



# Overcoming Human Trafficking Through Humanity Approach

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## Abstract

Human trafficking is one of transnational crimes with the characteristic of human exploitation. This crime injures humanity values; therefore in overcoming it, humanity approach is required in the domains of law and ordinance formulation and enforcement. This article used philosophical approach to the value "Just and civilized humanity" as the ideal law (*rechtsidee*), conceptual approach to the crime overcoming doctrine, and statute approach prevailing in Indonesia. Overcoming human trafficking through humanity approach is conducted with the principle "Protecting human prestige and dignity, and revitalizing the access of vulnerable person, particularly women and children, to justice. In the transnational context, extradition agreement is required in the attempt of law enforcement supported with Mutual Legal Assistance in the attempt of resolving transnational crime.

**Keywords:** human trafficking; humanity approach; human exploitation

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## Introduction

Rapid development of science and technology impacts the development of community life, including the development of transnational crime.<sup>1</sup> Currently, transnational crimes, viewed from quality and quantity aspects, have more varying and massive types and modes, with economic benefit being the end goal.

Legal science is required to resolve legal issues developing today<sup>2</sup>, particularly in treating human trafficking transnational crime. The modus operandi of human trafficking crime is generally to improve life quality from economic aspect; thus, the victims of human trafficking are often not aware that they have gotten into its trap. Coalition for Indonesian Women and Children (Indonesian: *Koalisi Perempuan dan Anak Indonesia*, thereafter called KPAI) as a Self Help Group paying special attention to women and children, based on the data of 2016, recorded about 70% victims of human trafficking or sexual exploitation. During 2019, KPAI recorded 244 human trafficking cases, with commercial sex exploitation being the cases most frequently occurring.<sup>3</sup> People (humans) encounter degraded humanity values. Meanwhile, law is created to protect humans holistically.

Law protection for the community in the term of human trafficking crime is implemented through humanity approach. At transnational crime level, the universal humanity values are the vision of transnational law enforcement. In the context of Indonesia as a constitutional law, humanity approach is based on the value of "Just and civilized humanity" constituting Indonesian ideal law.

The problem studied in this article is how to overcome human trafficking crime through humanity approach. International Labor Organization (ILO)'s study on women and children trafficking found that human trafficking in Indonesia is due to poverty, limited access and job opportunity, social conflict and war,

<sup>1</sup> Teguh Prasetya, et al., *Filsafat, Teori, dan Ilmu Hukum*, Radja Grafindo Persada, Jakarta, Cet. II, 2014, p.1

<sup>2</sup> Teguh Prasetya, et al., *Ilmu Hukum dan Filsafat Hukum, Studi Pemikiran Ahli Hukum Sepanjang Jaman*, Pustaka Pelajar, Yogyakarta, 2007., p. 20.

<sup>3</sup> Koalisi Perempuan dan Anak Indonesia, Jakarta, 2016.

weak law enforcement. Some causing factors related to governmental policy and performance such as lower investment, education, and health, birth document scarcity, and lower access to information.

Okky Chahyo Nugroho (2018)'s study concluded that the state is responsible for overcoming human trafficking. The state's responsibility is accomplished by creating Human Trafficking Prevention and Overcoming Task Force.<sup>4</sup> This article will confirm that the attempt of overcoming human trafficking will be accomplished through humanity approach that is oriented to public justice and civility at transnational scale, because humanity is a universal value order.

## Methods

This article is normative legal research with a philosophical approach to the value of "just and civilized humanity" as an ideal law (*rechtsidee*), a conceptual approach to the doctrine of crime prevention, and an approach to laws applicable in Indonesia. The laws that become legal research materials include Law no. 21 of 2007 concerning the Crime of Trafficking in Persons, Law no. 17 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning Child Protection and the Criminal Code.

