

Consideration of Judges in the Verdict of Trafficking in Persons 11 Migrant Workers from Buleleng (Case Study of Decision of Pn Singaraja Number 167/Pid.Sus/2022/Pn Sgr)

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Abstract

In this study the author aimed for (1) reviewing or analyzing the considerations of the Singaparan District Court judge Number 167 / PID.SUS / 2022 / PN SGR in the disconnected trade, (2) reviewing or analyzing the ruins of the Singaparan District Court judge Number 167 / PID.SUS / 2022 / PN SGR related to trafficking people in relation to community justice. The type of research used is normative legal research by approaching status, conceptual approach, case approach, and comparative approach. The results of the study obtained (1) considerations of the Singaparan District Court judge Number 167 / PID.SUS / 2022 / PN SGR in the disconnected trade under the material and blended the obtained by the fact of the trial, the 2nd / sngara. "And the Personal Raid in the relation to the public justice found the reconstruction of legal protection regulations of the crime of trade-based national-based trafficking, and ideal models related to normative legal arrangements have been there but a virgin of related institutions in the implementation of the rules should be more emphasized due to differences in views on any existing rules.

1. Introduction

Indonesia is one of the largest sources of migrant workers in Asia. Migrant workers are often recruited through various means, both legal and illegal. The recruitment of illegal immigrant workers is still associated with slavery as a form of criminal activity known as human trafficking (Kontan.co.ic, 2023).

Over time, the Indonesian nation aims to realize the welfare of the Indonesian people, achieve national welfare, maintain independence and justice, and uphold religious and moral values. But in reality, some Indonesians are still unable to achieve

prosperity and tend to be made "slaves", this is not in accordance with the country's development plan and violates human rights (Pian A, 1994: 48).

Human rights are basic, fundamental and principled rights. A person's human rights are special and privileged rights that cannot be created or revoked. Article 20 of Human Rights Law No. 39 of 1999 clearly states: "*No one shall be enslaved. Slavery or servitude, slave trade, trafficking in women and any act aimed at the same purpose are prohibited*".

Law is a tool to create justice. Justice in law is the justice that all people who live under the law want. Therefore, the law needs to have a basis for upholding justice that is acceptable to society. Law Number 21 Year 2007 on the Eradication of the Crime of Trafficking in Persons. Article 1 paragraph (1) provides a definition of trafficking in persons, which states that trafficking in persons is the act of recruiting, transporting, harboring, sending, transferring, or receiving a person by threat of violence, use of force, abduction, confinement, forgery, fraud, abuse of power or vulnerable position, debt bondage, or giving payment or benefit, so as to obtain the consent of the person who has control over the other person, both within the country and between countries, for the purpose of exploitation or resulting in exploitation. The criminal punishment is not only imprisonment but also fines or sanctions and substitute punishment, if the victim of trafficking in persons requests compensation, they can submit a request to the court. Regarding restitution, the provisions related to this replacement have been regulated in Articles 48, 49, and 50 of Law No. 21/2007 on the Eradication of Trafficking in Persons.

As well as the potential for norm ambiguity in Article 50 paragraph (4) of Law Number 21 of 2007 concerning Eradication of Human Trafficking Crime, especially in the phrase if the perpetrator is unable to pay restitution, then the perpetrator is subject to substitute imprisonment for a maximum of 1 (one) year.

Based on data from the Ministry of Women's Empowerment and Child Protection, from 2017 to October 2022, there were 2,356 reports of victims of human trafficking or trafficking crimes. Where the victims are 50.97% of trafficking victims are children, 46.14% are women, and 2.89% are men (Hukumonline, 2023).

Trafficking cases are also often found in Buleleng District. One of the cases with charges of trafficking in persons occurred in Buleleng Regency. Based on Singaraja District Court Case Number 167/Pid.Sus/2022/PN Sgr Komang Puja Rasmiasa was arrested on Monday, July 25, 2022 and Anak Agung Kade Ratna Sawitri was arrested on Thursday, August 4, 2022. As regulated and punishable in Article 11 of Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons Jo. Article 65 paragraph (1) of the Indonesian Penal Code The 1st defendant Komang Puja Rasmiasa and the 2nd defendant. Anak Agung Ratna Sawitri are guilty of committing the crime of "Aggregation of several acts that must be considered as independent acts, so that they constitute several crimes, namely conspiracy to commit the crime of trafficking in persons". Sentencing the defendant 1. Komang Puja Rasmiasa and the defendant 2. Anak Agung Ratna Sawitri each in the form of imprisonment for 7 (five) years minus the period of detention that has been served and a fine of Rp. 400,000,000, - (four hundred million rupiah) each in lieu of 8 (eight) months imprisonment. Stipulate that the defendant 1. Komang Puja Rasmiasa and the defendant 2. ANAK Agung Ratna Sawitri to pay restitution to the victims.

