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## HUMAN TRAFFICKING AS A HUMANITY CRIME IN INDONESIA

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### ABSTRACT:

**Human rights are the basic rights possessed by human beings from birth that are inherent in humans. Human rights cannot be revoked and should not be violated. In the modern world today, slavery still exists. The word slavery is now experiencing a shift of meaning in a more complex and varied directions. Traffickers have deprived others of the right to freedom to be exploited for personal gain. Human Trafficking, especially women and children, is a form of violation of the dignity and human rights, because in it there are elements of threat, torture, imprisonment, sexual violence and make them as commodities that can be traded. Under Indonesian law, human trafficking includes as human rights violations that include crimes against humanity or are called extraordinary crimes.**

**KEYWORDS: Human Trafficking, Human Rights, Humanity Crimes**

### INTRODUCTION:

Human rights are universal and inherent in every human being since birth as human beings, so that no one can reduce or

revoke human rights. Many countries regulate human rights in its constitution and its legislative products. Human rights as a common standard of achievement that ultimately becomes the safeguard of the future civilized peoples of the countries.

Human rights are developed, formerly human rights seen only on civil and political rights, then it is developed not only civil rights and political rights but also economic, social and cultural rights, otherwise recognized not only individual rights but also recognized group rights, such as group rights, minority rights and indigenous rights. Therefore, it is necessary to understand when group rights apply in the society of the state or society among nations.

In the history of the development of the human rights struggle movement, it was obtained sequentially that the first movement emerged in the English state in 1215 gave birth to Magna Charta, then perfected with the birth of Petition of Human Rights in 1627 and Bill of Rights in 1689. In America in 1776 born Declaration of human Rights and in France in 1789 with Declaration des Droits de l'home et citoyen known for the motto of Liberte, Egalite,

Fraternite. Demands on Human Rights are increasingly frequent until World War II. Often the emergence of arbitrary acts occurred in the days of feudalism in which the people must perform the duties imposed by the authorities without obtaining their rights. The law that regulates the rights at that time did not yet exist, so there is a strong control over the weak in the life of the community. Humankind has been born natural rights have been in the development of human nature progress arise movements that struggle for basic rights and freedoms that based on the inner consciousness of human beings where those rights need to get protection and guaranteed in writing in the constitution of every country.

Human trafficking has become a global phenomenon, including in Asian countries and even around the world. Human trafficking with various purposes of exploitation is a transnational and organized crime, which has serious consequences for victims as well as for society and the state. Human trafficking is a transnational crime that may occur in some States because trafficking occurs between the sending State, the transit State and the receiving State or the State of destination. Human trafficking is as well as organized crime with systemized culprit. Organized crime is linked to international syndicates. Many Asian countries are identified as the source, transit point, and destination country for trafficking victims, such as for that purpose forced labor and commercial sexual exploitation.

Human trafficking violates human rights which are human slavery in the modern era, since humans are equated with merchandise traded so that the right to life and the right to life are seized. Deprivation of liberty including all forms of slavery is incompatible and contradictory to the human aspect, in addition to human trafficking against the social aspect of the right to liberty, freedom right for nationality, the right to get protection or social

security, the right to a healthy life." The social aspect constitutes the whole aspect of human rights which according to law is essentially a legal interest so as to be protected".(Barda Nawawi Arif, 2010, p. 64-67). Therefore in the concept of Human Rights that man cannot become the object of trade (the object of law). Man is only worthy as a legal subject having rights and obligations. Thus Human Trafficking is a gross human rights violation which includes human crimes constituting transnational and organized crime so it is called extra ordinary crimes and has a wide impact both nationally and internationally.

