

Law Enforcement Against Perpetrators of Human Trafficking in Indonesia

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Abstract: The Indonesian government is taking the issue of human trafficking which is becoming increasingly widespread in Indonesia very seriously. However, law enforcement is still considered to face various significant obstacles and challenges. This study is a normative legal study that employs both a statutory and a conceptual approach. The data sources consist of secondary data, and the data were collected using literature review or documentary analysis techniques. The results of the study show that all perpetrators of human trafficking whether individuals or corporations—can be held collectively criminally liable under Law No. 21 of 2007 on the Eradication of Human Trafficking (PTPPO). Penalties that may be imposed on perpetrators of human trafficking offenses include fines, imprisonment, and other social sanctions.

Keywords: Dispensation; Marriage; Law; Indonesia

Abstrakct: Pemerintah Indonesia sangat serius dalam melakukan penanggulangan tindak pidana perdagangan manusia yang semakin masif di Indonesia. Namun, penegakan hukum dinilai masih menghadapi berbagai hambatan dan tantangan yang signifikan. Penelitian ini merupakan penelitian yuridis normatif dengan menggunakan pendekatan undang-undang dan pendekatan konsep. Sumber data berupa data sekunder dan data dikumpulkan dengan menggunakan teknik kajian kepustakaan atau kajian dokumentasi. Hasil penelitian menunjukkan bahwa semua pelaku tindak pidana perdagangan manusia baik yang melibatkan orang-orang maupun korporasi dapat dimintai pertanggungjawaban pidana secara kolektif berdasarkan Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang (PTPPO). Sanksi yang dapat dijatuhkan kepada pelaku tindak pidana manusia dapat berupa hukuman denda, hukuman penjara, dan hukuman sosial lainnya.

Kata Kunci: Penegakan; hukum; Perdagangan Manusia; Indonesia

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1. PENDAHULUAN

Indonesia is a state governed by the rule of law, in which the law is the supreme authority in the conduct of government. All actions taken by the government and the public must be based on the applicable laws, not on power or arbitrariness.¹ This is expressly guaranteed in the country's constitution.² One indicator that Indonesia is a state governed by the rule of law is the protection afforded to human rights.³

One form of this protection is the guarantee for citizens to obtain decent employment, either domestically or abroad, to improve their standard and quality of life. This is stipulated in Article 27, Paragraph (2) of UUD 1945, which states that "every Indonesian citizen has the right to work and to live a decent life in accordance with human dignity." Considering that Indonesia is a vast country with a large population, adequate and evenly distributed employment opportunities are necessary to ensure that all citizens can meet their basic needs.⁴ However, to date, job availability in Indonesia seems insufficient to meet the needs of all segments of society. In practice, this often leads to human rights violations such as exploitation, abuse, modern slavery, and various other acts that can be categorized as human trafficking.⁵

Human trafficking, a transnational crime, is increasingly prevalent. This type of crime is commonly found in developing countries with large populations and imbalances in the gender ratio.⁶ The underlying factors include economic disparities and high demand for cheap labor, often sourced from abroad.⁷ Almost all countries are involved in human trafficking networks, functioning as countries of origin (where citizens are trafficked abroad), destination countries (where trafficking victims are exploited), or transit countries (serving as temporary stops along trafficking routes).

According to Article 1, Clause 1 of Law no. 21 of 2007 concerning Eradication of the Crime of Human Trafficking. Human trafficking is defined as a series of actions that include recruitment, transportation, harboring, sending, transferring, or receiving individuals using threats, physical violence, abduction, confinement, forgery, deception, abuse of power or vulnerability, debt bondage, or providing payments or benefits to gain consent from someone with control over the individual. These actions can occur domestically or internationally, with the aim of exploitation or placing individuals in exploitative conditions.

¹ PAF. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: Citra Aditya, 2011).

² Satjipto Raharjo, *Ilmu Hukum*, Cet. 8 (Semarang: Citra Aditya Bakti, 2014).

³ Djaenal Hoesen Koesoemahatmadja, *Pokok-Pokok Hukum Tata Usaha Negara* (Bandung: PT. Citra Aditya Bakti, 1993).

⁴ A.S.S. Tambunan, *Politik Hukum Berdasarkan UUD 1945* (Jakarta: Puporis Publishers, 2020).

⁵ T. T Hapsari, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Perdagangan Orang Di Indonesia," *Dinamika* 30, no. 1 (2024): 1.

⁶ Matthew S. Jenner, "International Drug Trafficking: A Global Problem with a Domestic Solution," *Indiana Journal of Global Legal Studies* 18, no. 2 (2011): 901-27.

⁷ D. N Sari, "Pertanggung Jawaban Pidana Terhadap Pelaku Tindak Pidana Perdagangan Manusia (Human Trafficking) Oleh Korporasi" (Unisma, 2024).

Human trafficking is a criminal offense with far-reaching impacts, not only on the victims who become objects of exploitation but also on society and the state as a whole.⁸ This crime involves various actors, which can include individuals or groups, operating either domestically or across international borders. In this context, subjective accountability for human trafficking is crucial to analyze, particularly within the framework of criminal law applicable in Indonesia and internationally. Legal accountability for human trafficking is closely related to identifying who can be regarded as a legal subject in such cases. The legal subjects involved include not only the main perpetrators but also other parties who may play a role in the trafficking process, whether directly or indirectly. Within the criminal justice system, legal subjects are held accountable for their unlawful actions and must face sanctions in accordance with the prevailing laws.⁹ According to human trafficking in Indonesia is a serious issue requiring strict law enforcement. However, the role of law enforcement officers in identifying and prosecuting human traffickers remains suboptimal, both in terms of prevention and the fair application of justice.¹⁰ Furthermore, from an international legal perspective, human trafficking often involves cross-border collaboration, necessitating a clear understanding of the responsibilities of states and individuals involved in these criminal acts.