Based on the above background, in order to examine more deeply about *human trafficking*, I have raised the title: "**JUDGE'S CONSIDERATION IN THE DECISION**"

ON THE CRIMINAL ACT OF TRADE IN PERSONS 11 MIGRANT WORKERS FROM BULELENG (Case Study of Singaraja District Court Decision Number 167/Pid.Sus/2022/PN Sgr)".

2. Research Methods

Legal research aims to find the truth of coherence, namely whether legal rules are in accordance with legal norms, legal principles, and a person's actions. The legal research process requires research methods that support the results of the research (Marzuki, 2017: 47). This type of research is empirical juridical research (Adnyani, Atmaja & Sudantra, 2022).

This type of juridical research directs researchers not only to rely on legal theory, but also to make empirical observations of social, cultural, and political factors that can affect the implementation of law (Adnyani, 2016). The goal is to understand how the law works in everyday life and how people can utilize or respond to it (Adnyani, Mandriani & Asrini, 2019).

The juridical method focuses on collecting legal materials (Adnyani, 2019). The data is then analyzed using interpretative to evaluate the effectiveness or efficiency of a law or policy (Adnyani, 2021). Analysis of legal materials to identify weaknesses in the legal system or improve the effectiveness of a legal policy (Adnyani & Purnamawati, 2024).

The author uses a type of normative legal research, which questions the existence of blurred legal norms in this study. Normative legal research is research that conducts an assessment of the applicable laws and regulations that have been determined on a legal problem (Soekanto and Mamudji, 2003: 56). The approaches used in this research based on several approaches above are *statute approach*, *case approach*, *conceptual approach*, and *comparative approach*. This research uses normative legal research whose legal sources come from secondary data obtained from literature studies (Amiruddin and Asikin, 2016: 118). Sources of legal material are categorized into three, namely primary, secondary, and tertiary legal sources. Primary legal materials in this research use laws and regulations (Marzuki, 2008: 141), including the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 21 of 2007 concerning Eradication of Trafficking in Persons, Law Number 48 of 2009 concerning Judicial Power, Decision of the Singaraja District Court Judge Number 167/Pid.Sus/2022/PN Sgr. Secondary legal materials are legal materials obtained from library sources such as journals, doctrines, and results of previous research. Tertiary legal materials are legal materials that support primary and secondary legal materials with understanding and understanding of other legal materials.

3. Results and Discussion

3.1 Consideration of Judges in Deciding Case Number 167/Pid.Sus/2022/PN Sgr Regarding Trafficking in Persons

Sentencing in every judge's decision certainly requires a consideration from the panel of judges. The consideration of the panel of judges is the main aspect in the judge's decision which contains the value of justice and has the value of legal force and benefits for many people. The judge will obtain the facts that will be revealed during the trial, so that it will be used by the judge as a consideration in making a decision. In the imposition of a verdict by the judge to the defendant, of course, it contains considerations such as the evidence found during the trial, the testimony of witnesses, and the suitability of the article charged by the public prosecutor for the case committed by the defendant.

Case No. 167/Pid.Sus/2022/PN Sgr related to the crime of trafficking in persons committed by two defendants, namely Komang Puja Rasmiasa and Anak Agung Kade Ratna Sawitri. In the indictment submitted by the public prosecutor during the trial, the two defendants were charged with committing the crime of Article 11 of Law Number 21 of 2007 Concerning the Eradication of the Crime of Trafficking in Persons Jo. Article 65 Paragraph (1) of the Indonesian Penal Code. The public prosecutor in his indictment read out during the trial demanded that each defendant be sentenced to 7 (seven) years imprisonment minus the period of imprisonment already served, as well as a fine of Rp 400,000,000 (four hundred million rupiah) in lieu of 8 (eight) months imprisonment. And to provide restitution to the victims in accordance with the amount of losses suffered, namely with a total loss of Rp 528,650,000 (fifty-eight million six hundred and fifty thousand rupiah), which came from 11 (eleven) victim witnesses. And to keep the two defendants in detention.