## Result and Discussion

### 1) Humanity approach

Humanity approach in Indonesia is defined as "Just and civilized humanity", as mentioned in Indonesians' ideology, Pancasila.<sup>5</sup> These value postulates are firstly, respecting human prestige and dignity; secondly, the presence of access to justice for the vulnerable ones. Respecting human prestige and dignity is based on a rationale that everyone has irreplaceable living right and human rights are constitutionally formulated in fundamental human rights. This right ownership is inherent automatically to its status as human, regardless race, religion, sex, and any other differences.<sup>6</sup>

Every human being has right and obligation, freedom to choose (self determination), and self accountability. This conception is the normative base in constructing law at legislation level and in law enforcement system, particularly criminal justice system. Law is a category of social mediation between fact and norm.<sup>7</sup> Law as a closed system has logic, work mechanism, and a series of particular procedure. The legislating process is often political-nuanced but it is not justified to leave basic values of essential human rights as the eternal right.

Humanity approach is embodied to create law protection for the victim of human trafficking, through various channels (society's access to justice), because basically the rights inherent to everyone are not merely individual rights guaranteeing the as wide as possible freedom particularly in technology development, but also the communal interest-oriented one. Law builds on just and civilized humanity values, positioning human beings to be the subject. State is from, by, and for humans; therefore there is a direct relationship between human and state. State upholds human prestige and dignity as civilized creature.<sup>8</sup>

### 2) Essence of Human Trafficking

Human is defined complexly and comprehensively as the physical-spiritual unit controlled by common sense, including his existence among other humans.<sup>9</sup> Law Number 21 of 2007 about the Eradication of

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<sup>4</sup> Okky Chahyo Nugroho, *Tanggungjawab Negara dalam Penangan Tindak Pidana Perdagangan Orang*, *Jurnal De Jure*, Kementerian Hukum dan HAM, 2018, Vol. 18.No. 4,

<sup>5</sup> Sastrapratedja, *Lima Gagasan yang Dapat Mengubah Indonesia*, Pusat Kajian Filsafat dan Pancasila, Jakarta, 2013, pp.2-3.

<sup>6</sup> James Griffin, *On Human Rights*, Oxford University Press, New York, 2008, p. 16

<sup>7</sup> Stephen May, *Critical Multiculturalism: Rethinking Multicultural and Antiracist Education*, Palmer Press, London, 1999, pp. 27-30.

<sup>8</sup> Yovita A. Mangesti, *Hukum Berparadigma Kemanusiaan*, Genta Publishing, Yogyakarta, 2016, p. 74

<sup>9</sup> Yovita A. Mangesti, et al., *Nutrisi Bioetika Dalam Bingkai Hukum Positif di Indonesia*, D'Rosarie, Surabaya, 2021, pp.70-71

Human Trafficking Crime states that: Human trafficking is an act of recruiting, accommodating, transporting, dispatching, displacing, or receiving an individual with violent threat, violence use, kidnapping, locking-up, falsification, deception, power abuse, or vulnerable position, debt trapping or giving wage or benefit, therefore approval is gotten from the one controlling another, either at home or abroad (cross-country) for exploitation purpose or making an individual exploited.

Human trafficking is due to opportunity, economic, educational, and social-cultural factors, in addition to science and technology advance. However, economic and educational factors are apparently the ones most frequently causing the prevalence of human trafficking. The factor most frequently causing women and children trafficking is poverty, making them attempt to improve their economic condition by seeking job and often utilizing any job opportunity offer as long as it makes money.

Poverty factor leads to an individual's inability of fulfilling economic needs, particularly food, clothing, and shelter, according to intended standard. Poverty also can generate physical and psychological suffering due to the fund source they obtain. Poverty factor makes women and children utilize any job offer as long as it makes money. Nevertheless, what they dream of and expect is not as easy as what they have imagined. Instead of getting job and making money, they become the victim of human trafficking.

