

## Combating Prostitution as a Criminal Act of Human Trafficking through Penal Measures

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### Abstract

Women and children are the most vulnerable groups in society who tend to become victims of prostitution. Prostitution is a form of criminal act of human trafficking. Trafficking in persons is a violation of human rights and is an extraordinary, organized, and transnational crime. This research aims to determine the prevention of prostitution as a criminal act of trafficking in persons through penal measures and to determine the formulation of criminal sanctions against perpetrators of criminal acts of trafficking in persons for sexual exploitation. This research is normative juridical research with statutory and conceptual approach methods as well as descriptive-analytical research specifications. The findings in this article are that the change in the regulation of prostitution from the Criminal Code to the Trafficking Law (2007) occurred because of a change in the paradigm of prostitution from an ordinary criminal act to a violation of human rights, this increased criminal sanctions from the aspects of staff (type) and strafmaat (weight). The formulation of acts regulated in the Criminal Code and the Trafficking Law (2007) are similar in terms of the substance of the criminal act, namely that they both ensnare perpetrators who act as intermediaries or pimps in human exploitation. However, there are differences in the construction of the weight of the criminal sanctions. The Criminal Code provides criminal threats with an alternative system, which allows judges to choose between imprisonment or a fine. Meanwhile, the Trafficking Law (2007) applies the danger of cumulative sanctions, where perpetrators can be charged with imprisonment and a fine at the same time. The formulation of criminal sanctions against perpetrators of criminal acts of human trafficking in the Trafficking Law (2007) is formulated with the pattern of increasing the severity of criminal threats (staff at). The increase in the severity of the threat of criminal sanctions aims to provide a more optimal deterrent to perpetrators of criminal acts of human trafficking.

**Keywords:** Prostitution; Crime of Human Trafficking; Criminal Law Policy; Criminal Sanctions

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### Introduction

Women and children are the most vulnerable groups in society who tend to become victims of prostitution. Factors that cause them to be trapped in prostitution include poverty, frustration, lack of job opportunities, patriarchal values, hedonism, and psychological disorders.<sup>1</sup> Their involvement in prostitution could also occur due to fraud at work; they were promised high-paying jobs but instead were forced to sell themselves.<sup>2</sup> The participation of women and children in prostitution is supported by technological developments that make it easier for

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<sup>1</sup> Afif Fathin Muhtadi, 'Prostitusi Online Sebagai Tindak Pidana Perdagangan Orang', *Jurist-Diction*, 4.6 (2021), 2125 (p. 5) <<https://doi.org/10.20473/jd.v4i6.31838>>.

<sup>2</sup> Astri Aprilianti, Sahat Maruli, and Tua Situmeang, 'Perlindungan Hukum Korban Prostitusi Anak Melalui Media Sosial Ditinjau Dari Hukum Positif Indonesia', *Res Nullius Law Journal*, 6.1 (2024), 60-72 (p. 65) <<http://ojs.unikom.ac.id/index.php/law>>.

prostitution perpetrators to catch victims.<sup>3</sup> The harmful impacts of prostitution include physical, mental, and psychological suffering.<sup>4</sup> The feelings of trauma that arise can reach a level where the victim feels depressed and guilty, even leading to the desire to commit suicide.<sup>5</sup> Based on this description, the practice of prostitution is a serious problem that can hurt the growth and mental development of children and women as the nation's next generation.

Prostitution is non-husband and wife sexual relations based on transactions, generally carried out in certain places such as localities, hotels, and recreation areas. Prostitution comes from the Latin word prostitute or prostata, meaning allowing oneself to commit adultery, committing adultery, or fornication.<sup>6</sup> In Indonesia, prostitution is known and interpreted as work that exchanges sexual relations for money as a buying and selling transaction.<sup>7</sup> The Big Indonesian Dictionary (KBBI) defines prostitution as the exchange of sexual relations for money as a trade transaction.<sup>8</sup> Sociologically, it means that men's satisfaction characterizes sex work outside of marriage carried out by women, it is done for money and is used as a source of income.<sup>9</sup> Terminologically, prostitution is the provision of sexual services by men or women to obtain money or satisfaction.<sup>10</sup> Meanwhile, according to the author, "prostitution" is a sexual relationship between a man and a woman outside of marriage to receive compensation in the form of money. Prostitution is a form of human trafficking crime, trafficking in persons is an act of undermining human dignity so it is contrary to human rights and is an extraordinary, organized, and transnational crime.<sup>11</sup> Quoted from Wijers and Lap-Chew human trafficking does not only occur domestically, but is exported abroad, and is not limited to prostitution and slavery, but all forms of exploitation.<sup>12</sup> Several

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<sup>3</sup> Putri Salsabila Sutardja, Dewinta Adea Rohma, and Lisa Oktavianti, 'Efektivitas Perlindungan Anak Terhadap Anak Sebagai Korban Prostitusi Online Dalam Kasus Di Madiun', *DiH: Jurnal Ilmu Hukum*, 17.2 (2021), 241-53 (p. 255) <<https://doi.org/10.30996/dih.v17i2.5261>>.

