Towards Human Security: Women and Human Trafficking In Perspective of Human Rights and Law in Indonesia

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Abstract

Human trafficking is a sensitive issue at the same time a complex issue which involves women, children around the world are vulnerable to danger. This research seeks to understand how human trafficking is one of transnational crime is a problem in human history. Human trafficking is a new threat from humans in the world and this situation is also a concern for the state to resolve the issue. This crime against human rights and change people into the working poor, slaves, prostitutes, etc.

Keywords : Women, Human Trafficking and Human Rights

1. Introduction

Human trafficking is a sensitive issue at the same time a complex issue which involves women, children around the world are vulnerable to danger. Trafficking in persons is one of the forms of violence committed against children and women regarding physical violence, mental or sexual [1].

Human trafficking has become a global humanitarian issues [2]. By involving many nations, either as countries of origin, countries of destination and transit country, making this issue is more complex. Problem complexity increasing with increasing its neat and organized crime networks across the country.

Historically, trade or slavery has existed and evolved since hundreds or even thousands of years ago that began with the conquest of one group by another group, the group of the most powerful and has powers will dominate the weak group. Ownership economic and political power make sources and opportunities to the development of slavery, as a result of the conquest that is paid by an absolute devotion.

In continental Europe, especially Britain, slavery begins with the conquest of the UK to several countries outside the European continent. The first case of slavery - all known to occur in Sumerian society, which now is Iraq, more than five-thousand years ago. Slavery occurs in people of China, India, Africa, the Middle East and America. Slavery evolved along with the development of trade with increasing demand for labor to produce goods - goods for export. At that time slavery was the general state fair, which can happen to anyone at any time. Not much to look at slavery as evil or unfair practices [3].

The problem of human trafficking, especially women and children in Indonesia lately increasingly widespread. An increase in cases of criminal offenses per-trade people from year to year his special against women and children, including children who are still babies. UNAFEI report in 2004 showed that one third of the number of human trafficking around the
world are women and children, with amounts ranging 200000-225000 people each year [4].

The reality is quite insufficient irony with legislation on the prohibition against regulations gangan people, ranging from the Constitution of the Republic of Indonesia Year 1945, the Code of Penal (Penal Code), Act No. 39 of 1999 on the Right Human Rights, Law No. 23 of 2002 on the Protection of Children to Act No. 21 of 2007 on the Eradication of Trafficking in Persons.

Human trafficking is an act that is contrary to human dignity and violate human rights. Trafficking in persons has been expanded in the form of an organized crime network and disorganized, is both between countries and within the country, thus becoming a threat to society, nation, and state, and against the norms of life which is based on respect for human rights.

The condition of women and children as it would threaten the quality of the mother of the nation and the next generation of Indonesia. Combating human trafficking is not as easy as, given the syndicate trafficking have, networking and a great resource. In addition, the culprit was often move transportation line received less scrutiny. National legal system in Indonesia is still inadequate to deal with a problem as big and full of complexity as the problem of trafficking in children and women. Plus, the third chapter is used in cases of trafficking in women, namely Article 296-298 of the Criminal Code is prone to ensnare the perpetrators of trafficking in all its diverse forms, because these articles only include the trafficking of women for the purpose of exploitation of women and elaboration of elements about the trafficking of women and even then filled with confusion.

This article asking the question, why slavery is so prevalent in the world today? Although there are non-governmental organizations, government regulation, and individual efforts in place to try to counter the trend of slavery and trafficking, a practice more common today than at any other point in human history. Economic movement Neoliberalism and globalization processes will be considered as a contributor to modern slavery and human trafficking. Also, case studies will be provided to offer a detailed insight into this phenomenon.

In this article, I will explore the dimensions of human trafficking to distinguish between different types of trade. This distinction is based on the interpretation of the victims traded as a commodity. This article seeks to explore and to understand how human trafficking is one of transnational crime is a problem in human history. Development of alternative ideas is important because the notion that Human Security rests on the assumption that puts man as an entity that must be protected from various threats.

