



Victim Protection of Human Trafficking in Indonesia According to the International law

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ABSTRACT: *Human trafficking crimes became part of organized crime, which is based to one of the crime to the development and crime to the social welfare which is need to be much concern both national and international.it is making sense, due to the scope and wide range dimension so can be classified as organized crime. The protection of victim from human trafficking actually is part of the human rights problem and the rights of victim is un separate part with the human rights concept either, so it is need to be protect while in Indonesia, the victim protection of human trafficking has managed into the Indonesian Criminal Law Constitution and also the Law of Number 21 Year 2007 about the Suppression of Human Trafficking.*

Keywords: *human trafficking, social welfare, human rights*

I. INTRODUCTION

Many of crimes in new dimension has appeared lately, crime is always developing as well as crime in human trafficking. According to its crimes, in 1995 on United Nation (UN) conference about the crime prevention and the treatment of offers which was held in Cairo, had been discussion sort of act to combat transnational crime, terrorism and violence against women. Connected to it as well with combat transnational crime, in 2000 of Palermo Italia was held the UN Conference about Transnational Organized Crime, included the human trafficking specially women and children trafficking.

Human trafficking is became the Activities of Transnational Criminal Organizations beside the other crimes such as the drug trafficking industry, smuggling of illegal migrants, arms trafficking, trafficking in nuclear material, transnational criminal organizations and terrorism, trafficking in body parts, theft and smuggling of vehicles, money laundering (Un document No. E/CONF.88/2, 17-22) [1]. The international society has concerned to this such of crimes due to the implicated which is can be insidious, and can effect to all dimension or field whether to the security and national or international stability and became an frontal attack to the political authority and integrity of state. Apart from those mention, also as a trapped and slaved for some groups of society like women and children due to the illegal work like prostitution.

The main purposed of its crime is to gain more advantage either for the individual interest or some people whom organized it. Those money will be used by the perpetrator to defraying the other crimes (Ambassador Wendy Chamberlin) [2]. Human Trafficking crimes became part of organized crime, which is based to one of the crime to the development and crime to the social welfare which need to be much concern both national and international.it is making sense, due to the scope and wide range dimension so can be classified as *organized crime* (Article 2 poin 1 Article *Proposal and Contributions Received from Governments*, stated General Assembly, A/AC.254/5 19 December 1998) [3], *white-collar crime*, *corporate crime*, dan *transnational crime*. Even by used of the technology like *cyber crime*.

Based on those characteristic, so the impact and victim arise also are huge to the development and social welfare. According to it, in *United Nations Office on Drugs and Crime* (see http://www.unodc.org/unodc/en/trafficking_human_beings.html) [4], stated that from the countryside of Himalaya up to East Europe, specifically for women and children are tempted with the job prospect together with high payment whether as a servant in house, waitress or labour. Those by sales found the women and children by cheated them or lying information some of them trough advertising.They had been forced to work as prostitute.

The fact also shown that Indonesia also has found the trafficking. The effort to abolish the slave and human trafficking globally and specially in Indonesia actually has had begun since 1854 when the parlement (king) and government of Netherland existed the law number 2 year 1855 with tittle *Regeringreglement* (RR) which was in article 169 stated that last of January 1, 1860 slavery in Hindia Netherland must be totally

abolishment. Although the threat of punishment had arranged into the *Wetboek van starreth* or KUHP article 297 and 298, but like it used to be not followed by the law enforcement.

In the earlier of independence era, the hidden activity was still going on, even its crime became the global crime and shown significant increased together with the increased of transportation, the high impact of technology in communication, electronic. In 1997 UN approximated the offender, smuggler and corrupter (both the government officer and law enforcement officer) whom were involved in human trafficking had arise benefit up to US \$7 billion from its crime. Further more stated that its crime is more dangerous due to the its development which is wider and huge, become of new sources and purposed, more and high technology mechanism, variant of purposed, change of victim background, the wider link of offender and *sector industry criminal*, also the strong link of business between the offender and political link, the increased of benefit with and without any risk, the gross violation of human rights for the benefit gain. akan di dapatkan.

Until today, the human trafficking is still existed even in Indonesia. Several places in Indonesia became the central or place that can send those people who will traffick, most of them is recruited with promising to get the adequate work with highly payment. Most of the victim are women and children under age with lower education also very poor so its so easy to persuaded with some of good promised like high payment, good job.

Today, Indonesia has the Law Number 21 Year 2007 on the eradication of the criminal perpetration to the human trafficking (statute book year 2007 Number 58), April 19, 2007, As the effort to law protection whether direct or un direct to the victim, candidat of victim in order to not be a victim. Even Indonesia has ratified *United Nations Convention against Transnational Organized Crime* with Law Number 5 Years 2009, in January 1, 2009. By its ratification, means Indonesia became part of the effort to eradicate the human trafficking globally.

