

**UUMILC 2017**  
**9<sup>TH</sup> UUM INTERNATIONAL LEGAL CONFERENCE**

**INDONESIA CRIMINAL POLICY PREVENTION OF CRIMINAL  
PEOPLE TRADING IN HUMAN RIGHT PERSPECTIVE**

Herlina Manullang SH, MH (a)\*

\*Corresponding author

(a) Lecturer, Law Faculty of Nommensen University Sutomo Street, No 4A Medan City, Nort Sumatra, Indonesia  
herlinamanullang63@gmail.com

***Abstract***

One form of human rights violations is rife even has reached the alarming stage is the crime of trafficking in persons. According to the United Nations (UN), people trade is likened to being the world's third largest criminal company that generates about US \$ 9.5 million in taxes. In addition, human trafficking one of the most criminal companies association with money laundering, drug trafficking, document fraud and people smuggling. The development of this human rights form is a similar act or slavery and human trafficking is a widespread crime that has even crossed the border of the country, causing threats to the nation and state, and the norms of life based on respect for human rights. Therefore, a criminal law policy is required to combat human trafficking, including the process of establishing the rule of law, the process of law enforcement and the enforcement of laws to prevent, overcome, and even combat human trafficking based on values, national, and even international commitments to undertake early prevention efforts, in the form of prosecution of perpetrators, protection of victims and enhancement of international cooperation.

© 2018 Published by Future Academy [www.FutureAcademy.org.UK](http://www.FutureAcademy.org.UK)

**Keywords:** Criminal law policy, human trafficking, human rights.



## 1. Introduction

Humans, by nature, inherit unexplained rights such as the right to live, the right to security, the right to be free from all kinds of oppression and other rights which are universally called human rights. The term human rights means that the right is determined in the nature of humanity and for the sake of humanity (Pudjiarto, 2013). Human rights which are the rights of all basic rights of all human beings as God-given grace inherent in human beings, are natural, universal, eternal in relation to the dignity of human beings, shared by everyone regardless of gender, nationality, religion, age, even social status, political views, and so on.

To date, the criminal acts of human trafficking are perceived as one of the more troubling forms of crime, even as a threat to humanity, not only nationally but also internationally or globally. Human trafficking is included in the crime against humanity and is a serious violation of human rights, because it not only destroys moral values but also undermines human dignity.

Although many efforts have been made by individual countries including by international agencies such as the United Nations (UN), the forms of human trafficking show an increasingly worrying development. The human trafficking occurs more and more due to the enormous profits that the perpetrators derive. Furthermore, according to the United Nations, human trafficking is the world's third largest criminal company that generates about US\$ 9.5 million in annual taxes. In addition, human trafficking is also one of the most criminal companies associated with money laundering, drug trafficking, document forgery and people smuggling. Similarly, based on the results of the ILO study, gains from trafficked women, men and children are estimated at US\$ 32 billion annually (Makhfudz, 2015).

Based on data from the United Nations Office on Drugs and Crime (UNODC), identified victims of human trafficking come from 152 different countries and occur in 124 countries in the world. In addition to women and children, there is also an increase in casualties against men. All victims became the object of evil with various variations ranging from sexual exploitation, slavery, to the harvesting of organs. Especially for slavery, it is segmented in manufacturing, construction, textile production, shipping, up to the sector of fishery. Of the approximately 21 million victims trapped in trafficking, most were found to be 56% in the Asia-Pacific region. Countries in Southeast Asia and South Asia were suppliers of people who were traded all around the world. Of that percentage, about 83% of the victims were men who later became slaves.

Indonesia is a country vulnerable to human trafficking, because other than as a source or country of origin of human trafficking, Indonesia is also a transit country as well as a destination country. As a country of origin (supply country), based on estimation from 3 to 4 million Indonesian workers scattered in various countries, about 2% are victims of human trafficking (<http://indonesia.embassy.gov.au/kajindonesia/home/html>) Similarly, as the case revealed by the Indonesian police, with the case of 658 victims of inter-state trafficking of 512 Myanmar citizens, 96 Cambodians, 8 Laos and 42 Thai nationals, this occurred in Benjina Aru Islands, Maluku (Sukmanto, 2016).

## **2. Problem Statement**

Based on the above background, it can be identified that the following is the problem: What is the criminal law policy towards the prevention of human trafficking in the perspective of human rights law in Indonesia?

## **3. Research Questions**

The regulation of law which is related with human trafficking has not covered the law foundation comprehensively in combating the human trafficking. It is one of the worst action and the violation of dignity and automatically violates the human right. The prevention and handling of human trafficking is national responsibility society and family.

