



THE CRIMINAL ACT OF HUMAN TRAFFICKING WHICH IS BASED ON LAW ENACTMENT NUMBER 21 OF 2007 CONCERNING THE ERADICATION OF CRIMINAL ACTS OF HUMAN TRAFFICKING

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Abstract: There are still found the cases of the law facts about human trafficking which is happen in jurisdiction of police of Metro, Province of Lampung. The obstacle which is found in this reasearch is how to eradicat the criminal act, and the factors which obstruct the eradication of human trafficking. Eradication of human trafficking crime act is held by *penal* and *non penal* approach. *Penal* approach is beheld by counseling, social education in aim to develop human social responsibility about awareness to human trafficking criminal act, law knowledge counseling, re-socialization, workshop, and another activity. Then, those activities beheld in crime vulnerable area or crime object treatment. *Penal* approach beheld by legal effort; it means that the criminals or the actor of human trafficking action have to be procced by the enactment and sentenced to the court and execution. The aim is to get and to guarantee the legal certainty in a neighborhood. The factors which obstruct the eradication of human trafficking are such; facility factors, society factors, and culture factors.

Keywords: eradication, crime action, human trafficking.

I. INTRODUCTION

The development of is followed by developments of crime rates. Today, the development of human bing in Indonesia is currently very fast. The progress and implementation in all fields including social, political, economic and cultural have negative impacts of increasing the quality and quantity of various kinds of the crimes that are detrimental and disturbing to society. This era development is also accompanied by developmentsofthe crime rate, so the ability of law enforcers to prevent and deal with various crimes, both conventional and transnational crimes, is hopfully to be highly expected by the public to be further improved. Law enforcement is carried out by utilizing capabilities in the form of law enforcement which are carried out by professionals who are truly experts in their field and have practical experience which is related to the field.

Law enforcement is a process of efforts to enforce or function real legal norms as guidelines for behavior in traffic or legal relations in social and state life. Viewed from the perspective of the subject, law enforcement can be carried out by a wide range of subjects and, can be interpreted as law enforcement efforts involving all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the applicable legal rules, means that he or she is carrying out or enforcing legal rules. In a narrow term, from the perspective of the subject, law enforcement is only defined as the efforts of certain law enforcement officials to guarantee and to ensure the upholding of the law, if necessary, the law enforcement officials are permitted to use coercive force.

Law enforcement efforts regarding the occurrence of a criminal act are carried out comprehensively by law enforcement officers in all fields. An example is law enforcement efforts against criminal acts of human trafficking in the Police Legal Area of Metro city, province of Lampung. In the current era, there are still found of some cases which are related to criminal acts of human trafficking for human exploitation, so it needs to optimize the law enforcement within this field. An example of the case of criminal act of human trafficking, which was carried out by the perpetrator of a criminal act that occurred in the jurisdiction of the Metro Police. The perpetrator has fulfilled the material elements of committing the crime of human trafficking as regulated in Article 2 paragraph (1) of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking in a Decision which has permanent legal force (*inkracht van gewijsde*).

The typology development¹ of criminal acts of human trafficking shows that human trafficking is the most dominant source and the main predicate crime which gives rise to other criminal acts. The criminal acts development of human trafficking has reached a condition which requires attention. Seeing the close correlation between criminal acts of human trafficking as a predicate crime and criminal acts of human trafficking as its derivative, so it is very clear that the success of the war against criminal acts of human trafficking is largely determined by the effectiveness of the anti-trafficking regime.²

An interesting thing which causes social problem is that the current anti-trafficking regime is not sufficient to support efforts to prevent and eradicate criminal acts of human trafficking in the jurisdiction of the Metro Police Legal Area. Based on pre-survey data from the Metro Police, criminal acts of human trafficking have increased as shown in the following table: ³

¹ Gumarso Singgih, *Hukum dan Kriminologi*, Sinar Grafika, Jakarta, 2011, p.49, *Tipologi Kejahatan merupakan jenis-jenis tindak pidana dalam perkembangan modus-operandi baru (delik khusus) yang dilakukan para pelaku tindak pidana*

² *Ibid*, p.51. *Predicate crime merupakan pembuktian kejahatan asli, derivative sarana untuk melakukan tindak pidana*

³ *Satreskrim* (criminal division) Polres Metro 2020

YEAR	NUMBER OF CRIMINAL CASES OF HUMAN TRAFFICKING IN THE JURISDICTION OF METRO POLICE
2015	1 case
2016	0 case
2017	0 case
2018	2 cases
2019	1 case

Source: criminal division of Metro Police

Today, criminal acts of human trafficking have become a social phenomenon. Universal and comparative definitions regarding criminal acts of human trafficking have concepts regarding criminal acts of human trafficking based on different priorities and perspectives. The criminal act of human trafficking as regulated in Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Human Trafficking is a form of crime. The perpetrator can be held responsible for all his mistakes. Criminal acts of human trafficking still frequently occur in the jurisdiction of the Metro Police. Such cases need attentions from the government.