1.1 Research Design.

This article is based on the research literature to discover variants of secondary sources found in a number of studies that terekan in the written text of books, papers, journal articles and relevant reports. The procedures that are commonly used are: (1) perform Inventory and identification of literature relating to trafficking and human rights, (2) identify patterns of various cases that arise, then analyze and present the descriptive variety of cases and is associated with the context of globalization, and (3) submit conclusions.

By using the method of approach: 1). Legal approach (law approach) to find basic philosophy and the ratio legis of the Act relating to the matter being investigated. 2). Conceptual Approach (conceptual approach) to understand and find the concept in the field of bankruptcy law and the field of arbitration. 3). Case approach (approach cases) against commercial decision putasan court which has had the force of law (inkracht van gewijsde) permanent, this is done to find the ratio decidendi or reasoning judgment that the court to take a decision.

3. Data and Findings.

Based on the discussion of the results of this study concluded that:

3.1 Overview of Human Trafficking.

The term "trafficking" was first known from the United Nations instruments. At first "traffic" is used to refer to the "white slave trade" experienced by women in about 1900. At that time, many poor white women voluntarily migrate from Europe to Arab and Eastern regions of America as concubines or prostitutes commercial. This is a particular concern for European society middle class, both men and women, also the Government. The result is the formation of an international agreement to suppress the white slave trade in 1904, then the term "traffic" changing its use be directed to activities of mobilization of women for immoral purposes, namely prostitution. At first, the definition is intended merely mobilization carried out within the country. However, by 1910 the definition was extended to include also trafficking in women that occurs within the boundaries of transnational. As a result, women who migrate are often attached to prostitution [5].

Definition of trafficking in persons under Article 3 point a United Nations Protocol of 2000 on Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol Italy) is defined as "trafficking in persons' shall mean the recruitment, transportation, transfer or harbouring receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, or deception, of the abuse of power or of a position of vulnerability or of the person having con-trol over another person , for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Thus, human trafficking from recruitment[6] , transportation [7], transfer, harboring or receipt of persons by threat or use of all violence or other forms of coercion [8], abduction, fraud or deception, abuse of power, giving or receiving of payments or benefit in order to obtain persetu -juan of a person in authority over another person for the purpose of exploitation [9]. Exploitation, including for prostitution of others or other forms of sexual exploitation [10], forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Based on the above understanding, this suggest that humans as commodities, move it arbitrarily, laden with various offenses and crimes and arbitrariness which is based on power
with the purpose of labor exploitation is detrimental to the interests of victims and benefited others. Buying and selling human beings, many involving children and women for the sake of sexual exploitation. In addition, they have been abused as sex objects that destroy the lives of those [11]. Therefore, it can be said that trafficking in persons is a human tragedy must be stopped [12].

 Trafficking in women according to the Global Alliance Against Traffic in Women (GAATW) in Thailand in 1994 are:

 All efforts or actions relating to recruitment, transportation within or across borders, purchase, sale, transfer, delivery or receipt of a person by using deceit or pressure, including the use or threat of use of force or violence or the abuse of debt bondage for the purpose of placing or holding the , whether paid or not to work undesirable (domestic, sexual or reproductive) in forced labor or bondage or slavery-like conditions, in an environment other than the place where the person was living at the time of deception, pressure and indebtedness the first time [13].

 According to Article 1 (1) of Law No. 21 of 2007 on the Eradication of Trafficking in Persons, Trafficking in Persons is the act of recruiting, transporting, harboring, transportation, transfer, or receipt of persons by threat of violence, use of force, abduction, confinement, forgery , deception, abuse of power or of a position of vulnerability, debt bondage, or giving payments or benefits, to achieve the consent of he who holds control over the other person, whether within the country or between countries, for the purpose of exploitation or cause people to be exploited.