Based on UNODC Report on Human Trafficking modern expose form Slavery stated that "the most common form of human trafficking first is sexual exploitation (79%). Victims of sexual exploitation are mostly women and young girls. The second most common form of human trafficking is forced labor (18%), although this may be a mistake because forced labor is less frequently detected and reported than trafficking for sexual exploitation. Worldwide, nearly 20% of all trafficking victims are children. However, in parts of Africa and the Mekong region, children are the majority (up to 100% in Western Africa).(Trafficking in Person Report, 2017)

The United Nations Protocol against Human Trafficking as a prominent international treaty in this field which came into force in 2003. The report shows that in recent years the number of Member States seriously implementing the Protocol has more than doubled from 54 to 125 of 155 Countries. However, there are still many countries that do not have the necessary legal instruments or political will.(Trafficking in Person Report, 2017)

Therefore, how does human trafficking violate human rights? Human trafficking is as transnational crime and organized crime. Trade as a transnational crime illustrates that

trafficking does not only happen internationally but that crime must have the nature of crossing the border as a part of evil.

#### **CATEGORY OF HUMAN TRAFFICKING:**

One of the problems facing the world is human trafficking that includes crimes against humanity. It violates human rights, damaging families, destroying global markets, undermining the rule of law, and spurring other transnational criminal activities, this also threatens public security and national security, but at worst, human trafficking robs human freedom and dignity. Therefore, human trafficking must be eradicated. The forms of human trafficking occurring in a country with other countries have different characteristics, although in general the forms of human trafficking include sexual exploitation, economic exploitation and social exploitation. Based on Human Trafficking Report June 2017 forms of human trafficking included (Trafficking in Person Report, 2017):

##### **1. Sexual Trade**

Prostitution occurs because of the threats, fraud, coercion or combination of these means then the human trafficking. The perpetrator is involved in recruitment, storing, transporting, providing, obtaining a request or retaining a person for the purposes of the adult sex trade. Sex trafficking can also occur through coercive forms in which individuals are forced to continue prostitution to pay off debts, recruitment or they are sold so that they repay the debt first if they wish to be free.

##### **2. Children Sexual Trade**

A person under 18 years old is classified as a child recruited, transported, acquired, protected, solicited, or kept for committing commercial sexual acts, through threats, fraud or coercion, as human trafficking. The use of children in commercial sex is prohibited under US law and by law in most

countries of the world. Sex trafficking has devastating consequences for children, including old physical and psychological trauma, illness (including HIV/AIDS), drug addiction, unwanted pregnancies, malnutrition, social exclusion and even death.

##### **3. Forced Labor,**

Forced labor is also called the trade of labor which includes various activities of recruiting, transporting, giving, or obtaining with one's involvement using by force or physical threat, psychological coercion, abuse of legal proceedings, fraud, or other coercive means to force a person to work. Although the employee agrees, this does not apply then the worker is a victim of trafficking.

##### **4. Debt Bondage,**

One form of coercion used in human trafficking in the form of sex trafficking and forced labor through debt bondage. Some workers inherit debt; for example, in South Asia it is estimated that there are millions of trafficking victims working to pay off the debt of their ancestors. Others become victims of human trafficking or recruiters who violate the law exploit the assumed debt consciously or unconsciously, as a job term. Employment agencies, recruiters and employers in both countries of origin and destination can contribute to debt bondage by charging the cost of hiring workers by taking high interest, making it difficult or even impossible to pay off debts.

##### **5. Domestic Worker,**

Domestic workers who work at home include human trafficking because workers are not free to leave their jobs, they are isolated, abused and salaries are paid less than promised and even not paid, no holidays. Domestic workers, especially women, face various forms of sexual harassment and gender-based violence.

6. Child Labor,

Although children can be legally involved in certain forms of work, children can also be found in situations of slavery. Some indicators of forced child labor include situations in which the child appears to be in custody of a non-family member who needs a child to do work that financially benefits someone outside the child's family and does not offer the child the option to go, such as being forced to beg.

7. Child Army

Children's Army is a manifestation of trafficking when it involves illegal recruitment or the use of children through violence, deception, or coercion, by armed forces as soldiers or other forms of labor.

Judging from the forms of human trafficking above, it is clear that human trafficking is a crime of humanity because it is the worst treatment of human dignity. The consequences of human trafficking are not only result in casualties but consequently also to the gradual collapse of social institutions.