The evidence disclosed during the trial belonged to the victim witnesses, totaling 176 (one hundred seventy six) items of evidence in the form of Holiday Visa Passports, Airline Tickets, Proof of Transfer, Proof of Conversation, Proof of PCR, SPA Certificates, Proof of Hotel Booking. The two defendants had their respective roles in carrying out their operations. The defendant Anak Agung Kade Ratna Sawitri was tasked with taking care of all matters relating to licensing and administration. Then the defendant Komang Puja Rasmiasa was tasked with finding and inviting people who wanted to join and work in Turkey.

The victims were promised that they would get a job in accordance with their respective job description, they would be employed at a 5-star hotel, they would get a salary of 7 (seven) million to 10 (ten) million per month. They were also promised that work visas would be made, residence permits (IKAMET) would be made, health insurance would be obtained, messes would be placed, and finally those who had not yet worked would be responsible for 1 meal a day. However, after all the victims had departed and arrived in Turkey, they did not get what they had been promised. When they were there they did not work according to the job description and did not get a decent place to live. So that the victim witnesses while there lived stranded without a clear purpose.

The money paid by the victim witnesses was then divided by the two defendants with the defendant Komang Puja Rasmiasa receiving Rp 1,000,000 (one million rupiah) to Rp 3,000,000 (three million rupiah) per victim. The remaining money was given to the defendant Anak Agung Kade Ratna Sawitri.

The consideration of the panel of judges before sentencing the defendant was based on the aggravating and mitigating circumstances. The aggravating circumstance was that the defendant's actions caused harm to the victim. In addition, the defendant's actions contradicted the government's efforts to combat human trafficking. The mitigating circumstances were that during the trial the two defendants were polite and cooperative and admitted their guilt and regretted their actions. Furthermore, this was the first time the two defendants had committed this crime.

Based on the considerations found from the facts presented during the trial. The panel of judges stated that the defendant had been proven legally and convincingly to have committed an act of trafficking in persons based on Article 11 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons Jo. Article 65 Paragraph (1) of the Indonesian Penal Code. With this, the panel of judges sentenced

each defendant to 5 (five) years imprisonment minus the period of arrest and detention that each defendant has already served. The two defendants were each sentenced to a fine of Rp 400,000,000 (four hundred million rupiah) in lieu of 6 (six) months imprisonment. The two defendants must also pay compensation for the losses suffered by the victims totaling Rp 528,650,000 (five hundred and twenty eight million six hundred and fifty thousand rupiahs) in lieu of 10 (ten) months imprisonment if not paid.

3.2 Decision of the Judge of the Singaraja District Court Number 167/Pid.Sus/2022/PN Sgr Regarding Trafficking in Persons in Relation to Community Justice

The crime of trafficking in persons is a form of violation of human rights owned by others. Trafficking in persons based on Article 1 Paragraph (1) of Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons essentially explains that trafficking in persons is an action carried out by a person or group that carries out recruitment, transportation, shelter, delivery, transfer, or acceptance carried out by threats of violence, forgery, abduction, abuse of power, fraud, confinement, debt bondage carried out within the country or outside the country.

Based on the definition of human trafficking in case number 167/2022/Pid.Sus/PN Sgr, several elements have been fulfilled based on the description of human trafficking, so that the actions committed by the two defendants are classified as acts of human trafficking. Trafficking in persons is becoming increasingly prevalent as a cover to channel labor abroad. The victims are asked to pay a sum of money as an administrative requirement. After being sent abroad the victims are neglected and do not receive the rights that they should have received based on the agreed agreement.

3.3 Fulfillment of a Sense of Justice for Victims in Case No. 167/2022/Pid.Sus/PN Sgr

The factors behind the rise of human trafficking cases are the increasing needs of life that encourage people to seek a more decent livelihood. The factor of poverty, the unavailability of jobs makes people flock to find jobs that are considered to improve their standard of living.