The inclusion of corporations as legal subjects in criminal law has long been a subject of debate among legal experts. In the previous Criminal Code (KUHP), corporations were not recognized as legal subjects that could be held criminally accountable, in line with the principle of *societas delinquere non potest*.¹¹ However, under the new Criminal Code corporations are recognized as legal subjects in criminal law. The issue of corporate criminal liability as perpetrators of crimes is complex, as it challenges the principle of *geen straf zonder schuld* (no punishment without fault), where guilt is understood as a mental state that inherently belongs only to individuals.¹² Thus, traditionally, only individuals can be held criminally accountable. If the crime of human trafficking is committed by an individual, criminal liability can be directly imposed on that person. However, if the offense is committed by a corporation, the question arises as to whether criminal liability can be imposed on the corporation in the same way as it would be on an individual.

Punishment cannot be imposed if the element of fault is not fulfilled, as fault is a mental attitude (*mens rea*) that includes intent and negligence. These two forms of fault can only be proven in humans, as only humans, by virtue of their reasoning, can determine whether an act is unlawful. In the context of human trafficking offenses committed by corporations, questions arise regarding the equivalence of punishment between corporations and individuals, and who should be held criminally liable whether it is solely

⁸ Aaron Fichtelberg, "Performing Legitimacy in Irregular Criminal Justice: Lessons from the People's Tribunals," *International Journal of Law, Social Science, and Humanities* 3, no. 2 (2026): 460–472, <https://doi.org/https://doi.org/10.70193/ijlsh.v3i2.298>.

⁹ A Takariawan and S. A Putri, "Perlindungan Hukum Terhadap Korban Human Trafficking Dalam Perspektif Hak Asasi Manusia," *Jurnal Hukum Ius Quia Iustum* 25, no. 2 (2018): 237–255.

¹⁰ R Kurniaty and A. Kurniawan, "Another Threat to the Sovereignty of Indonesia's Territorial Waters: Human Trafficking in the Fisheries Industry," *IOP Conference Series. Earth and Environmental Science* 493, no. 1 (2020): 1–7.

¹¹ Ahmad Faizal Azhar and Eko Soponyono, "Kebijakan Hukum Pidana Dalam Pengaturan Dan Penanggulangan Ujaran Kebencian (Hate Speech) Di Media Sosial," *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (2020): 275–90.

¹² Sudarto, *Tindak Pidana Korupsi Di Indonesia, Dalam Hukum Dan Hukum Pidana* (Bandung: Alumni, 1981).

the corporation, its management, or both.¹³ Moreover, the form of punishment imposed on a corporation must align with the provisions of the applicable laws and regulations, including sanctions that are appropriate for non-human entities.

Corporations as legal subjects have been recognized in various laws and regulations, yet in practice, this recognition still faces numerous challenges, particularly concerning acts committed by corporations. These challenges arise due to the differing nature and existence of legal entities or corporations as legal subjects compared to natural persons (*natuurlijke persoon*) as legal subjects.¹⁴ Based on this background, the author is interested in analyzing and understanding the legal foundation underpinning the recognition of corporations as legal subjects in human trafficking offenses under Indonesian criminal law. Additionally, the author seeks to explore the forms of corporate liability in such criminal offenses.

Research conducted by indicates that corporations can be held criminally liable if certain conditions are met, including the existence of a criminal offense, the element of fault (intentional or negligent), the capacity for responsibility, and the absence of exculpatory reasons.¹⁵ The application of identification theory and vicarious liability serves as the legal basis for linking corporate actions to criminal violations. Regarding sanctions, Law Number 21 of 2007 replaces the Criminal Code (KUHP), which was deemed less effective in addressing human trafficking. This law imposes severe penalties, including imprisonment and substantial fines, for offenses such as recruitment, transportation, harboring, and exploitation of individuals. Additionally, publicity sanctions are applied to raise public awareness and prevent corporate involvement, with consequences that include both financial and non-financial impacts on corporations.

Research by states that corporations have been formally recognized as subjects of criminal law in the Draft Criminal Code, which will comprehensively apply within the criminal law system.¹⁶ With this application, laws outside the Criminal Code no longer need to specifically regulate corporations as subjects of criminal law, except in cases where special provisions or exceptions are intended by the regulations. Legal protection against human trafficking offenses continues to face significant challenges, particularly with regulations that do not sufficiently favor victims. While child victims are guaranteed legal protection, including restitution, the implementation of restitution is often hindered, particularly when perpetrators are unable or unwilling to pay, leaving no clear solution in Law Number 21 of 2007 on the Eradication of Human Trafficking. Research by Elfina Lebrine Sahetapy and investigations by the National Commission for Child Protection (2004–2006) revealed alarming figures, with 400 cases of child trafficking involving children under the age of five recorded in 2004 and an estimated 10,000 children trafficked between 2005 and

¹³ Ufran, "Kebijakan Antisipatif Hukum Pidana Untuk Penanggulangan Cyberterrorism," *Masalah-Masalah Hukum* 43, no. 4 (2014): 529–38.