 3.2. General Review on Human Rights (HAM)

 3.2.1 The nature of Human Rights.

 Human rights are basic rights of human beings since humans were born. Rights can be formulated as a right inherent to human nature. This right is owned by a man simply because he is human, not because the public administration or the administration of the state. Thus human rights is not dependent on the recognition of other human beings, other people, or other countries. Human rights derived from the Creator, which is God Almighty and is a right that can not be ignored. Human rights are the rights of human beings simply because he is human. Human beings have not because it was given to him by the public or by positive law, but solely based on their dignity as human beings [14]. Humans are creatures of God who have dignity. Therefore, it is universal, meaning that applies anywhere and for anyone and can not be taken by anyone. These human rights are needed in addition to protect themselves and the dignity of humanity is also used as a moral foundation in associating or dealing with fellow human beings.

 3.2.1 Definition of Human Rights.

 The term human rights is a translation of the Droits de L'homme (France), Human Rights (UK), and mensekelijke rechten (Netherlands). In Indonesia, human rights better known as rights or may also be referred to as the right fundamental. Istilah rights monumental born
since the French revolution in 1789 in the "Declaration des Droits de L'homme et du Citoyen" (rights human and French citizen), with the slogan Liberte (Freedom), Egalite (Equality) and Fraternite (Brotherhood).

Rights in the general sense is the fundamental rights of every human person as God's grace inborn therefore that human rights are fundamental rights of every human being attached and as the grace of God the Most Esa. Ada some inalienable rights such as the right to have freedom of speech and expression, the right to choose religious freedom in accordance with own religion, the right to freedom of association, the right to equal protection before the law and much more.

The right to life, the right to liberty and security are examples of some of the rights that are universally recognized in the world. No one shall be enslaved, trafficked, abused, treated as inhuman or degrading. In this sense, then even though everyone is born with skin color, sex, language, culture and different nationality, such a person suspected or convicted person is not part of human rights. he still has these rights. This is the universal nature of these rights. In addition to universal, those rights are also inalienable (inalienable). That is as bad as any treatment that has been experienced by a person or how ruthlessly treatment of a person, he will not stop being human and therefore still have these rights. In other words, the rights attached to him as a human being.

Indonesia, the notion of human rights affirmed in Article 1 of Law No. 39 of 1999 on Human Rights:

Human Rights is a set of rights attached to nature and human existence as a creature of God Almighty and it is His grace that must be respected, upheld and protected by the state, law and government, and everyone for the respect and protection of human dignity [15].

3.2.3 Principles of Human Rights.

Talking about human rights principles in the context of international human rights law, it will be associated with the general principles of international law (general principles of law), which is also one of the main sources of international law (primary), in addition to international agreements (treaty), customary international law (customary international law), jurisprudence and doctrine. So that a principle can be categorized as general principles of international law required two things, namely the acceptance (acceptance) and recognition (recognition) of the international community. Thus, the human rights principles that have met these two conditions have categories as general principles of law. In fact, it was later elaborated into various instruments of international human rights law, such as international treaties.

Some have animating principle of human rights. These principles are found in almost all international agreements and applied to the rights of the wider. The principle of equality, the prohibition of discrimination and the positive obligations imposed on each country used to protect certain rights [16].

The notion of human rights is built on the principle of equality. This principle emphasizes that human beings are domiciled equal dignity and status concerns. Humans have equality in human rights. Differences inherent in human beings not cause humans into an unequal position, because although he is as a human being is so still. This is for instance
reflected in the principle of equal pay for equal work in the UDHR are considered as the same rights to work the same principles as well as the human rights. Equality requires equal treatment, in which the same situation should be treated equally, and with the debate, in which the different situations are treated differently [17]. Prohibition against discrimination of non-discrimination is one important part of the principle of equality. If everyone is equal, then there should be no discriminatory treatment (other than affirmative action to achieve equality). This principle is also known by the name of the principle of non-discrimination. In the "International Bill of Human Rights", ie UDHR, ICCPR and ICESCR, this principle has been loaded explicitly. Even earlier, the same thing also had previously affirmed in the Charter of the United Nations (United Nations Charter). The principle of positive obligations arising country as a logical consequence of the provision in accordance with international human rights law that an individual is the party that holds rights (right bearer) while the state plays as the holder of the obligation (duty bearer) on human rights, namely the obligation to; protect (protect), guarantees (Ensure) and meet (fulfill) the human rights of each individual. In fact, according to international law, the obligation on top of an obligation erga omnes nature or liability for the whole country when it comes to human rights norms are categorized as jus cogens (peremptory norms). For example, a ban; slavery, genocide and torture.

