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by PRIA MITRA PURBA

Submission date: 14-Oct-2023 09:07PM (UTC-0500)

Submission ID: 2193093849

File name: Justice_conectividad.docx (94.08K)

Word count: 4549

Character count: 24837

Justice Connectivity in the Criminal Prosecution of Human Trafficking

Ika Dewi Sartika Saimima¹, Mochammad Syafruddin Rezky Sanaky²

¹ Faculty of Law, Bhayangkara Jakarta Raya University, Jakarta, Indonesia.

² Auckland Law School, University of Auckland, New Zealand

: ika.saimima@ubharajaya.ac.id*, arimsrs@yahoo.com

Corresponding Author *



12 Submitted:	Revised:	Published:
<p>Article Info</p> <p>Keywords: Connection Court; Human Trafficking Law Enforcement;</p>	<p>Abstract</p> <p>Introduction: The involvement of members of the army of the Republic of Indonesia (TNI) and the police of the Republic of Indonesia (Polri) became a special obstacle in the handling of human trafficking cases. The difficulties are due to the existence of special regulations governing the courts applicable to members of the TNI who commit criminal acts.</p> <p>Purposes of the Research: The case may be dealt with in conjunction with a criminal offense of trafficking in persons, given that the offense has fulfilled the element of involvement (also, <i>deelneming</i>) or jointly (<i>mede dader</i>) between a civilian and a person with military status in the criminal offense of trafficking</p> <p>Methods of the Research: The type of research used is normative jurisprudence, with the primary legal material including the Act No. 21 of 2007 on Punishment of Trafficking in Persons, the Law No. 31 of 1997 on Military Justice, and the Law No. 2 of 2002 on the State Police of the Republic of Indonesia. Secondary legal material covers all publications dealing with the protection of human rights, especially those relating to the protection of women and children. This writing uses the fact approach, which involves studying the facts about human trafficking and providing critical analysis related to the problems arising from those facts. Legal material search techniques use document study techniques as well as study analysis using qualitative analysis. The researchers also conducted research into the library's documents, books, and other library materials. The results of the data collection and the author's analysis of the theories relevant to this research</p> <p>Results / Findings / Novelty of the Research: The involvement of TNI and Polri personnel in illegal human trafficking activities has negatively impacted Indonesian law enforcement. Human trafficking crimes have a terrible effect on the public's sense of peace, security, well-being, and order. Connectivity justice is an effort to resolve the crime of trafficking in individuals who can serve as judges for the victims in the criminal court system. Compared to the particular legislation intended for TNI or Polri members, the criminal penalties in Act No. 21 of 2007's provisions on the suppression of criminal acts of trafficking in persons are more severe. Not only penalties for degrading behavior or other violations of the code of ethics, but also connectivity courts</p>	

1. INTRODUCTION

Women and children are the most vulnerable to trafficking in human beings, and women and children who are victims of trafficking usually come from the region of Indonesia and

try to change their fate to find jobs outside the city and end up being illegal migrant workers abroad. During 2020–2023, the State Police of the Republic of Indonesia has arrested about 500 suspects of trafficking in human beings as migrant workers.¹ While the Public Relations Division of the Indonesian Police said that during the month of July 2023, it was possible to rescue 2186 victims of human trafficking through the Human Trafficking Criminal Task Force, The modes used in recruiting the victims consisted of illegal immigrant workers, housekeepers, crew, commercial sex workers, and child exploitation.² Data from the Child Protection Online Information System indicates that in 2022, there were 1,418 cases and 1,581 victims of human trafficking.³ Women and children are often forced to work in restaurants and then become commercial sex workers by accompanying guests.