**HUMAN TRAFFICKING INCLUDING A SEVERE VIOLATION OF HUMAN RIGHTS IN INDONESIA:**

Human trafficking includes forms of modern human slavery and their vulnerable victims (socially, economically, politically, culturally and biologically). The consequences of human trafficking not only result in the victims but also the consequences of society and the state. The consequences for the victim are lifelong because of physical and psychological violence where the result of psychological violence is not easy and need longer time to heal and cannot be cured as a result of physical violence. The quality of the victim's life will be destroyed and even eliminate the lives of the victims.

Human trafficking with a variety of exploitative purposes is an international and

organized crime that has serious consequences for victims as well as communities and countries and can destroy social institutions slowly. For example, sexual exploitation, this results in human rights violations and destroys morally, socially and psychologically for the community. If this is organized continuously it poses a strategic risk to the future stability of society and the state.

The consequences of continuous organized crime of human trafficking can then continue and evolve to other organized crimes such as narcotics, terrorism, arms trade. Ongoing trafficking into large scale can result in disturbing the stability of the population or the wider society to the world community. This relates to the number of victims trafficked abroad or in connection with the many members of a particular national or ethnic group who are trafficked to a particular market or region to the destination country. This opens up opportunities for corruption and money laundering in the public sector, since the multilateral nature of trafficking can create opportunities for other crimes such as corruption, money laundering, narcotic trade and with the money ready to be used every day to allow for abuse against the fight against human trafficking by law enforcement. As corrupt law enforcement agencies in trafficking networks can no longer work enforces laws to combat human trafficking but cooperate with networks that operate people trafficking. All of these circumstances disrupt domestic economic investment, causing political instability and national security to undermine the whole order of life and the welfare of society leading to the collapse of a nation. Therefore, human trafficking for various purposes of exploitation is an international and organized crime that has a very serious impact on the security, welfare and human rights of victims who destroy the quality of life and even

eliminate the lives of the victims as well as potentially tearing down the state power.

The development of technology and society has links to the development of transnational forms of crime as well as organizations as a forum. This form of crime is called transnational crime, or better known as transnational organized crime such as corruption, money laundering, people smuggling, human trafficking, arms trade, and terrorism.

The United Nations General Assembly initiated the holding of the international convention on Organized Transnational Crime in Palermo Italy, which resulted in the United Nations Convention Against Transnational Organized Crime (UNTOC). Indonesia has ratified the TOC Convention with the enactment of Law No. 5 of 2009 on the Ratification of the United Nations Convention against Transnational Organized Crime on 12 January 2009. The objective of the creation of the UNTOC Convention is to promote cooperation in order to effectively prevent and combat such persons, as also provided for in Article 1 of UNTOC (in the Elucidation of Law of the Republic of Indonesia No. 5 of 2009 on Ratification of the United Nations Convention Against Transnational Organized Crime) which states that the purpose of this Convention is The purpose of this Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

The cooperation covers various aspects in the effort to combat transnational organized criminal acts. Therefore, States Parties including Indonesia shall take the necessary actions or steps, for example, to harmonize legislation without prejudice to the principle of sovereignty and territorial integrity of the state.

According to UNTOC a serious crime is described in Article 2 letter b UNTOC namely (b) "Serious crime" shall mean conduct

constituting an offense of punishment by a maximum deprivation of liberty of at least four years or a more serious penalty." Thus a criminal offense whose penalty threat is equal to or heavier than that limit is four years as long as it is classified as an organized transnational crime.(M. Iman Santoso, 2013, p. 115). The State party shall not make the definition of a serious criminal offense in its penal code but if it has rules relating to an organized criminal group, its punishment may be exacerbated.

