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## Law Enforcement Response To Human Trafficking According To Law No. 21/2007: Case Study in Benjina, Aru Archipelago Regency

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### Abstract

Generally, there are some distinction on the response to human trafficking that has been particularly ruled in Law No.20/2007 21 about Abolition of Criminal Act Human Trafficking. That law contains legal basis to anticipate and round up activities, ways, or any other exploitations occurred on human trafficking. In the process of implementation of criminal act case handling to human trafficking, the peace officer sometimes get difficulties to proof the perpetrator because sometimes it's an organized crime, moreover it is a trans-national crime. The purpose of this study is to know and to analyze some aspects in law enforcement on human trafficking cases in Indonesia according to Law No. 21/2007 about Abolition of Criminal Act Human Trafficking (case study on human trafficking case in Benjina, Aru Archipelago Regency, and Maluku). So that this study can be a common comprehensive study to handle the human trafficking cases in Indonesia.

*Keywords:* law enforcement, case handling, the criminal act of human trafficking.

## 1.0 BACKGROUND

Human trafficking is a form of human exploitation that violate the Human Rights and contradicted to Islamic law. It can be a physical exploitation, physic exploitation, psychic/mental exploitation, and economy exploitation. Data from the Supreme Court state that Indonesia is on the third rank of countries with the highest human trafficking case in the world. Data from the Indonesian National Police 2011-2013 shows that in 2011-2013, there are 509 cases of human trafficking. 213 cases are manpower exploitation, 205 cases are sexual exploitation, 31 cases are discrepancy between the consent and the reality in workplace, and 5 case are baby trafficking. (Laraswati, 2016:5).

Human trafficking are growing more in some countries, including Indonesia and other developing countries. This causes Indonesia become a concern as a nation, international society, and international organizational member, particularly to the United Nations. (General Clarification 2007:1). So, the solution to human trafficking in Indonesia needs to be more concerned and should be optimally done.

Human trafficking has increasing around the world, either in organized or unorganized criminal networking forms. This criminal act not just involve individual, but also involve a group that not only reach the domestic region but also reach the international scope. The human trafficking also occurred in Benjina, Aru Archipelago Regency, Maluku Province that happened in PT. Pusaka Benjina Resource (PT. BPR). The process round up the country border-crossing because the victims are the ship's crew that being sent from Thailand. Most ship's crew that are being trafficked mostly from Myanmar, Cambodia, and Thailand.

This human trafficking cases in Benjina first revealed by the Task Force Team that caught 322 ship's crew found in PT Pusaka Benjina Resources area in pathetic condition. Not far from there was found a cemetery of 11 ship's crew. This was first reported by the Associated Press (AP). Based on that report, the Ministry of Marine Affairs and Fisheries along with the peace keepers moved to release hundreds ship's crew who were imprisoned in PT PBR area. (Elisa Valenta Sari, 2015:102).

Based on the confession from one of the ship's crews, most of them had been exploited about 10 years without being paid. Moreover, some of them admitted that they are being harrassed and prisoned. Bruises and cut wound all over their body become an evidence of violence or torture that happened there.

## 2.0 THE DEFINITION OF HUMAN TRAFFICKING

Human trafficking had been categorized as a criminal act in Indonesia law. Human trafficking was explicitly ruled on Article 297 in the Lawbook of Criminal Law by stated that "Trafficking on women and children, liable for 6 years of punishment in jail. (Kuhap 297). Although human trafficking was explicitly criminalized, there was no official definition about human trafficking on Article 297 in the Lawbook of Criminal Law that complicate to a apply the law. Beside, the Article 297 gave too undemanding punishment and imbalance to the impact that received by human trafficking victims.

General meeting of United Nations on November 12-15, on 2000 in Palermo, Italia discussed about international law instrument<sup>10</sup> which resemble to human trafficking cases and the solution. The meeting generates some protocols, i.e *Protocol to Prevent, Suppress, and Punish*

*Trafficking in Persons, Especially Women and Children*. (Suhaidi, 2007:21). On Article 3a, that protocol defined human trafficking as:

*Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of other forms of sexual exploitation, forced labour or services, slavery or practices, similar to slavery or practices similar to slavery, servitude or the removal of organs.*

The protocol is valid from December 25th, 2003 and it also the first law instrument which is bounding globally by the ratified definition on human trafficking. The objective of this definition is to facilitate convergence on national approach related to domestic criminal act that will support an efficient international corporation on investigation and the prosecute of human trafficking. One of the additional purposes from that protocol is to protect and help human trafficking victim by valuing their rights.