Also it has been issued on President Regulation Number 69 Year 2008 of the duty to handling and prevention the criminal perpetration of human trafficking, then the ministry of woman empowerment. In order to handling the victim and witness of human trafficking crime, the ministry of woman empowerment also had issued the regulation of Ministry of Woman Empowerment, Number 1 Year 2009 of minimum services standart for the witness/victim of human trafficking and the abolishment of sexual exploitation to the children and teenage in city/town.

Based on description above relating to the increased of human trafficking as global crime included Indonesia, so the problem analysis which should be discussed trough this paper is how is the law form for the protection of the victim from the human trafficking crime In Indonesia according to International Law ?

II. ANALYSIS AND DISCUSSION

A. Defenition of Human Trafficking

Defenition of trafficking according to the President Regulation Number 88 Year 2002 in December 30, 2002 on the abolishing trafficking for women and children, has mentioned :

Women and children Trafiking is all forms of the offender consist: one or more act to: recruited, gained between city or country, movement, departure, acceptance, relocation by: intimidating, use of verbal and phisicly violation, kidnapping, cheating, take benefit to the vurnerable situation such as when somebody does have no choice, isolate, depend to the drugs, dept trapping, et by given or accepted the payment or benefit from the women and children which used with the purposed of: prostitution and exploitation (included paedophilia), migrant worker either legal or illegal, child adoption, working on jermal, servant for household, begger, pornographic industry, forbidden drugs seller, human body organ seller and any other form of exploitation.

While the UN (2000) limitation to the human trafficking are :

- a) Human Trafficking is recruited, sent, moved, relocated or accepted people with intimidating or abusing all other form of forced, kidnapping, cheating or power abused or vurnerable position or to give and get the payment or the benefit in order to get approvement from authority with exploitation purposed. Exploitation is included the exploitation for prostitute other people or any other form from sexual exploitation, force service, slave or any slave practices or taking part of body organ.
- b) Approvement from the human trafficking victim to the its exploitation mentioned on sub paragraph (a) in this article would not be related if of the form as mentioned above had beed used.
- c) The recruitment, send, movement or relocated or received the children with exploitation purposed would classified as human trafficking
- d) Child is all people under 18 age year old

B. International Instrument Relating to the Human Trafficking

These conventions have begun the countries effort to abolish the human trafficking, specially for women and children :

1. *International Agreement for The Suppression of White Slave Traffic* Year 1904
2. *International Convention for the Suppression of white Slave Traffic*, Year 1910;
3. *International Convention for the Suppression of traffic in women and Children* 1921; and
4. *International Convention for the Suppression of Traffic Women of Full Age* Year 1933.

Those convention generally refer to human trafficking when moved the human being specifically to women and children through state border passage and prostitution purposed. It Stated clearly that the suppression of human trafficking in prostitution purposed would arranged into Convention for the Suppression of the traffic in Person and of the Exploitation of the Prostitution of the Others of UN in 1949 dan entry into force since 25 July 1951.

C. Victim Protection of Human Trafficking Crimes According to International Instrument of Trafficking

The Protection of victim actually part of human rights problem and the right of victim itself also part of human rights concept. Due to that reason, it is necessary to have the law protection for the victim.

In other words can be said that all the victim from any forms of crimes should be protected due to the victim rights in getting claim to the offender, victim should be able to maintain the amount of indemnation but of course all forms for revenge and indemnation take over by the State, so voice of the victim has not concerned anymore. Futher more in the new concept of criminal law, where mentioned the necessary to empowerment and threatened the behave of the offender to get back well into society life, which is effect that State has less concerned to the victim (Mardjono Reksodiputro, 1994:75-76) [5]. Nodays had developed the new orientation to the Criminal Law, before the criminal law oriented only to the *crime* with targeting *prevention of crime*, then to the *offender* with targeting *treatment of offender*, then developed to *victims* with targetting *treatment of victims*. Concerned to the victim on Criminal Law these days in order to suppressed the impression that it only “spoil” the offender than concerned to the victim.

According to article 43 Law Number 21 Year 2007 which is refer to Law Number 13 Year 2006 actually was the effort to harmonized between the two laws. Due to Law Number 13 Year 2006, Has managed about the protection of witness and victim.

