



Corporate Criminal Responsibility for Trafficking in Persons and Child Sexual Exploitation

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Abstract. *This study aims to analyse that employment agreements can be null and void if there are indications of trafficking in persons, including sexual exploitation of children. In addition, this study applies the criminal liability of corporations that commit trafficking in persons, including child sexual exploitation. This research uses a conceptual approach and a case approach with the source of legal materials used as primary and secondary legal materials or literature studies, with prescriptive analysis. The study shows that human trafficking, including child exploitation, is primarily a mode of labour recruitment. In recruiting workers, employers are required to make employment agreements with workers. Labor agreements that do not observe law, decency, and norms of justice and violate human rights provisions guaranteed by the Constitution that expose workers may qualify that such contracts fall under the criminal offense of trafficking in persons, including child sexual exploitation. However, this evidence cannot be proven by a formal employment agreement alone, and it must be done with measures of prohibited consequences. Furthermore, the results of this study are human trafficking crimes, including sexual exploitation of children committed by corporations, so those who can be held accountable are corporations and management. This finding correlates with the development of criminal law in Indonesia, which places corporations and corporate administrators as legal subjects, just as individuals are.*

Keywords: *Human Trafficking, Exploitation, and Corporations*

1. Introduction

Trafficking in persons is generally defined as all acts related to the recruitment, transportation, transfer, sale, or purchase of human beings by coercion, fraud, cheating, or other coercive tactics aimed at placing them in conditions of forced labor or slavery-like practices, where labor is drained through physical or non-physical coercive means, including extortion, fraud, cheating, isolation, threats or use of physical force or psychological pressure. The history of the development of human trafficking crimes in Indonesia, since the beginning, has categorized human trafficking as a form of criminal act regulated by the provisions of the Criminal Code. However, trafficking in persons is a transnational organized crime, it is necessary to renew the commitment to combat and overcome as stated in Presidential Decree concerning the National Action Plan for the Elimination of Trafficking in Women and Children. Law 21 of 2007 concerning the Eradication of Trafficking in Persons (in the future referred to as the ETiP Law) was enacted. In the current news, human trafficking has been declared a global and severe problem, and even human trafficking has turned into a business that provides excellent profits to the perpetrators. Human trafficking that used to be carried out by individuals is now carried out in organized groups, and not infrequently; even a corporation is also involved with this condition [1]. Corporations have a significant role in the development of the Indonesian economy. Based on its group, most of Indonesia's population is a lower-middle-level economic group. Whether the criminal answer can be directly imposed on the Corporation like a human being, the Criminal Code, which is the essential book of criminal law in Indonesia, adheres to the principles that

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delinquent government university legal entities cannot commit criminal acts in the criminal law system in Indonesia, where errors according to criminal law are always required and are the fault of humans, so it is closely related to the individualization of the Indonesian Criminal Code [2]. Along with the development of the era, corporations have an increasingly assertive role in people's lives; not only that but the role and range of corporate activities also cover an extensive area and sometimes even cross the territorial boundaries of a country. However, criminal conviction of the perpetrator of the crime can be achieved if the perpetrator's actions are proven to have an element of guilt and the ability to be responsible. Likewise, if a corporation commits a crime, both conditions must be met first for criminal conviction on the Corporation. Every trafficking offender must be held accountable for all acts before the law. Criminal responsibility is essentially an unfavorable consequence of deviant attitudes committed by criminal offenders. On the other hand, criminal liability is intended to correct the convicted person's behavior and prevent others from committing a similar criminal act. Criminal accountability is closely related to guilt. Guilt is a factor that must be fulfilled in the criminal conviction of the perpetrator of the crime because the el because guilt is a determining factor regarding whether or not someone can be sentenced to a crime. The error can only be applied to natural law, namely man. As it is known that error is a man's mental attitude, there are only two: intentionality and negligence. Both forms of error can only be proven against human legal subjects, not against legal entities or corporations because only humans are equipped with reason so that they can determine whether an act violates the provisions of the law or not. In addition, liability related to trafficking in persons can also be delegated to the management of the Corporation for an act committed for and on behalf of the Corporation. This liability is stipulated in the anti-trafficking law. The type of Corporation that often provides prostitution that falls under trafficking is karaoke parlors. In the karaoke place, a Lady Companion (LC) works as a companion to accompany or entertain karaoke guests in singing. Law enforcement against these corporations usually stalls at the investigation stage because there is insufficient evidence to prove the Corporation is guilty. In addition, there is also a Memorandum of Understanding (MoU) or work agreement between the Corporation and the Pimp or a person who acts as an intermediary caregiver or owner of a female guide or Lady Companion (LC); in essence, the agreement makes it impossible for the Corporation to be criminalized if the Lady Companion (LC) committed a criminal act. This MoU also makes investigations related to human trade involving corporations (karaoke places) challenging to proceed to the investigation stage. The Corporation does not benefit from trafficking in persons, but the one who benefits is pimping. The above statement raises the question of whether the Corporation can be held responsible for human trafficking and sexual exploitation of children.