The definition of human trafficking in United Nation protocol became the base of human trafficking definition used before the legalization of human trafficking constitution. Along with definition given by United Nations, Article 1 No. 1 Law No. 21/2007 defined human trafficking as an action of recruitment, transportation, accommodation, delivery, transfer, or receiving a person with violence threat, abduction, trap, fraud falsification, power coercion, or susceptible position, debt strangulation or give payment or benefits, so that it will get agreement from people who control others, even done in domestic or transnational, for exploitation or causes other people exploited. Whereas, the criminal act of human trafficking means every act that fulfill the elements of criminal act determined on Law No. 21/2007. (The Criminal Act Abolition 2007:22).

### 3.0 THE ELEMENTS OF HUMAN TRAFFICKING CRIMINAL ACT

The Constituent of Criminal Act of Human Trafficking consisting three major element which consist some inferior elements as follows:

#### 1.) MAIN ELEMENT I (Process/Movement).

- a. Recruitment
- b. Transportation
- c. Accommodation
- d. Delivery
- e. Transfer
- f. Receiving a person

#### 2.) MAIN ELEMENT II WAY (MEANS)

- a. Violence threat
- b. Violence usage
- c. Abduction

- d. Locking up
- e. Falsification
- f. Deception
- g. Power exploitation
- h. Susceptible position
- i. Debt strangulation
- j. Giving payment or benefits.
- k. So that it will get agreement from people who control others even it was done in domestic or transnational.

### 3.) MAIN ELEMENT III (AIM/GOAL)

- a. Exploit the people.
- b. In Indonesia or transnational
- c. Exploit people

Stated that the elements of each main element (process, ways, and purposes) is an alternative accusation so that to determine a case on human trafficking it just need one element.

Further definition about exploitation according to Article 1 No. 7 Law No. 21/2007 is an action with or without victim's agreement but unlimited to prostitution, slavery, or any activity similar to slavery, suppression, exploitation, physical usage, sexual reproduction, organ, or transferring and transplant organ and or body cell or use power and someone ability by others to get benefits even materially and immaterially that against the law.

Important questions to look into this problem is as follows:

1. What article is proven by Public Prosecutor of Attorney General in the prosecution demand letter (recusitor) on human trafficking case in Benjina, Aru Archipelago Regency, Maluku?
2. How do the evidence of exploitation element on human trafficking criminal act case in Benjina, Aru Archipelago Regency, Maluku?
3. How do the law protection form for human trafficking criminal act victims, according to Law No.21/2007 about the Abolition of Criminal Act Human Trafficking?

## 4.0 CHRONOLOGY OF HUMAN TRAFFICKING CASE IN BENJINA, ARU ARCHIPELAGO REGENCY, MALUKU

There was found 8 case file of the suspect of the human trafficking case in Benjina, Aru Archipelago Regency, Maluku as follows:

1. Hermanwir Martino alias Herman as PJS. SITE OPS DEPT HEAD or Subdivision Head to PT. BPR (Pusaka Benjina Resource) Benjina; (Criminal case file for suspected name

- HERMANWIR MARTINO otherwise HERMAN Number: BP/10/VI/2015/Reskrim June 22nd, 2015).
2. Boonsom Jaika alias Yud as captain to KM Antasena 311; (BP/12/VI/2015/ Reskrim June 19th, 2015)
  3. Somchit Korraneesuk alias Tai Wau alias Wau as captain to KM Antasena 309; (Criminal case Mr. SOMCHIT KORRANEESUK Number : BP /16/VI/2015/Reskrim June 26<sup>th</sup>, 2015).
  4. Surachai Maneephong alias Tai Kee alias Kee) as captain to KM Antasena 142; (Criminal case Mr. SURACHAI MANEEPHONG otherwise TAI KEE Number: BP/15/VI/2015/Reskrim June 26<sup>th</sup>, 2015)
  5. Yongyut Nitiwongchareon alias Yut as captain to KM Antasena 838;(Criminal case MR. YONGYUT NITIWONGCHAREON Number: BP/13/VI/2015/Reskrim June 19<sup>th</sup>, 2015)
  6. Hatsaphon Phaetjakreng alias Tai At as captain to KM Antasena 141; (Criminal case file MR. HATSAPHON PHAETTJAKRENG otherwise TAI AT otherwise AT Number: BP/14/VI/2015/Reskrim June 24<sup>th</sup>, 2015)
  7. Mukhlis Ohoitenant alias Mukhlis as Quality Control (QC). (Criminal case MUKHLIS OHOITENAN Number : BP/11/VI/2015/Reskrim June 22<sup>nd</sup>, 2015)
  8. Yopi Hanorsian alias Yopi as QC (Quality Control). (Criminal case YOPI HANORSIAN otherwise YOPI Number: BP/17/VI/2015/Reskrim June 26<sup>th</sup>, 2015).

