

## **Corporate Accountability for the Illegal Crimes of Human Trafficking in Indonesia**



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**ABSTRACT:** The progress of human trafficking crime in Indonesia, since the beginning of Indonesia has categorized human trafficking as a form of criminal action under article 297 of the criminal code. However, since human trafficking is an organized transnational crime, it is necessary to bring about a renewed commitment to fight and eradicate, the 2007 act of no. 21 was enacted on the elimination of criminal trafficking. So based on the background it has been raised to a corporation's responsibility for the criminal trafficking of human trafficking in Indonesia. The type of research used is normative legal research. Normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. In determining corporate accountability for the crimes of the people's trade, the result of the accountability of the common atypical criminal (subjective terms) such as the presence of responsible assets, the absence of errors of both arson and negligence, the absence of those that constitute the reason for the removal of the criminal. Certainly in determining how the accountability of the corporation is adjusted according to the theory of criminal trafficking of human trafficking it would be appropriate to use the theory vicarious liability for holding corporate accountability in the criminal crime of human trafficking.

**KEYWORDS:** Accountability, Corporation, Illegal Crimes Of Human Trafficking.

### **INTRODUCTION**

The progress of human trafficking crime in Indonesia, since the beginning of Indonesia has categorized human trafficking as a form of criminal action under article 297 of the criminal code. However, since human trafficking is an organized transnational crime, it is necessary to bring about a renewed commitment to fight and eradicate, as stated in the 2002 88th chapter of the national action plan for the elimination of the women and child trade. Then, on April 19, 2007, legislation no.21 of 2007 was enacted on the elimination of trafficking crimes (subsequently called PTPPO), article 1 of 1 (1) the PTPPO act mentioned. Trafficking in persons is the act of recruiting, transporting, shelter, shipping, transference, or acceptance of a person with threats of violence, use of violence, kidnapping, kidnappings, counterfeiters, fraud, misappropriation of power or position, raising debts or payment or benefits, thereby obtaining approval from the person in control of the other person, whether in the state or between, For the purpose of exploitation or causing people to be exploited.<sup>1</sup>

Victims of trafficking crime especially in Indonesia are mainly women and children. Trafficking in people is a type of slavery, and the news has now been declared a global and serious problem, even turning people into businesses that have benefited the perpetrators. The time of criminal trafficking in people increasingly indicates their quantity and quality. The human trafficking that was done by individuals is now collective and organized and not even rare for a corporation to be involved in this.<sup>2</sup>

Corporations own a big role in economic development Indonesians. According to the economy most of Indonesia's people are middle and low. The need for jobs is a crucial problem, especially considering the high unemployment rate in Indonesia. Employment constraints will hamper government programs for welfare of communities. Without a decent wage job, people are having a hard time meeting the necessities of life. The existence of corporations as providers of jobs made it easy for the masyarakat to find sources of income. A person working in a corporation would receive wages or wages according to the terms agreed upon so that they would be able to sustain his life. In addition to providing jobs for the rest of the country, some of its business interests become labor suppliers. Corporate activities as part of the work dealer provide facilitation to those who need jobs to find jobs they can afford. But on the way not all business suppliers carry out their activities in a clean way.

Criminal trafficking of people is assumed by a corporation when such crimes are committed by persons acting in and on behalf of a corporation or on behalf of a corporation, based on a working relationship or another in the corporate sphere, whether

<sup>1</sup> Faisol, Lucky Endrawati, Faizin Sulistio, *Pengaturan Pertanggungjawaban Pidana Korporasi Terkait Tindak Pidana Perdagangan Orang*, hlm 3.

<sup>2</sup> Rahmad Syafaat, *Dagang Manusia*, cet. 1, Lappera Pustaka Utama, Jakarta, 2003, hal. 1.

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individually or together.<sup>3</sup> Article 13 verse (1) the 2007 act of commerce is considered by a corporation when it is committed by people acting for and/or on behalf of the corporation or for corporate interests, whether by relationships or other relationships. Acting in the corporate environment both alone and together in response to criminal trafficking can also be delegated to corporate administrators on a deed done for and in the name of the corporation. Such measures are governed under the PTPPO clause 13 (2) that read of the criminal trafficking of people done by a corporation as referred to in the verse (1), so inquiries, prosecution, and inquiry are made against the corporation and/or its administration. So based on the background it has been raised to a corporation's responsibility for the criminal trafficking of human trafficking in Indonesia.

### FORMULATION OF THE PROBLEM

Based on the background the writer has given earlier, the writer chooses a few things to be a problem in writing this paper, as for the issues to be discussed what form Corporate Accountability for the Illegal Crimes of Human Trafficking in Indonesia?