In relation to human trafficking in East Java, Rachmad Syafaat stated that there are some factors contributing to human trafficking, particularly women and children trafficking, as explained below:

- a. Economic problem
- b. Disharmonious family
- c. Early-age marriage or divorce
- d. Victim of sexual abuse in early age
- e. Victim of rape
- f. Limited job opportunity
- g. Being affected by other children working successfully: the victims are usually pressed by mean of fulfilling their life needs, some jobs like working in food court, garment, and servant are offered to them, to make them come to village/city, and their parents are persuaded to tell their children to work without knowing the type of job, sometimes agents give parents some loan and then asked their children to repay the loan with their wage after they have worked.<sup>10</sup>

The most fundamental factor contributing to the increased human trafficking rate is economic factor, in the sense of economic problem, particularly the fact of poverty. Considering the finding of previous studies, it can be summarized that limited economic condition compels women and children to help fulfill the family's needs and their own needs by means of doing any job. These less fortunate women and children want to do any job as long as it gives them income. They work, particularly, in non-formal occupation regardless the type and the workplace, including being commercial sexual worker, etc.

Such condition gives the perpetrator of human trafficking an opportunity of using women and children's helplessness by making them the commodity of human trafficking, because it is this group that consists of vulnerable persons that can be persuaded easily with the promised job or other economic aid. In addition, some other factors cause human trafficking: family disharmony, early-age marriage, being the victim of sexual abuse during childhood, being the victim of rape; thus women can no longer take their self value into account.<sup>11</sup>

The terminology of human trafficking is in contradiction with humanity value, because a person is not an object or product that can be exploited and does not have commodity value. This element of action breaks human prestige and dignity. A person under another's control has no access to justice. This person belongs to vulnerable group that should be given freedom and protected for their life rights. The terminology of human trafficking in philosophical study and factual reality is a legal event against a person and done by

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<sup>10</sup> Ibid.

<sup>11</sup> Mary Anne Warren, *Moral Status Obligations to Person and Other Living Things* (Oxford: Oxford University Press, 1997).

another person<sup>12</sup>. For that reason, in overcoming human trafficking crime, victim and perpetrator should be treated proportionally.

Digital media as a promoting medium through social media clearly does not appreciate but instead degrades the dignity of human as God's creature with moral. In addition, it breaks the human rights given by his Creator.<sup>13</sup> For that reason, state should be present to anticipate, to prevent, and to overcome it.

Normatively, state indeed has intervened in the attempt through releasing Law Number 21 of 2007 about the Eradication of Human Trafficking Crime. The issuance of legislation only is not enough; thus, the state should know how to implement and to enforce it effectively in current situation.

United Nations defines "human trafficking" as threat or violence or other form of compulsions, kidnapping, deception, fraud, power abuse or vulnerable position, giving or receiving wage or benefit to get permit from the one having control over another for exploitation purpose. The forms of human trafficking against women and children are, among others:

Adoption conducted through trading with Indonesian or foreign citizens, ordering bride or request for contracted wife coming from certain places, involving children in illicit drug trading, employing children in plantation, pedophilic exploitation, women and children pornography, women and children trafficking for forced labor, employing women and children for begging on the street, employing women and children in sexual work or prostitution, bias gender culture and 'rape culture', women often feel marginalized by standard philosophy of mature moral reasoning. Humans tend to protect more the vulnerable element from the nature if they accept moral obligation to it.<sup>14</sup>

The enactment of Declaration of Human Rights, constituting the result of United Nations' Conference on December 10, 1948, has put foundation for the human treatment against all human beings. Everyone, regardless sex, origin, race, religion, and ethnic, should get equal treatment as God's creature. Everyone has prestige and dignity as human beings given by the Creator. Therefore, it has been everyone and every state's obligation to give the guaranty of protection to everyone's prestige and dignity by preventing the human trafficking crime from occurring.

The practice resembling slavery in the past is the act of positioning an individual under another's power, so that the individual cannot decline an unlawful job order by the other person, even though she does not want to do so. Human trafficking, involving women and children, has spread widely creating either organized or non-organized criminal network (syndicate). Human trafficking crime is done not only by individual but also by corporation and the organizer of state that misuse its authority and power. The human trafficking perpetrator network has not only cross-region (in a country) but also cross-country operational coverage.