Based on that case file, it can be seen the chronology or modus operandi that has been done by the suspect as follows:

- Started from the job agreement between PT BPR (Director of PT Pusaka Benjina Armada: Legiman Sutrisman) as the first opponent and Silver Sea which represented by Torsak Pirunga Pourah in Thailand as the Second Opponent and Chokchai Dhanapak as the Third Opponent in Thailand as at once recruit and search worker for PT BPR in 2007 which the content of the agreement include obligation of some opponent, i.e:
  1. First Opponent
    - Remand all license petition to ship's crew.
    - Pay tax and other living cost which arise along with ship member salary through second opponent.
  2. Second Opponent
    - Continue Correspondence from First Opponent.
    - Abandon and report ship member salary from first opponent to second opponent.
  3. Third Opponent
    - Look for ship's crew
    - Take care of job document and the license of ship's crew
    - Pay ship's crew salary.



- Amount of the salary is ascertained by third opponent after agreed by first opponent.
  - Third opponent get 10 % from ship's crew salary.
  - Ship's crew salary should be paid by first opponent to third opponent through second opponent on the end of month in Thailand.
  - Ship's crew salary should be paid by third opponent by way and time which is agreed along with third opponent and every ship member .
- Based on agreement letter above, the ship's crew recruitment to work in PT BPR done by the third opponent by giving a pledge that their salary will be in amount 9.000 (nine thousands) Baht per month or about Rp3.000.000,- (three millions rupiahs).
- The recruiter also pledged the victims that they will work in Thailand, then from recruit result by third opponent was found 23 (twenty three) ship's crew (victim witnesses) most of them are Myanmar citizens who will be employed in PT PBR, and twenty three of ship's crew are taken in different time to different ship, i.e the five KM Antasena.
- Stated that all ship's crew then being created a Seamen Book which their citizen is changed to Thailand citizen, who changed by the Third Opponent in Thailand.
- After all ship who took the ship's crew (victim witnesses) arrived in Benjina in 2013, PT BPR opponent which located in Jakarta inform the arrival of foreign ship to Hermanwir Martino as the branch head to PT PBR Benjina who will be employed as ship's crew in fish vessels. Then, PT PBR Benjina through Hermanwir Martino as head of PT BPR Benjina coordinate to the immigration office, Syah Bandar, customs office, the quarantine to check the foreign employer document. After checking the ship's crew of foreign that foreign ship, a list were made then the data is signed by Hermanwir along with Seaman Book photocopy, then it sent through email to PT PBR Jakarta in order to be made an Immigration Special Ease.
- Stated that the ship's crews are employed to each ship who took them from Thailand to Indonesia and then the ship's crew depart with each ship to catch fishes. The ship's crew works during 18 (eighteen) hours to 20 (twenty) hours a day. But, the salary accepted by ship member is not suitable to the amount that promised at the recruitment. The ship's crew only get 3000 Baht or 1 millions rupiahs to 4500 Baht or about 1,5 millions which is paid once in two or three months. It is caused by salary payment mechanism for ship's crew is implemented by Center PT BPR that sent the salary to Silver Sea in Thailand, then the Silver Sea sent it to Quality Control (QC) in Benjina as the representation of Silver Sea in Thailand, then abandoned to the captain and the captain will pay it to each crew.
- Stated that the indolent crew that run from ship, missed the ship, drunk, or fight will be taken to isolation room by the captain through Mukhlis and Yopi for two until sixteen days. They two are the only person that have an access to the isolation room, in other words, the captain cannot take the ship's crew directly to the isolation room. The isolation room in PT PBR are built to isolate the troubled crew then they're noted in a book and will be reported to Hermanwir Martino alias Herman.