## **4. Purpose of the Study**

### **4.1. Crime of Human Trafficking and Human Right**

As stated before, the Crime of Human Trafficking is a part that cannot be separated from violation of Human Rights. The activities of human trafficking constitute acts contrary to human rights and therefore are perceived as a form of crime against humanity. In the concept of Human Rights, everyone cannot be an object that can cause adverse legal effects, including as objects of trade as the goods/objects or something that serves as the object of law. Man is only worthy as a legal subject having rights and obligations. Therefore, the criminal act of Human Trafficking is a serious crime and can bring about other crimes that can be categorized as extra ordinary crime.

The crime of buying and selling human or human trafficking is derived from English "Traffic" i.e. commerce; trade; the sale or exchange of such things as merchandise, bills, and money (Garner, 2007). In "Bahasa Indonesia", it is translated into "lalu lintas"; "perdagangan"; "berdagang"; "tukar menukar". The term is then interpreted as "trade". People or things being transported along a route. Then the term "Trafficking" according to Black's Law Dictionary is mentioned as "The act of transporting, trading, or dealing esp. in people or illegal goods", while "Human Trafficking" is "The illegal recruitment, transportation, transfer, harbouring, or receipt of a person, one from another country, with the intent to hold the person captive or exploit the person for labour, services, or body parts. Human Trafficking offenses include forced prostitution, force marriages, sweat-shop labour, slavery and harvesting organs from unwilling donor-Also termed trafficking in person" (Garner, 2007). This term is used in illegal trade in human trading, often associated with slavery or slavery-like actions.

According to Black's Law Dictionary, slavery is "A Situation in which one person has absolute power over the life, fortune, and liberty of another. Slavery was big problem for the constitution makers. Those who are profited by it insisted on protecting it; those who loathed it dreaded even more the prospect that to insist on abolition would mean that the constitution would die aborning. Some framers reached a compromise, of sorts. The words "slave" and "slavery" would safeguard the "peculiar institution" from the abolitionist" (Garner, 2007). While in "Bahasa Indonesia" dictionary, slavery is defined as things related to servants or treated as slaves, everything about the slave (Moeliono, 1994).

The notion of human trafficking itself is contained in the UN Protocol: to prevent, combat, and punish trafficking in persons, especially women and children. It is a Supplement of the UN Convention

against transnational crime organizations. According to Article 3 Point (a) of the United Nations Protocol on Preventing, Combating and Punishing the Crimes of Human Trafficking, Especially Women and Children (Protocol of Palermo Italia) of 2000:

*“Human Trafficking / Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation”.*

The definition is subsequently adopted by Law No. 21 of 2007 on the Eradication of Human Trafficking. Article 1 Point (1) stipulates that Human Trafficking is the act of recruitment, transportation, sheltering, delivering, transfer or acceptance of a person by threat of violence, use of force, abduction, arrest, forgery, fraud, abuse of power or vulnerable positions, debt bondage or giving payment or benefits so as to obtain the consent of the person in control of that other person, whether committed within the state or between countries, for the purpose of exploitation or exploitation of persons. Exploitation includes exploitation for prostitution of others or other forms of sexual exploitation, labour, or forced servitude, slavery or similar practices to slavery, bondage or the taking of organs.

Based on the definition above, elements of an activity that can be categorized as human trafficking are as follows:

- a. Process- including recruiting, transporting, moving, hiding or receiving (potential victims)
- b. Means- intending to control the victims by using threats, various forms of violence, kidnapping, trickery, fraud, abuse of power or vulnerable positions or granting for receipt of profit payments to obtain the consent of the person in control of the victim.
- c. Purpose- including the act of exploitation: at least for prostitution or other forms of sexual exploitation, forced labor, slavery, servitude, and organ harvesting.

Related to the purpose of human trafficking, the forms of exploitation undertaken by traffickers are as follows:

- a. Prostitution;
- b. Narcotics and drugs distribution;
- c. Work does not match the job promised;
- d. Working with limitless time;
- e. Salaries are never paid;
- f. Baby smuggling;
- g. Illegal adoption;
- h. Sale of baby or child;
- i. Students are used as crews for fishing ships or on fish trap;
- j. Organ transplants.

The categories indicate that a major element in the crime of human trafficking is any act which essentially causes the exploitation of a person in physical, psychological, mental, sexual, economic, and /

or social suffering resulting from the crime of human trafficking. One form of human trafficking is sexual exploitation of women and children. Women and children as victims shall be subjected to sexual trafficking which includes any use of sexual organs or other organs of the victim to gain profit.

This notion is generally only concerned with the sexual exploitation of women, although it is possible in both the male sex organs and non-organs. In relation to the increase in the qualification of human trafficking as extraordinary crimes, the element of human exploitation as an act of exploiting women is a violation of human rights.

Human trafficking is an act contrary to human dignity and violates human rights. Trafficking of persons has been widespread in the form of organized and disorganized criminal networks, both inter-state and domestic, thus posing a threat to society and to the state as well as to life norms based on respect for human rights.