Law Number 21 of 2007 about the Eradication of Human Trafficking also regulates the protection of witness and victim as an important aspect in law enforcement, intended to give basic protection to victim and witness. In addition, this law also pays much attention to the victim's suffering as the consequence of the human trafficking crime in the form of restitution right that should be given by the perpetrator of human trafficking as the compensation to the victim, and regulates the victim's right to medical and social rehabilitation, discharge or reintegration that should be done by the state, particularly to those suffering physically, psychologically, and socially, due to human trafficking crime.

In the context of human trafficking, the entrance most easily used by the perpetrator of human trafficking is the migrant worker, being the hope for many Indonesians, because of their potential high wage to improve their family's life condition. The triggers are, among others, high unemployment rate in

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<sup>12</sup> Yovita, Op. Cit.

<sup>13</sup> Teguh Prasetya, Ibid.

<sup>14</sup> Rahmad Syafaat, *Dagang Manusia (Kajian Trafficking Terhadap Perempuan dan Anak di Jawa Timur)*, Yogyakarta : Lappera Pustaka Utama, 2003, 15.

Indonesia and poverty also contributes considerably to the trafficking of Indonesian workers during the process of dispatching Indonesian workers to foreign countries<sup>15</sup>.

Human trafficking in Indonesia is like an iceberg phenomenon that is not apparent on the surface but actually very worrying inside. Some other social aspects triggering or underlying human trafficking are:

- a. Contract migrant workers coming from rural areas and particularly poorest areas.
- b. Having no skill
- c. High cost to be spent triggers the prevalence of illegal workers
- d. Training and skill have not been important points
- e. The placement and the protection of Indonesian migrant workers (TKI) have been governed in the Law Number 39 of 2004.<sup>16</sup>

The characteristics of human trafficking can be said as the type of transnational crime, because of its activities crossing state borders, particularly related to the nationality and residence of human trafficking perpetrator and victim, and the consequence of it throughout world. The states in the world agree to classify human trafficking crime into transnational crime category, just like corruption and drug abuse, terrorism, and etc, that should be treated extraordinarily and be punished severely. This crime can be classified into “extraordinary crime”.

The causes or the roots of human trafficking problem should be identified comprehensively, meaning that they should be contemplated or thought of philosophically.

Human trafficking problem should get extra serious attention from the government, through its law enforcers. Recalling the exclusive and sensitive characteristics of human trafficking crime In Indonesia as the consequence of economic pressure being its main characteristics and modus operandi, it is important to take some attempts to overcome and to prevent human trafficking crime from occurring. The principle is “preventive action is better than overcoming measure.

### 3). The characteristics of Human Trafficking Crime as a Transnational Crime

The characteristics of human trafficking as a transnational crime can be found in the placement of Indonesian migrant workers in foreign countries who commit murder crime. In that case, the perpetrator was identified to be an Indonesian placed in other state’s region (Malaysia). In the placement region of Indonesian migrant workers, Malaysia, a migrant worker killed a Japanese person, and the migrant worker then ran away to Singapore.

In the sample case above, the problem is who is authorized to arrest the perpetrator and what court does have an authority to trial him as the law enforcing attempt. In this case, there are some possibilities related to who are authorized to do law enforcement to represent Indonesia as the origin state of the perpetrator (Indonesian Migrant Worker), Malaysia as the venue, Japan as the origin state of the victim, and Singapore as the run-away place.

Indonesia, of course, has authority related to the principle of personality recalling that the perpetrator is an Indonesian, or Malaysia because the ‘*locus delicti*’ is in Malaysia’s region, or Japan recalling that the victim of the murder is a Japanese. In this case, Japan, of course, has interest, because based on personality principle it has interest in enforcing its criminal law as the attempt of protecting its citizens, recalling that each of states has an authority to enforce their own law related to the crime committed by an Indonesian migrant worker abroad.

Basically, a transnational crime is not much different from that in general. However, it has cross-country characteristics viewed from its ‘*locus delicti*’ and consequence pertaining to many states. If the consequence

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<sup>15</sup> International Labour Organisation, *Jender Dan Kemiskinan*, Jakarta, 2026, p.2

<sup>16</sup> Teguh Prasetya, *Ibid*.

of crime is massive in nature and has an impact on international and or human interests like genocide, terrorism, etc, the crime is an international or global one.