## 5.0 ARTICLE WHICH PROVED BY PUBLIC ATTORNEY TO THE HUMAN TRAFFICKING DEFENDANTS

Based on the case above, the Public Attorney make an accusation letter in subsidiary form<sup>1</sup> to the defendant<sup>3</sup>. In primary accusation, the criminal act engaged to the defendant, i.e. the article 2 verses 2 Law No. 21/2007 about the Abolition of Criminal Act Human, consists these elements:

- Every people
- Recruitment, transportation, accommodation, delivery, transfer, or receipt a person;
- With violence threat, violence act, abduction, locking up, falsification, deception, power exploitation, susceptible position, debt strangulation, or giving payment or benefits although they get an agreement from the people who control.
- For exploitation purpose in Republic of Indonesia;
- Causes people exploited

It stated that the human trafficking case which occurred in PT PBR Benjina, Aru Archipelago Regency is a transnational crime so that it's an organized crime or criminal who came from Silver Sea and Chok Chai Dhanapak as the crew recruiter. Until the ship's crew arrive and work in Benjina above Antasena ship, the defendant Hermanwir Martino as PJS Site OPS Dept. Head or Subdivision head of PT PBR Benjina, Boonsom Jaika alias Yud as the captain for KM Antasena 311, Somchit Korraneesuk as the captain to KM Antasena 142, Yongyut Nitiwongchaeron as the captain to KM Antasena 838, Hatsaphon Phaettjakrengs as the captain to KM Antasena 141, Mukhlis Ohoitenan and Yopi Hanorsin as Quality Control is a unit in transfer process from recruitment, transportation, accomodation, transfer, receipt of persons with falsification, deception, power exploitation, or susceptible, position, or giving payment or benefits although getting agreement for people who control others, for exploitation purpose in Indonesia Republic area which cause exploitable people. (Ninik Rahayu, 2013:50).

## 6.0 ELEMENT EVIDENCE TO EXPLOITATION

It has been analyzed before that criminal act is proved to the defendant in the requisitor letter of Public Prosecuting Attorney in State Prosecuting Attorney of Dobo. Essentially, in Article 2 verse 2 Law No. 21/2007 was found the element "exploitation purpose" and element "cause exploitable people" then it should be proved.

To prove both of the elements, meanwhile it can be seen from the facts obtained from the evidence on court as follows :

- a. To get the Seaman Book, the ship's crew should be trained in "education/basic exercise" (to get basic training certificate). From the existing evidence tool, evidence tools i.e. witness information, letters, defendant information, and directions, was known that the foreign ship's crew are mostly from Myanmar that employed in PT

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<sup>1</sup> Subsidiary Accusation is an accusation letter arranged in layers. By accusation which is made in layers and in a series, each accusation can not stand but connected because there is only one action that is chased. Therefore, an accusation layers is arranged primarily in a series, subsidiary, more subsidize, etc. Heaviest criminal act arrangement, then light criminal act and finlly lightest criminal act.



PBR Benjina and they had never get a basic training certificate and never get basic training to be ship member.

- b. Based on the victim witnesses information and the defendant information known that the crew never signed a work consent. Without consent, their rights such as salary, bonus, leave, health check, health insurance and other things is not accomodated. When they are not givent a written consent, it means the PT BPR means to exploit them.
- c. Salary that received by the ship's crew who work for PT PBR Benjina is not accorded to what is promised before by by the recruiter. In the case file or at court, most of the ship's crew told that during they worktime in PT PBR Benjina, they only get paid Rp1.000.000, where as before they are employed, PT BPR Benjina promised to give them 9000 Baht each month. Also, they get paid only once every two until three weeks. are promised will get salary about 9000 Bath. Ship member did not accept salary month, but usually 2 or 3 month once.
- d. PT PBR Benjina siding with through skipper give punishment for ship member who make troubles such as lazy, run of ship, missed ship, have drunk, by putting into ship member who had trouble to isolation room through defendant Mukhlis and Yopi for 2 (two) days until 16 (sixteen) days. People who have access to put into ship member who had trouble are defendant Mukhlis and Yopi, because defendant are QC or quality control who work in PT PBR Benjina whom their main job beside watch or control catching fish expulsion from ship , alsocontrol or watch ship member who work in PT PBR Benjina.

In Law No. 21/2007, Article 1 No. 3 was mentioned that victims is someone who had psychic suffer, mental, physic, sexual economy, and/or social which is caused by human trafficking. The scope of criminal act victim involve 3 (three) subject, i.e: who's the victim, what kind of loss or harm they get and person who responsible to those loss/harm, and what kind of loss/harm that can be restored. (Farhana, 2010:158).

From the facts above, it can be seen that the ship's crew in PT PBR Benjina is not given their rights such as job training, job contract (consent), health check, health insurance, and the appropriate salary. Moreover they're threated unapropriate and prisoned in isolation room for 2 until 16 days when they make a problem. So that, in this case, the ship's crew in PT PBR Benjina were positioned as victims who had psychis suffer, mental, physic, economy, and or social because of the action done by the defendant.