In response to the phenomenon, UN has issued various legal instruments on the prevention of human trafficking, especially trafficking of women and children. Among others:

- a) Prostitution Convention for the Suppression of the Traffic to Person and of the others. The Convention was first issued in 1904 in the form of a joint treaty and adopted as a convention in 1910, renewed four times in 1921, 1933, 1947, and 1949.
- b) The UN Convention on Slavery in 1926.
- c) The UN Convention on Trade of Slavery in 1956, in addition to the 1926's Slavery Convention.
- d) The UN Convention on Transnational Organized Crime and its two protocols: "Protocol to Prevent, Suppress and Punish Human Trafficking, Especially Women and Children" in 2000, and "Protocol against Smuggling of Migrants by Land, Sea and Air" in 2000.

#### **4.2. Development of Modus Operandi of the Trafficking Crime**

The criminal act of human trafficking which can be categorized as a form of "modern-day slavery" is a global issue of human rights. Protection of human rights emphasizes that every person is born to have freedom, with equal dignity, and is entitled to protection without discrimination. In the formulation of one of the articles of the 1945 Constitution namely Article 28 I emphasizes the "right not to be enslaved". In order to realize the protection of those rights, the Indonesian government considers it necessary to make its own regulation regarding the crime of human trafficking by issuing Law Number 21 of 2017 on Eradication of Human Trafficking.

As we know that human trafficking is not a new form of crime that is known, because in Indonesian history this occurred through slavery or servitude. At the time of the kingdoms, women trafficking was an integral part of the system of feudal government. Human trafficking was more organized and rapidly developed during the Dutch colonial period; this was seen from their traditional slavery and concubinage to meet the needs of European society. In colonial times, this human trade might take the form of forced labor, the sale of girls to obtain material rewards and contract marriages. Similarly, in the period of Japanese occupation, Indonesian women became Jugun Ianfu who became the sexual object of the Japanese army during World War II. This shows that there had been trafficking of women and children in the form of sexual slavery. In those days, human trade had not been categorized as a crime, so there was no threat of punishment given to the traffickers. Along with the development of

time, with a changed shape in line with economic, social and political development, trafficking concept changed. Then, during the independence period, human trafficking was declared as a criminal act. The government of Indonesia criminalized human trafficking, as set forth in Article 297 of the Indonesian Criminal Code (KUHP). In that article, human trafficking is explicitly expressed as an act of trading women and underage men, with imprisonment of up to six years.

In the practice of human trafficking, an offender is the one who makes a person trapped in a circle of trafficking practices. In many cases, the closest people are more dominant to be traffickers. It could be that parents sell their children to other people, relatives, neighbours, friends; even a husband / boyfriend takes the role as the culprit.

In the current development, trafficking has involved various parties. Of those who become perpetrators, the victims are handed over to certain parties to be the object of subsequent trade. In relation to human trafficking across borders, parties falsifying documents or those assisting overseas shipments by filing false documents are included as traffickers. Based on data from the Ministry of Women Empowerment and Child Protection, the criteria of traffickers are :( DP3AKB Jabar, 2016)

- i. Procurer or pimp;
- ii. People nearby such as parents, relatives, acquaintances;
- iii. Employee or company owner;
- iv. Government officials;
- v. Teachers;
- vi. Trafficking syndicates.

Regarding objects of human trafficking, parties who are victims of trafficking in general are women and children. Women and children are vulnerable to becoming victims of trafficking. Based on Global Report on Human Trafficking in Asia Pacific issued by the United Nations in 2014, it is noted that 36% of victims of human trafficking are children, of which the remaining 64% are adults. Meanwhile, when viewed from the type of trafficking, 26% of the victims are sexually exploited, 64% are forcibly employed, and 10% represents other elements such as rental of babies and children for begging, and so on (Anwar, 2016).

Based on data recorded on the police department, in the period of 2012 to 2015, there were 861 cases of trafficking, and more than 70% of the victims were women and children. Similarly, data on the annual report of human trafficking in 2016 states that Indonesia is one of the primary countries of origin, destination, and transit for Indonesian men, women and children to become forced labourers and victims of the sex trade.

Each province in Indonesia is both the origin and destination of trafficking. It is estimated that around 1.9 million of the 4.5 million Indonesians working abroad, most of whom are women who have no documents or have passed the residence permit.

Indonesians have been exploited into forced labour abroad, mainly employed as domestic workers, factory workers, construction workers and labourers in oil palm plantations in Malaysia, as well as being victims of sex trade. More than one million out of 1.9 million Indonesian workers have unofficial status in

Malaysia, as Malaysia is always a major destination for Indonesian migrant workers, followed by Saudi Arabia.