2. Literature Review

The issue of corporate criminal responsibility (CCR) has gained significant attention in the context of trafficking in persons and child sexual exploitation. As globalization facilitates the movement of both goods and people, corporations may inadvertently or actively become involved in these heinous crimes. This literature review explores various dimensions of CCR, highlighting key findings, legal frameworks, and challenges in holding corporations accountable. This argumentation will be explained as follows : (1). Definition and Scope of Corporate Criminal Responsibility; The concept of CCR refers to the legal accountability of corporations for criminal acts committed by their agents or employees. Scholars such as Friedman emphasize that corporate liability can extend beyond traditional notions of individual culpability, particularly in cases where corporate policies or practices facilitate criminal activity; (2). Trafficking in Persons and Child Sexual Exploitation; Trafficking in persons is defined by the United Nations as the recruitment, transportation, transfer, harbouring, or receipt of persons through means of threat, use of force, or coercion for various forms of exploitation. Child sexual exploitation encompasses a range of abuses against minors, including sexual trafficking and exploitation through child pornography. The

International Labour Organization estimates that millions of children are victims of trafficking and exploitation globally; (3). Legal Frameworks Addressing Corporate Responsibility; Various international and national legal frameworks address CCR in relation to trafficking in person and child sexual exploitation; United Nations Protocols; The Palermo Protocol encourages states to adopt measures to prevent trafficking and hold perpetrators accountable, including corporations. National Legislation; Countries like the United States have enacted laws such as the Trafficking Victims Protection Act, which imposes penalties on entities involved in trafficking.

3. Methodology

This research is empirical legal research with several approaches, namely the statute approach, conceptual approach, and case approach, with the source of legal materials used primary and secondary legal materials (literature studies), with prescriptive analysis.

4. Discussion And Findings

Qualifications for Employment Agreements that Are Subject to Trafficking in Persons and Child Sexual Exploitation

a. Forms and Characteristics of Trafficking in Persons

Law enforcement in trafficking crimes has various challenges, one of which is the development of the mode of trafficking in persons, which is a distinctive characteristic where this crime develops because it is used as a profitable business for perpetrators. The rampant crime of trafficking in persons will result in destructive power in all aspects of life, such as economic, political, humanitarian, and cultural aspects [3]. Based on the facts that occur, Indonesia is one of the countries in the Southeast Asian region that is a granary of human trafficking [4]. The characteristics of trafficking in persons can also be seen through indicators stated by the International Migrant Organizations (IOM) and the Attorney General's Office of the Republic of Indonesia [5], where law enforcement officials use these indicators to reference material acts committed by perpetrators who can be categorized as carrying out processes, methods, and objectives in trafficking. However, this indicator is not part of the trafficking element stipulated in the criminal act human trafficking (CAHT) Law. The indicators of trafficking in such persons are expressed as follows:

- a) Unable to self-manage wages received or required to hand over most efforts to third parties (employers, pimps, intermediary agents)
- b) Restrictions on freedom (e.g., not leaving the workplace for long periods and under constant supervision)
- c) Specific indicators aimed at trafficking in persons exploitation of prostitutes include earning minimal wages from wages generally paid in prostitution businesses, being required to earn a certain amount of income per day, embroidery managers or third parties having paid transfer fees to potential victims, and handing over part of the potential victim's income to third parties, where potential victims are employed changes.

Regarding the forms and characteristics of the criminal act of trafficking in persons, it can be seen that many of these crimes are under the guise of recruitment of workers. Then, exploitation is carried out, which significantly violates human rights. It can be said that the criminal act of trafficking in persons in today's globalization and modern era is possibly carried out by corporations, such as illegal migrant worker service distributors using business modes in the form of Companies, or others to launch malicious intentions to carry out human trafficking [6].

b. Employment Agreements That Can Be Categorized as Trafficking in Persons and Child Sexual Exploitation