II. DISCUSSION

Eradicating the Crime of Human Trafficking

Eradicating criminal acts of human trafficking that occur in the Metro Police Legal Area in particular is based on the provisions in Law Number 21 of 2007 concerning Eradication of Criminal Acts of Human Trafficking which is realized as a form of legal certainty in the eradication of criminal acts of trafficking. Criminal sanctions in this law aim to ensure legal certainty, orderliness and legal protection in the current modernization and globalization can be implemented, if the various dimensions of legal life always maintain balance and harmony between civil morality which is based on actual values in civilized society. The activity process that includes various parties including the community within the framework of achieving goals is mandatory to view criminal law enforcement as a criminal justice system.

The eradication of criminal acts of human trafficking is applied to perpetrators through a judicial process. Efforts to eradicate criminal acts of human trafficking have to reach the stage of examination in court by a judge in handing down a verdict to the perpetrator of a criminal act of human trafficking by viewing to several elements of error which have been fulfilled in order to be held accountable for their actions which has to be appropriate with the elements of a criminal act, such mentally healthy, knowing that their actions are contrary to the law and being able to know their will according to their conscience, so that they can be punished by a judge. The aim of this punishment is not retaliation but rather guidance for

defendants who have done wrong and so that they can be held accountable for their actions. The theory of the purpose of punishment is:

- a. Influencing the creator's behavior so that he does not take action another crime which is usually called social prevention.
- b. Influence the behavior of members of society not to commit criminal acts like those committed by the convict.
- c. Bringing an atmosphere of peace or conflict resolution.
- d. Retaliation or recompense and correction of the maker's mistakes.⁴

Criminal acts of human trafficking still happen in jurisdiction of the Metro Police. It can be seen from the disclosure of human trafficking cases in several big cases in Lampung Province. The perpetrators have been proven to have committed the crime of human trafficking as regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of human Trafficking. Juridical studies regarding law enforcement and crime prevention indicate that law enforcement and crime prevention efforts can be implemented by:

- a. application of criminal law
- b. prevention without punishment
- c. influencing society's views on crime and approaches through the mass media.⁵

In terms of its relevance to law enforcement theory, it can be analyzed that eradicating criminal acts of human trafficking is implemented using a penal method. The penal approach is an approach that uses criminal law tools as stated in the theory of law enforcement and crime prevention called criminal law application. The penal approach is an approach that uses criminal law. Penal method applies formal criminal penalties (*Ultimum Remidium*) and nnothe criminal penalties which implemented through the criminal justice system. There are three (3) ways to get the expected goals. First, the short-term is resocialization (re-socializing) perpetrators of criminal acts. Second, medium-term is to prevent crimes from occurring. Third, long-term goal is to achieve social welfare. The legal instrument which is used for those ways is Article 2 paragraph (1) Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking.

Eradicating criminal acts of human trafficking is carried out through a penal approach. Perpetrators of criminal acts of theft with violence must be sent to court and get criminal sanctions in accordance with applicable statutory provisions. Penal method is one of the efforts which can be done to enforce criminal law for criminal acts of human trafficking with the aim of exploitation. Penal method for overcoming crime is carried out with criminal law; that is criminal sanctions which constitute a threat to the perpetrator. Judging from Law Number 21 of 2007 about concerning the Eradication of the Crime of Human Trafficking, so the application of criminal sanctions in Law Number 21 of 2007 is a form of the Eradication of the Crime act of Human Trafficking a form of penal effort in eradicating the crime of human trafficking. This is the implementation of the penal approach in enforce the law by means of legal action.

⁴ R. Sudarto, *Hukum Pidana*, Yayasan Sudarto, Law Faculty of UNDIP, Semarang, 1997, p.93

⁵ *Ibid*, p. 67

Examining the description above, the author can analyze about eradicating criminal acts of human trafficking which is carried out through a penal approach by means of legal measures. Legal efforts using penal method has to focus on repressive actions; that is eradication and crackdown actions to overcome the problem of criminal acts of human trafficking. Legal policy in eradicating criminal acts of human trafficking is included in social policy, namely policies or rational efforts in order to achieve community welfare. The imposition of criminal sanctions in the form of imprisonment or fines on perpetrators of criminal acts of human trafficking is carried out through a judicial trial process, and the imposition of administrative sanctions can be carried out without a judicial trial process although it must view to the principles of proper governance.

Monitoring criminal acts of human trafficking in the Metro Police Legal Area

Monitoring criminal acts of human trafficking in the jurisdiction of the Metro Police is one of the methods or activities efforts which is carried out to identify early any incident which is suspected to contain elements of a violation or crime. Monitoring criminal acts of human trafficking has three forms, those are:

1. Monitoring every incident which can be suspected and/or contains elements of a criminal act of human trafficking in the jurisdiction of the Metro Police.
2. Inventorying information based on the operational modus of criminal acts of human trafficking in the jurisdiction of the Metro Police.
3. Collecting information about an incident where a criminal act of human trafficking occurred in the jurisdiction of the Metro Police.