In some countries, the attention to the victim chance has shown good effort where there are some indemnation given to the victim as wished of the most of international society where held the UN Conference in Caracas, Venezuela on 1980. The UN *Commission of Crime Prevention and Treatment of Offenders* opinionion that UN Conference VII held Milan on 1985 must discussed about victim problem which had covered the victim of conventional crimes, like abuse to the people or victim due to power abused such as economic and politic, organized crimed and exploitation, and pay special attention to the vulnerable people like women, children and minority ethnic (Paul Zvonimir Separovic, 1985:425-426) [6]. Also according to the recommendation of UN Conference VII in 1985 in Milan has state: That the rights of victim must be seen as an integral from all of the criminal law system. Related to it, Joanna Shapland, and partners (Joanna Shapland, Jon Willmore and Peter Duff, 1985:1) [7] had remain while before that, the victim of crime has been forgotten by the people in Criminal Law System. Less of concerned given to the victim would lack the process of work of Criminal Law System.

Based on it, J.J.M. van Dijk, and friends (J.J.M. van Dijk, H.I. Sagel-Grande, and L.G. Toornvliet, 1999:289) [8] written that in the middle of 20th century, the criminal law mostly not concerned to the position of the victim. While the Criminology always refer to the offender. The growth of Criminal Law begin in year 1960 with purposed that suffering of victim would be much lighter. Then, on late of 1980, in many country had rised groups to campaign for treated the victim better in criminal law system and the criminology which oriented to the victim.

The growth of concerned to the victim has shown that victim problem is still part of the Criminal Law system which is supposed to get much attention. The respond of UN Conference (as a compare) European Commission (*European Commission*, 1999: 2) stated that in independence era, justice and security in European union community, must have guarantee of European citizen to access in Criminal Law System. Because of it, the individu must get the adequate protection of law. It is important due to the ignorance of the rights of victim since long time and it is time to pay attention more to the right of victim. The effort to the protection of criminal victim actually had done since early 1980, where the European Commission had adopted some of instruments international with purposed to fix the victim rights in European Union. Next steph from its effort in many chances had been discussed in European parliament. In 1998, The problem of victim protection is still been discussed in European Council and the result was victim of crime entry into *Action Plan on Freedom, Security and Justice*.

UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* actually had adopted by General Assembly per 29 November 1985 (*General Assembly Resolution 40/34*), and reflexed it a willingness from all the international society to balance between the fundamental rigts of the offender and the rights and interest of the victim. The declaration based on the philosophy thought that victim must be protect

and treated such a human being. According to it, the right of victim to access of the justice mechanism and get well into indemnation of those suffering. Apart from that, the victim also has right to get special help relating to emotional traumatic and other problem due to the grief befalling victim.

Concerned to the victim must be not just for the victim of the conventional crime (like rob, rap, steal and other crimes) but also to victim of non conventional crime, like human trafficking victim.

As mentioned above, the increasing attention to the victim of crime actually to balanced the fundamental rights between the offender and the victim. For that purposed, the concept is must clear in other words must be maintain first either the aim and scope of it protection.

To create the concept of victim protection, the need to consider the concept of Criminal sanction as Barda Nawawi Arief mentioned (Barda Nawawi Arief, 1996:98) [9] that the concept of criminal sanction must be based on balance from two main direction, protection to the society and protection to individu so would born the concept of *Daad-dader Strafrecht*. But for the individu protection, in my opinion must be in wider scope, not only just for *offenders oriented* but also for *victims oriented*. *Victims oriented* also can be wider, not oriented only in *potential victims*, but also *actual victims* or *direct victims*. Due to it *Daad-dader Strafrecht concept which had* implemented in article 11 Draft Law of Criminal Law Book of Indonesia 2008 (Explanation of article 11) [10] and supposed to review and developed with *Daad-dader-slachtoffer Strafrecht* concept.

Futher more, the victim will not feel marginalized anymore in Criminal Law. So the equal and balance must be developed in the new of Indonesian Criminal Law Constitution/book.

D. Law Protection for Victim in Human Trafficking in Indonesia

Human Trafficking or Trafficking In Person is a crime that is very hard to stop and called as modern slave by the international society nowadays. It became of 7 priority of the Police in Republic of Indonesia together with suppression of gamblers, narcotic drugs, corruption, illegal logging, fishing-mining, human trafficking, crime on road and anarchism. The Human trafficking is growth continuesly both national and international. In Addition to the growth of technology in communicate as well as transportation which is used by the offender or trafficker to do the new crime like: human trafficking trough internet or syndicate network by the broken chain.

The practice of human trafficking in Indonesia, actually has existed since long ago, just due to the less of awarance from the society and had worst networking between the Police, attorney, Judge and non government organization also the advocate which is part of the sub system in *Criminal Justice System (CJS)*.

Indonesia is not only known as a sender country but as a transit country and receiving country either. It means some of area in Indonesia, known as area where the victim comes from and some of places became a place where victim get the exploitation. They are not only sales around Indonesia but also outside of the country, like Malaysia, Arab Saudi and Jepang.