Human trafficking is illegal and constitutes a grave violation of human rights, sexual exploitation and labor, cruel treatment of victims, debt bindings, fictitious marriages, prostitution, enslavement for big financial gain, etc. are all prevalent human rights violations in human trafficking.⁴ Inappropriate treatment, intimidation, even violence, and threats make the victim helpless. The latest mode used by traffickers today is through cultural exchange programs, scholarships, and internships. Delivery destination countries are Malaysia, Singapore, Brunei Darussalam, Taiwan, Japan, Hong Kong, and the Middle East. The U.S. Embassy and Consulate in Indonesia said that by 2022, the Indonesian government will still be in tier two. This is due to the fact that the Indonesian government, despite its efforts to make legislative regulations on the handling of trafficking in persons, still does not meet the minimum standards for committing criminal acts against trafficked persons.⁵ Indonesia's placement in Tier 2 is due to the lack of robust and systematic procedures, hindering the identification of victims and even finding apparatus involvement in human trafficking crimes.⁶ The protection services provided by the government are still inadequate because they do not specifically meet the needs of victims of human trafficking.

The phenomenon of human trafficking is not only a problem at the international level, for the Indonesian government it is still a major social problem and a disaster for human security by stealing the rights of individuals to their freedoms. The human trafficking that is happening today is becoming increasingly uncontrollable due to the presence of social media. The threat of human trafficking reaches all vulnerable groups without being supervised. Surveillance on these sites is not responsible for human trafficking crimes, especially if such crimes have entered the private sphere through the use of social media accounts. This article criticizes some of the reports of trafficking in persons, including the involvement of the apparatus which resulted in Indonesia being in a tier 2 position. Critical analysis was carried out against the participation of eight members of the National Army of the Republic of Indonesia (TNI) and one member of the Police of Indonesia. (Polri).

2. METHOD

The type of research used is normative jurisprudence, with the primary legal material including the Act No. 21 of 2007 on Punishment of Trafficking in Persons, the Law No. 31

¹ Fraksi Partai Keadilan Sejahtera, "Kasus Perdagangan Orang Masih Terus Berlanjut, PKS: Pemerintah Harus Segera Bertindak!"

² Divisi Humas Polri, "Selama 51 Hari, Polri Selamatkan 2.186 Korban TPPO."

³ Sistem Informasi Online Perlindungan Perempuan dan Anak, "Data Kekerasan Terhadap Perempuan dan Anak."

⁴ Hidayati, "Upaya Pemberantasan Dan Pencegahan Perdagangan Orang Melalui Hukum Internasional Dan Hukum Positif Indonesia."

⁵ Kedutaan Besar dan Konsulat Amerika Serikat, "Laporan Tahunan Perdagangan Orang 2022."

⁶ Nirmala Maulana Achmad, "Kepala BP2MI: Ada Oknum Polri Dan TNI Terlibat Dalam Kasus TPPO, Bahkan Di BP2MI."

of 1997 on Military Justice, and the Law No. 2 of 2002 on the State Police of the Republic of Indonesia. Secondary legal material covers all publications dealing with the protection of human rights, especially those relating to the protection of women and children. This writing uses the fact approach, which involves studying the facts about human trafficking and providing critical analysis related to the problems arising from those facts. Legal material search techniques use document study techniques as well as study analysis using qualitative analysis. The researchers also conducted research into the library's documents, books, and other library materials. The results of the data collection and the author's analysis of the theories relevant to this research.

3. RESULTS AND DISCUSSION

3.1. Facts related to the involvement of members of TNI and Polri

Trafficking in human beings is a modern form of slavery and is not only happening in Indonesia but is happening all over the world. It is an extreme crime and a violation of human rights. Women and children are vulnerable groups that are often victims of and trapped in the cycle of human trafficking. In 2022, The District Head of Langkat's shrimp house was found inactive, and the suspected members of TNI and Polri were involved. The number of victims in the shrimp house was about 56, two of whom were high school students.⁷ Other reports indicate that inside the casket were found hot iron, a hammer, firearms, and some other supporting instruments for violent acts. The Human Rights Commission also mentions that violence, torture, and slavery have been practiced in the shrimp house. The practice has been ongoing since 2010, is known to state institutions, and has been extended over the years.⁸ Non-active The District Head of Langkat is a local player in the palm coconut business that employs a lot of people.