¹⁴ Rodliyah, "The Concept of Corporate Crime in the Indonesian Criminal Law System," *International Journal of Multicultural and Multireligious Understanding* 7, no. 1 (2020): 711–19, <https://doi.org/http://dx.doi.org/10.18415/ijmmu.v7i1.1334>.

¹⁵ Anthony O. Nwator, "Corporate Criminal Responsibility: A Comparative Analysis," *Journal African Law* 57, no. 1 (2013): 83.

¹⁶ Joelman Subaidi and Budi Bahreisy, "The Legal Position of Corporate Crime in Indonesia," *International Journal of Law, Social Science, and Humanities (IJLSH)* 1, no. 1 (2024): 50–55, <https://doi.org/https://doi.org/10.70193/ijlsh.v1i1.143>.

2006, 30% of whom were exploited for prostitution abroad. This highlights the involvement of corporations as perpetrators that remain insufficiently addressed by criminal liability mechanisms. A normative study of this issue finds that children as victims of human trafficking committed by corporations have not received optimal legal protection from the state, government, or society. Disparities in sanctions, such as fines for corporations stipulated in the Child Protection Law and the Anti-Human Trafficking Law, create gaps that hinder justice and adequate protection for victims.

Previous studies have shown that corporations can be held criminally liable for human trafficking offenses under certain conditions, such as the occurrence of a criminal act, the presence of fault (intent or negligence), the capacity to be held accountable, and the absence of exculpatory reasons. Furthermore, the doctrines of identification theory and vicarious liability serve as the legal basis for linking corporate actions to criminal offenses. Law Number 21 of 2007 imposes severe sanctions on corporations involved in human trafficking. However, its implementation faces challenges, particularly in providing legal protection for victims, such as restitution issues that are hindered when perpetrators are unable or unwilling to pay. Although corporations have been recognized as subjects of criminal law in the Draft Criminal Code (RKUHP), which will apply comprehensively, in practice, sanctions against corporations often create disparities that impede optimal legal protection for victims, especially children targeted in human trafficking.

This research aims to analyze and understand the accountability of corporations as legal subjects in human trafficking offenses. It seeks to identify how corporations, as legal entities, can be held criminally liable in human trafficking cases and explore the elements required to impose criminal penalties on corporations. Furthermore, this study aims to examine the mechanisms for imposing penalties on corporations involved in human trafficking. It will explore the types of sanctions that can be imposed on corporations, including imprisonment, fines, and other penalties such as publicity, as well as their application in Indonesia's legal practice. Thus, this research aims to provide deeper insights into corporate liability and criminal sanctions in human trafficking cases and to offer recommendations for improving the existing legal system.

2. METODE PENELITIAN

Penelitian ini merupakan penelitian yuridis normatif dengan menggunakan pendekatan undang-undang dan pendekatan konsep yang berkaitan dengan penegakkan hukum terhadap perdagangan manusia di Indonesia. Pendekatan undang-undang (*statute approach*) adalah metode menelaah semua regulasi yang berkaitan dengan isu hukum yang diteliti. Manakala pendekatan konsep (*conceptual approach*) adalah metode menelaah pandangan, doktrin, serta prinsip hukum dari para ahli untuk memahami dasar lahirnya suatu aturan.¹⁷

Dalam penelitian hukum mengenai perdagangan manusia di Indonesia, pendekatan undang-undang menelaah konsistensi dan kesesuaian berbagai regulasi seperti Undang-Undang No. 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang,

¹⁷ Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia-Social and Behavioral Sciences* 219 (2016): 201-7, <https://doi.org/http://dx.doi.org/10.1016/j.sbspro.2016.05.006>.

sementara pendekatan konsep mengkaji doktrin dan prinsip hukum untuk memahami esensi kejahatan, perlindungan korban, serta hak asasi manusia.¹⁸ Dalam penelitian hukum normatif ini, kedua pendekatan ini saling melengkapi. Pendekatan undang-undang memberikan kepastian mengenai norma yang berlaku (*das sollen*), sementara pendekatan konsep memberikan dasar pemahaman yang logis dan teoritis tentang mengapa hukum tersebut dibuat dan bagaimana seharusnya norma tersebut dimaknai serta diterapkan dalam melindungi korban kejahatan

3. HASIL DAN PEMBAHASAN

3.1 Corporate Legal Responsibility in Human Trafficking Crimes

The perpetrators of human trafficking refer to individuals or groups involved in actions that meet the elements of the crime. These perpetrators can include individuals, organized networks, or specific entities that contribute, either directly or indirectly, to the recruitment, transportation, sheltering, or transfer of people for exploitation purposes (Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes, 2007). The criminal subjects in human trafficking crimes encompass various parties who may be held legally accountable. First, any individual involved, either directly or indirectly, in the crime is considered a responsible legal subject.

Second, corporations, defined as organized entities, whether legal or non-legal, can also be criminally liable if proven to be involved in human trafficking. Third, organized groups, consisting of at least three people collaborating for criminal purposes, fall under this category. These groups typically exhibit characteristics such as a structured organization and a motivation to gain financial or material benefits. Fourth, state officials who abuse their power, including government officials, military personnel, or other law enforcement officers, may also face criminal penalties if involved or complicit in human trafficking activities. The diversity of legal subjects involved indicates that human trafficking crimes engage multiple parties with varying roles and degrees of involvement.¹⁹

A corporation is defined as: a collection of people and/or wealth that is organized, whether a legal entity or not.²⁰ In human trafficking crimes, corporations possess two main characteristics: being a collection of people and/or wealth that is organized.²¹ The collection of people refers to a group of individuals who have a structured, specific goal.²² Meanwhile, organized wealth refers to resources managed in a planned manner to support certain activities, which can take the form of legal or non-legal entities (Law No.