<sup>4</sup> Ayu Intan Novelianna Setyono, Hadibah Zachra Wadjo, and Yonna Beatrix Salamor, 'Perlindungan Hukum Terhadap Anak Dari Eksploitasi Seksual', *Jurnal Ilmu Hukum*, 1.1 (2021), 12-16 (p. 14).

<sup>5</sup> Dayangku Fanny Padillah and Nurchayati Nurchayati, 'Penerimaan Diri Pada Korban Kekerasan Seksual Sekaligus Pelaku Pembunuhan', *Jurnal RAP (Riset Aktual Psikologi Universitas Negeri Padang)*, 13.2 (2023), 136 (p. 139) <<https://doi.org/10.24036/rapun.v13i2.u8037>>.

<sup>6</sup> Padillah and Nurchayati.

<sup>7</sup> Jonathan Surya Wijaya, 'Pertanggungjawaban Pidana Terhadap Para Pihak Perkara Prostitusi Online Sebagai Pelaku Tindak Pidana', *Jurist-Diction*, 2020, p. 2245 <<https://doi.org/10.20473/jd.v3i6.22970>>.

<sup>8</sup> Rizky Karo Karo, Debora Pasaribu, and Elsa Sulimin, 'Upaya Preventif Dan Represif Terhadap Prostitusi Online Berdasarkan Peraturan Perundang-Undangan Yang Berlaku Di Indonesia', *Lex Journal: Kajian Hukum & Keadilan*, 2.2 (2018), p. 1 <<https://doi.org/10.25139/lex.v2i2.1411>>.

<sup>9</sup> Siti Nurul and others, 'Perilaku Sosial Pekerja Seks Komersial (PSK) Di Dunia Pelacuran', *Jurnal IJTIMAIYA*, 2018, p. 113.

<sup>10</sup> Ahmad Rosyadi, 'Kajian Yuridis Terhadap Prostitusi Online: Skripsi' (Fakultas Syariah Dan Hukum Uin Syarif Hidayatullah, 2011), p. 11.

<sup>11</sup> Rosyadi, p. 4.

<sup>12</sup> Aldri, 'Pertanggungjawaban Pidana Pelaku Tindak Pidana Perdagangan Orang Untuk Kepentingan Seks Komersial Terhadap Anak Yang Dilaku Kan Oleh Ibu Kandung (Studi Kasus

prostitution practices began with the start of many irresponsible groups carrying out human trafficking.<sup>13</sup> The term human trafficking comes from English, the word "trafficking" means illegal trade, and "human" means human in Indonesian.<sup>14</sup> Prostitution can be considered a criminal act of human trafficking if there is an element of exploitation by a third party, namely a pimp or pimp who takes advantage of the victim.

The parties involved in the practice of prostitution include Commercial Sex Workers (PSK), users of prostitution services, or even through (pimps or pimps). PSK can be classified into 2 (two) categories, namely: 1. PSK who carry out their profession consciously and voluntarily based on certain motivations. 2. PSK who carry out the task of prostitution because they are held captive or trapped and forced by pimps.<sup>15</sup> Users of prostitution services are parties who use sexual services to obtain sexual satisfaction from a sex worker by providing several material rewards.<sup>16</sup> A pimp or pimp is someone who obtains material benefits from sexual transactions through his partial or complete involvement in organizing, facilitating, and controlling the management of prostitution, including providing a place for sexual transactions to take place, supervising the implementation and/or recruitment, providing food and protection, or making decisions on the mobilization of sex workers' work.<sup>17</sup> In this research, the author focuses on pimps who often take advantage of vulnerable groups, such as women and children, by recruiting, controlling, and exploiting victims for personal gain.

The topic of women being used as objects of prostitution and human trafficking has been widely written about. First, Yanto (2018), that the dominant regulations governing the crime of prostitution are the Criminal Code (Article 296 and Article 506), and Law No. 44 of 2008 concerning Pornography.<sup>18</sup> Second, Ulfah (2018), that the imposition of criminal sanctions that will be given to perpetrators

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Nomor:1451/Pid.Sus/2021/Pn-Mdn) (Skripsi)', *Universitas HKBP Nommensen*, 2022, p. 18 <<https://repository.uhn.ac.id/handle/123456789/6858>>.

<sup>13</sup> Di Ajeng Laily and Andi Nafsia Aulia, 'Penanggulangan Prostitusi Perspektif Hadist', *Lentera*, XVIII.2 (2016), 43-58 (p. 237).