### RESEARCH METHODS

The type of research used is normative legal research. Normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. The source of data used in this study is a secondary data source, namely searching through legal materials that are in accordance with legal issues related to the author's title which is Corporate Responsibility For The Criminal Trafficking Of Human Trafficking In Indonesian.<sup>4</sup>

### DISCUSSION

The problem of corporate accountability as a perpetrator of criminal wrongdoing is not simple in view of the problem stems from a principle of no crime without error. The mens rea or guilt is an inner attitude, which is naturally only in the natural person and therefore, is viewed as only a natural human subject subject to criminal liability.<sup>5</sup> The corporation that perpetrates criminal trafficking gives people a sense of fact that in the case of the corporation committing criminal acts there must be a group of people who work together to accomplish the deed. Although perpetrators in the execution of a criminal corporation involve a group of people, corporate crime is still not equated with organized group crime.

Criminal accountability is closely connected with guilt, since the element of error is a determining factor as to whether a person can be punished or not. Sauer said there are three basic insights into the penal code:

1. Nature Versus Law (Unrecht);
2. Error (Schuld); and
3. Criminal (Strafe).

In recent developments there have been many formulating legislation regarding corporate criminal accountability in this case, impact on the process of law enforcement. The difference in corporate accountability in various legislation is potentially disruptive in law enforcement, especially in judicial proceedings. Moreover, the disparity results in legal uncertainty, there is a disparity in judicial ruling and a disharmonizing of arrangements against criminal crimes committed by corporations.

The many special-interest corporations committed criminal acts must be incorporated into the criminal trafficking law that has been regulated as in the 2007 human trafficking act act number 21 on the elimination of criminal trafficking." A chapter on the subject of the law can be seen in chapter 1 number 4 that describes "each one as an individual or a corporation who commits a criminal trafficking of persons." Thus we can understand the law's subject to the law of including people and corporations whether they are law or not.

The 2007 denial of 21 - year law on the crackdown of human trafficking on April 19, 2007, the rump on the trafficking of human trafficking found in the bill made the main reference. Article 1 number 1 mentions "trafficking in persons is the recruiting, transporting, shelter, shipping, removal, or acceptance of someone with the threat of violence, use of violence, kidnapping, extortion, forgery, fraud, abuse of power or position vulnerable, crediting or receiving or receiving To the purpose of exploitation or to cause exploited persons.

Thus, it is embodied in the sense that "man is made into a collective, arbitrarily moving him, laden with arbitrary arbitrariness based on power, with the purpose of exploited labor to the detriment of the victims and benefit others. Then human trafficking is a human trafficking crime that must be immediately stopped.

Act number 21 of 2007 contains elements of the criminal trafficking of human trafficking, which are of violent or random violence, fraud, kidnapping, kidnappings, power mismanagement, a tying of vulnerability or a struggle for debt. "In this regard, that

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<sup>3</sup> Sudarto, *Hukum dan Perkembangan Masyarakat*, Sinar Baru, Bandung, 1985, hal. 51

<sup>4</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Raja Grafindo persada, Jakarta, 2003, hal, 13.

<sup>5</sup> Muh Abdul Qudus, Pujiyono, *Pertanggungjawaban Korporasi Terhadap Tindak Pidana Human Trafficking Di Indonesia. Jurnal Komunikasi Hukum (JKH) Universitas Pendidikan Ganesha* Vol. 5 No. 2, Agustus 2019. Hlm 29.

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criminal events have elements as a violation of the law, a behavior conducted on the grounds of a guilty offender and a punishable behavior, so in the criminal trafficking of human trafficking there are unlawful acts of recruiting, sending, and appropriating with violence or threats of violence, fraud, kidnapping, kidnappings, Abuse of power, exposure to a vulnerable position or a noose on an element of error in the root of the criminal trafficking of human trafficking the fault is subtly described in the rugs for the purpose of exploiting or exploiting the person which means there is a means to exploit or exploit the person.

Regarding the proposed corporation's accountability of the criminal trafficking of human trafficking is governed in article 13 of the law, which is: "verse (1) the criminal trafficking of people is considered by a corporation when it is committed by people acting on and/or on behalf of the corporation or for corporate interests, whether by working relationship or other relationships, acting in the corporate environment both alone and together"; And "verses (2). In the case of a corporation's criminal trade are carried out by a corporation as referred to in the verse (1), so investigations, prosecution, and idling are carried out against the corporation and/or its administration."

Saw characteristics of corporate crime different from "crimes committed by individuals. So there are some theories about corporate criminal liability. This is not only because corporations are an organization, but also because the purpose of corporations is to do business and not to do evil, the mens rea issue or mentality is not easy when compared with the crimes committed by individuals.

