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Corporate Liability for the Crime of Trafficking in Persons in the Case of Placement of Illegal Migrant Workers (Study of Decision Number 931/Pid.Sus/2020/PN.Btm)

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ABSTRACT

Corporate criminal liability for the crime of human trafficking, with a focus on the case of illegal placement of Indonesian migrant workers based on Decision Number 931/Pid.Sus/2020/PN.Btm. Corporations as legal entities have a legal obligation to comply with the procedures for the placement of Indonesian migrant workers as stipulated in Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers and Law No. 21 of 2007 concerning the Eradication of Trafficking in Persons. The fact shows that these provisions are often violated for the sake of economic gain. This research departs from the rampant practice of placing migrant workers without official permission carried out by corporations, which results in the exploitation of workers abroad. This research uses a normative juridical approach based on secondary data to analyze corporate criminal liability in the illegal placement of migrant workers. The results of this study show that normatively, Indonesian positive law has regulated the possibility of criminal sanctions against corporations, including the main punishment in the form of fines and other additional punishments as stated in Article 25 of the PTPPO Law. In the case of PT Novarica Agatha Mandiri, the judge imposed a financial penalty of 5 M on the corporation as well as imprisonment on the director based on the doctrine of vicarious liability.

KEYWORDS

Criminal Liability;
Trafficking in
Persons; Illegal
Migrant Workers



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INTRODUCTION

In 2020, the Batam District Court decided a criminal case against a corporation that had been proven to have illegally placed Indonesian migrant workers in foreign countries without official authorization. According to Decision Number 931/Pid.Sus/2020/PN.Btm, the corporation was proven not to have a Permit for Placement of Indonesian Migrant Workers (SIP2MI) and did not even fulfill basic protection obligations towards workers. As a result, the migrant workers were sent to the destination country without guaranteed legal protection and experienced exploitation, which fulfills the elements of Trafficking in Persons (TPPO) as stipulated in Article 4 of Law Number 21 of 2007.

In the development of the era of globalization and modernization, the practice of human trafficking is not only the act of individuals, but can also be carried out by corporations. Not infrequently, illegal migrant labor brokers utilize the guise of business entities, whether in the form of CVs, PTs, or other forms of business, to carry out the practice of human trafficking. Therefore, this case shows that the crime of human trafficking is not committed by individuals alone or informal syndicates, but involves legal entities that are legally registered as companies. The position of corporations as legal subjects has been recognized in various laws and regulations. However, in practice, there are still many obstacles, especially related to the actions carried out by corporations. This is because the characteristics and existence of legal entities as legal subjects are different from humans as natural persons (*natuurlijke persoon*) who have inherent basic rights, such as the right to live safely, the right to freedom, and the right to be treated equally, which should not be violated by anyone.¹

Corporations, which should be subject to the principle of prudence and protection of workers, are active actors in the practice of labor exploitation with economic motives.² On the other hand, efforts to enforce criminal law against corporations as legal subjects still have various obstacles, ranging from proof to the application of effective and equitable sanctions.³ If human trafficking is committed by an individual, legal liability can be imposed on the perpetrator. However, if the act is committed by a corporation, the issue arises as to whether criminal liability can be immediately imposed on corporations as well as on humans, or a different mechanism is required. This phenomenon illustrates the weak supervision of corporate activities in the field of labor placement, as well as the non-optimal application of criminal law liability for corporations in the criminal justice process in Indonesia. In fact, normatively, Law No. 18/2017 on the Protection of Indonesian Migrant Workers has emphasized the need for transparent, accountable, and procedural governance.

Trafficking in persons in the form of illegal migrant worker placement remains a serious problem in Indonesia. This crime is seen as a modern form of slavery practice, as well as one of the most serious violations of human dignity. The

¹ Jony Sinaga, "Kewajiban Negara Dalam ICCPR (International Covenant On Civil and Political Rights)" (2007) 4 Komnas HAM.

² Muladi & Barda Nawawi Arief, *Teori-teori dan Kebijakan Pidana*, ed. revisi ed (Bandung: Alumnus, 2018).