## **7.0 LAW PROTECTION TO THE VICTIM OF HUMAN TRAFFICKING**

Basically, victim is the most suffered opponent in criminal act. After all this time, the orientation of criminal law is offender oriented that means the perpetrator is the main focus in criminal law, then the thought to change this orientation emerge. The ideas revolution and the attentions to the victims are based on two ideas. First is the idea that country is responsible to give compensation restitution. Second, there is new teaching on criminology that leave positivity approach to critical criminology. (Muhadar, 2018:47).

Criminal law policy about human trafficking related to law reinforcement to the perpetrator and victims. This condition will be different with the criminal act which is usually more focused on law reinforcement by giving punishment to the perpetrator. On human

trafficking case, the victims are more discussed because the victim are not only suffered physically but also their phsyic, mental, and social life. (Heny Nuraeny, 2011:83)

One of the model of law reinforcement to human trafficking's victim is given a restitution, stated in Article 1 No. 13 Law No.21/2007. Restitution is a compensation payment burdened to the perpetrator based on court decision.

Article 48 verse 1 Law No. 21/2007 on Abolition of Criminal Act Abolition Human Trafficking stated that each victim of human trafficking or their heirs have a right to get restitution. Verse 2 mentioned that restitution is as mentioned in verse 1. The compensation include:

1. Wealth or salary loss
2. Suffering
3. Cost for medical and/or phsyiological care
4. Other disadvantage that received by the human trafficking victim.

According to article 48 verse 3 law No. 21/2007 the restitution is given and included at once on court decision command about the human trafficking case.

To determinate the amount of restitution burdened to the defendants, i.e: the ship captain, State Prosecuting Office of Dobo coordinating with the agency of witness and victim protection. The command of Tual district court to each defendant, each captain who did the criminal act of human trafficking in PT PBR Benjina burdened restitution as follows:

- a. Require the defendant Boonsom Jaika alias Yud to pay restituion to the victims, i.e Soe Min Thein, Win Hlaing, and Soe Myin in total Rp335.300.000' (three hundreds and thirty five millions three hundreds thousands rupiahs). (Criminal case sentence Number : 107 /Pid.Sus./ 2015 /PN. Tul.(Human Trafficking)
- b. Requires defendant Harttsaphon Phacetjakreng alias Tai At to pay restitution to the victim, i.e Win Htut, Myo Naing, Zaw Zaw Myat, and Ye Tun in total Rp239.900.000; (two hundreds and thirty thousands rupiahs). (Criminal case sentence Number : 107 /Pid.Sus./2015/PN/.Tul (Human Trafficking). Requires defendant Somchai Maneaphong alias Tai Kee to pay restitution in total Rp49.800.000; (forty nine millions and eight hundred thousands rupiahs) to the victim Thant Zin Win.
- c. Requires defendant Somchit Korraneesuk alias Tai to pay restitution in total Rp18.400.000 (eighteen millions and four hundreds thousands rupiahs) to the victim Aye Min Soe.
- d. Requires defendant Yongyut Nitiwongchaeron to pay restitution Rp129.900.000; (one hundred and twentynine millions and nine hundreds thousands rupiahs) to Aung Theintun and Min Htike as victim.

The command mentioned that if the restitution is not paid in 14 days counted from the decision get a stable law power, then the court command Public Prosecuting Attorney to seize the convicted's properties and auction the properties off to pay the restitution. And if the convicted cannot pay then restitution, then they will be prisoned for a year. That Council Decision of Tual State Court is already match with article 48 and 50 Law No.21/2007.

## 8.0 CONCLUSION

1. Stated that the criminal act of human trafficking in PT PBR Benjina, Aru Archipelago Regency is a transnational crime that has been done as an organized crime. The crime begins when Silver Sea and Chok Chai Dhanapak which is located in Thailand as the recruiter of ship's crew arrived and worked in Benjina on Antasena ship belongs to PT PBR Benjina. The criminal act of human trafficking that has been done is an activity which is match to the article 2 verse 2 Law No.21/2007 in the Abolition of Human Trafficking.
2. To prove the human trafficking case in Benjina, it can be seen from facts in court which is got from the evidence. The facts such as the crew are not given a job training, job contract, health check, health insurance, and unappropriate salary. Moreover they are threatened despotically that they are put into isolation room if they make any trouble. So, in this case, the ship's crew in PT PBR Benjina are positioned as victims who fulfill requirement that the defendant purposively exploit the victims and caused the victims exploited.
3. One of the law protections for the victim of human trafficking according to Law No.21/2007 is restitution or compensation to the victims. The restitution implemented by give and include it in the command on the first court level about criminal act of human trafficking.

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