There are two theories that are used as justification for the disposal of criminal accountability to the corporation, for in these two theories keep the offending as a prerequisite for the imprisonment of a criminal subject:

### 1. Identification Theory

The theory was used to provide justification for rendering liability to the corporation although in reality it is not something that can do itself and cannot have the mens rea because it simply doesn't have the inner attitude.<sup>6</sup> The theory teaches that to impose a corporation on a criminal responsibility, anyone who commits such a crime should be able to be identified by the prosecutor. If the criminal trafficking of human trafficking is carried out by those considered in the mind of the corporation, new corporate accountability can be directly attributed to the criminal. That the behavior and mens rea of a person associated with a corporation can be attributed to the corporation so that a criminal liability can be charged against it. In other words, the behavior and mens rea of the person are thought to be the behavior and attitude of the corporation.

The determination to implement this theory must be determined as to that: 1). The actions of personnel that become corporate framemind are included in the field of activity assigned to them; 2) the criminal act was not cheating of the corporation; 3) a criminal act is intended to benefit or benefit a corporation; And 4) in order for the subject of law to be found guilty of criminal wrongdoing, the legal subject must have a choice.<sup>7</sup>

### 2. Vicarious Liability Theory

This theory reinforces the justification for extending a corporation's accountability. This theory represents accountability for crimes committed, by others or better known as accountability. In vicarious variation, the mens rea is the main requirement in order to obtain a legal subject that commits a crime. In other words it must be proved first that a person has committed a mistake, and thus he deserves to be punished for it. In addition, there must be a working relationship between the perpetrators and others that must be held accountable for the crimes committed.<sup>8</sup>

If this theory is applied to a corporation, "it means it must be held accountable for the actions of its employees, its powers, or its mandates or whoever is responsible for the corporation. There are two critical requirements that must be met in order to apply a criminal act based on this theory: 1). There must be a relationship, such as a work relationship between an employer and a worker; And 2) the criminal acts committed by the worker must be involved or are within the scope of the work.<sup>9</sup>

If the theory is linked to corporate crime, "it is part of an attempt to frame the corporation for criminal acts perpetrated by an employee. Criminal liability charged to the head (director) for the crimes committed by the underboss in an organizational structure, because the employee's actions constitute part of the corporate interests themselves. Such accountability would be directly to a superior or director who acted for and on behalf of the corporation.<sup>10</sup>

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<sup>6</sup> Azizurrahman, 2014, Pembaharuan Kebijakan Pidana Kejahatan Perdagangan Orang (Studi Di Wilayah Perbatasan Kalimantan Barat-Sarawak). Jurnal Yustisia, Vol. 3 No.2.

<sup>7</sup> Hanim & Prakoso, 2015. Perlindungan Hukum Terhadap Korban Kejahatan Perdagangan Orang (Studi Tentang Implementasi Undang-Undang No. 21 Tahun 2007). Jurnal Pembaharuan Hukum, Vol.II No.2.

<sup>8</sup> Azizurrahman, *Op. Cit.*

<sup>9</sup> Girsang, 2014, Pemberantasan Tindak Pidana Perdagangan Orang Melalui Undang-Undang Pencegahan Dan Pemberantasan Tindak Pidana Pencucian Uang. Jurnal Ilmu Hukum, pp.111-138.

<sup>10</sup> Kamea, 2016, Penegakan Hukum Pidana Terhadap Kejahatan Perdagangan Orang Menurut Undang - Undang Nomor 21 Tahun 2007. Jurnal Lex Crimen, Vol.V No.2, pp.126-132.

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In the age of globalization where crime has transformed "from conventional model to modern model, it would be wise to look at corporations as subject to law and can be considered criminal. Especially in the criminal trafficking of human trafficking, it is very possible that corporations can profit from the trafficking of human crime.

Based on the above two theories and according to article 13 of act number 21 of 2007, "then the vicarious opinion theory would be more appropriate if it were used to solicit a criminal accounting of the corporation in the criminal trafficking of human trafficking.

Talking about accountability the corporate criminal that committed the crime of human trafficking in analyzing it also uses the criminal theory of accountability in general, as follows: 1). Has accountability capabilities; 2) there is error both intentional and wrong; And 3). No such thing as an excuse for the criminal eraser.

Applying "the above theory remains guided by the code of corporate accountability as the subject of law, making it relevant and relevant. To understand overall that the criteria for accountability above would be defined one by one, which is:

### a. Has the ability to be accountable

Simply put, the term "responsible capacity" can be defined as "a healthy and resourceful person who distinguishes between good and bad." In principle, when it comes to these responsible skills criminal law subsidizes with a system called "fictitious" that is, according to Indonesian law each criminal is essentially considered a person capable of responsibility for his actions. Therefore, any criminal deed committed by a corporate organ such as employees, directors, commissioners, shareholders, or anyone controlling the corporation, they are regarded as capable of taking responsibility for its actions, unless proven otherwise, there is a reason as stated in article 44 of the criminal code: 1) the soul of the perpetrator has a mental disability from his growth to his mind is less perfect to distinguish between good and bad; And 2) if the perpetrator has a normal disorder caused by an illness, then his mind becomes malfunctioning perfectly/optimally to distinguish between the good and the bad.<sup>11</sup>

The above formula is attributed to corporate accountability as subject to law under act no. 21 of 2007: "by using vicarious discharge the ability of the corporate organs (employees, directors, commissioners, shareholders, or anyone controlling the corporation) during service, corporate orders or goals are delegated to act responsibly. The corporation is the employer of the organ."