<sup>14</sup> Ni Luh Putu Lusi Ayupratiwi, 'Peran Hukum Internasional Dalam Upaya Pencegahan Dan Pemberantasan Human Trafficking Di Indonesia', *Jurnal Pendidikan Kewarganegaraan Undiksha*, 10.3 (2022), 235-52 (p. 237) <<https://doi.org/10.23887/jpku.v10i3.52030>>.

<sup>15</sup> Erna Nuraena and Ade Hadiono, 'Peran Satuan Polisi Pamong Praja Dalam Menangani Pekerja Seks Komersial (PSK) Di Kabupaten Lebak', *JIPAGS (Journal of Indonesian Public Administration and Governance Studies)*, 5.1 (2021), p. 38 <<https://doi.org/10.31506/jipags.v5i1.9640>>.

<sup>16</sup> Akmal Akmal, Sahuri Lasmadi, and Dessy Rakhmawati, 'Kebijakan Hukum Pidana Terhadap Anak Yang Melakukan Tindak Pidana Pelacuran Di Indonesia', *PAMPAS: Journal of Criminal Law*, 4.1 (2023), 74-87 (p. 77) <<https://doi.org/10.22437/pampas.v4i1.24158>>.

<sup>17</sup> Binahayati Rusyidi and Nunung Nurwati, 'Penanganan Pekerja Seks Komersial Di Indonesia', *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat*, 5.3 (2019), 303 (p. 304) <<https://doi.org/10.24198/jppm.v5i3.20579>>.

<sup>18</sup> Febri Dwi Yanto, 'Analisis Yuridis Ketentuan Pertanggung Jawaban Pidana Bagi Pelaku Prostitusi Online Di Indonesia', *Legal Spirit*, 2017, p. 69 <<https://doi.org/https://doi.org/10.31328/lv.vii.2.588>>.

of human trafficking crimes is regulated in the Trafficking Law (2007).<sup>19</sup> Third, Veibe V. Sumilat (2021), that substantive reform is needed, namely reform of material criminal law regarding the accountability of parties involved in prostitution.<sup>20</sup> The difference between the discussion regarding the author's research and other research is that the author's research focuses on the problem of how to tackle prostitution as a criminal act of human trafficking in Indonesia through penal measures. Apart from that, how to formulate criminal sanctions against perpetrators of criminal acts of trafficking in persons for sexual exploitation.

## Research Problems

Based on the description expressed above, the problems in this research are:

1. How is prostitution as a criminal act of human trafficking handled in Indonesia through penal measures?
2. How are criminal sanctions formulated against perpetrators of criminal acts of trafficking in persons for sexual exploitation?

## Research Methods

This article is the result of normative research with a statutory and conceptual approach. The data used is secondary data consisting of regulations, references, and resumes of court decisions. All of this data was searched using internet searches. The data found is displayed in descriptive text and tables, then the data is analyzed qualitatively, namely describing and interpreting the data based on principles, norms, theories/doctrines of legal science. Qualitative normative because this research starts from legal regulations so it is a positive legal norm. The data obtained is analyzed by understanding and explaining the data that has been collected and arranged systematically, and then conclusions are drawn.

## Discussion

### 1. Combating Prostitution as a Criminal Act of Human Trafficking in Indonesia Through Penal Measures

The determination of prostitution activities as part of the criminal act of human trafficking shows that the response to this activity has a repressive nuance through penal measures. Initially, the instruments for penal measures regarding the criminal act of trafficking in persons were generally and simply regulated in the Criminal Code (KUHP).<sup>21</sup> In line with the dynamics of societal development and

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<sup>19</sup> Daniela Velásquez, 'Tindak Pidana Perdagangan Orang Dalam Perspektif Hukum Pidana Positif Dan Hukum Pidana Islam', *New England Journal of Medicine*, 372.2 (2018), 2499–2508 (p. 2449).

<sup>20</sup> Filbert Maneking, V Veibe Sumilat, and E Ronald Rorie, 'Kajian Yuridis Terhadap Pelaku Dan Korban Kejahatan Prostitusi Online Ditinjau Dari Delik Pidana', *Lex Privatum*, 9.3 (2021), 1–11 (p. 246).