The phenomenon of human trafficking in Indonesia, in practicing is a very wider spectrum, started from the illegal then packed it up with very good way like official authority as it cover to the crime practising. The effort to dismiss the human trafficking or *Trafficking In Person* had done by the government issued with Law Number 21 Year 2007 about the suppression of human trafficking with preventing way start from recruited process, transport, relocated, delivery, movement to the people whom suspect to be trap into it.

On Law Number 21 Year 2007 had mentioned the direct protection of law to the victim, like implemented in article 43 to article 55. Specially to the responsibility of the offender also mentioned in article 48 untill article 50. Law number 21 year 2007 has shown a lot of further significant, specifically about the responsibility to the victim but if we pay attention to articles 50 point (4) of Law Number Year 2007, there is a problem due to punishment of jail just a human and in context of article 50 point (4) of the Law Number 21 Year 2007 which can be punish is the people but how is with organization? While has mentioned above, article 1 point (4) of its law maintain that everyone mean not only human being but also company or organization.

According to these, It law has a weak in forcing the company to fulfill their obligation of the victim from the human trafficking crime, apart from it, also shown the inconsistent in defined the subject of the offender.

For the future, Hopefully the criminal law punishment for the company should be develop widerly to those alternative sanction which use to be fined/penalty. For those reason the Law Number 21 Year 2007 trough articles 15 point (2), has arranged:

- a. Repeal of permit ;
- b. Hijack of property Criminal Act;
- c. Repeal of law body status;
- d. Fired board ; and/or
- e. Prohibition to the board to establish new company in same field.

Remaind the concept of protection is not just *potencial victims oriented*, but also to *actual victims*, so the laws it much further than previous law.

According to Schafer, that the indemnation to the victim should be offender own responsibility, it based of part from the community prossceng. Based on this point of view, the restitution is not refer to the victim instead but on the same time willuse to help the offender get back into its society as well as srehabilitation, an its part of the punishment (M. Arief Amrullah, 2003:213) [11]. As J.J.M. van Dijk wrote that to handling the conflict between the offenders with the victim, then criminal law is a helper to solve the conflict due to justified the victim. Then to answer the demanding of people of the serve, specially to the victim of human trafficking, so Police officer had done some new changes from “militaristic” to “civilian police” from or change the attitude from antagonist to protagonist .

Those all form the accelaration of culture transformation which has shown two face with unable to separate coherent face and humanist face. Police institution as its main duty and authority had given by the law articles 13: Police of the Republic of Indonesia is part of one function from the government in security and orderliness society. It is also mentioned in Police mission is able to protect and guide as well as server the society and stand near the peole surrounded also as a professional and proportional law enforcer with always respect to the law and human rights,keep the security and create the well security in this country with democracy and welfare state. In order to handlle the human Trafficking in preventing and handling as mentioned in articles 5 point (2), so the government should created the duty group with member of the representative from the government, law officer, people organization, non government organization, researcher/academission in order to prevent human trafficking crimes.

But the implementation of it working groups has not working optimal yet so need to coordinate in order to prevent, protection even for law punishment and cooperation trans sector in order to prevent the human trafficking. The un optimal coordination and cooperation between those institutions related to these indicators, such as :

a. Preventing

In order to prevent the human trafficking, the most important is the Law Number 21 Year 2007 has not been sosialised to the people specifically to the Indonesian worker whom will send.

b. Protecting

It has not created the good cooperation either good coordination as mentioned for the working group duty especially if connected the bilateral cooperation, multirateral, regional and international in order to solve the human trafficking. Nor the Government Regulation Number 9 Year 2008 of mechanism of the service for witness and victim of human trafficking.

c. Punishment in Law

There is no coordination and cooperation in law punishment between Police officer, Law and Human Rights Department, Supreme of Court, Attorney General due to the victim is not active or not report to it because lack of understanding law or embarrassment.

III. CLOSURE

The protection of victim from human trafficking actually is part of the human rights problem and the rights of victim is un separate part with the human rights concept either, so it is need to be protect while in Indonesia, the victim protection of human trafficking has managed into the Indonesian Criminal Law Constitution and also the Law of Number 21 Year 2007 about the suppression of human Trafficking. The fact is human trafficking crime is still exist together with the high technology like communication and transportation and is also became an transnational crime but we have to optimist that the country like Indonesia can reduce or even suppressed the human trafficking by the work of working group that has established like mentioned above also the protection and restitution to the victim of human trafficking should be pay attention by the government. Also the punishment from the offender and its company or institution should be enforced like what the existing law arranged in order to stop the victim of human trafficking. As the human trafficking is becoming a transnational crimes so also the international instrument of its crime should be implemented to the countries in the world included Indonesia. The protection of the victim of human trafficking in Indonesia should be implemented remaind of many victims of its crimes so the government should be given the guarantee like law protection to the victim of human trafficking.

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