³ Hamzah Andi, *Asas-Asas Hukum Pidana di Indonesia dan Perkembangannya* (Medan: Medan Sofmedia, 2012).



distribution of cases of Indonesian citizens who are victims of human trafficking in foreign countries in the period 2015 to November 2022 was recorded at 3.44 million people.⁴ The distribution includes Asia with 722 cases, the Middle East with 691 cases, Africa with 235 cases, the Americas and the Caribbean with 11 cases, Europe with 23 cases, Oceania with 35 cases, and other countries.⁵

Article 1, paragraph 1 of Law Number 21 Year 2007 on the Eradication of the Crime of Trafficking in Persons stipulates that:

Trafficking in persons is the act of recruiting, transporting, harboring, sending, transferring, or receiving a person by threat of force, use of force, abduction, harboring, forgery, fraud, abuse of power or position of vulnerability, debt bondage or giving payments or benefits, to obtain the consent of the person who has control over the other person, whether carried out within the country or between countries, for exploitation or resulting in exploitation.

Corporate liability in the crime of human trafficking is a significant development in criminal law, which shows that corporations are positioned as legal subjects that can be held criminally responsible. Therefore, law enforcement officers need to overcome various challenges in proving the involvement and imposing sanctions on corporations, especially in cases that contain cross-border elements, such as Illegal Migrant Workers.

As described, this research is intended to discuss in depth the form of criminal liability imposed on corporations in cases of trafficking in persons for the placement of illegal migrant workers, by paying attention to aspects of positive law and its implementation in court decisions. In addition, this research also seeks to identify the challenges and problems that arise in the process of applying criminal law mechanisms against corporations that commit criminal acts of human trafficking.

METHOD

The research method used in the following research is normative juridical research, which is a method that focuses on the study of positive law and applicable laws and regulations. The approach applied includes a statute approach, namely by examining various laws and regulations that are relevant to the legal issues studied.⁶ As well as the case approach, namely by examining court decisions that have permanent legal force and have a relationship with the problem under study.

There are 3 sources of legal material applied in this research, namely:

- a. Primary legal materials, namely legal materials consisting of laws and regulations, official minutes, court decisions, and official state documents.
- b. Secondary legal materials, including various legal literature such as legal journals containing legal principles, expert opinions (doctrine), results of legal studies, and other references that are relevant to understanding primary legal materials, such as legal dictionaries or encyclopedias.

⁴ Anggi Rachma Zakia Fitri & Heru Sugiyono, "Strategi Penanganan Pekerja Migran Indonesia yang Bekerja Tidak Sesuai dengan Kontrak Kerja" (2023) 6:3 J USM LAW Rev 972-987.

⁵ Muh Abdul Qudus & Pujiyono, "Pertanggungjawaban Korporasi terhadap Tindak Pidana Human Trafficking di Indonesia" (2019) 5:2 J Komun Huk 26-39.

⁶ Kornelius Benuf, Siti Mahmudah & Ery Agus Priyono, "Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology di Indonesia" (2019) 3:2 Refleks Huk J Ilmu Huk 145-160.



c. Tertiary legal materials are reference sources that function to provide explanations or instructions to primary and secondary legal materials. Examples include legal dictionaries, general dictionaries, and various encyclopedias, including the legal encyclopedia.

In the following research, the method of collecting legal materials used is document study, which is a written document containing information, data, analysis, and results of studies on a particular topic or problem that is systematically arranged as reference material. Sources of legal documents include institutions that form legislation, interested parties, and legal experts. As well as researchers in the field of law.⁷ Secondary legal materials include textbooks that contain fundamental principles of legal science as well as classic views of legal experts who have high authority. In addition, this material also includes various literature that is relevant to the issues studied, especially on matters relating to corporate liability in the criminal act of trafficking in persons. Examples of secondary legal materials used in this research include: Written works in the form of research books and academic papers, supporting literature sources available in the library, and Internet articles.