Trafficking in persons most of the modes are labour recruitment, in which then the workers are exploited by being made sexual workers or given minimal wages. In recruiting workers, the employer must enter into a work agreement with the workers. The definition of an employment agreement is stated in Article 1 number 14 of Law Number 13 of 2003 concerning Manpower, which has been amended concerning the Stipulation of Government Regulations instead of Law Number 2 of 2022 concerning Job Creation into Law states that an employment agreement is an agreement between workers and employers or employers containing conditions of work, rights, and obligations of the parties. An understanding of a work agreement, namely an agreement between a worker and an employer, in which agreement is marked by characteristics, the existence of a specific wage or salary agreed, and the existence of a relationship above, namely a relationship based on which one party (employer) has the right to give orders that the other party must obey [7]. The employment agreement is implemented with the agreement of both parties. This agreement is based on the principle of freedom of contract in treaty law in Indonesia, as stated in Article 1338 of the Civil Code. The scope includes, namely, freedom to make or not to make agreements, Freedom to choose parties with whom he wants to make agreements, freedom to determine or select the power of the agreement to be made, Freedom to find the object of an agreement, freedom to accept or deviate from the provisions of laws that are optional (annulled, optional) [8]. There is a principle of freedom of contract where the things agreed upon by both parties in the agreement apply as binding law. However, the freedom given by law to both parties to determine the content of the contracting agreement and the terms and conditions of the contract must not contradict the law, decency, and norms of justice. In general, there are several workers' rights that are considered fundamental and must be guaranteed, although their application can be determined mainly by economic and socio-cultural development and the society or country in which a company operates, including [9]:

- a. The right to a job. The right to work is a human right. This right is stated and fully guaranteed by the Constitution; this can be seen in Constitution 45, which states, "Every citizen has the right to work and a decent living for humanity."
- b. Right to privacy rights. In this case, employees can keep their data confidential. Even companies have to accept that there are certain things that companies should not know and want to keep confidential by employees.
- c. The right to freedom of conscience. The worker should not be forced to commit specific actions that he considers unkind: commit corruption, embezzling company money, lower standards

Based on the explanation of the work agreement above, it can be said that although it is an agreement between both parties, namely workers and employers, there are provisions regarding the principle of freedom of contract. It does not rule out the possibility that companies recruit workers with a work agreement, where the clauses are very contrary to order and moral norms and violate human rights stipulated in the Constitution, which causes workers to feel exploited where the definition of exploitation is stated in Article 1 paragraph 7 of the ETiP Law states that: Exploitation is an act with or without the consent of the victim, which includes but is not limited to prostitution, forced labor or service, slavery or slavery-like practices, oppression, extortion, physical, sexual, reproductive organ use, or unlawfully removing or transplanting organs and body tissues or utilizing one's energy or ability by another party for material or immaterial gain. Therefore, the company can be said to have committed a trafficking crime. However, with the existence of an employment agreement that contains elements of exploitation, the company cannot be directly said to be a perpetrator of trafficking in persons; this is because, by the characteristics of the criminal law that the so-called perpetrators of criminal acts are groups or people who commit acts or criminal acts concerned with the meaning of people who commit intentional or unintentional elements as required by law or arising consequences not intended by law, whether they are objective or

subjective elements, regardless of whether the act is done based on one's own decision or with the encouragement of a third party. Criminal acts, in general, can be interpreted as unlawful acts both formally and materially. Regarding the explanation above, it can be said that a person said to be a criminal offender must be proven formally and materially for his actions because criminal law is a law that punishes the actions of perpetrators who cause prohibited consequences. So it can be concluded that if a company conducts labor recruitment with a work agreement in which the clause contains things that are contrary to order and decency norms and commits human rights violations that make workers exploited and in its actions the company acts based on the work agreement, which fulfils the offense of trafficking in persons regulated in the ETiP Law, It can then be said that the company committed the crime of trafficking in persons.

Corporate Responsibility for Criminal Acts

a. Corporate Legal Basis Declared as Legal Subject of Trafficking in Persons

The subject of law is everything that can have rights and obligations. In this case, the right is power, the authority given by law to the subject of law, while the obligation is a burden given by law to the subject of law [10]. In the beginning, the subjects of criminal law that lawmakers challenged were only human beings (individuals or individuals). In the Criminal Code (Criminal Code), the subject of law is individuals; corporate thinking has not been seen as a subject of criminal law. But in its development, doubts in the past to place corporations as subjects of criminal law who can commit criminal acts and those who can be held accountable for crime have been shaken. The doctrine, that coloured the Dutch Wvs of 1886, had changed in connection with accepting the concept of functional actors. Criminal makers include corporations in criminal law because humans sometimes commit criminal acts through organizations, so lawmakers in formulating" offenses also consider this reality [11]. Regarding terms related to corporations, it often confuses the public in understanding various corporate crimes. The terms criminal law and civil law have different meanings and purposes when realizing the occurrence of a corporate crime. In this connection, Steven Box distinguishes corporate crime as follows [12]:

1. *Crimes for corporations (corporate crimes)*: These crimes are committed by corporations to achieve profits for the benefit of the Corporation; in other words, *corporate crime is committed for the Corporation and not against it.*
2. *Crimes against corporations (employee crime)*: crimes against corporations, such as a financial division stealing corporate money. In this case, the target of crime is the Corporation, so the Corporation becomes the victim.
3. *Criminal corporations* : Corporations are used as a means to commit crimes.

The development of corporations in the science of criminal law has been well-accepted among academics and practitioners regarding a particular crime involving a company called corporate crime. Sometimes, corporate crime is also called corporate crime or organizational crime. Law Number 1 of 2023 concerning the Criminal Code (KUHP) also defines portions in Articles 45 to 50, where corporations can be made perpetrators of crimes and be burdened with liability. Regarding the definition of corporate ratio, it is also regulated in Article 6 point 4 of the ETiP Law; a corporation is a collection of people and wealth organized, whether a legal entity or a non-legal entity. Legal subjects in the form of persons or corporations can commit this trafficking offense. This legal can be seen in Article 1 Number 4 of the ETiP Law, which states, "Everyone is an individual or corporation that commits trafficking in persons. This individual responsibility leads to corporate actors' personal liability in trafficking crimes. In addition, corporations can also be collectively liable based on a concept of corporate responsibility, where they are considered responsible for the actions of their members carried out for the benefit or on behalf of the Corporation. Trafficking in persons committed by corporations is stated in Article 13 of the ETiP Law, which is expressed as follows:

- 1) The crime of trafficking in persons is considered committed by a corporation if the crime is committed by persons acting for and on behalf of the Corporation or for the benefit of the Corporation, whether based on employment or other relationships, acting within the corporate environment either alone or jointly.
- 2) If trafficking in persons is committed by a corporation, as referred to in paragraph (1), investigation, prosecution, and punishment shall be carried out against the Corporation and its management.

The enforcement of corporations in trafficking crimes has a clear objective, namely, first, to increase the effectiveness of prevention and law enforcement efforts by recognizing that corporations can be part of trafficking crime networks. By placing legal responsibility on corporations, they will become more responsible for preventing people's criminal acts and engaging in responsible business practices. Second, corporations as legal subjects regulated in the ETIP Law are also intended to provide justice to trafficking victims by expanding legal responsibilities and eliminating legal loopholes that corporations can exploit to avoid trafficking liability [13].

b. Corporate Liability in Money Trading Crimes

In this regard, it appears that criminal liability against corporations is so broad because all acts and mistakes committed by workers, employees, or people who act for the benefit of the Corporation can be accounted for by the Corporation. However, this is only for criminal acts that do not require *mensrea* (guilt mind) (disturbance of public order), *criminal libel* (slander, defamation), or *content of court* (violation of court order). *Vicarious liability* is almost all associated with absolute liability. (*Strict Liability*). However, when compared between the two, there are similarities and differences. The similarity between *Strict Liability* and *Vicarious Liability* is that it does not require *mensrea* or an element of guilt in the person being prosecuted. Meanwhile, the difference lies in *Strict Liability*, where criminal liability is imposed directly on the perpetrator, while in *Vicarious Liability*, criminal liability is indirect. The doctrine of *vicarious liability* can be applied within a scope of employment or in the framework of job duties, and the act is carried out for interest or corporate profits. Or, in a contrary manner, it can be said that if a person or agent commits a criminal act, it acts not in space. The scope of employment or not in the framework of his job duties or the actions carried out are not intended for the interests or benefits of the Corporation, so the Corporation cannot be accounted for in criminal law [13]. Third, the aggregation theory was born because of dissatisfaction with previous theories, especially the identification theory, which was considered inadequate for overcoming the reality of the decision-making process in large modern companies. This Aggregation allows the aggregation or combination of actions and mental attitudes or *mensrea* from several relevant people within the scope of the company to be considered as if it were carried out by one person, which is then attributed to the actions and mental attitudes of the Corporation so that the Corporation can be held criminally liable. When the Corporation is declared criminally responsible for a criminal act that has been committed, in this case, it is generally known as 3 (three) systems of corporate criminal liability, which are stated as follows [14]:

1. The management of the Corporation as the maker and manager must be criminally responsible (first stage)
2. The Corporation is the maker, but the manager must be criminally responsible (second stage)
3. Corporations as makers and corporations must also be responsible (third stage)

However, based on its development, the three concepts are still incomplete. According to him, the management and Corporation are both perpetrators of criminal acts and must bear criminal responsibility. Here are some of the reasons stated by as follows [15]:

- a. If criminal liability is imposed only on the management, then it is unfair to the community who have suffered losses; the management's actions are for and on behalf of the

Corporation and are intended to benefit or avoid or reduce financial losses for the Corporation.