### b. There is an error either intentional or negligence

In the intentional criminal law (*dolus*) or negligence (*culpa*) are two forms of the inner attitude of an individual who commits a criminal act on a crucial basis for determining whether or not he is guilty of his actions. The point in the theory is that a person's criminal act is almost done if the act of a person knows or realizes that the act is prohibited by the law and the theory teaches that a person's criminal deeds can only be said to be deliberately committed if the moment committing the perpetrator not only knows the error, but also wants the act to come true.<sup>12</sup>

### c. There's No Excuse For Forgiving Dam's Guilt Eraser

The condition of a subject of law including a corporation can be held criminally liable for the latter is the absence of forgiveness. The reason of forgiveness is the reason that eliminates any judicial error including corporations. Deeds committed by the subject of *hukm* (corporation) remain against the law so that it remains a criminal act, but is not convicted, because there is no error.<sup>13</sup>

In accordance with the nature of self-reliance (a project) the reasons for criminal deletion must be found in the corporation itself. It is very likely that in a person there is a criminal eraser but not the same as a corporation, even if it is the act of a corporation.

Thus the accountability of the corporation in the criminal trafficking crime of human trafficking is the conformity of all the criminal liability conditions that are interpreted by the above - defined faults of the organizers, that of criminal actions, of criminal liability, of errors, and of no criminal purges. Was then tailored to the proposed corporate theory of answer answer as described and explained above.<sup>14</sup>

As a follow-up to compliance of the corporation can be charged with criminal accountability, so act number 21 of 2007, has set up criminal penalties of penalties and additional criminal penalties. The root of the sanctions is cited in chapters 13 verses 1 and 2: "verses (1). Criminal trafficking of people is considered by a corporation when those acting on and on behalf of a corporation or on behalf of a corporation, whether by relationships or other relationships, act in the corporate environment both alone and together; and (2) in the case of a corporation's trade crimes being committed by a corporation as referred to in verse 1, so investigation, prosecution, and inquiry were carried out against the corporation and/or its administration".

Corporate accountability is also regulated in national or new criminal scripts, Chapter 45 (1) "Corporate is the subject of criminal wrongdoing", (2) Corporation as referred to in verses (1) It includes a legal entity that is shaped Offshore LLC, Foundation, Cooperative, State enterprises, Local or equated enterprises With that, with the good society of men neither the law nor the

<sup>11</sup> Takariawan & Putri, 2018 Perlindungan Hukum Terhadap Korban Human Trafficking dalam Perspektif Hak Asasi Manusia. Jurnal Hukum IUS QUIA IUSTUM, Vol.25 No.2, pp. 237- 255.

<sup>12</sup> *Ibid.*

<sup>13</sup> Azizurrahman, 2014

<sup>14</sup> *Ibid.*

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corporations, the corporations in the rolling shape, a company of commanders, or something like that according to the provision legislation. Chapter 46 "A felony by a corporation is a felony that was done by a ranking official functional in the structure of corporate or people organizations based on a working relationship or based other relationships that act for and on behalf of corporate or acting in a corporate interest, deep those corporate ventures or corporate activities, either in a sense separately or together". Chapter 47 "In addition to the terms of section 46, criminal actions by a corporation can be committed by a giver command, control, or corporate benefit owners that's outside the organizational structure, but it can control of corporations."<sup>15</sup>

### CONCLUSION

Criminal law, whether viewed in act number 21 of 2007 on the elimination of criminal trafficking of people as well as "the theory of accounting for the corporation, as one of the legal subjects of the criminal trafficking of human trafficking can be held accountable for the trafficking of the crime of human trafficking. In determining corporate accountability for the crimes of the people's trade, the result of the accountability of the common acotypical criminal (subjective terms) such as the presence of responsible assets, the absence of errors of both arson and negligence, the absence of those that constitute the reason for the removal of the criminal. Certainly in determining how the accountability of the corporation is adjusted according to the theory of criminal trafficking of human trafficking it would be appropriate to use the theory "vicarious liability for holding corporate accountability in the criminal crime of human trafficking.

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<sup>15</sup> Undang-Undang No 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana