

## **The Nature of Legal Protection for Women Victims of Trafficking in Persons**

Amelia Arief<sup>1</sup>, Mulyati Pawennai<sup>2</sup>, Sufirman Rahman<sup>2</sup>, Baharuddin Badaru<sup>2</sup>

<sup>1</sup>Doctor of Law at Muslim University of Indonesia

<sup>2</sup>Indonesian Muslim University

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### **ABSTRACT**

This study aims to analyze the nature of human trafficking crimes that have an impact on women as victims. This type of research is descriptive research with a juridical-empirical approach, which is research that examines positive legal rules to get answers to existing problems by linking facts or phenomena about the effectiveness of legal protection against women victims of the crime of trafficking in persons. The results of the study show that: the nature of the crime of trafficking in persons that affects women as victims in South Sulawesi undergoes a very complex process with various forms of exploitation, violence, and mistreatment that causes suffering both physically and psychologically.

**KEYWORDS:** Women; Victim; Trading

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### **I. INTRODUCTION**

Human trafficking has long been a national and international problem for various nations in the world, including Indonesia. The issue of human trafficking (especially children and women) began to attract the attention of many parties in Indonesia when ESCAP (UN Socio-Economic Committee for the Asia Pacific Region) issued a statement placing Indonesia along with 22 other countries in the third (now ranked 2) or lowest position in responding to the issue this<sup>[1]</sup> The *International Organization for Migration* (IOM) report states that the number of victims of human trafficking in Indonesia between 2005-2017 reached 8876 people. Female victims continue to be the largest victims of human trafficking.<sup>[2]</sup>

Indonesia is suspected as a country with cases of trafficking in persons for widespread domestic marketing and has even become a source country (*supplier*) for international trade.<sup>[3]</sup> Another thing, in Indonesia human trafficking always appears and exists in various forms according to the situation and conditions. In the case of human trafficking, the most vulnerable victims are women and children. Women are trafficked for sexual purposes by being used as commercial sex workers and workers in other sectors. Women are most vulnerable to being ensnared in human trafficking, especially those who work as domestic helpers abroad or commonly called female workers (TKW) often receive inhumane treatment. The acts of exploitation and violence experienced by the victims caused deep trauma and suffered psychological and mental losses.

The International Organization for Migration (OMI) report stated that the number of victims of human trafficking in Indonesia between 2005-2017 reached 8876 people. Female victims still occupy the highest rank who experience trafficking in persons. In 2018, the Indonesian National Police (POLRI) reported 95 cases of trafficking in persons, this is a decrease compared to 123 cases in 2017.<sup>[4]</sup> Dozens of reports of TPPO (Trafficking in Persons) involving 297 victims the majority are made into migrant workers and commercial sex workers. Then, 248 cases entered the prosecution stage in the High Court.

Trafficking in women hinders the development of human resources considering the social and psychological impacts experienced by the victims prevent them from functioning socially, contributing to the development process and continuing the quality regeneration process. The stigma imposed on women and children who have been 'exploited' in prostitution, for example, is an obstacle serious for victims to participate in the development and community life. Furthermore, trafficking in women also has the potential to weaken positive social values in society which in turn can lead to various social vulnerabilities.<sup>[5]</sup>

Indonesia is one of the countries that agreed and promised to implement the Palermo Protocol, and Indonesia succeeded in ratifying and promulgation in the 2007 State Gazette of the Republic of Indonesia No. 58, which is an addition to the State Gazette of the Republic of Indonesia Number 4720. Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Trafficking in Persons or UUPTPO. The crime of trafficking in persons itself means any action that contains elements of a criminal offence that has been regulated in the UUPTPO. In the case that occurred in Indonesia, the victims of the crime of trafficking in

persons were not only exploited to China but some were also sent to other countries, for example, Gabon, Africa.

In South Sulawesi, the number of cases of human trafficking or human trafficking that occurred in South Sulawesi increased in 2016 compared to 2015. Previously, in 2015, the number of human trafficking cases reported at the South Sulawesi Regional Police was only four cases. The four cases were resolved. Meanwhile, in 2016, there were five reports of human trafficking cases at the South Sulawesi Regional Police. However, only one report was completed.<sup>[6]</sup>

The crime of Trafficking in Persons is a type of slavery in this modern era. At the world level, trafficking in women is closely related to transnational crime and is declared a violation of human rights, which is very contrary to human dignity. Cases of Trafficking in Persons from year to year are increasing. The sending of Indonesian workers abroad is often used as a crime mode for human trafficking. The victims of human trafficking usually enter through illegal channels through brokers. Every year at least 450,000 Indonesians (70 per cent are women) are dispatched as workers abroad. Of this amount, around 46 per cent are strongly indicated as victims of the crime of trafficking in persons (results of a 2009 Migrant Care study).

## II. RESEARCH METHODS

This research is legal research using a juridical and sociological approach. A juridical approach is an approach that uses the rules and regulations related to the problem being studied, while the sociological approach is an approach that uses primary data with secondary data support.

## III. DISCUSSION

Islam upholds human values. The form of respect for human values can be seen in the very strict sharia rules that impose sanctions on anyone who violates human rights. In addition, Allah's glorification of human existence in the world is also affirmed in the Qur'an and hadith. In QS. Al-Isra: 70.

﴿ وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ  
مِّنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا ۝ ٧٠ ﴾

The Word of Allah SWT according to the interpretation of the Ministry of Religion of the Republic of Indonesia, namely And indeed, We have honoured the children and grandchildren of Adam, namely the human group in general with good bodies, the ability to think, freedom of will, and knowledge, and We transported them on land in vehicles such as camels or others, and at sea, by ship, and We have provided them with good things, in the form of drinks and delicious food, and We have given them superiority over many creatures which We have created with perfect advantages.

In connection with this verse, women with all their advantages and disadvantages are creatures that are glorified by Allah SWT. Women in Islam have a high position and a great influence in family and social life. Therefore, in Islam, women (especially mothers) are termed as the first school (madrasah al-ula) in character building for families and communities. Women also have a very important role in the life of the state. However, behind the glory of a woman, women are often positioned in a subordinate position/position and are seen as objects so that they are vulnerable as victims in the practice of trafficking in women.

Trafficking of women (women trafficking) is not a new thing in human life. History records that in ancient times *slavery* occurred in various parts of the world. Slavery is known as a form of one's control over another person and the right to obtain material (by selling it to others) and immaterial (serving/serving/serving the master) benefits from such ownership.

Historically, the condition of women in the past was very sad and worrying, both in the Arabian Peninsula and in other regions around the world. They can hardly have the right to live properly. The history of trafficking in women (human trafficking) in Islamic history is better known as slavery that occurred in the Arabian peninsula in the period before the apostolic treatise of the Prophet Muhammad SAW. Evidence of the existence of slavery is contained in the story of the time of the prophet Ibrahim where his wife Siti Sarah was willing to give her slave, namely Siti Hajar, to the prophet Ibrahim who then gave birth to the Prophet Ismail. Likewise, at the time of the Prophet Ya'qub, free people that time people who were proven to steal could become slaves to those who took/stole their property,<sup>[7]</sup> to become slaves.<sup>[8]</sup>

The phenomenon of Trafficking (trafficking in humans) also occurred in the Jahiliyah era. In this era, according to Husein Muhammad, it happened to vulnerable groups such as women, children and the poor. The practices of oppression by the strong and rich against the weak and poor, at that time were common and were not considered as violations. They are considered not fully human, but only half-human, second class human, or even as goods. Violence against them can occur anywhere, both in the domestic and public spheres.

Another factor of the practice of slavery in the era of ignorance because it was supported by the socio-political situation at that time. The social structure of society at that time was very patriarchal, the social class system was still valid. The Quraish tribe is the highest so that it is highly respected and respected in the Arabian Peninsula region. The high intensity of war between tribes/tribes, the occurrence of robbery, kidnapping of women, poverty and powerlessness to pay debts, coupled with the existence of a slave market where the masters traded their slaves. This practice occurred for hundreds of years until finally Islam came and abolished the practice of slavery, but this abolition was carried out gradually, not directly. For example, the existence of the Kafarat law frees slaves when a Muslim violates religious law.

When Muhammad SAW was appointed as an Apostle, Allah gave him the main task, namely to improve the morality of the Quraysh at that time,<sup>25</sup> so that the spirit of liberating humans from the practice of slavery was one of the efforts to improve the morality of their people, and gradually the phenomenon of Trafficking (in the form of slavery) became forbidden. Islam teaches that humans are the most special, most perfect creation of Allah (laqod kholaqna al-insāna fī ahsāni taqwīm) not only physically perfect but also equipped with reason and other abilities. For this reason, Islam recommends freeing slaves who are Muslim and even Islam itself raises the status of these slaves. This can be seen from the hadith of the Prophet Muhammad: "Anyone who frees a Muslim slave who is a Muslim, then his actions will be his liberator from the fire of hell".

From the above hadith, it is very clear that Islam elevates the status of slaves, the Shari'ah also supervises and pays attention to liberation by encouraging these actions and promising salvation from hell and good luck by entering heaven for one who frees slaves. Even Islam elevates them from being slaves to being brothers to their masters.<sup>[9]</sup> Islam not only elevates them in terms of the attitude that should be given but also in talking to them so that they do not feel inferior.

In Greek society, women at that time did not have any share, so they were considered "temptations of the devil". Even one of their very famous orators, namely Demosthenes said, "Our aim in making women prostitutes and concubines is to pay attention to our daily physical health. While the wife is to give birth to our legal children." So, the Greek women who came out of the house and ascended the throne high in society were those who became prostitutes.<sup>[10]</sup>

Unlike the case in Greek society, in Jewish society, the position of a woman is equated with a maid, who does not inherit at all, if in a family there is a son and when her husband dies, she automatically becomes the wife of the brother. His brother, unless his brother releases him or does not marry him.<sup>[11]</sup>

In Indonesia, slavery has also occurred during the kingdom of the archipelago. Slavery at that time was a common thing. At that time, if a king had several concubines, which often indicated the amount of power the king had. These concubines not only came from ordinary people who were "sold" or had direct links to the royal rulers, or who were forced to surrender because they had to serve the rulers so as not to get rewards that could mean the loss of their lives, but also noble daughters who were handed over as a sign of loyalty or offerings from other kingdoms.<sup>[12]</sup>

During the Dutch colonial rule, slavery began to take a more commercial form. This activity is only carried out to obtain cheap workers (forced labour in the culture stelsel), but also to fulfil the growing sex industry due to a large number of European citizens such as soldiers, traders, and envoys who are generally bachelors. The historical phenomenon apart from being a form of exploitation of people against other people, especially women (sexually) is "Nyai". A term for high society women but a deposit from Dutch colonial officials.