¹⁸ Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 1–20, <https://doi.org/10.51749/jphi.v2i1.14>.

¹⁹ A Pinto QC, *Corporate Criminal Liability* (USA: Sweet & Maxwell, 2008).

²⁰ Yana Fajriah, Edy Jumady, and Ardiansyah Halim, "Good Corporate Governance And Corporate Social Responsibility On Company Value With Financial Performance," *Jurnal Akuntansi* 26, no. 2 (2022): 324–341, <https://doi.org/https://doi.org/10.24912/ja.v26i2.944>.

²¹ A Rahmatyar and S. H. K Abadi, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Perdagangan Orang," *Jurnal Kolaboratif Sains* 7, no. 6 (2024): 1976–1984.

²² R. M Arifin and J Jaenuri, "Perlindungan Hukum Terhadap Anak Korban Tindak Pidana Perdagangan Orang Dalam Perspektif Korporasi Sebagai Pelaku," *Al- Ashlah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 2 (2023): 2, <https://doi.org/https://doi.org/10.69552/alashlah.v2i2.2444>.

21 of 2007 on the Eradication of Human Trafficking Crimes, 2007).²³ Furthermore, organized groups also qualify as legal subjects in this crime. An organized group is defined as a structured entity composed of at least three individuals working together over a period to commit one or more crimes regulated by law, with the primary motivation being the acquisition of material or financial gain, either directly or indirectly. Thus, both corporations and organized groups reflect the existence of systematic structures supporting human trafficking crimes (Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes, 2007).

Organized groups involved in human trafficking crimes have four main characteristics. First, the group consists of at least three individuals. Second, its existence is temporary, depending on the objectives to be achieved.

Third, the group engages in one or more criminal acts as defined by law. Fourth, the group's goal is to gain material or financial profit, either in the form of goods or money. This profit typically comes from human trafficking transactions, where individuals, corporations, or organized groups receive compensation from buyers (Law No. 21 of 2007 on the Eradication of Human Trafficking, 2007). A corporation is defined as a group of people and/or assets organized as either a legal entity or not, with characteristics that include a collection of individuals or wealth organized for a particular purpose.²⁴ Organized groups refer to structures made up of at least three individuals working together to commit one or more crimes with the aim of obtaining material or financial gain. These groups are characterized by continuity of structure, criminal objectives, and a motivation to acquire profits, whether in the form of goods or money. Additionally, corporations are defined as organized groups of people and/or assets, whether legally constituted or not, that can also be perpetrators of human trafficking crimes. Corporations involved in human trafficking can be held criminally responsible according to applicable laws (Rochmah & Simangunsong, 2023).

Organized groups, consisting of at least three individuals working together to commit one or more crimes for material or financial gain, are also perpetrators of human trafficking. These groups share common characteristics such as structural continuity, criminal objectives, and a motivation to obtain profits, in the form of either goods or money. Meanwhile, state officials, including government officers, military personnel, police, or other law enforcement bodies who abuse their authority to support or engage in human trafficking, may also face criminal sanctions. This abuse of power refers to actions that deviate from the true norms or intended purpose of the authority held.²⁵

The legal basis for recognizing corporations as legal subjects is framed in regulations that acknowledge corporations as entities with distinct legal status and rights independent from shareholders, managers, or individuals involved in their operations. In various jurisdictions, corporations are treated as legal entities with their own rights and obligations.²⁶ This legal framework provides protection to corporations, enabling them to

²³ Sari, "Pertanggung Jawaban Pidana Terhadap Pelaku Tindak Pidana Perdagangan Manusia (Human Trafficking) Oleh Korporasi."

²⁴ Muladi and Dwidja Priyanto, *Pertanggungjawaban Pidana Korporasi* (Jakarta: Kencana, 2010).

²⁵ Hapsari, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Perdagangan Orang Di Indonesia."

²⁶ Arifin and Jaenuri, "Perlindungan Hukum Terhadap Anak Korban Tindak Pidana Perdagangan Orang Dalam Perspektif Korporasi Sebagai Pelaku."

own assets, conduct business transactions, sue or be sued in court, and bear legal responsibility for actions carried out during their business operations.

In addition to Law No. 21 of 2007 on the Eradication of Human Trafficking, corporations as legal subjects in Indonesian criminal law are also governed by various other regulations addressing crimes involving corporations, such as Law No. 40 of 2007 on Limited Liability Companies, Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes, Law No. 20 of 2001 on Amendments to Law No. 31 of 1999 on the Eradication of Corruption, and Law No. 1 of 2023 on the Criminal Code (KUHP). It is important to note that the legal framework for corporations in Indonesian criminal law is continually evolving, and the applicable regulations may change over time. Therefore, corporations must stay updated on the applicable legal frameworks and ensure compliance with existing regulations.