- b. If only the Corporation is burdened with criminal liability while the management does not have to bear responsibility, then it will provide the possibility to transfer responsibility; in this case, the management will permanently hide behind the back of the Corporation to release itself from responsibility under the pretext that the actions committed are not in personal interests and personal benefits but on behalf of the Corporation and corporate government.

Based on the theory and expert explanation above, it can be said that corporations, corporations, and management can be held accountable for the development of criminal acts committed by corporations. This theory is in line with the development of criminal law in Indonesia, which places corporations and corporate administrators as legal subjects, just as individuals are. Concerning the trafficking crime, formulating the legislation that regulates it applies a cumulative and alternative criminal liability pattern. If a corporation commits the crime of trafficking in persons, criminal liability and sanctions can be imposed on the Corporation and its management. It has been mentioned earlier that when the Corporation is proven to have committed a criminal act, then criminal liability can be applied to the Corporation and its management. The ETiP Law regulates this act. Article 13, paragraphs (1) and (2) of the ETiP Law states that:

- 1) The crime of trafficking in persons is considered committed by a corporation if the crime is committed by a person acting for and on behalf of the Corporation or for the benefit of the Corporation, whether based on employment or other relationships, acting within the corporate environment either alone or jointly
- 2) If trafficking in persons is committed by a corporation, as referred to in paragraph (1), investigation, prosecution, and punishment shall be carried out against the Corporation and its management.

Rules regarding the handling of corporate crime are also regulated in Supreme Court 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, where it is stated in that corporations can be held criminally responsible following the criminal provisions of the laws governing corporations. Furthermore, paragraph (2) explains that the judge imposing a crime on the Corporation can assess the Corporation's guilt as follows:

- a. The Corporation may profit or benefit from such criminal acts or such criminal acts are committed for the benefit of the Corporation;
- b. Corporations allow criminal acts to occur; or
- c. The Corporation does not take the necessary steps to prevent a more significant impact and ensure compliance with applicable legal provisions to avoid criminal acts.

Against these two provisions, namely the ETiP Law and Supreme Court Number 13 of 2016, it can be seen that the rules contained in Supreme Court Number 13 of 2016 only regulate criminal acts against corporations and do not include criminal acts against corporate management, while the provisions of the CAHT Law have regulated criminal liability against corporations and corporate governance. However, the explanation is not regulated when the criminal responsibility is transferred to the management of the Corporation or the Corporation directly. This statement above contrasts with the formulation of corporate liability in the Corruption Law, where the Corruption Law also places corporations and corporate administrators as legal subjects who can be held criminally responsible as stipulated in the CAHT Law. However, the explanation section of the Corruption Law mentions the criteria for corporate management, which has not been contained in the provisions of the CAHT Law. The explanation of the Corruption Law explains that what is meant by management is a corporate organ that carries out the management of the Corporation concerned, according to the articles of association, including those who have the authority and participate in deciding corporate obligations that can be classified as corporate crimes [16]. Against the provisions contained in the Corruption Law, it is appropriate that the provisions of the CAHT Law also explain the definition and criteria of corporate

management specifically and clearly. Management is a person who has a functional position in a corporation, participates in corporate management, has authority and obligations based on basic budgets, and is involved in implementing corporate activities.

5. Conclusion

Trafficking in persons is mostly the mode of labor recruitment. In recruiting workers, the employer must make a work agreement with the workers. Employment Agreement is an agreement between both parties, namely workers and employers. The employment agreement is based on the principle of freedom of contract, where the freedom is not absolute. Labor agreements that do not pay attention to laws, decency, and norms of justice and violate human rights provisions guaranteed by the Constitution that expose workers can qualify as trafficking in persons. However, this proof cannot be proven by an employment agreement (formal) alone; it must be done with the action of prohibited consequences (material). For trafficking in persons committed by corporations, those who can be held accountable are corporations and administrators. This statement is regulated in line with the development of criminal law in Indonesia, which places corporations and corporate administrators as legal subjects, just as individuals. Provisions regarding corporate responsibility for trafficking in persons are regulated in the ETiP Law and Supreme Court No. 13 of 2016. Such liability can be in the form of imprisonment and fines.

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