Law Number 17 of 2016 about the enactment of Government Regulation Substituting for Law Number 1 of 2016 about the Second Amendment to Law Number 23 of 2002 about Child Protection into the Law confirms the prohibition of children trafficking and confirms that children deserve growth and development and participation reasonably according to human prestige and dignity, protection from exploitation, and freedom from slavery.

In the Penal Code (Indonesian: *Kitab Undang-Undang Hukum Pidana*, thereafter called KUHP), the prohibition of human trafficking has been governed in Article 297 stating that “Women and non-adult boy trafficking are threatened with maximum imprisonment of six years”, and classifying the deed into crime. Thus, human trafficking is classified into crime with the punishment of imprisonment, according to Penal Code. However, the provision of Article 297 of the Penal Code threatens the perpetrator with too light punishment not matching the consequence of human trafficking crime suffered from by the victim. As such, a law should be developed to govern the human trafficking specifically to provide material and formal legal foundation. For that reason, this specific law anticipates and covers all types of actions in the process, way, or any exploitation likely occurring in human trafficking practice, conducted between regions in a state or between different states, and by either individual or corporate perpetrators.

The Law Number 21 of 2007 about the Eradication of Human Trafficking states firmly that human trafficking is a criminal action, and to the perpetrator the criminal sanctions will be imposed. The confirmation is mentioned in the Provision of Article 1 number 2 of Law, formulating that “Human Trafficking is any action or a series of actions fulfilling the elements of crime specified in this Law”.

Law Number 21 of 2007 about the Eradication of Human Trafficking Crime also states clearly that human trafficking is a deed breaking human prestige and dignity. It is mentioned in the chapter of considering point (b) of Human Trafficking Crime Eradication Law, that “human trafficking, particularly involving women and children, is the deed in contradiction with human prestige and dignity and breaking human rights, and thereby should be eradicated”. Therefore, in any state throughout world, human trafficking is considered as a crime prohibited and to the perpetrator of it, criminal sanctions will be imposed.

Law Number 21 of 2007 about Human Trafficking Eradication has put criminal sanctions into the provisions of early articles. It indicates the legislative commitment to human trafficking crime as the one needing to be eradicated. However, considering the sanction to be imposed as mentioned in Articles 3, 4, 5 and 6 of Law Number 21 of 2007 about Human Trafficking Crime Eradication, the sanctions imposed are too light compared with the suffering experienced by the victim of human trafficking, ranging between IDR 120,000,000 (one hundred and twenty millions rupiah) and IDR 600,000,000 (six hundreds million rupiah).

#### 4). Human Trafficking in Islamic Perspective

#### 5). Humanity approach as the attempt of overcoming human trafficking as a transnational crime.

The attempt of overcoming human trafficking as a transnational crime is taken by: a) protecting human prestige and dignity, b) revitalizing the access to transnational justice: improving and empowering international cooperation. It is elaborated as follows:

##### a) Protecting Human Prestige and Dignity

Human trafficking has been done for a long time despite in contradiction with human prestige and dignity. Human trafficking is the violation of human rights that should be protected by the state under Pancasila and UUD 1945 (1945 Constitution). Human trafficking is a well-organized crime using conventional and modern methods.

In the organized crime, the perpetrators of human trafficking build network from national to international level<sup>17</sup>. This organized crime involves each group of people whose main activity breaks the criminal law to get illegal benefit and power by committing criminal activities<sup>18</sup>.

In Indonesia, the victims of human trafficking are commonly women and children. Critical notes to the human trafficking with women and children being the victims are the varying opinion particularly on child labor as one of problems needing a distinctive solution. In relation to child labor, there are at least three principles needing serious attention: *firstly*, they hold on a principle that child labor should be abolished (abolition). This principle results from an assumption that a child may not work, as he/she should go to school and play; *secondly*, child labor should be protected (protection), this principle builds on a view that a child as an individual has economic right to work and therefore the rights as worker should be guaranteed through manpower regulation as that prevailing to adult labor; *thirdly*, an opinion that child labor should be empowered. It departs from the recognition of child's rights and the support to the attempt of reinforcing child labor to understand and to fight for their rights<sup>19</sup>.