The lack of knowledge possessed by the community makes them vulnerable to being trapped by illegally established agencies, and they end up becoming victims of human trafficking. Case Number 167/2022/Pid.Sus/PN Sgr is an example of a case that occurred due to the lack of understanding of the community regarding labor distribution.

The victims suffered losses worth around IDR 528,650,000 (five hundred and twenty-eight million six hundred and fifty thousand rupiah). They were sent to Turkey and then abandoned while they were there. The victims have the right to protection provided by the state. Forms of protection for victims of trafficking include compensation and restitution, counseling services and medical assistance, legal assistance, and information (Dikdik M. 2007: 166- 167).

Based on the judge's decision in case No. 167/2022/Pid.Sus/PN Sgr, the defendants were ordered to pay restitution to the victims in the amount of the losses suffered by the victims, namely a total of Rp 528,650,000 (five hundred twenty eight million six hundred fifty thousand rupiah), which if not paid will be replaced by imprisonment for 10 (ten) months.

Restitution, which is the subject of the researcher's discussion, is specifically regulated in Articles 48 to 50 of Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons. Although it has been regulated in several articles related to restitution payments to victims, Article 48 of Law No. 21/2007 on the Eradication of the

Crime of Trafficking in Persons does not specify the amount of restitution. The calculation method for the amount of compensation is only based on the material loss suffered by the victim and proven by valid evidence. Therefore, if the victim suffers a loss but it cannot be proven, then the provision of compensation cannot be made. This certainly leaves victims in legal uncertainty even though there are already rules that discuss restitution. Although the government has tried to provide the best service to fulfill justice for victims, the process of applying for restitution is quite complicated and also the limitations of everyone in understanding their right to receive restitution are obstacles to the implementation of the fulfillment of ideal justice for victims. So that even though the legal arrangements related to the provision of restitution already exist, assistance and socialization from related institutions are needed for victims. This is so that the realization of existing regulations is in line with the conditions of victims in the field so that there is no conflict in the community (Riza, 2023: 41).

Meanwhile, Article 50 paragraph (4) of Law Number 21 Year 2007 on the Eradication of Trafficking in Persons regarding substitute confinement also does not mention the minimum and maximum limits in imposing punishment in the form of substitute confinement. The phrase states that if the perpetrator is unable to pay restitution, then the perpetrator is subject to substitute imprisonment for a maximum of 1 (one) year. That the punishment of substitute confinement for a maximum of 1 (one) year described in Article 50 paragraph (4) can potentially cause injustice. Thus, there is a legal phenomenon in the form of vagueness of legal norms.

3.4 The Role of the Government in Fulfilling the Sense of Justice for Victims of Trafficking in Persons from a Human Rights Perspective

The government as the highest institution of a country certainly has an obligation to provide full protection to victims of criminal acts. The state, in this case represented by the government, is the spearhead of human rights enforcement in society. The government has an obligation to protect all citizens from acts that violate human rights. As stated in Article 28I Paragraph (4) of the 1945 Constitution of the Republic of Indonesia, the state, especially the government, is obliged to protect, uphold, promote and fulfill human rights for all Indonesian people. In addition, it has been reaffirmed in Article 71 of Law Number 39 of 1999 concerning Human Rights which states: "*The government is obliged and responsible for respecting, protecting, upholding, and promoting human rights as stipulated in this Law, other laws and regulations, and international human rights law accepted by the Republic of Indonesia.*"

In accordance with what has been stated by the law that the fulfillment of a sense of justice for victims of human trafficking is the responsibility of the government. The government is obliged to protect victims who have experienced human trafficking and restore the rights possessed by victims as before. This is so that victims can live a normal social life again.

The concept of justice certainly has different meanings according to the conditions and situations that are being experienced. Justice based on the perspective of the victim in relation to the rights of the victim as a human being has many interpretations. In cases of human trafficking, the provision of justice must certainly be based on the principal losses experienced by the victim. So that the purpose of fulfilling a sense of justice can be achieved in accordance with the purpose of the law itself.

Losses incurred to victims of human trafficking can material, physical and psychological. Each victim certainly has different conditions so that the fulfillment of

justice must also consider the position of the victim as a party who has been harmed. The purpose of justice is to provide a sense of satisfaction for victims whose rights have been violated. The government must consider objectively so that the provision of justice for victims does not seem ordinary (Suhardin, 2008: 485).