3.2.4 Human Rights non-derogable rights.

In the MPR Decree No. XVII / MPR / 1998 on Human Rights, Article 37 of which states: The right to life, freedom from torture, freedom of thought and conscience, freedom of religion, the right not to be enslaved, the right to recognition as a person before the law, and the right not to be prosecuted based on retroactive law is a human right that is not can be reduced under any circumstances (non-derogable) [18].

Non-derogable rights are human rights that can not be reduced under any circumstances. Thus the non-derogable rights defined in the Constitution Amendment NRI 1945 first paragraph of Article 28 (1) which states as follows:

The right to life, freedom from torture, freedom of thought and conscience, freedom of religion, the right not to be enslaved, the right to recognition as a person before the law, and the right not to be prosecuted based on retroactive law is a human right that is not can be reduced under any circumstances [19].

Furthermore, Article 4 of Law No. 39 of 1999 on Human Rights also states: The right to life, the right not to be tortured, the right to personal freedom, freedom of thought and conscience, freedom of religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted under retroactive laws is the right human rights can not be reduced under any circumstances and by anyone [20].

The classification of non-derogable rights and derogable rights are appropriate International Covenant rights or the International Civil and Political Covenant on Civil and Political Rights (ICCPR). Ratification of the International Convention of civil rights politics is a step forward Indonesian government in an effort to improve the human rights performance. For the civil and political rights more concrete marked by the Ratification of the ICCPR by Act No. 12 of 2005 which is also mentioned in Article 7: "that no one should be subjected to torture, mistreatment or cruel, inhuman, or degrading treatment" [21].
Idhal Kasim in his "Convention on Civil and Political Rights, An Introduction," published ELSAM, the rights of non-derogable rights are absolute and must not be reduced fulfillment by States parties, although in a pinch though. Miriam Budiarjo in "non-derogable Should Sign Act of 1945". Said that with the inclusion of non-derogable rights in the Constitution, then we have tied its own hands. Let's say, the poor and neglected children in the Constitution is declared as non-derogable rights, then we will be accused of human rights violators if the state does not fulfill due in connection with the limited funds.

In accordance with Article 28, ICCPR states' rights altogether should not be reduced because it is so fundamental, namely: (i) the right to life (rights to life); (ii) the right to be free from torture (rights to be free from torture); (iii) the right to be free from slavery (rights to be free from slavery); (iv) the right to be free from detention for failing to fulfill the agreement (debts); (v) the right to be free from retroactive punishment; (vi) rights as a legal subject; and (vii) the right to freedom of thought, conscience and religion. States parties to a violation of the rights in this type will often criticized as a country that has committed a serious breach of human rights (gross violation of human rights). Because this right is very important that these rights are very obliged to be protected by law so that no one can be deprived of life arbitrarily.

3.3 Law About Trafficking.


The international conventions in the country wanted an active role of the state in preventing, protecting and enforcing the law against human trafficking activities in his country. Indonesia as a UN member states have ratified the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) in 1979 by Act No. 7 of 1984 with the Republic of Indonesia Year 1984 Sheet number 29.


In the historical record manusiata trade, women and children has become a very vulnerable position of victims in human trafficking crimes. Laws and regulations relating to trafficking such as Law No. 23 of 2002 on the Protection of children and Law No. 7 of 2002 on the ratification of CEDAW has not provided a comprehensive legal basis for
this trafficking crime.