A fundamental problem is also due to women and children's unawareness that they become the object of human trafficking and the risk and hazard of the job they do. Many people migrating to seek job in both Indonesia and abroad do not know the hazard of human trafficking and the ways used by the perpetrators of human trafficking with various tricks to trap female and child labors, actually resembling the slavery practice in the past that has been prohibited in the present.

Poverty factor has forced many families to plan a strategy to support their life, including migrating to find job and working due to loan trap, the job done by an individual to repay debt or loan. Meanwhile, considering the "human trafficking" cases occurring in Indonesia, it can be concluded that "women and children trafficking pattern uses more deception modus with an excuse to entice them with good job and good income, but in fact they are exploited sexually. The modus is sufficiently successful recalling the victims to whom the job is offered are those actually needing job to fulfill their life needs because they live under poverty line.

Globalization development also impacts the lifestyle of the present youths, particularly women, like gadget and social media use constituting media to the development of lifestyle and even the life culture of youths today. Such social media affects the lifestyle encouraging the youths to tend to have more money and higher standard of life, and in turn triggering migration and making people vulnerable to "human trafficking".

Globalization also leads to the people's weak control over social behavior of community. Many "human trafficking" cases occurring due to deception done by promising any job, in fact, are the modus operandi of "human trafficking". People's mindset is also affected by cultural factor, including the role of women in family: although cultural norms emphasize that the women's place is at home as wife and mother, it is also recognized that women often become additional/ complementary breadwinners to meet the family's need.

Theoretically, anyone committing crime, including the perpetrator of human trafficking, should be accountable for his deed legally. Van Hamel defines criminal accountability as a psychologically condition and skill bringing three abilities: 1) ability of understanding the meaning and the actual consequence of the self deeds, 2) ability of being aware that the deeds are in contradiction with society order, and 3) ability of determining the wish to take action<sup>20</sup>.

Meanwhile, Simons states: "the accountability in criminal law is essentially:

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<sup>17</sup> Prakoso, Abdul Rahman., & Nurmalinda, Putri Ayu. (2018). Kebijakan Hukum Terhadap Tindak Pidana Perdagangan Orang. *Seminar Nasional Hukum Universitas Negeri Semarang*, Vol.4, (No.1), pp-1-24.

<sup>18</sup> Rosnawati., Din, Mohd., & Mujibussalim. (2016). Kepastian Hukum Hak Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang (TPPO) Berdasarkan Undang-Undang Nomor 21 Tahun 2007. *Jurnal Ilmu Hukum*, Vol 4, (No, 1, Februari), pp-1-7.

<sup>19</sup> M. Makhfudz, Op.Cit.

<sup>20</sup> Van Hamel in Adam Chazawi, *Pelajaran Hukum Pidana 1: Stetsel Pidana, Tindak Pidana, Teori-teori Pemidanaan & Batas Berlakunya Hukum Pidana*, Rajagrafindo Persada, Jakarta, 2008, p. 79.

- a) Psychological condition of an individual, and
- b) Relationship between psychological condition and deed committed.<sup>21</sup>

Van Hamel provides criteria of accountability ability consisting of 3 (three) elements: *firstly*, ability of comprehending actually the consequence of their deed; *secondly*, ability of being aware that the deeds are in contradiction with society order; *thirdly*, ability of determining the desire to take action. These three abilities are cumulative<sup>22</sup>. Referring to Satochid Kartanegara's opinion, an individual's ability of being accountable should meet 3 requirements:

The individual's mental condition is in such a way that he can understand or know the value of his deed, and thereby can understand the consequence of it.

The individual's mental condition is in such a way that can determine his desire over the deed committed.

The individual should be aware that the deed he does is the prohibited or unjustifiable one, viewed from legal, society, and moral aspects<sup>23</sup>.