Then, when Japan entered Indonesia, the commercialization of sex grew. In addition to forcing indigenous and Dutch women to become prostitutes, the Japanese also brought many Javanese women to Singapore, Malaysia and Hong Kong to serve as sex servants for high-ranking Japanese officers there. Even Jugun Ianfu<sup>[13]</sup> was the most vulgar form of the practice of trafficking in women and children during the Japanese occupation.

In today's developments, the case of trafficking in women in the international world, Indonesia is known as a source area for trafficking in persons. The source, transit and receiving areas of trafficking in persons are the places where transactions take place. Many Indonesian women and children are also trafficked abroad by transportation routes through transit areas which are generally located in border areas or big cities that have good transportation facilities.

One of the big cities in Indonesia that has a strategic position is Makassar City, which is none other than at the intersection of traffic lanes from the south and north in the province of Sulawesi, from the western region to the eastern region of Indonesia and from the north to the southern region of Indonesia. . Makassar Potential Makassar is the provincial capital of South Sulawesi (South Sulawesi) and calls itself the Gateway to the Eastern Indonesia Region. The term "Gateway of East Indonesia" for South Sulawesi is appropriate considering that this region has economic centres. In addition, Makassar is an important place for export and import activities, considering that the Makassar Ocean Port and Hasanuddin Airport are transit points for trade

traffic for the eastern part of Indonesia, which also play a role and function in connecting this province with other cities throughout Indonesia. Indonesia and abroad.

In connection with this, in Makassar City human trafficking is quite large, every year the South Sulawesi police always find cases of human trafficking (human trafficking) in Makassar City, this shows that the development of human trafficking and exploitation of women and children in Indonesia in general and Makassar City, in particular, is increasingly rampant. Thus, government officials and the public must understand the development and impact of this human trafficking case, so that the prevention and elimination process can be carried out quickly.

The forms of Human Trafficking, seen from the form of trafficking in persons can occur in various events as follows: 1) Sale of children – Child sale is any act or transaction of a child being transferred to another person by any person or group, for-profit or in other forms; 2) People smuggling is an attempt to obtain, as a way to obtain, either directly or indirectly, profits in the form of money or other materials, against the entry of a person illegally into a group of countries, the person is not a citizen of that country or a permanent citizen. ; 3) Migration under pressure, both legal and illegal, is the process by which people consciously choose to leave one place and go to another. Trafficking of women and children is a form of forced migration, in which trafficked persons are recruited and transferred to cloth places by force, threats of violence or fraud; 4) Child prostitution – Child prostitution is child prostitution, using children for sexual activity for profit or in other forms. These definitions include offering, procuring and providing children for prostitution; 5) Prostitution of adult women who fall into the category of trafficking in persons is a woman who is deceived.<sup>[14]</sup>

Human(*trafficking in Person or Human Trafficking*) for many people is something that is often and commonly heard because of the level of occurrence of cases of trafficking in persons that often occur in Indonesia. This phenomenon is often the centre of attention of various groups. Thus, human trafficking is a form of cruel criminal practice that violates human dignity and is a violation of the most concrete human rights that often prey on those who are economically, socially, politically, culturally and biologically weak. Today's society often refers to human trafficking as *the form of modern-day slavery*. The title is appropriate because it is a form of human slavery in modern times and is one of the worst forms of cruel treatment that violates human dignity.

Trafficking case in South Sulawesi has a lot going on, from the data and findings in the field as well as the news media, it turned out in South Sulawesi has happened to these practices, with the advent of this case, all components of the women agreed to fight for the issuing of Regional *Anti-Trafficking* in South Sulawesi. Some opinions say that the people of South Sulawesi are very proud when their children go abroad. So if someone wants to take their child abroad and is promised a good salary or salary, their parents usually allow it. Due to the lack of information at their destination, girls often experience fraud and fall into the trap of trafficking in women.

In connection with the above description, it can be said that trafficking in persons is an act of recruiting, transporting, harbouring, sending, transferring or receiving a person using the threat of force, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage. Or benefits, to obtain the consent of the person who has control over the other person, whether carried out within a country or between countries for exploitation or causing people to be exploited.

#### IV. CONCLUSION

The nature of the crime of trafficking in persons is an act of recruiting, transporting, harbouring, sending, transferring or receiving a person using the threat of force, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage or benefits, to obtain the consent of the person who has control over another person, whether carried out within a country or between countries for exploitation or causing people to be exploited.

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