To give a little hope to the prevention and law enforcement related to human trafficking, the Indonesian government established regulations that Act No. 21 of 2007 on Penberantasan Crime of Trafficking in Persons. This Act also write platted criminal penalties of imprisonment for not only the perpetrators but also impose criminal penalties. Relating to the protection of victims of human trafficking is also applicable law number 13 of 2006 on the Protection of witness and victim protection in addition to that stipulated in Law No. 21 of 2007 on the Eradication of Trafficking in Persons is.

3.4 Forms of Human Trafficking.

Forms of trafficking in persons is happening in a country with other countries have different characteristics, but in general its bentukbentuk include: sexual exploitation, forced labor, domestic servitude, child adoption between countries illegally, debt bondage, mail order brides and trafficking human organs[24]. Based on research conducted by the institute in Indonesia forms of trafficking is very varied. Harkristuti recorded Harkrisnowo said some of the findings in the field are as follows:[25]

a. Delivery of migrant workers out of the country without official documents or official documents dipalsukandan under the guise of legal activities, for example, "cultural mission";

b. The placement of manpower in the country for sexual exploitation;

c. Implementation of marriage timeless only to legalize sexual intercourse is meant for a certain period to receive financial compensation (marriage contract) which is usually done by male foreign workers with Indonesian women;

d. Implementation of marriages between countries through orders (mail-order bride) and the bride did not know the actual conditions of the prospective husband;

e. The recruitment of children to become workers on the platforms with very minimal wages, working conditions that threaten the health of the body, mental and moral; and

f. Adoption infants without due process (due proces of Law).

For example, during 2004 up to March 14, 2005 the government has repatriated at least 120 people and 347 696 victims of trafficking of Indonesian workers (TKI) with practices. They were sent to Malaysia with passports and visiting or tourist visas to work there. In the absence of a work visa, has led many of them are exploited in the form of passport retention, low wages, confinement, even treatments are inhumane. When a visitor's visa had expired, the TKIs become illegal as they had overstayed and this made them vulnerable to in eksplitasi. As the development of technology and transport between the State allows the increasing trafficking across borders. Cases that arise may be difficult to resolve. To resolve this problem diliperlukan effective legislation and efesian in order prevention and law enforcement on cases of trafficking in persons, especially that crosses state borders Indonesia.

Rampant cases of human trafficking in Indonesia, is very closely linked to high rates of poverty and unemployment as well as impacted by the low level of education, gender discrimination, and marriage early age. In addition, the prolonged financial crisis and economic slowdown has led to many families, not least in Indonesia, lost sources of income,
so that in this condition, prostitution is considered to give better opportunities to children and women to earn money. Children and women are the most numerous victims of human trafficking which puts them in a very risky position, especially with regard to both physical and mental health spiritual, and very prone to acts of violence, unwanted pregnancy, and sexually transmitted infections including HIV / AIDS [26].

4. Reference.

[5] Recruitment is an act which includes invites, collecting, carrying, or separate a person from the family or the community (Article 1 point 9 of Law No. 21 of 2007 on the Eradication of Human Trafficking / UUPTPO).
[6] The delivery was dispatched action or harboring a person from one place to another (Article 1, point 10 UUPTPO).
[7] The violence is any act in contravention of the law, with or without the use of physical and psychological means against which pose a danger to the life, body, or cause a person's deprivation of liberty (Article 1, point 11 UUPTPO). The threat of violence is any act in contravention of the law in the form of speech, writing, images, symbols, or gestures, either with or without the use of means which cause fear or curb a person's fundamental freedoms (Article 1, point 12 UUPTPO).
[8] Exploitation is an act with or without the consent of the victim which include but are not limited to pela-Curan, forced labor or services, slavery or practices similar to slavery, oppression, extortion, panorama-entry physical, sexual, reproductive organs, or unlawfully remove or transplant organ and / or tissue or utilizing the power or ability of a person by another party to gets her material and immaterial advantage (Article 1 point 7 UUPTPO).
[9] Sexual exploitation is the use of all forms of sexual organs or other organs of the victim for profit, including but not limited to all activities of prostitution and fornication (Article 1 point 8 UUPTPO).
[16] Ibid.
[17] Ibid.