3.5 An Ideal Model for Legal Arrangements Regarding the Provision of Compensation for Victims of Human Trafficking Crimes

In human trafficking cases, victims are not only materially harmed but also physically and psychologically. After the perpetrator is sentenced to criminal punishment by the court, the victim becomes the party who is felt to have been given justice by the court so that no one specifically highlights the condition of the victim after the criminal verdict. In fact, if viewed from human rights, the fulfillment of justice must focus on the condition of the victim who has been harmed by the perpetrator. In the process of case settlement, the rights of victims tend to be ignored and focus on the actions of the defendant (Andi Hamzah, 1986: 33).

The ideal model that the author can convey is in the form of reconstruction. The legal reconstruction that becomes the researcher's idea about restitution as regulated in Law Number 21/2007 on the Eradication of Human Trafficking Crimes is as follows: Reconstruction of the regulation of legal protection of victims of trafficking in persons in Article 48 of Law No. 21/2007 on the Eradication of Trafficking in Persons based on the value of justice, especially paragraph (3) whose initial phrase reads restitution is given and included at the same time in the court's verdict on the case of trafficking in persons. It does not explicitly mention the limitation of the amount of restitution, either the minimum amount or the maximum amount of restitution. Reconstructed into the provision of restitution as referred to in paragraph (1) is carried out since the first level court decision is handed down with a restitution penalty of at least Rp.120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 5,000,000,000.00 (five billion rupiah) (Jainah, 2022: 387).

And Article 50 paragraph (4) of Law Number 21 Year 2007 on the Eradication of the Crime of Trafficking in Persons, which initially phrases that if the perpetrator is unable to pay restitution, then the perpetrator is subject to substitute confinement for a maximum of 1 (one) year. The phrase substitute imprisonment for a maximum of 1 (one) year has the potential to cause injustice, because the judge may determine that to replace restitution, the convicted person is subject to substitute imprisonment for a period of 1 (one) month only, while the victim's loss reaches 528,650,000. If the loss reaches 528,650,000, it is replaced with a sentence of 1 (one) month, which is fair. The phrase of Article 50 paragraph (4) of Law Number 21 Year 2007 on substitute confinement should be explained as the minimum and maximum limit in providing substitute confinement. The aim is that the decision of the Panel of Judges cannot be arbitrary and there is legal certainty.

4. Conclusion

Based on the discussion of the research results described above, conclusions can be drawn from this research, among others:

1. The judge's consideration in the verdict on the crime of trafficking in persons in case number 167/2022/Pid.Sus/Pn Sgr is based on aggravating and mitigating circumstances obtained based on the facts of the trial. Based on the aggravating circumstances, the defendant's actions caused harm to the victim. In addition, the defendant's actions contradicted the government's efforts to combat human trafficking. The mitigating circumstances were that during the trial the two defendants were polite and cooperative and admitted their guilt and regretted their actions. Furthermore, this was the first time the two defendants had committed this crime.
2. Several articles have regulated the payment of restitution to victims, but in Article 48 of Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons, the amount of restitution cannot be determined with certainty. Meanwhile, Article 50 paragraph (4) of Law Number 21/2007 on the Eradication of the Crime of Trafficking in Persons regarding the punishment of substitute confinement also does not mention the minimum and maximum limits in providing punishment in the form of substitute confinement. It only states that if the perpetrator is unable to pay restitution, then the perpetrator is subject to substitute imprisonment for a maximum of 1 (one) year.
3. Substitute confinement decisions are contained in Article 50 paragraph (4) of Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons.

5. Recommendations

Based on the conclusions that the author obtained, the suggestions that the author can convey:

1. Suggestions from the author that can be conveyed are the need for legal reform, especially related to the protection of witnesses and victims in the realm of regulation in Law Number 21 of 2007 concerning Eradication of Trafficking in Persons Articles 48 and 50.
2. The court judge in giving a decision on restitution has a minimum limit and a maximum limit on the imposition of restitution decisions on the head of the criminal perpetrator as contained in Article 48 paragraph (3) of Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons.
3. The court judge in giving a decision on substitute confinement should have a minimum limit and a maximum limit of imposition.

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