The legal basis for corporations as legal subjects in human trafficking crimes can be found in various international and national legal instruments. At the international level, the United Nations Convention against Transnational Organized Crime (UNTOC) and its Protocols, which aim to prevent, suppress, and punish human trafficking, particularly involving women and children, provide a legal framework to support efforts to combat this crime.²⁷ At the national level, many countries have adopted specific laws governing human trafficking crimes and the involvement of corporations. In Indonesia, for instance, Law No. 21 of 2007 on the Eradication of Human Trafficking provides clear regulations regarding penalties and legal responsibilities for corporations involved in human trafficking. Corporations as legal subjects in this crime can be held criminally accountable, both individually and collectively. Individual responsibility refers to the involvement of individuals in the crime, while collective responsibility refers to the concept where a corporation is deemed responsible for actions carried out by its members for the corporation's interest or on its behalf. This concept of corporate responsibility strengthens the role of companies in preventing human trafficking and ensuring legal accountability.²⁸

The classification of corporations in human trafficking crimes is more specifically regulated in Article 13, Paragraph (1) of Law No. 21 of 2007 on the Eradication of Human Trafficking. This article states that human trafficking can be attributed to corporations if the criminal acts are committed by individuals acting on behalf of and for the benefit of the corporation. The individuals involved may have an employment relationship or other connections with the corporation and act within the scope of the corporation, either individually or collectively. Therefore, corporations can be held criminally responsible if the criminal acts committed are directly related to the corporation's interests or activities.²⁹

The implementation of the legal basis for corporations in the context of human trafficking crimes has two main important objectives. First, the primary goal is to enhance the effectiveness of prevention and law enforcement efforts by acknowledging that

²⁷ Sari, "Pertanggung Jawaban Pidana Terhadap Pelaku Tindak Pidana Perdagangan Manusia (Human Trafficking) Oleh Korporasi."

²⁸ S Rochmah and F. Simangunsong, "Pertanggung Jawaban Pidana Terhadap Pelaku Tindak Pidana Perdagangan Orang," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (2023): 231-243.

²⁹ Y Yulistyowati, "Pertanggungjawaban Pidana Kelompok Terorganisasi Dalam Tindak Pidana Perdagangan Orang," *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 66, no. 2 (2018), <https://doi.org/http://jurnal.unmuhjember.ac.id/index.php/FAJ/article/view/2047>.

corporations can be involved in these criminal networks.³⁰ With this recognition, corporations will be more responsible for preventing human trafficking and ensuring that their business practices adhere to ethical and legal standards. Second, this legal framework also aims to provide justice for human trafficking victims by broadening legal responsibility and closing legal loopholes that previously allowed corporations to avoid accountability in human trafficking cases.

3.1 Criminal Liability of Corporate Legal Entities in Human Trafficking Crimes

Indonesian law has established clear regulations regarding criminal liability for individuals involved in human trafficking. Article 2 of Law No. 21/2007 states that any individual or group involved in human trafficking, including recruitment, transportation, accommodation, or reception, may be subject to heavy imprisonment and significant fines. Additionally, the law also regulates the protection of victims' rights, such as physical, psychological, and social protection.³¹

Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes sets forth various provisions related to human trafficking crimes, including crime categories, prohibited actions, and legal sanctions for perpetrators (Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes, 2007). Below are the main categories of crimes regulated by the law:³²

a. Violent Crimes

These involve threats or acts of violence, either verbal or physical, intended to restrict the victim's basic rights. Sanctions for these acts are outlined in Article 2.

b. Illegal Entry of Persons

This involves the illegal act of bringing victims into Indonesian territory for exploitation. This crime, known internationally as "trafficking," is regulated under Article 3.

c. Human Export

The act of sending people abroad to be exploited, often to countries like Malaysia, Hong Kong, or Saudi Arabia. This provision is governed by Article 4.

d. Child Exploitation through Adoption

The act of adopting children with the intent to exploit them. This action is regulated by Article 5.

e. Sending Children Abroad for Exploitation

This involves sending minors abroad with the intention of exploitation. Sanctions for this violation are stated in Article 6.

³⁰ Azizurrahman, "Pembaharuan Kebijakan Pidana Kejahatan Perdagangan Orang (Studi Di Wilayah Perbatasan Kalimantan Barat-Sarawak)," *Yustisia* 3, no. 2 (2014), <https://doi.org/https://doi.org/10.20961/yustisia.v3i2.11100>.

³¹ N Riana, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Perdagangan Orang" (Universitas Airlangga, 2016).

³² A Sihite, T. Y Chandra, and H. A Mau, "Penegakan Hukum Terhadap Korporasi Pelaku Tindak Pidana Perdagangan Orang Dari Perspektif Perlindungan Korban," *Jurnal Studi Interdisipliner Perspektif* 23, no. 2 (2024): 178–190.

f. Abuse of Authority

A crime committed by government officials who misuse their power in the context of human trafficking. This is covered under Article 8.

g. Transferring People for Profit

Involves the transfer of victims for financial or emotional gain. Sanctions for this are detailed in Article 9.

h. Assisting or Attempting to Commit a Crime

This involves actions that assist or attempt to commit human trafficking crimes. The regulation for this is found in Article 10.

i. Conspiracy in Crime

Perpetrators who plan or conspire to commit human trafficking, including through negotiation or agreement. This is addressed in Article 11.

j. Exploitation or Abuse of Victims

This involves the sexual exploitation of victims, employing victims for exploitative purposes, or accepting benefits from human trafficking crimes. The relevant regulation is in Article 12.