The number of Indonesian migrant workers trapped in forced labour situations, including debt bondage in Asia, Middle East and in fishing vessels, is significant. Indonesian citizens who are victims have also been identified in other countries in Asia and in the Middle East, including South Korea, Pacific Islands, Africa, Europe (including the Netherlands and Turkey), as well as South America. (<https://id.usembassy.gov/id/our-relationship-id/official-reports-id/laporan-tahunan-perdagangan-org-2016>).

It can be further elaborated that those who are always the objects of trafficking are those belonging to groups with certain characteristics, such as:

- i. The poor;
- ii. Because of consumptive/hedonic lifestyle;
- iii. Lack of jobs;
- iv. Low educated and are dropouts so they do not have skills;
- v. People who dream of high salaries by working outside the country without provided with enough information;
- vi. Victims of domestic violence;
- vii. People who have lost family members;
- viii. Victims of conflict;
- ix. Victims of disaster;
- x. The unemployed
- xi. Street children;
- xii. Divorcee due to early marriage.

Based on such backgrounds, cases of human trafficking involving women and children will continue to occur in various parts of the world, including Indonesia. Such conditions provide an opportunity for offenders to earn substantial profits with a much smaller risk than the crime of narcotics. Thus, the crime of human trafficking is growing with various modus operandi.

In its development, the problem of human trade has become more complex, because this has crossed the borders between countries. Patterns of trade are changed, no longer done by individuals but by organized syndicates. They work in a planned and neat way—transnational organized crime. Therefore, the handling needs to be done comprehensively, because it has involved cross-countries with different political, legal and social conditions. This needs comprehensive cooperation between countries, in bilateral, regional, international, and multilateral ways.

The criminal modus operandi of human trafficking is also growing, ranging from conventional recruitment of victims through the sending of labour both in state and abroad, illegal adoption, kidnapping of babies, or victims dated and married by perpetrators.

In general, the human brokers or intermediaries make particulars of the modus operandi by offering domestic or overseas jobs with a salary offer that is very tempting. Such modus operandi is generally operated by people close to potential victims, such as family members, friends, even the

influential forces in areas, by offering promising and attractive benefits. Potential victims are those who want to migrate from their original location and look for opportunities to work in other regions or countries. Although some of them may realize that what they do is illegal, they too must be willing to work under intimidation and torture, both physical and psychological, sexual assault, and prohibition to worship God in accordance with their religious beliefs.

Female workers (TKW) as domestic assistants, both inside and outside the country, are employed under conditions of coercion, restraints, working with unclear working hours with wages not in accordance with what is promised, and even with no paid wages. Not a few of them work with a huge debt burden. The jobs have put themselves in debt bondage as they agree to make money loans to pay for their travel expenses. They are not allowed to cancel their plans to work abroad, except they pay off their debts arising from processing, training, shelter and transportation costs. The large amounts of debt are often charged as incidental, unofficial and non-transparent costs. The workers sometimes do not know how much debt they have to pay. Often, the employer or recruiter does not explain how much debt has been paid, and this results in the situation where workers do not know how much longer they have to work to pay off their debt.

Towards the migrant workers who are abroad, there are also some employers and agents who confiscate passports and other documents to ensure that the workers especially working as maids, do not try to escape. Even if there are workers who can get home because they escape, they usually return to the homeland without carrying any money. Many ill-fated fates befall female migrant workers where they are raped by their employers, tortured causing physical and psychological damages and creating painful stress and illness, and even worse they go home deceased. Not quite there yet, the suffering experienced while abroad continues into the country - arrival at the airport often gets unfair treatment, including being a victim of fraud or extortion by the uniformed and thugs.

Concerning the sending of Indonesian workers "TKI" to the Middle East and Saudi Arabia, the modus operandi of crimes of human trafficking is also done by way of forgery of documents. Falsification of documents is in the form of transfer of identity for placement to the conflict country in the Middle East, transfer of work type ranging from cleaning service / hospitality to housekeeper, and granting of permanent resident visa. They are victims of trafficking not only for the purpose of exploitation of forced labour, slavery or similar practices of slavery, but also for the purpose of exploitation of prostitution. (<http://www.berisatu.com/nasional/301396-modus-perdagangan-orang-makin-beragam.html>).

What is more worrying, and the growing mode of human trafficking is the sexual exploitation of girls. Non-commercial sexual exploitation of children is perpetrated by conducting sexual harassment, abuse, rape and sexual violence. Commercial exploitation of children is undertaken in the world of child prostitution and by being used to produce child pornography and so on. At first, they are promised to work as labourers, household assistants, restaurant workers, clerks and industrial workers, but by the time they arrive at their destination, they are forced to work that is not in accordance with what is promised.

Another form involving children as victims of human trafficking is child trafficking, with the modus operandi of infant kidnapping for sale, either for the purpose of adoption or sale and purchase of children for other illegal acts. Another modus operandi is migrant workers who are trapped with a fake marriage while abroad, then, when conceiving, they are forced to give their baby to be illegally adopted.



The child trafficking modus operandi also occurs for the purpose of organ transplantation of which to utilize the victim by taking organs of the body that are tradable.

The form of exploitation of street children is to make them to be beggars, street singers, street vendors, pickpockets, shoeshine doers and to force them to do jobs that can endanger them. The phenomenon of street children has a very close relationship with the development of a region into a metropolis or big city. Children are employed offshore or on fish-trap spots and at plantations under stressful and confined working conditions that are dangerous and at low payment or even zero payment.

In its development, the modus operandi of crime of human trafficking is allegedly done by sending art and cultural ambassadors. Women and girls are promised to work as cultural ambassadors, singers, or entertainers in a foreign country. There is also a modus operandi as if the sending would give them a scholarship to education or work practices abroad. On their true arrivals in many countries, many of these women are forced to work in the sex industry or on jobs in slavery-like conditions.

A new modus operandi that is less exposed in Indonesia was discovered, although it has become a warm conversation topic in the international world. This modus operandi comes from the business sector. This modus operandi is based on the Global Supply Chain system that is often applied by large private companies that have many branches in other countries. For example, workers in industries that produce clothing, shoes, jewellery that have been marketed around the world. Behind the manufacturing process is prone to the human trafficking, by employing children by force, by involving certain elements of offers and bad situations and conditions, which then cause the victims to experience violence (Republika.co.id, 2017).

## **5. Research Methods**

The type of research used is doctrinal research or normative legal research, namely legal research that uses secondary data sources whose emphasis is on theoretical and qualitative analysis, which is also referred to as library research or document studies (Warman, 2016) because it is done on data that is secondary to the library. The implementation of normative research is broadly addressed to research on principles of law, research on legal system, research on legal synchronization, legal history research and comparative law study (Cruz, 2015).

In accordance with the type of research used, the legal materials are derived from library data (library research). This study uses secondary data both in the form of primary legal materials and secondary legal materials. The primary legal material is the statutory regulations relating to the crime of human trafficking. Secondary law material is in the form of legal view cited from the literature that supports the frame of thought and analysis of the object of research.

## **6. Findings**

### **6.1. Trafficking in the Perspective of Human Rights Law**

According to Law No. 39 of 1999 on Human Rights (hereinafter referred to as HR) in Article 1 point (1), it is stated: "Human rights are a set of rights attached to the essence and existence of human beings as creatures of God Almighty and is a gift that must be respected, upheld and protected by the state and government and every person for the honour and protection of human dignity". The formulation of

HR contained in the Law of HR is exactly the same as that is contained in Article 1 point (1) of Law No. 26 of 2000 on Human Rights Court.

Based on the definition of HR, it is meant to emphasize that human rights are related and inherent with the human dignity. There are even values of the formula contained in the law mentioning that human being is a creature of the Almighty and is His gift. This affirms that all humans without exception have the same dignity and rights.

Both explicitly and implicitly, the rules that classify human trafficking as a form of HR violations have been quite adequate. Among others:

- a) Universal and global in outlook, human trafficking is also categorized as a violation of human right that is degrading human dignity. In Article 1 of the Universal Declaration of Human Rights (UDHR) states, “all human beings are born free and equal in dignity and rights. They are bestowed with reason and conscience and should act towards one another in the spirit of brotherhood”. This worldwide declaration of HR was approved by UN General Assembly Resolution No. 217A (III) on December 10, 1948 in Paris, France. In Article 4 of the UDHR, it is clearly stated: “no one shall be held in slavery or servitude; all forms of slavery and slave trade shall be prohibited”.
- b) The implications of HR violations have also been regulated in the 1945 Constitution of the Republic of Indonesia, especially in Article 28I Paragraph (1) which reads: “The right to live, the right not to be tortured, the right of freedom of thought and conscience, the right of religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law; they are human rights that cannot be reduced under any circumstances”. Indeed, in the 1945 Constitution particularly in Article 28I Paragraph (1) there is no mention of human trafficking, but is actually veiled in the word ‘slave’. The article reads: “the right to live, the right not to be tortured, the right of freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of retroactive law; they are human rights that cannot be reduced under any circumstances”. The right not to be enslaved has implications for the rights not to be traded, which is common to children and women.
- c) Given that the victims of human trafficking are women and children who are relatively young, aside from including this as human rights violations, this is also categorized as violations of child rights, as contained in Article 28B Paragraph (2) of the 1945 Constitution which states: “Every child has the right to survive, grow and develop and be entitled to protection from violence and discrimination”. When girls have become victims of trafficking, parents, families, communities and even countries have committed human rights abuses, because in Article 52 of Law of HR it is affirmed that “everyone is entitled to protection by parents, family, community and country” (Paragraph 1). It is important to emphasize that the parties mentioned must provide maximum protection towards the implementation of the child rights so as not to become victims; “human rights and for the benefit of the human rights, child rights are recognized and protected by law even since in the womb” (Paragraph 2).

- d) Law No. 39 of 1999 on Human Rights (Law of HR) in Article 20 is affirmed “no one shall be enslaved or subjected to servitude” (Paragraph 1). “Slavery or servitude, slave trade, women trafficking, and all forms of deeds of any kind whose purpose is similar are prohibited” (Paragraph 2). The word “similar” referred to in this article is “no one shall be enslaved or subjected to servitude” (Article 20 Paragraph (1)) Furthermore, in Article 53 Paragraph (1) Law of HR, it is mentioned “every child since in the womb is entitled to live, survive and improve their standard of living”. Still related to the rights of children, it is also stipulated in Article 56 of the Law of HR: “Every child has the right to know who his/her parents are, to be raised and cared for by their own parents” (Paragraph 1). “In the case where parents are incapable of raising and caring for their children properly, and in accordance with this law, the children may be taken care of or raised as a child by others in accordance with the provisions of legislation”. It is also stipulated in Article 57 of the Law of HR that “every child shall have the right to be raised, nurtured, cared for, educated, directed, and guided by parents or guardians until adulthood, in accordance with the provisions of laws and regulations”. These articles are important to mention to the attention of parents, because when parents neglect the obligation to the rights of their children, the children are very vulnerable to become victims of human trafficking.
- e) Specifically Law No. 23 of 2002 on Child Protection also prohibits trafficking of persons, especially children. Thus, trafficking of persons violates and contradicts not only international and national human rights provisions but also the Law of Child Protection. This can be seen in Article 83 of Law of Child Protection which states “the prohibition of trading, selling, or kidnapping children for personal purposes or for sale”. Inherent with Article 83 is Article 4 of Law of Child Protection which states “every child has the right to live, grow and develop, and to fairly participate according to human dignity, and to be protected from violence and discrimination”. Furthermore, Article 13 of Law of Child Protection states that “every child in the care of a parent, guardian or any other party responsible for it, is entitled to protection from both economic and sexual treatment, discrimination, exploitation, neglect, cruelty, violence and abuse, injustice, and other misconduct”.

## **6.2. Criminal Law Policy on Prevention of Crime of Human Trafficking**

Wrongdoing or crime is one form of deviant behaviour that is always present and inherent in every form of society; no society is far from evil (Priyatno, 2013). According to Sadli (2013), deviant behaviour is a real threat or threat towards social norms that underlie life or social order; it can lead to individual and social tensions, and is a real or potential threat to the ongoing social order (Priyatno, 2013). Thus, a crime is – besides a social issue – instead, according to Benedict S. Alper, “the oldest problem” (Prakoso, 2016).

The use of legal remedies including criminal law, as one of the attempts to address social problems, is included in the legal countermeasures policy. In addition, because the aim is to achieve the welfare of society in general, the policy of legal countermeasures is intended to achieve the welfare of society in general (Arief & Muladi, 2013).

Various policies and legal regulations that are created must have a purpose, namely for human welfare (social welfare) in the social life. One way to achieve prosperity is people always do development: both human resource development and natural resource development. For that reason, the rule of law should not only serve as a means of development in achieving human welfare, but more emphasized on the legal sense as a means of better-directed human activities desired by the development or renewal of the law. On that basis, the laws that have been made should be obeyed, followed and implemented, therefore, the law in one place must be in accordance with the social conditions (legal culture) of the community (living law). Otherwise, the law will not run effectively.

The public understanding of the crime of human trafficking is related to the attitude of legal awareness about the importance of rules in the form of positive law, and also relates to the level of legal awareness (*rechtsbewustziyn*). Therefore, the understanding of the law is not only in terms of legal enactment (law in book), but more on the legal implementation (law in action), so that the understanding of the crime of human trafficking is not only at the level of the concept, but more preferably at the level of implementation or applications related to legal awareness. If the rule of law has been perceived as a need, it will become a feeling or sentiment (*rechtsgevoel*), so the rule of law will be able to apply according to the need and not because of compulsion. Thus, the purpose of law and law enforcement will go according to the law supremacy. However, the law should not harm the interests of the individual.

According to Ali (2012), law should be viewed as a social institution. Law is not seen as something autonomous, but functionally understood and is always in independent relation to other fields of society (Soemintoro, 2010). Law also not only acts as a static norm that prioritizes certainty and order alone, but also must activate thinking and engineer the behaviour of people, in achieving its goals. Law is not seen as the only alternative in the arrangement of society, therefore to maintain law requires an attempt to structuring in the fields of politics, economy, social, and culture. Ultimately, the existence of the law is not at issue anymore, but the law can be accepted as something that should be executed or something that must be applied, so that it can bring about justice. Therefore, the law must be able to harmonize between elements of justice. In practice, the elements often conflict with each other, so carrying out the objectives of the law can be done through the social order, social system, and the concept of justice of the community concerned. To this, Roscoe Pound states, "Since Roman law, people have learned to progressively better fulfil their practical duties, in order to regulate relationships and discipline behaviours in order to curb the instinct of the will of the human beings in co-operation for the advancement of civilization" (Fuady, 2012).

Today, in legal reform, Indonesia has spawned several laws on human rights law and ratified several international conventions, particularly on the increasingly popular human trafficking which is a violation of human rights. Human trafficking is the same as slavery, which is defined as a condition of someone who is under the ownership of others (Kansil, 2014). Slavery is the act of placing one in the power of another, so that the person is unable to resist a work which is unlawfully ordered by another person to him, even if the person does not want it. The crime of human trafficking is also said to be a form of human slavery in this modern age, which is the worst deed of violation of human dignity. On that basis, the problem of crime of human trafficking is of serious concern to some countries including Indonesia. The above reasons are based on noble values and national and international commitments to

prevent and mitigate from the outset, with the prosecution of perpetrators and the protection of victims; national, regional and universal cooperation is required, and the most important is legal policy.

Legal policies carried out are specifically in the prevention and enforcement against the crime of human trafficking, so that the law can run effectively and in accordance with expectations. According to Mochtar Kusumaatmadja, law without power is fantasy, while lawless power is tyranny (Kusumaatmadja, 2012).

Tackling human trafficking through legal products in the form of laws is basically a form of crime prevention policy or part of a criminal policy. According to Soedarto (1981), criminal policy has three following meanings:

- i. In a narrow sense, it is the whole principles and methods that form the basis of reaction to a criminal offense;
- ii. In a broad sense, it is the overall function of the law enforcement apparatus, including the workings of the courts and the police;
- iii. In the broadest sense, it is the whole policy undertaken through legislation and official bodies, which aims to transcend the central norms of society

The above described is part of social policy, which is a rational effort of society to improve the welfare of society. Crime prevention efforts with criminal law are essentially also part of criminal law enforcement efforts. Therefore, criminal law policy is part of the law enforcement policy. It is based on the criminal justice system consisting of sub- system of investigation, sub-system of prosecution, sub-system of justice, and sub-system of correctional (Sunarso, 2012).

Besides, crime prevention efforts through legislation (legislation policy) is essentially an integral part of social defence effort. Therefore, criminal law policy is also an integral part of social policy. Social policy can be interpreted as any rational effort to achieve the welfare of the community and also includes the protection of the community. So, in terms of social policy, it is included in it social policy and social defence policy (Arief & Muladi, 2013).

In line with the opinion of Hoefnagels, the implementation of criminal law policy can be done by the application of criminal law through penal and non-penal means which is a censure or a discouragement or suffering. Thus, the entire criminal process (from detention, examination to verdict imposed) is a punishment. On that basis, any change of society that is not followed by legal development will be wasteful, especially in the process of law enforcement. Law enforcement is a process for realizing legal intentions into reality (Rahardjo, 2013). The meaning of legal intentions is the minds of the legislatures formulated in these laws. The law enforcement process also reaches the process of making it which is the mind set forth in the rule of law. This process also determines how the implementation of law enforcement. Therefore, law enforcement actually starts from the rule of law that must be executed (Rahardjo, 2013)

In trafficking, the execution is not always based on penalty, but can also be non-penal forms. Based on the above, there are at least two perspectives of the function of law within a society (Soemintro, 2010). Even though human trafficking has been regulated in Law No.21 of 2007, and is threatened with criminal sanctions, this is still widely done in practice, even made a livelihood or a source of livelihood of the family. Judging from its effectiveness, it turns out this rule is not effective. The cause is certainly a

variety of reasons: economic factors / poverty, educational factors, environmental factors, and other factors, resulting in ineffective law enforcement or community distrust of legal institutions, because they assume that they will not get justice.

Human trafficking also involves a network of difficult syndicates. In this case, there are people who recruit (traffickers), so there must be known pockets in which many cases of trafficking occur. Regarding cooperation with certain departments or agencies, the one that needs to be improved is with agencies / task forces engaged in women's empowerment in the region. In addition, many parties must be involved if this idea is to be done. To deal with this problem, it is necessary to have a legal regime that works to resolve conflicts that arise in the society, therefore the nature must be comprehensive and integral community, law enforcement officers must be firm and authoritative, and policy makers both the level of legislation and judicial decisions of the judge must be able to work in accordance with the objectives of the law, namely to achieve justice and welfare of the community.