The Migrant Workers Protection Agency (BP2MI) mentioned in the disclosure of the human trafficking case in July 2023 that the trade union involved several TNIs, Polri members, ministries/agencies, and MPs within BP2MI itself. Law enforcement officers in human trafficking cases have an important role to play in identifying and responding to cases that occur on the ground and are actually involved in such cases. Oknum TNI, on behalf of M-ranked Head of Corps., is currently handled at Regional Police Station of Bintan Island. The suspect is suspected of smuggling Indonesian Labour Force (TKI) to Malaysia.⁹ The involvement of M in the case of trafficking of the person was confirmed by the witness S, who mentioned that the candidates TKI were housed in the contract belonging to M. The participation of the TNI also occurred in 2021. The Commander of the TNI at the time mentioned that there were two such suspected member from TNI Maritime, ranked Copral One (Koptu) BK and TNI Air Force Sergeant Chief (Serka) S. Both of these suspected member are serving in Bintan Island.¹⁰

In addition to members of TNI, there are also a number of Polri members who are involved in the case of human trafficking. The investigation was carried out on the basis of Judgment No. 22/Pid.Sus/2015/PN.Atb. Rinanda criticized the judge's judgment that gave a criminal sentence to the accused, Demas Saan Fuaandan Davidson Anin Unknown Rangkat, who was

⁷ Luxiana, "Komnas HAM Ungkap Keterlibatan Oknum TNI-Polri Di Kerangkeng Bupati Langkat."

⁸ Dedi Hermawan, "Kerangkeng Manusia Di Rumah Bupati Langkat: Komnas HAM Temukan 'Besi Panas' Palu', Alat Dalam 26 Bentuk Kekerasan Dan Keterlibatan Anggota TNI-Polri."

⁹ Giri, "Oknum TNI, Polri, Bahkan Di Internal BP2MI Terlibat Dalam Kasus Perdagangan Orang Yang Masih Marak Artikel Ini Telah Tayang Di TribunJabar.Id Dengan Judul Oknum TNI, Polri, Bahkan Di Internal BP2MI Terlibat Dalam Kasus Perdagangan Orang Yang Masih Marak."

¹⁰ Santi Dewi, "Jenderal Andika Akui 2 Anggota TNI Terlibat Kirim PMI Ilegal."

sentenced to three (3) months in prison. In his analysis, Rinanda said there were disparities in the implementation of criminal sanctions.¹¹ In the verdict, there is also an inconsistency between the prosecution's lawsuit and the judge's judgment, which is far from the lawsuits and threats. In the verdict, the judge mentioned the excuses given to the accused, Dema Saan Fuah and Davidson Anin. The exoneration grounds are not the excuse grounds regulated in the Criminal Law Bills KUHP, and therefore the judgment No. 2470-K/Pid.sus/2015 must be adjusted to the exonerative grounds as regulated by the KUHP because the lightening things in the judge's consideration used as one of the judges' considerations in settling the case cannot be used to relieve the accused from the threat of his sentence, which should be three years of imprisonment.

The involvement of both TNI and Polri members becomes a barrier in the handling of human trafficking cases. Trafficking in persons is difficult to detect, so it is a barrier for the government to deal with the trafficking of persons.¹²

3.2. Judicial authority for members of the Indonesian National Army (TNI) and members of Polri

From the perspective of the Indonesian criminal justice system, every member of TNI has the same status as civil society. There is no distinction in the eyes of the law if it turns out that there are members of TNI who have committed a breach of the law or a crime. A member of the TNI who commits a violation shall be subject to the rules of law generally applicable and special rules applicable to military members.

Article 3 paragraph (4a) of the provisions of MRR No. VII/MPR/2000 and Article 65 of Law No. 34 of 2004 on the National Army of Indonesia states that "The Primate of the Indonesian Army is subject to the jurisdiction of the military judiciary in the case of violations of military law and is submitted to the ordinary court in the event of general criminal law violations. In terms of the authority to conduct investigations or to prosecute (jurisdiction) in the environment of military justice in connection with criminal matters, it is limited only to the military members who have committed a violation of military criminal law.

The introduction of special regulations for military members (TNI) is subject to a number of considerations, namely, firstly, the special duty assigned to each member and inherent in military life; the two international worlds incorporate military criminal law as part of the law of the conflicting state; and the three military criminal laws are special criminal law and recognized in the field of Indonesian criminal law.¹³

The problem of human trafficking in Indonesia is very complex because its forms are often out of sight, such as the delivery of cultural missions, the granting of scholarships, the ordering of brides, or the shipping of migrant labor without official documents. Another problem of human trafficking is the involvement of irresponsible people in carrying out their functions and duties.

In an effort to eradicate human trafficking, law enforcement plays an important and critical role, as it is the first agency to receive reports and then identify and process reports of cases of human trafficking. Victims and traffickers are in direct contact with law enforcement. In addition, law enforcement serves as a liaison point for victims to be referred to social service providers to deal with the trauma experienced. Law enforcement is the hope of the victims

¹¹ Rinanda and Helvis, "Analisis Hukum Peran Pembantu Dalam Tindak Pidana Perdagangan Orang Terhadap Terdakwa Yang Merupakan Anggota Polri."

¹² Dwirivanda, "Kebijakan Indonesia Terhadap Korban Kejahatan Perdagangan Orang Di Malaysia (2012-2017)."

¹³ S.R. Sianturi, *Hukum Pidana Militer*.

to resolve the case of trafficking. Nevertheless, the victims often have to bite their fingers because the law enforcement officers are in the circle of trafficking themselves.

The announcement mentions the involvement of some Polri members in a criminal act of human trafficking. Law enforcement should be the protectors of the community instead of being involved in the case, How are the sanctions given to the number of members of TNI and Polri?

The main functions of TNI and Polri are to maintain national security and law enforcement. If in the performance of such functions and duties there is a villain who is involved in the criminal act of trafficking in persons, then it must be done in accordance with the provisions of the applicable law. Article 18 of Law No. 48 of 2009 on the Power of the Judiciary states that the power of the judiciary is exercised by the Supreme Court and its subordinate judicial bodies in the Common Court, Religious Justice, Military Court, State Business Court, and Constitutional Court. Military justice as an institution of justice is a means of law enforcement, a place of legal protection for citizens, and the state apparatus involved in a legal dispute. While for Polri members who have problems with the law under Article 29 of the Police Act, they are subject to the powers of the general criminal justice besides, Polri members are also subject to the disciplinary rules and the Code of Ethics of the Profession.

Article 65 (2) of Act No. 34 of 2004 states that all military members committing general criminal offenses are subject to the jurisdiction of the General Court and that the military who commits a criminal offense is subject to a Military Court. In other words, the courts of law of the military committing criminal offenses are assigned to two separate jurisdictions, the Military Tribunal and the General Tribunal. However, the general court of law has not yet been able to implement it in the practice of the court, as stipulated by Article 3(4) letter a of The People's Consultative Assembly of the Republic of Indonesia (MPR RI) No. VII/MPR/2000 and Article 65(2) of Law No. 34, 2004. Stated differently, military personnel who commit civil offenses are nonetheless subject to the Military Court's legal jurisdiction. This is due to the transitional requirements of Act No. 34 of 2004's Article 74. In Law No. 34 of 2004, Article 74(1), the words "the provisions referred to in Article 65 shall apply at the time of the newly enacted law on the Military Court" are restated. "It shall remain subject to the provisions of Act No. 31 of 1997 on the military court, so long as the new military court law has not been formed," according to Article 74(2).