RESULT & DISCUSSION

I. Application of the Law on the Non-Criminalization of Trafficking in Persons (TPPO) Committed by Corporations

As a consequence of providing opportunities to the private sector in organizing the placement of Indonesian Migrant Workers abroad, there has been a negative impact, which can be seen from the various cases experienced by these workers both before departure, during the work period, and after returning to their home areas.⁸ The state is obliged to implement basic provisions for the sustainability of responsible private agents, accompanied by strict evaluation and supervision mechanisms for Indonesian migrant workers and for private actors and government officials.

Law No. 39 of 2004, in conjunction with Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, has clearly regulated the forms of sanctions that can be imposed on the Indonesian Migrant Worker Placement Company (P3MI) if it is proven to carry out contrary actions at the pre-placement stage of PMI abroad. The sanctions consist of two categories, namely administrative sanctions and criminal sanctions. Administrative sanctions include reprimands, written warnings, temporary suspension of business activities, and revocation of operational licenses. Meanwhile, criminal sanctions include imprisonment, confinement, and fines, depending on the level of guilt and violation committed by the corporation.⁹

Basically, these provisions can be carried out by corporations through their management. However, to be able to place the corporation as the perpetrator of a criminal offense, it is necessary to fulfill certain conditions. Furthermore, if the

⁷ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020).

⁸ Rezza Galih Prakoso, *Ancaman Pidana Penempatan Pekerja Migran Ilegal* (Pekalongan: PT. NEM, 2022).

⁹ Risca Gladis Ratnasari & Ariyanti, "Penegakan Hukum Tindak Pidana Perdagangan Orang Terhadap Pekerja Migran Indonesia Secara Non Prosedural" (2023) 4:1 MLJ Merdeka Law J 41-52.



corporation benefits from the actions it takes, then the corporation can be held accountable for these actions. In the legal events in Decision No. 931/Pid.Sus/2020/PN Btm, the court charged Laila Kadir alias Ella, who is the Director of PT Novarica Agatha Mandiri, because it was proven according to the law to have illegally placed Indonesian Migrant Workers, which then qualified as the crime of trafficking in persons. PT Novarica Agatha Mandiri, which was established based on Notarial Deed No. 7 dated July 8, 2019, was used by the defendant as a means to recruit and dispatch prospective migrant workers illegally. In this case, the corporation became the instrument of the perpetrator of the crime through the active role of the Director as the main decision maker in the company's operational activities, especially in the placement of prospective crew members abroad without official permission from the government (SIP2MI/SIP3MI). Therefore, the defendant's actions are contrary to:

- a. Article 4 in conjunction with Article 10 of Law no. 21/2007 on the Eradication of TPPO, due to the recruitment, transfer, and exploitation of victims, namely migrant workers who were sent to work as crew members on foreign vessels in Argentinian waters;
- b. Article 81 of Law No. 18/2017 on the Protection of Indonesian Migrant Workers, because the defendant, as an individual subject, carried out the placement of Indonesian Migrant Workers without official authorization;
- c. Article 55, paragraph 1 of the Criminal Code, the defendant is deemed proven to have committed, ordered, or participated in a criminal act together with other parties.

There are forms of exploitation of migrant workers. Exploitation experienced by migrant workers on foreign vessels includes:

- a. Forced labor with working hours beyond human limits, without proper breaks;
- b. Physical violence by foreign ship foremen against workers;
- c. Non-conforming facilities and wages, including inadequate drinking water and non-transparent deductions from salaries;
- d. No language and competency training is provided, leaving workers vulnerable to harassment and violence due to their inability to understand work instructions.

In fact, one of the victims, Hasan Apriadi, died because he was forced to work while sick and was not given proper care on the LU HUANG YUAN YU 118. Although corporations are not explicitly criminalized as legal entities, the criminalization of company directors is a form of vicarious liability. This shows that the current Indonesian judicial system still focuses on imposing sanctions on the natural person as a representation of the corporate actor, rather than the legal entity directly. This decision shows that the national legal system has recognized the possibility of corporate involvement in the crime of human trafficking. However, in practice, the application of law against legal entities (corporate liability) is still limited, because it only sanctions the individuals behind the corporation, not the corporation itself. In this context, the imposition of sanctions against corporations should be carried out based on Article 7 of Law No. 21/2007, which opens space for criminalization of corporations, Article 118 of the Criminal Procedure Code, which contains provisions related to summoning and investigating corporations in their position as legal subjects.