Moeljatno concludes that "An individual cannot be accountable for (punished) when he/she did not commit any crime. However, not all individuals commit crime can be punished" <sup>24</sup>. The accountability in criminal law builds on the principle "there is no punishment of sanction without fault (*'geen straf zonder schuld'*; *'actus non facit reum nisi mens sit rea'*)"<sup>25</sup>. It is in line with the Law Number 21 of 2007 about the Eradication of Human Trafficking Crime stating that Human Trafficking crime is a very complex activity with human being the object to get benefit regardless the victims' interest. Normatively, Law Number 21 of 2007 about the Eradication of Human Trafficking crime has imposed firm sanction as a repressive measure to overcome human trafficking. Nevertheless, the inclusion of criminal sanction does not guarantee maximally the attempt of eradicating human trafficking crime.

Those committing human trafficking can be punished based on Article 2 clause (1) of Law Number 21 of 2007 about the Eradication of Human Trafficking, deciding that "Any one who are involved in recruiting, transporting, accommodating, dispatching, displacing, or accepting an individual with violent threat, violence use, kidnapping, locking-up, falsification, deception, power abuse or vulnerable position, loan trap or giving wage or benefit, despite approval from the one having control over another, for exploitation purpose, in Republic of Indonesia's territory, will be punished with criminal sanction of at least 3 (three) years and at most 15 (fifteen) years and fine of at least IDR 120,000,000 (a hundred and twenty million rupiah) and at most IDR 600,000,000 (six hundreds million rupiah).

The difficulty found in revealing children trafficking often results from the factual condition that children are still under their parents' supervision, and the parent should be responsible for their children's life. The authorized one will find difficulty in supervising the child labors. However, based on factual condition in "human trafficking" involving many women and children, the government should obligatorily overcome and prevent the case for the sake of children's future. This reality can be considered portraying the problems related to biased gender, rape culture, and victimization still threatening vulnerable that must need adequate legal protection from the state.

Another problem is women "stereotype" that is as if justified as the stimulant of men's lust. This sexual exploitation rate will increase, with the women being the object of violence and trafficking on the one hand. Women as if have commodity value. Furthermore, if the women may be bought or paid, they can be employed as "instrument free sex" potentially leading to domino effect of unwanted pregnancy. Another consequence likely occurring is women becoming surrogate mother prevalently.

<sup>21</sup> Eddy O.S. Hiarij, *Prinsip-Prinsip Hukum Pidana*, Cahaya Atma Pustaka, Yogyakarta, 2014, p. 123.

<sup>22</sup> Ibid., p. 128

<sup>23</sup> Satochid Kartanegara, *Hukum Pidana Kumpulan-Kumpulan Kuliah*, Balai Lektur Mahasiswa, Jakarta, 1983, pp. 23-244

<sup>24</sup> Moeljatno, *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta, 2008, p. 165.

<sup>25</sup> Ibid., p. 167.



The solution to this situation includes internal and external factors of the women. The internal factor intended is that women should be able to change paradigm, women is not only domestic creatures wrestling with giving birth, dressing, cooking or well, kitchen, and mattress who are then comfortable with this zone. Ethically, women should be aware that they are valuable and their life rights should be upheld and cannot be the object of commodity and that it is from women's body that the next generation of human beings will be born in the future.

#### b) Revitalizing Access to Transnational Justice: Improving and Empowering International Cooperation

The resolution of transnational crime theoretically can be accomplished through a variety of methods used. Revitalization should be made on the role of public and private institutions in the attempt of protecting the vulnerable persons and organizing social rehabilitation particularly to the victims. It can be accomplished through affirmative policy, giving the women bigger role as an attempt of solidifying the women in social and community aspects. Externally, a community-based law protection is required. The people (community) should contribute to creating access to justice to everyone, particularly women.

In addition, the people should obligatorily protect their citizens as an entity of group. The government's duty is to stimulate the people to participate in making them (community) independent and helping protect the weak people, including women. The establishment of women organization with their activities should be built into independent women. An attempt to be taken to accomplish it is to establish cross-state cooperation, either bilateral or multinational. This importance of international cooperation related to human trafficking builds on the fact that human trafficking crime is one of transnational crimes involving several states.