The process by which the law enforcement agency calls TNI troops who arrive to conduct a violation then committed was also indicated in the telegraph of the TNI Commander, Number ST/1221/2021;

1. The commander or head of unit must answer calls from Polri, the Corruption Eradication Commission (KPK), and other law-enforcement organizations asking TNI soldiers to testify on legal incidents.
2. Calling against TNI soldiers who do not comply with the procedures for the Commander/Chief of Unit to coordinate with the law enforcement apparatus concerned.
3. A TNI soldier who gives a statement related to a legal event to the law enforcement agency can do so in his unit with the accompaniment of a law officer or unit officer.
4. A TNI soldier who gives a statement concerning a legal event to the law enforcement agency may be made at the office of the law-enforcing agency that calls him with the accompaniment of the law officer.

According to the provisions of the Military Criminal Justice Act, the military judiciary becomes the executive of the jurisdiction in the Armed Forces. This is done to enforce law and justice, taking into account the interests of national security.

3.3. Seeking justice and connectivity in human trafficking criminal proceedings

It reflects a consensus that the public acknowledges the conduct or measure that it considers to be most significant.. Therefore, it cannot be allowed if it is found that the law enforcement is actually involved in a criminal act.

Law enforcement efforts through the Military Justice Act or the Police Act of the Republic of Indonesia and other supporting regulations must also take into account the fact that the problem arising from legal events in such a society constitutes a particular form of criminal offence of the existence of an extraordinary crime in the criminal act of trafficking in persons.

The rule of law applied to members of TNI through the process of investigation based on the provisions of the Military Court Act gives the impression that the involvement of members of the TNI in the criminal act of trafficking in persons is an act that cannot be punished or can be said immunity of the law. This opinion is widely developed and backed by the belief that those who participate in the trafficking of people become powerful individuals who shield serious crimes against civilians and are immune to the legal restrictions outlined in the Code of Criminal Law that apply to military punishments instead of civil law violations.

The Criminal Code contains details of acts that include crimes, perpetrators of crimes that can be punished, and the kinds of punishment imposed on violations of the law. In other words, the law must be fair, with no distinction of who is the perpetrator of the law, from the top to the bottom, from civil society and the State apparatus, and from the well-being of the people. Therefore, whoever commits a crime shall be punished and punished according to the laws in force. Given the existence of special regulations established regarding the involvement of members of TNI in criminal acts of trafficking in persons, it is advisable to deal with such cases through the courts of connectivity.

According to Law No. 14 of 1970 on the Provisions of the Trees of the Judiciary, Article 22 states that "Unless the matter must be investigated and tried by the court in the military tribunal, as decided by the Minister of Defense and Security with the consent of the Minister of Justice, criminal acts committed jointly by those belonging to the general court and the military court are examined and tried by the courts in the common court."

A case-connection procedure is a judicial system applied to a criminal offense in which a suspect or a defendant is involved (along with *deelneming*) or jointly (*medie dader*) between a civilian and a person with military status (TNI soldier). The provision does not even at all open the possibility of examining separately or divided in matters of connectivity. Thus, it can be assured that connectivity justice can be carried out in cases of trafficking in persons where involvement is concerned, given the criminal acts committed by civilians together with military personnel.

Article 89 of the Code of Criminal Law states that: (1) A criminal act committed jointly by those who belong to the general court and the military court shall be examined and tried by a court in the common court unless, in accordance with the decision of the Minister of Defense and Security with the approval of the minister of justice, the matter must be

investigated and tried in a court of military court. (2) Criminal investigations as referred to in paragraph (1) shall be carried out by a Standing Team consisting of investigators as provided for in Article 6 and the police. (2) The criminal investigation as mentioned in paragraph (2) shall be conducted by a standing team composed of investigators as provided in article 6, the military police of the Armed Forces of the Republic of Indonesia, and the Military Auditor or the High Military Auditor in accordance with their respective authorities under the law applicable to the criminal investigations. (3) The team, as specified in the second paragraph, shall be constituted by a joint decision of the Minister of Defense and Security and the Minister for Justice.