II. Corporate Liability for Trafficking in Persons Crime in Illegal Migrant Worker Placement Cases

Corporate criminal liability in the crime of trafficking in persons (TPPO) is one of the important developments in Indonesian criminal law, especially when the crime involves the non-procedural placement of Indonesian Migrant Workers (PMI). Batam District Court Decision No. 931/Pid.Sus/2020/PN.Btm. The verdict serves as a significant precedent showing that corporations can be held criminally liable for their involvement in TPPO. In this decision, PT Novarica Agata Mandiri, as a corporation, was proven to have carried out the placement of Indonesian Migrant Workers to foreign countries illegally and without a Permit for Placement of Indonesian Migrant Workers (SIP2MI). The corporation also did not fulfill the basic protection obligations as contained in Law No. 18/2017 regarding the protection of PMI, which includes guarantees of legal protection, safety, and welfare of PMI.

According to the judge's consideration, the actions taken were in accordance with the qualifications of the offense in Article 4 in conjunction with Article 10 of Law No. 21/2007 regarding the eradication of TPPO, which essentially prohibits the recruitment, harboring, transportation, or sending of people for exploitation in violation of legal procedures. The corporation's actions are considered to have intentionality (*mens rea*) because it consciously carries out the activity of placing unauthorized migrant workers, which directly places workers at risk of exploitation in the destination country. The form of liability applied to PT Novarica Agata Mandiri includes a fine of 5 billion, with the provision that if the payment of the fine is not made, the corporation's assets will be confiscated and auctioned as a form of repayment of the fine.¹⁰ The fine sanction against the corporation is based on the provisions in Article 30, paragraph 2 of the Criminal Code & Article 25 of the PTPPO Law, which allows the imposition of fines as the main punishment to the corporation. The application of this cumulative punishment reflects the seriousness of the government as a state organizer, which in this case is represented by the Legislative Body, in an effort to overcome the practice of trafficking in persons.¹¹ Corporate criminal liability in this decision reflects the application of the doctrine of vicarious liability, where the mistakes made by the management in their capacity to represent the corporation are seen as the fault of the corporation.¹² Therefore, this action is in line with Article 118, paragraph 2 of the Criminal Procedure Code, which allows the prosecution of legal entities through their management. Therefore, this delegation shows that although normatively the regulation of corporate criminal liability already exists, its implementation still faces challenges, especially in proving the relationship between the actions of individual administrators and the interests of the corporation, as well as in enforcing effective sanctions.

Corporate criminal liability for the crime of trafficking in persons is an important and complex issue in the realm of corporate criminal law. This concept relates to how a business entity can be held liable for its involvement in the practice

¹⁰ Putusan Pengadilan Negeri Batam Nomor 931/Pid.Sus/2020/PN.Btm

¹¹ M Ilham Wira Pratama, "Kebijakan Hukum Pidana dalam Penanggulangan Tindak Pidana Perdagangan Orang Berdasarkan Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang" (2023) 1:2 J Fakta Huk 98-108.

¹² Muladi & Dwidja Priyatno, *Pertanggungjawaban Pidana Korporasi* (Jakarta: Prenada Media Group, 2010).



of human trafficking. Corporate criminal liability reflects the legal capacity of a company to be subject to criminal sanctions for actions related to the crime of trafficking in persons. This includes the role of the corporation, policies, and actions that support the criminal offense, as well as negligence in prevention efforts.¹³ The corporation, as a legal subject that commits the crime of trafficking in persons, shows that behind the involvement of the corporation, there is a group of individuals who work together to realize the crime. Although criminal acts carried out by corporations involve a number of individuals, corporate crime cannot be equated with organized crime. An unlawful act can be categorized as being carried out by a corporation if the perpetrators who carry it out are part of a legal entity or business entity. Criminal liability for corporations in the crime of trafficking in persons is an important component in the strategy of handling the crime of trafficking in persons, which is of concern in various countries, one of which is Indonesia.