Each category of crime is clearly defined with specific sanctions, aimed at providing legal protection for victims and ensuring that perpetrators of human trafficking receive appropriate punishment according to their violations.³³ Human trafficking is a human rights violation that involves various illegal actions such as recruitment, transportation, transfer, concealment, or receipt of a person for exploitation purposes. This exploitation may include prostitution, forced labor, slavery, illegal adoption, or organ trafficking. In Indonesia, Law No. 21 of 2007 regulates criminal sanctions for human trafficking perpetrators, with penalties ranging from a minimum of 3 years to a maximum of 15 years in prison, along with fines ranging from IDR 120 million to IDR 600 million, depending on the violation committed. The main articles in Law No. 21 of 2007 on the Eradication of Human Trafficking include:³⁴

- a. Article 2 Paragraph 1: Regulates penalties for those involved in the recruitment, transportation, or detention for exploitation.
- b. Article 3: Provides penalties for perpetrators who bring people into Indonesia or send them abroad for exploitation.
- c. Article 4: Deals with penalties for perpetrators who take Indonesian citizens abroad for exploitation.
- d. Articles 5 and 6: Focus on the exploitation of children through adoption or sending them abroad.

³³ H. C Kamea, "Penegakan Hukum Pidana Terhadap Kejahatan Perdagangan Orang Menurut Undang-Undang Nomor 21 Tahun 2007," *Lex Crimen* 5, no. 2 (2015): 2, <https://doi.org/https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/11125>.

³⁴ Faisol, "Pertanggung Jawaban Pidana Pengurus Korporasi Terkait Tindak Pidana Perdagangan Orang," *Yurispruden: Jurnal Fakultas Hukum Universitas Islam Malang* 2, no. 2 (2019): 2, <https://doi.org/https://doi.org/10.33474/yur.v2i2.2776>.

Human trafficking perpetrators can come from various backgrounds, including labor recruitment agents, government officials who forge documents, employers who exploit workers, and family members who knowingly sell their children or relatives. This practice involves various forms, ranging from trafficking of young girls for domestic servitude, sex work, to exploitation in the pornography and drug industries. To address this issue, a holistic approach is needed, involving strict law enforcement, prevention through education and economic empowerment, and collaboration between the government and society.³⁵

Criminal responsibility is closely tied to the application of penalties, which serve various functions, including preventing crimes by enforcing the law, protecting society, resolving conflicts caused by criminal acts, restoring social balance, creating peace in society, and rehabilitating offenders so they can reintegrate into society as productive members. Punishment also serves to rectify the wrongs committed by the offender.

In criminal law, there are three main elements that form the basis of criminal responsibility or fault, namely:

1. The capacity of the perpetrator to be held accountable for their actions.
2. The commission of an unlawful act, whether intentional, reckless, or negligent, as evidenced by the psychological state of the perpetrator.
3. The absence of any justification or excuse that would absolve the perpetrator from criminal responsibility.

Criminal punishment also encompasses fundamental principles, such as upholding human rights, freedom, and individual dignity. In this case, the exclusive interests of society or scientific knowledge should not override the rights and welfare of the individual. Law No. 21 of 2007 on the Eradication of Human Trafficking regulates various aspects of human trafficking crimes in Indonesia. Human trafficking can be carried out through recruitment, registration, purchase, sale, transfer, acquisition, or concealment of victims. Common strategies used by perpetrators include threats, physical and verbal violence, abduction, fraud, exploiting the victim's vulnerabilities, isolation, drug abuse, and entrapment. Article 2 of this law imposes strict penalties on those involved, including actions leading to the exploitation of victims.

The criminal elements (*bestanddelen van het feit*) applied to the crime of human trafficking involving individuals or corporations (through corporate controllers) are regulated in Articles 2 Paragraph (1) and Paragraph (2) of Law No. 21 of 2007 on the Eradication of Human Trafficking (2007). The explanation is as follows:

1. Any person who recruits, transports, shelters, sends, transfers, or receives someone using threats of violence, physical violence, abduction, detention, forgery, fraud, abuse of power or vulnerable position, debt entrapment, or offering payment or benefits, even with the consent of the person in control of the other, for the purpose of exploiting that person within the territory of the Republic of Indonesia, shall be punished with imprisonment for a minimum of 3 years and a maximum of 15 years, along with a fine of a minimum of IDR 120,000,000 and a maximum of IDR 600,000,000.

³⁵ Rahmatyar and Abadi, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Perdagangan Orang."

2. If the acts in Paragraph (1) result in the exploitation of a person, the perpetrator shall be sentenced under the same provisions as stated in Paragraph (1).

According to Syamsuddin (2014), four key elements constitute the crime of human trafficking:

1. Perpetrator Element Human trafficking crimes can be committed by individuals or corporations. The perpetrators referred to in the Law on the Eradication of Human Trafficking are individuals or corporations involved in the crime (Article 1, number 4).
2. Process Element The process in human trafficking involves a series of actions performed in a specific sequence, such as recruitment, transportation, sheltering, sending, transferring, or receiving a person. This process may occur naturally or may be deliberately designed by the perpetrator.
3. Method Element The actions taken to facilitate the crime, including the use of unlawful methods to ensure the process proceeds. This includes threats, violence, abduction, detention, forgery, fraud, abuse of power or vulnerable position, debt entrapment, or offering payment or benefits to gain consent from the person in control of the victim.
4. Purpose Element The purpose of the human trafficking crime is to exploit the victim or cause the victim to be exploited. This is outlined in Article 1, number 1, and Article 2 Paragraph (1) of the UU PTPPO. The purpose of exploitation may include various forms of slavery or human trafficking involving forced labor, sexual exploitation, or other forms of exploitation.

The concept of corporate criminal responsibility in human trafficking is a highly complex and important issue within corporate criminal law. This responsibility pertains to how a company or corporation can be held accountable for its involvement in human trafficking. Corporate criminal responsibility refers to the legal capacity of a company or corporation to be subject to criminal sanctions related to human trafficking. It includes the role of the corporation, policies or actions that support the crime, and negligence or non-compliance in efforts to prevent such crimes.