The operation of the criminal act of human trafficking in the jurisdiction of the Metro Police is an activity in seeking and finding information which is related to the incident, so the implementation is adapted to the kind and type of violation by viewing the human rights and be followed by a legal basis which means equipped with an angle order.

Efforts/methods to monitor and operate criminal acts of human trafficking in the Metro Police Legal Area can be in the form of:

1. Observation by deploying a special unit and carefully to the object and scene of the incident to obtain a clearer description, either overall or in more detail of criminal acts of human trafficking in the Metro Police Legal Area.
2. Stalking of objects which are connected or related to incidents of criminal acts of human trafficking in the jurisdiction of the Metro Police which will, are currently and/or have happened.
3. Infiltration within the scope of an event or class of activity involving a criminal act of human trafficking in the jurisdiction of the Metro Police where elements of a violation will occur, are occurring or have already occurred.
4. Carrying out interrogations with parties who know or are reasonably suspected of knowing about the occurrence of violations/crimes of criminal

acts of human trafficking in the Metro Police Legal Area by paying attention to the source and value of the information.

Cooperation in monitoring criminal acts of human trafficking in the Metro Police Legal Area

Metro Police cooperates and coordinates with other security forces such as local guard or village police (in Indonesia is called *polmas* or *hansip*), society security and order advisor police (in Indonesia is called *Bhabinkamtibmas*), national army (TNI) or other related officers. This collaboration is based on their respective functions without disturbing or interfering with the technical tasks of each agency. Supervision is focused on the possibility of criminal acts of human trafficking with the aim of exploitation. Law enforcement efforts to tackle criminal acts of human trafficking in the Metro Police Legal Area are carried out with preventive and repressive efforts.

1. Law enforcement efforts to tackle criminal acts of human trafficking in the Metro Police Legal Area in a preventive manner

The crime of human trafficking in the Metro Police's jurisdiction cannot be separated from the problem of monitoring the activities of citizens in Metro City. The meaning of supervision has a broad meaning and contains a positive meaning. Supervision also means the process of observing all activities which is carried out by law enforcement officials in accordance with applicable regulations, instructions and policies. An important thing of supervision, is to know that deviations or errors occur in the implementation of tasks. Law enforcement efforts to tackle criminal acts of human trafficking in the Metropolitan Police's jurisdiction, in this case, are carried out preventively, has to be done as early as possible. Looking at the facts of cases of criminal acts of human trafficking which have occurred in Metro City, it can be seen that system for monitoring citizens activities which lead to criminal acts of human trafficking in the Metro Police Legal Area is still not running optimally yet.

2. Law enforcement efforts to tackle criminal acts of human trafficking in the Metro Police Legal Area by repressive means

In its relevance to law enforcement efforts to tackle criminal acts of human trafficking in the Metro Police Legal Area, repressive methods are carried out after the occurrence or presence of criminal acts of human trafficking in the Metro Police Legal Area. This action can be juridical based on the provisions in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking.

Criminal acts of human trafficking still occur in the jurisdiction of the Metro Police. Those cases which have happened need attention from the government. Law enforcement efforts to tackle criminal acts of human trafficking in the Metro Police Legal Area by repressive means are carried out after the occurrence or existence of criminal acts of human trafficking in the Metro Police Legal Area. This action is

juridical in nature and is guided by the provisions in Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking.

Eradicating criminal acts of human trafficking is closely related to the role of law enforcement officials in tackling criminal acts of human trafficking in the Metro Police Legal Area. Each law enforcement officer and officials have to include parties concerned with their duties or roles, that is related to reporting or complaint activities, investigations, inquiries, prosecutions, evidence, sentencing and imposition of sanctions, and efforts to re-socialize convicts. In the working process of law enforcement officials, there are 3 (three) important elements which are influenced.

III. CONCLUSION

Eradication of criminal acts of human trafficking is carried out using non-penal and penal means. The non-penal approach is carried out through counseling, social education in order to develop the social responsibility of community members who are aware of the criminal act of human trafficking, legal counseling, resocialization, workshops, etc., especially carried out in environments that are prone to crime, handling objects of crime. The penal approach is carried out with legal measures, which is the perpetrators of criminal acts of human trafficking have to be prosecuted based on the provisions of statutory regulations up to the court level and executed in order to obtain criminal sanctions and guarantee legal certainty in society.

The factors which inhibit the eradication of criminal acts of human trafficking are as follows: Facilities factor that is the limited number of law enforcement officers in the field to monitor and anticipate criminal acts of human trafficking, and the lack of limited facilities, have resulted in law enforcement in handling criminal acts of human trafficking face obstacles. Community factor, some cityzens in border areas with Metro city and some regencies generally do not know the importance of law enforcement in handling the crime of human trafficking and are reluctant to report it to the authorities, so it makes difficulties for law enforcement to eradicate the perpetrators of this crime. Cultural factor, The cultural factor in question is a cultural shift in the social order of society. This factor is influenced by foreign cultural values which have a negative impact on Indonesian society, that is the negative aspects of immoral acts and human trafficking which also influence the local wisdom values of the people in Metro City

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