The criminal offenses which include a serious crime in this UNTOC are: 1) Criminalization of participation in an organized criminal group in Article 5, 2) Criminalization of the laundering of proceeds of crime in Article 6, 3) Criminalization of corruption in Article 8, 4) Criminalization of obstruction of justice in Article 23, 5) Human trafficking, Especially Women and Children in supplements UNTOC. 6) The Smuggling of Migrants by Land, Sea and Air (Supplements of Migrants by Land, Sea and Air) supplement UNTOC, 7) The Illicit Manufacturing of and Trafficking in Firearms, Their parts and Components and Ammunition supplements UNTOC

Victims of human trafficking have rights and human rights always attached to human beings including human trafficking victims wherever located, even if they are outside the country of residence. Affirmed in the Universal Declaration of Human Rights (1948) asserts that rights are universal: applicable to all persons regardless of race, sex, ethnicity, or other differences.(United Nation, 2014, p. 6)

Human rights related to human trafficking (United Nation, 2014, p.15):

1. The prohibition of discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status

2. The right to life
3. The right to liberty and security
4. The right not to be submitted to slavery, servitude, forced labor or bonded labor
5. The right not to be subjected to torture and/or cruel, inhuman, degrading treatment or punishment
6. The right to be free from gendered violence
7. The right to freedom of association
8. The right to freedom of movement
9. The right to the highest attainable standard of physical and mental health
10. The right to just and favorable conditions of work
11. The right to an adequate standard of living
12. The right to social security
13. The right of children to special protection
14. Right to life
15. Right to freedom and security
16. The right not to be enslaved, to labor
17. The right not to be subjected to torture and / or cruel, inhuman or degrading treatment or punishment
18. The right to be free from gender violence
19. Right to freedom of association
20. Right to freedom of movement
21. The right to the highest attainable standard of physical and mental health
22. The right to just and favorable conditions of work
23. The right to a decent standard of living
24. The right to social security
25. The right of children to special protection

Human trafficking as a form of crime that violates human rights, therefore a human rights-based approach is needed. It is clear that trafficking violates human rights based on the criteria of human trafficking and the purpose of human trafficking and other trafficking traits.

In dealing with human trafficking through a human rights-based approach is "conceptual framework for dealing with a phenomenon such as trafficking that is normatively based on international human rights standards and that is operationally directed to promoting and protecting human rights"(United Nation, 2014). Therefore every aspect of the national, regional and international response to human trafficking entails the rights and obligations set forth in international human rights.

In Indonesia, in the Elucidation of Law no. 26 of 2000 regarding the Human Rights Court which states that the consideration of the formation of this law is one of them is a gross violation of human rights is an extraordinary crimes and has wide impact both at the national and international levels and it is not a criminal act set forth in the Criminal Code and cause harm both material and immaterial which resulted in feelings of insecurity both to individuals and society. In Article 7 of Law no. 26 of 2000 on the Human Rights Court that one of the grave human rights violations is a crime against humanity and Article 9 states.

Crime against humanity is one of the acts committed as part of a widespread or systematic attack that it knows that the attack is directed against civilians in the form of:

- a) Murder, b) Hostility, c) Slavery, d) Forcible evictions or displacement of the population, e) Deprivation of liberty or other arbitrary deprivation of physical liberty in violation of fundamental principles of international law, f) Torture, g) Rape, sexual slavery, forced prostitution, forced pregnancy, sterilization or forced sterilization or other forms of sexual violence, h) Violation against a particular group or association based on equality of political, racial, national, ethnic, cultural, religious, gender, or other reason that has been universally recognized as prohibited under

international law, i) Forcible disappearance of persons, j) Apartheid crime

According to the explanation of Article 9 letter c,

The meaning of slavery in this provision includes human trafficking, especially trafficking of women and children. Under Article 9, slavery, sexual slavery and forced prostitution including human trafficking constitute gross violations of human rights with the types of crimes against humanity constitute an extraordinary crime.

Therefore human trafficking includes crimes of humanity, so it is an extraordinary crime. Also in the RI Law no. 21 of 2007 concerning the Eradication of Human trafficking that human trafficking is a gross violation of human rights.

#### CONCLUSION:

Human trafficking is a modern form of human slavery that violates human rights. The human rights of victims cannot be revoked and should not be violated because human rights are inherent in humans, so humans cannot become objects of trade (the object of law). Man is only worthy as a legal subject having rights and obligations. Therefore, a human rights-based approach is needed in tackling human trafficking.

In Indonesian Law, it is mentioned that human trafficking is one form of human rights violations that include crimes against humanity or also called extraordinary crime.

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