If the word same-equal in the wording of the article can be interpreted as: - Participation (same as) is *deelneming* as described above; - *mede dader* means Article 55, paragraph (1). If the meaning "participation" then includes articles 55 and 56 of the Code, but if the meaning of the *mede dader*, then the meaning is only article 55 (1) paragraph 1 that means. (not included criminal act 56). The element of involvement in the criminal act of trafficking in persons in which the perpetrator is a member of TNI has basically fulfilled the elements of Article 4 of the Criminal Procedure of Trafficking. The elements referred to in the article include the preparation of shelter houses, the management of medical checkups, assisting in the making of passports, taking care of departure, even carrying out detention, and committing acts of violence against the victims. Such acts have met the elements of assisting the trafficking of persons.

Articles 198-203 of Law No. 31 of 1997 on Military Courts Article 198 paragraph (1) reads: (1) Criminal acts committed jointly by those belonging to the military courts and the courts of ordinary jurisdiction shall be examined and tried by a court in a general court district unless, according to the decision of the Minister with the consent of the Ministry of Justice, the matter must be investigated and tried in a tribunal in a common court district, except when, in accordance with a decision by the Minister, with the agreement of the Secretary of Justice, the matter should be examined and tried by a tribunal within the military court districts.

Legal events as well as legal norms that have been violated in the case of the trafficking of such persons will affect the form of liability of the member of TNI who has committed a serious crime committed against the public. If a case involving a member of the TNI and civilians is handled through a connectivity court, it will make it easier to coordinate and expedite the prosecution of the case. Because there won't be a "reversal" of events between investigators and prosecutors if the single team handles the inquiry and prosecution processes. The process of handling cases of human trafficking handled by law enforcement agencies can be more transparent and accountable through connectivity courts than by TNI.

In articles 324 to 327 of the Covenant on Criminal Procedures, trafficking in persons is the principal rule governing positive criminal affairs in Indonesia. It is also a foundation for criminal law enforcement to be able to prosecute criminal matters in order to protect public interests and public order. Soerjono Soekanto mentions that law enforcement is the activity of reinforcing the relationship between the values expressed in the established principles and attitudes as a set of values of the final stage of creating, maintaining, and maintaining peace of life.¹⁴ If any law enforcement officer is involved in a human trafficking case, it is

¹⁴ Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*.

unlikely that the law can be enforced. This will result in people not trusting law enforcement.

To ensure that incidents of trafficking involving numerous TNI members are handled transparently and in accordance with the clear legal guidelines in Act No. 21 of 2007, Suppression of Trafficking in Persons, justice for the victims is expected. The imposition of disciplinary measures under the TNI's rules will be complimentary to the removal of the criminal penalty itself if proof through the connectivity court has been upheld.

4. CONCLUSION

The involvement of members of TNI and Polri in human trafficking criminal acts has become a bad precedent for Indonesian law enforcement. Criminal acts of trafficking in human beings have a devastating impact on the peace, security, well-being, and order of the general public. In the criminal law enforcement system, connectivity justice is an attempt to settle the crime of trafficking in people who can deliver justice to the victims. The criminal sanctions in the provisions of Act No. 21 of 2007 on the Suppression of Criminal Acts of Trafficking in Persons are more severe than the special laws aimed at members of TNI or Polri. Not just sanctions for the fall of the degradation sanctions or any other code of ethics sanctions, connectivity courts will provide for enforcing criminal sanctions.

Handling cases of human trafficking involving many institutions must be done through strong collaboration. Multisectoral collaboration between law enforcement agencies is very important, especially if it involves members of TNI and Polri. The tool to support collaborative handling of human trafficking cases is connectivity justice. Therefore, ignorance or confusion determines which court is competent to prosecute members of the TNI for trafficking in human beings through connectivity courts as the solution and form of law enforcement.

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Prep. You may be using the wrong preposition.



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