However, this liability mechanism requires a special approach because corporations, unlike individuals, are legal entities that do not have the will and physical ability to commit crimes directly. Nevertheless, corporations can act through staff or management who carry out activities within their scope of work for the benefit of the corporation. In cases of trafficking crimes involving business entities or corporations, proving the element of guilt or *mens rea* is complicated. This is because corporations do not have consciousness or will like humans.¹⁴

In this regard, in the opinion of legal expert Suprpto, the corporation can be held accountable if the elements of intent or negligence are found in the individuals who are part of its instruments. The mistake is not seen as personal responsibility but collective, because every action or deed carried out by individuals is directed to bring benefits to the corporation.¹⁵ In line with this view, the element of fault is seen not only as a personal fault, but as a collective fault stemming from the actions of individuals who are part of the corporation that causes harm.

Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons, which regulates human trafficking, is the main reference in Article 1 number 1 which states: Trafficking in persons is the act of recruiting, transporting, harboring, sending, transferring, or receiving a person by threat of violence, use of force, abduction, harboring, falsification, deception, abuse of power or vulnerable position, debt bondage or giving payments or benefits, to obtain the consent of the person who has control over the other person, whether carried out within the country or between countries, for exploitation or resulting in exploitation.

This definition implies that humans are treated as objects of trade, moved without control, and subjected to various forms of violations and crimes through arbitrariness oriented towards labor exploitation. As a result, victims suffer losses while the perpetrators gain profits. Thus, TPPO is a human crime that must be stopped immediately. (Sularman and Ma'ruf, 2017). As an organ of the Company, the board of directors has the authority as stipulated in Article 94, paragraph 1 of Law

¹³ Tasa Titi Hapsari, Rahmatul Hidayati & Budi Parmono, "Pertanggungjawaban Korporasi dalam Tindak Pidana Perdagangan Orang di Indonesia" (2024) 30:1 Din J Ilm Ilmu Huk 9458-9474.

¹⁴ Warih Anjari, "Pertanggungjawabana Korporasi Sebagai Pelaku Tindak Pidana" (2016) 1:2 J Ilm WIDYA Yust.

¹⁵ Suprpto, *Hukum Pidana Ekonomi Ditinjau Dalam Rangka Pembangunan Nasional* (Jakarta: Widjaja, 1963).



Number 40 of 2007 concerning the Company Law. The authority is attached based on the appointment decision taken in accordance with the provisions of the Company Law and the Company's articles. However, the authority can be revoked at any time by the party that gives the mandate.¹⁶

In Law No. 40/2007 on Limited Liability Companies, the liability of PTs can be classified into three stages, namely:

- a. The initial phase in the process of establishing a Limited Liability Company begins when the company has had its deed of establishment drawn up by a notary, but has not yet received official authorization as a legal entity from the Minister of Law and Human Rights. At this stage, the status of a PT is not yet recognized as an independent legal entity, so all legal actions taken on behalf of the company are fully the personal responsibility of the founders or shareholders. Therefore, if there are losses or legal liabilities arising, the responsibility does not lie with the PT, but with the founders individually.
- b. The second phase occurs after the PT has been authorized as a legal entity by the Minister of Law and Human Rights, but the stage of registration and official publication of the company has not yet been carried out in the Supplement to the State Gazette. At this stage, the principle of limited liability begins to apply to shareholders, meaning that they are only liable to the extent of their paid-up capital. However, the directors and commissioners still bear joint responsibility if legal problems arise because the status of the corporate legal entity is not yet perfect.
- c. The third phase takes place after the deed of establishment of the PT is made and legalized in the Supplementary State Gazette; in this phase, the PT fully has the status of an independent legal entity and is separate from its founders and management. Therefore, in principle, the responsibility of shareholders, directors, and commissioners is limited, in accordance with their respective positions, but if, in practice, the corporate management is involved in illegal acts, including TPPO and illegal placement of migrant workers, they can still be held personally criminally liable.