Law enforcement can be implemented by establishing cooperation in entering into extradition agreement. Extradition agreement is basically a bilateral agreement between the states entering into extradition agreement. The extradition agreement essentially contains the mutual agreement to deliver the perpetrators of crime who run away to their state. The delivery of criminal is done based on the agreement between the two states, if the type of crime is included into the approved extradition agreement.

There are some principles related to extraditable crime: double criminality principle, in the case of Indonesian migrant workers who commit murder as aforementioned, in which the deed done is the criminal action classified by both countries into the crime threatened with criminal sanction. For example, in relation to planned murder, threatened with death sentence in Indonesia, if the state requested does not include death sentence in its criminal law, the perpetrator cannot be extradited.

In addition, the principle "not delivering the perpetrator of political crime" should be considered and each of states does not include the perpetrator of political crime into the list of those that can be delivered to the requesting state. It is because the political crime belongs to human rights that should be protected by any country. The principle of not delivering the citizen reflecting the personality or active national principle that in Indonesia is regulated in Article 5 of Penal Code is the point needing to be considered in the law enforcement against the crime committed by Indonesian migrant workers in foreign countries.

Another principle to be considered is '*ne bis in idem*', in Indonesia reflected on Article 76 of Penal Code, in which this principle applies universally. The essence of principle is that an individual to which criminal sanction is imposed and having fixed legal power '*inkracht van gewijsde*' cannot be prosecuted for the second time in the same case. The principle of expiration in extradition law is the one needing to be considered in extradition agreement. This principle nullifies the delivery of transnational crime perpetrator to the requesting state, unless the certain state does not implement the principle of expiration; thus, the crime can be processed legally anytime.

In the term of crime related to some states that apply for the extradition of the perpetrator will be dependent on whether or not there is extradition agreement between requesting and requested states. The delivery will be made to the states having entered into extradition agreement previously. Actually, the delivery of crime perpetrator can be done without previous extradition agreement, when both states

establish good relationship between the requesting and the requested states, based on the good faith principle in international law.

In addition to extradition agreement, the law enforcement against the transnational crime can be accomplished using “Mutual Legal Assistance”. This method is conducted by means of cooperation packaged in the agreement between states containing the request for help to give information and anything related to the crime, for example, giving other states an opportunity of arresting the perpetrator of crime. The objects are evidence taking and giving, confiscation, suspension of asset resulting from the crime, document display, presenting an individual to give information related to transnational crime.

Another principle to be considered in the law enforcement of transnational crime is the principle “respecting the state sovereignty as an independent state. Every independent state has sovereign right to its territory, including in developing and enacting its national law. Therefore, any state establishing relationship with others should obligatorily respect the law of corresponding states, related to the request for the extradition of transnational crime perpetrator to its state. In the case of extradition, the requesting state can neither its desire against the state requested to deliver the perpetrator of transnational crime who runs away to the state, or in the term of “*mutual legal assistance*” use nor force the state to help facilitate the legal process against the perpetrator of transnational crime who runs away to its state.

The important note taken in the law enforcement related to human trafficking is the role of the court as the judge and the decision maker. The court/the judge should actually find the motive of human trafficking behavior. The judge can not only make his past experience the precedent, meaning that the similar cases cannot be decided similarly, because the *modus operandi* can be different. In other words, the judge should not follow precedent or called the doctrine of precedent or *stare decisi*. In the Pancasila legal system, it is called the Decision with Fixed or Permanent Legal Power<sup>26</sup>.

## Conclusion

The overcoming of human trafficking crime through humanity approach is oriented to civilized humanity values that are implemented using the principles “protecting human prestige and dignity, and revitalizing the access to justice for the vulnerable persons, particularly women and children”.

Concretely, the law enforcement against transnational crime can be accomplished through some resolving methods commonly known in international world, such as building cooperation between states, either bilateral or multilateral.

Extradition agreement is one of resolving methods used in the attempt of law enforcement, of course with some mutually agreed requirement, and by paying attention to the principle of law enforcement to transnational crime. Mutual Legal Assistance is also the form of cross-country cooperation as one of methods used to settle transnational crime.

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