Corporate criminal liability generally encompasses three main aspects. First, direct liability, where a corporation directly involved in human trafficking offenses can be penalized under applicable laws. This may occur if the company is involved in activities such as recruitment, transportation, or exploitation of human trafficking victims. Second, indirect liability, where a corporation can be held responsible if it fails to make sufficient efforts to prevent human trafficking within its supply chain. This could include closely monitoring suppliers or contractors to ensure they are not involved in unlawful practices. Third, leadership accountability, where corporate leaders and executives can also face penalties if they are involved in human trafficking offenses or if they are aware of such practices within the corporation but fail to take adequate preventive actions.

The purpose of corporate criminal liability in human trafficking offenses is to encourage companies to act ethically and prevent human exploitation. With this responsibility in place, it is hoped that companies will be more cautious in their operations and ensure they are not involved in activities that harm or oppress individuals. The primary objective of corporate criminal liability is to strengthen global efforts to combat human trafficking and protect human rights by ensuring that corporations involved in illegal practices like

human trafficking face appropriate sanctions, thus preventing the recurrence of such crimes in the future.

The Identification Theory argues that for corporate criminal liability to be imposed, the criminal actions of individuals within the corporation must be clearly identified. If a human trafficking offense is committed by an individual acting as the directing mind or controller of the corporation, then the corporation can be held criminally liable for the act. In this case, the behavior and malicious intent (*mens rea*) of the individual can be attributed to the corporation, making the corporation responsible for the offense. For this theory to be applied, several conditions must be met: the actions of the directing mind must be directly related to the responsibilities of the corporation, the criminal act must not be a fraud against the corporation, and the offense must be committed for the benefit of the corporation. Additionally, the individual involved in the offense must have the element of fault (*mens rea*) in their actions to be found guilty (Hanim & Prakoso, 2015).

The Vicarious Liability Theory emphasizes that a corporation can be held criminally responsible for the actions of other individuals, often referred to as liability for the actions of others. In this theory, the key requirement for criminal prosecution is proving the element of *mens rea* (malicious intent). This means that it must be proven that the individual committing the crime has blameworthy conduct. Additionally, the theory requires a relevant working relationship or other connection between the offender and the party responsible for the act. Thus, a corporation as a legal entity can be held liable for the actions of its employees or agents, as long as there is a legitimate relationship and relevance to the activities conducted in their capacity as part of the corporation.³⁶

The Vicarious Liability Theory implies that an individual or entity with responsibility may bear legal consequences for the actions of someone working for them, even if the entity was not directly involved in the criminal act. This often includes the obligation to compensate the parties harmed by the actions taken. In many cases, this principle does not require proof of fault or negligence from the responsible party. In other words, even if the entity or individual held responsible was not directly involved in the legal violation, they can still be held accountable. The central principle of this theory is that the specific relationship between the responsible party and the individual committing the violation creates an obligation to act carefully and prevent harm or legal violations.

The purpose of the Vicarious Liability principle is to ensure that those with control or authority over others' actions are held responsible for those actions. In the context of corporate crime, this principle serves to hold the corporation accountable for crimes committed by its employees. Holding supervisors, such as directors, accountable for crimes committed by subordinates in the organizational structure occurs because the employees' actions are made for the benefit of the corporation. Thus, criminal responsibility is not only directed at the individual perpetrator but also at the supervisor or director who acts on behalf of the corporation, considering they have the authority and control in decision-making that can impact the entire organization.^{37s}

³⁶ Azizurrahman, "Pembaharuan Kebijakan Pidana Kejahatan Perdagangan Orang (Studi Di Wilayah Perbatasan Kalimantan Barat-Sarawak)."

³⁷ Kamea, "Penegakan Hukum Pidana Terhadap Kejahatan Perdagangan Orang Menurut Undang-Undang Nomor 21 Tahun 2007."

The Strict Liability Theory adheres to the principle of direct liability, which arises immediately without needing to prove fault in the perpetrator of the crime (Atmasasmita, 2009). In the corporate context, this theory refers to situations where a corporation can be penalized for a criminal offense even without evidence of fault or malicious intent. According to Arief (2002), this theory also applies to corporations violating specific regulations set by law.³⁸ For example, laws may establish regulations that constitute offenses for corporations, such as operating a business without a license, violating license requirements, or operating an uninsured vehicle. In this case, the corporation will remain liable even if no direct proof of fault is available concerning the actions of specific individuals within the corporation.³⁹

The principle of strict liability refers to an obligation that must be fulfilled regardless of whether there is fault in the perpetrator of the crime.⁴⁰ Its main characteristic is that, even in the presence of fault, no further proof of that fault is needed. In this context, the defendant can be found guilty merely by proving that the criminal act was committed, without assessing the motive behind the action. This principle asserts that a defendant can be convicted based solely on proof of *actus reus* (the unlawful act) without having to prove the malicious intent or fault (*mens rea*) underlying it.

According to L.B. Curzon, as quoted by Hatrik (1996), there are three reasons supporting the acceptance of the concept of strict liability for certain offenses that do not require proof of *mens rea*. These reasons are as follows:⁴¹

1. It is essential to ensure compliance with certain regulations vital for the well-being of society: Some regulations or laws are designed to protect the overall interests of society, and the application of strict liability ensures that these regulations are adhered to without exceptions.
2. Proving *mens rea* would be more difficult in offenses related to public welfare: In many cases, proving the intent or fault of the perpetrator can be extremely difficult, especially in violations involving social issues or public welfare. The application of strict liability simplifies law enforcement by only requiring proof of the unlawful act (*actus reus*).
3. The high level of social danger posed by the violated regulation: Some actions that violate regulations have the potential for significant social harm, making it crucial to enforce accountability without overlooking the fault element. With strict liability, perpetrators involved in harmful activities can be punished even if there is no clear malicious intent.