In the Criminal Code, although it does not explicitly regulate the relationship of criminal liability imposed on corporations, there are provisions that allow the imposition of criminal sanctions on corporations through court decisions. The Limited Liability Company Law contains provisions that explain the responsibility of directors and commissioners for various management actions carried out within the scope of their authority, including when such actions violate the law. This condition can be classified as organized crime because, in criminal acts carried out by organized groups, it is not required to have a legal entity or business entity as a container. Meanwhile, a criminal offense is said to be committed by a corporation if the action is aimed at obtaining profits for the corporation for the welfare of its members, not for the personal interests of each individual.

Article 16 of Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons stipulates that if the crime of trafficking in persons is committed by an organized group, then each member of the group involved shall be punished with the same penalty as stated in Article 2. This provision emphasizes that there is no

¹⁶ Pramono Nidyo, "Tanggung Jawab dan Kewajiban Pengurus PT (BANK) Menurut UU Nomor 40 Tahun 2007 Tentang Perseroan Terbatas" (2007) 5 *Bul Huk Perbank dan Kebanksentralan* 15.



distinction between the main perpetrator and the assisting party, as both are treated equally in criminal liability. Thus, the provisions in Articles 55 and 56 of the Criminal Code, which differentiate the capacity of the assisting perpetrators, are not applicable in cases of trafficking committed by organized groups.¹⁷

CONCLUSION

Corporations as a subject of criminal law in the case of Trafficking in Persons (TPPO) have been regulated in Law Number 21 Year 2007 on the Eradication of Trafficking in Persons. This law emphasizes that if an act is committed by an individual who acts on behalf of, or for the benefit of, a corporation, then the corporation can be subject to criminal liability. In the case of PT Novarica Agatha Mandiri, it is proven that there is a practice of recruiting and placing Indonesian Migrant Workers (PMI) abroad without a valid Indonesian Migrant Worker Placement Permit (SIP2MI). This action fulfills the elements of the Crime of Trafficking in Persons because it is carried out in a planned manner, involves sending workers without legal protection, and leads to the exploitation of labor in foreign countries.

Normatively, Indonesian law has opened space for the punishment of corporations, both through fines and other actions in accordance with the provisions of Article 25 of the PTPPO Law and Article 118 of the Criminal Procedure Code. Legally, trafficking in persons is regulated in Article 297 of the Criminal Code, but the regulations are considered inadequate, so the benefits have not been fully felt. However, in practice, law enforcement more often imposes criminal sanctions on the management or director (natural person) representing the corporation. In this decision, although the corporation was sentenced to a fine of 5 billion, the main focus of punishment was still directed at the director as the physical perpetrator based on the doctrine of vicarious liability. This shows that corporate criminal liability in Indonesia has been recognized, but its application is still not optimal. Decision No. 931/Pid.Sus/2020/PN.Btm is an important precedent because the judge imposed a significant fine on the corporation, along with imprisonment on the director. This dual application indicates the seriousness of the judiciary in recognizing the role of corporations as perpetrators of crime. However, this decision also confirms that proving the guilt of the corporation is still very dependent on proving the guilt of the management. Some of the main obstacles in the application of criminal liability against corporations in Indonesia include:

- a. Unclear mechanism for proving the element of guilt (*mens rea*) in corporations;
- b. Difficulty linking board actions to the interests and policies of the corporation;
- c. Weak application of direct sanctions against legal entities;
- d. Overlapping authority between institutions, such as between the Ministry of Transportation and BP2MI, which causes legal uncertainty in licensing the placement of migrant workers, especially crew members.

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

¹⁷ Yushfi Munif Nasution, *Pertanggungjawaban Pidana Korporasi Terhadap Tindak Pidana Penyelundupan* Universitas Sumatera Utara, 2008) [unpublished].



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