On the basis of that, prevention of human trafficking in the perspective of human rights law should be done comprehensively and integrally, with law enforcement officers that are firm and authoritative, which can be done through the level of criminal law policy by way of legislation, execution, and judicial process, that is through various ways, including:

- i. Extending human rights arrangements in the country's basic law (UUD);
- ii. Establishment of laws and regulations that specifically regulate human rights;
- iii. Recognizing and ratifying international treaties on human rights into the national legal system

The existence of political commitment in the country through the National Action Plan for Human Rights, as well as the involvement of the Indonesian government at the level of ASEAN and international.

## 7. Conclusion

The crime of human trafficking should be regarded as an extraordinary crime, as it undermines the dignity of human beings as the creature of God Almighty, which means a violation of human rights. The state must therefore declare war on trafficking and overcome its causes and background, ranging from law enforcement to socialization.

It is therefore necessary that criminal law policy is essentially an attempt to realize the rules of criminal legislation to be in accordance with the circumstances at a certain time (*ius constitutum*) and the future (*ius constituendum*).

## References

- Ali, A. (2012). *Menguak tabir hukum*, (3<sup>rd</sup> ed). Bogor: Ghalia Indonesia.
- Anwar, S. D. (2016). *Global supply chain pada perusahaan swasta rentan unsur perdagangan orang*, Kementerian Pemberdayaan Perempuan Dan Perlindungan Anak Republik Indonesia. Retrieved from [www.kemenpppa.go.id](http://www.kemenpppa.go.id)
- Arief, B.N., & Muladi. (2013). *Teori-teori dan kebijakan pidana*, Bandung: Alumni.
- Cruz, d. P. (2015). *Perbandingan sistem hukum: Common law, civil & socialist law*. Jakarta:Nusa Bangsa.
- DP3AKB Jabar. (2016). *Praktik perdagangan manusia dan permasalahannya ditinjau dari segi sosiologie hukum*. Retrieved from [DP3akb.jabarprov.go.id](http://DP3akb.jabarprov.go.id)
- Fuady, M. (2012). *Dinamika teori –teori hukum* (4<sup>th</sup> ed.). Bogor: Ghalia Indonesia.

- Garner, A.B. (2007). *Black's law dictionary*. USA: West Group St Paul Minn.
- Kansil. C.S.T. (2014). *Tindak pidana dalam undang-undang nasional*. Jakarta: Jala Permata Aksara.
- Kusumaatmadja, M. (2012). *Konsep-konsep hukum dalam pembangunan* (4<sup>th</sup> ed.). Bandung: Alumni.
- Moeliono, M.A. (1994). *Kamus umum bahasa Indonesia*. Jakarta: Balai Pustaka.
- Makhfudz, M. (2015). Kajian praktek perdagangan orang di Indonesia. *Adil Jurnal Hukum*, 4 (1), 225-243.
- Prakoso, A. (2016). *Kriminologie dan hukum pidana, pengertian, aliran, teori dan perkembangan*, Jakarta: Laksbang.
- Priyatno, D. (2013). *Wajah hukum pidana asas dan perkembangan*. Jakarta: Gramata Publishing.
- Pudjiarto, H.R. (2013). *Hak asasi manusia kajian filosofis dan implementasinya dalam hukum pidana di Indonesia*. Yogyakarta: Universitas Atmajaya.
- Rahardjo, S. (2013, 2014). *Masalah penegakan suatu tinjauan sosiologis*. Bandung: Sinar Baru.
- Republika. Co.Id, Jakarta-Friday, April 30, 2017, 13.51 WIB. Retrieved from <http://www.beritasatu.com/nasional/301396-modus-perdagangan-orang-makin-beragam.html/cititation>. [https://id.usembassy.gov/id/our-relationship-id/official-reports-id/laporan-tahunan-orang-2016 /cititation](https://id.usembassy.gov/id/our-relationship-id/official-reports-id/laporan-tahunan-orang-2016/cititation)
- Sadli, S. (2013). *Persepsi sosial mengenai perilaku menyimpang*. Jakarta: Bulan Bintang.
- Soedarto. (1981). *Kapita selekta hukum pidana*. Bandung: Alumni.
- Soemintro, H. R. (2010). *Studi hukum dan masyarakat*. Bandung: Alumni.
- Sukmanto. A.D. (2016). *Satu korban perdagangan manusia sudah terlalu banyak. Seminar on Human Trafficking and Male Victimization Regional Approaches From Central and Southeast Asia*, Hotel Pullman. Jakarta. 22 November 2016.
- Sunarso, S. (2012). *Wawasan penegakan hukum di Indonesia*. Bandung: Citra Aditya Bakti.
- Warman, E. (2016). *Metodologie penelitian hukum*. Jokjakarta: Genta Publishing.