³⁸ Irman Putra and Arief Fahmi Lubis, "Tinjauan Hukum Dalam Penghentian Kejahatan Genosida Merupakan Tanggungjawab Semua Bangsa," *Intelektiva: Jurnal Ekonomi, Sosial & Humaniora* 1, no. 07 (2020): 81-90.

³⁹ Glenn Mark A. Togle, "Challenges, Acceptance, and Adoption of Electronic Payment at Teodoro Arcenas Trade Center Towards Efficient Local Development," *International Journal of Law, Social Science, and Humanities* 3, no. 2 (2026): 451-459, <https://doi.org/https://doi.org/10.70193/ijlsh.v3i2.306>.

⁴⁰ Muhammad Miftahul Huda, Suwandi Suwandi, and Aunur Rofiq, "Implementasi Tanggung Jawab Negara Terhadap Pelanggaran HAM Berat Paniai Perspektif Teori Efektivitas Hukum Soerjono Soekanto," *IN RIGHT: Jurnal Agama Dan Hak Azazi Manusia* 11, no. 1 (2022): 115, <https://doi.org/10.14421/inright.v11i1.2591>.

⁴¹ LB Curzon, *Dictionary of Law. Sixth Edition* (Essex: Pearson Education Limited, 2022).

The application of criminal liability theory to corporations in human trafficking crimes remains based on general liability principles. These principles include three important aspects:⁴²

1. Capacity for accountability: Capacity for accountability refers to an individual's mental health and intellect, which enables them to distinguish between right and wrong. In Indonesian criminal law, a fictive system is applied, stating that every perpetrator of a crime, including corporations, is presumed to be capable of being accountable for their actions, regardless of specific conditions that may exist in the perpetrator.
2. Presence of fault: Fault, whether in the form of intent or negligence, is an essential element of criminal liability. Intent occurs when the perpetrator realizes that their act is prohibited by law and deliberately desires the outcome of their actions. Negligence happens when the perpetrator should have known, but fails to consider the risks or dangers arising from their actions. In this context, a corporation can be considered guilty if there is evidence of either intent or negligence leading to human trafficking.
3. No excusing or justifying reasons: To hold a legal entity accountable for criminal actions (including corporations), there must be no excusing or justifying reasons that would eliminate fault. An excusing reason is one that removes fault, even though the act is still considered a criminal offense. In this case, even if a corporation can show that the action was not intentional or was due to negligence, if there is no justification for the action, the corporation can still face criminal sanctions.

As a subject of criminal law, a corporation can be treated similarly to an individual because it has rights and obligations granted by law. The corporation's capacity, in this case, is equated with that of a human being, allowing the corporation to be held responsible for legal acts it performs. In the context of human trafficking offenses, it is more appropriate to analyze corporate criminal liability using the vicarious liability theory. This theory refers to the principle where an entity, such as a corporation, can be held accountable for criminal acts committed by individuals working for them, such as employees or leaders acting on behalf of and in the interest of the corporation.

The vicarious liability theory is relevant to the formulation in Law No. 21 of 2007 on the Eradication of Human Trafficking, which states that corporations can be held criminally liable if human trafficking offenses are committed by individuals or groups working within or for the corporation. Therefore, even if the corporation does not directly commit the crime, it can still face criminal sanctions if there is involvement or negligence in preventing the act, either through weak policies or insufficient oversight that allowed conditions favorable to human trafficking to occur.

4. KESIMPULAN

In human trafficking crimes, corporations are held responsible for the actions of individuals acting on behalf of and in the interest of the corporation, in accordance with the provisions of Law No. 21 of 2007 on the Eradication of Human Trafficking. Corporations and organized groups have a structured organization and a goal to obtain financial or material gain through criminal activities. Additionally, corporations can be

⁴² Takariawan and Putri, "Perlindungan Hukum Terhadap Korban Human Trafficking Dalam Perspektif Hak Asasi Manusia."

subject to collective criminal liability if the crime is committed by its members acting for and/or on behalf of the corporation. This law extends legal responsibility to corporations to ensure more effective prevention and enforcement of the law, as well as to provide justice for victims of human trafficking. This responsibility aims to prevent the abuse of power in business practices and close legal loopholes that allow corporations to evade accountability.

The criminal liability of corporate legal subjects in human trafficking crimes is regulated by Law No. 21 of 2007, which establishes criminal liability for both individuals and corporations involved in human trafficking. These crimes involve various forms, such as recruitment, transportation, transfer, and reception of victims through illegal means such as violence, fraud, or abuse of vulnerable positions. The penalties imposed can include imprisonment and significant fines. In the case of corporations, there are three main aspects of criminal liability: direct responsibility, indirect responsibility, and leadership. A corporation may face sanctions if it is directly involved in the crime or fails to take sufficient preventive measures, such as ensuring that their supply chain is free from human trafficking practices. Leadership responsibility also applies to executives who fail to take preventive steps despite knowing of illegal practices within the company. The purpose of applying this criminal liability is to encourage corporations to act ethically, protect human rights, and strengthen global efforts to combat human trafficking.

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