<sup>21</sup> Heni Susanti, Wira Atma Hajri, and Islam Riau, 'Perbandingan Aturan Hukum Tentang Tindak Pidana Perdagangan Orang Di Indonesia Dan Malaysia', *Perbandingan Aturan Hukum*

the number of human trafficking crimes which are becoming increasingly complex, Indonesia has finally improved these regulations by issuing special regulations, namely the Trafficking Law (2007). This Law also touches on prostitution which includes but is not limited to the phrase "sexual exploitation".<sup>22</sup> Human trafficking is differentiated into sexual exploitation and non-sexual exploitation, sexual exploitation is differentiated into forced prostitution, forced marriage, and marriage through intermediaries, while non-sexual exploitation is differentiated into forced labor and organ trafficking. Victims are trafficked not only for prostitution or other forms of trafficking. Sexual exploitation, but also includes other forms of exploitation, for example, forced labor or forced services, slavery, or practices similar to slavery.<sup>23</sup>

One form of sexual violence in human trafficking crimes that often occurs is aimed at sexual exploitation. The definition of sexual exploitation according to positive law is regulated in the Trafficking Law Article 1 paragraph (8): "Sexual exploitation is any form of use of the victim's sexual organs or other body organs to obtain profit, including but not limited to all activities of prostitution and sexual abuse." Sexual exploitation is a criminal offense in several forms, such as the crime of prostitution, the crime of pornography, and the crime of trafficking in persons for sexual purposes.<sup>24</sup> Bonaraja Purba et al (2023) explain that the mode of operation of sexual exploitation includes:<sup>25</sup>

a. Simple

The prospective victim is sold by the seller (can be parents, husband, or adoptive parents) directly to the buyer or through certain intermediaries;

b. It's a bit complex

Prospective victims are visited or invited by friends/neighbors/relatives/boyfriends to look for halal work in shops, cafes, and restaurants in big cities with the promise of a large salary. The victim is immediately sold to a buyer in the destination city or taken to a transit location and then raped and then sold to a direct buyer;

c. Complex

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*Tentang Tindak Pidana Perdagangan Orang Di Indonesia Dan Malaysia*, 4.1 (2022), 91–108 (p. 95) <<https://dunia.tempo.co/read/1479064/a>>.

<sup>22</sup> Andi Brian Palandi, 'Tanggung Jawab Bagi Penyedia Jasa Prostitusi Online Ditinjau Dari Undang-Undang Nomor 11 Tahun 2008 Juncto Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik', *Journal Lex Crime*, 1.2017 (6AD), p. 143.

<sup>23</sup> Astuti Nur Fadillah and Sartik Antio, 'Perdagangan Orang (Human Trafficking): Aspek Kekerasan Terhadap Perempuan Di Indonesia', *SANISA: Jurnal Kreativitas Mahasiswa*, 2.2 (2022), p. 86.

<sup>24</sup> Fredi Yudiantoro, 'Eksplorasi Seksual Sebagai Bentuk Kejahatan Kesusilaan Dalam Peraturan Perundang-Undangan', *Justitia Jurnal Hukum*, 2.1 (2018), p. 112 <<https://doi.org/10.30651/justitia.v2i1.1227>>.

<sup>25</sup> Bonaraja Purba and others, 'Legal Protection for Children as Victims of Commercial Sexual Exploitation on Social Media', *Indonesian Journal of Advanced Research*, 2.7 (2023), 813–26 (p. 822) <<https://doi.org/10.55927/ijar.v2i7.4614>>.

Prospective victims are approached by brokers/middlemen (people whose work goes to villages to look for girls who are growing up to be deposited or sold to collectors or directly to pimps/pimps) with the promise of finding them a halal job in a big city with a large salary and financial support. All transportation and accommodation expenses, even though it will later become a debt that the victim will have to pay dearly.

The enactment of the Trafficking Law has the juridical consequence of declaring several articles in the Criminal Code that regulate human trafficking to be invalid. The articles in question are Article 297 of the Criminal Code and Article 324 of the Criminal Code, both of which were declared invalid based on Article 65 of the Trafficking Law. The phrases from the two articles in question are as follows:

*Article 297*

*"Trafficking in women and trafficking in underage boys is punishable by a maximum imprisonment of six years."*

*Article 324*

*"Any person who, at his own expense or someone else's expense, carries out a slave trade or carries out acts of slave trafficking or intentionally participates directly or indirectly in one of the acts mentioned above, is threatened with imprisonment for a maximum of twelve years."*

Changes in regulations in Article 297 of the Criminal Code and Article 324 of the Criminal Code as a result of the enactment of the Trafficking Law have significant differences in the form of criminal acts and sanctions. Specifically regarding criminal sanctions, Articles 297 and 324 of the Criminal Code use a single threat and have not implemented special minimum provisions, in contrast to the Trafficking Law which formulates cumulative/alternative threats in the form of "imprisonment and/or fines" and special minimums in the form of imprisonment of at least three years and/or fines adjusted to the crime committed. Special minimum provisions are used to provide a deterrent effect to perpetrators of human trafficking because their actions will result in a prison sentence of at least three years.<sup>26</sup> Thus, changes in criminal law policy in the Trafficking Law aim to make the perpetrators suffer.

The enactment of the Trafficking Law does not eliminate the criminal act of prostitution regulated in the Criminal Code, the criminal acts that are still in effect are Article 296 and Article 506 of the Criminal Code with the following phrase:

*Article 296*

*"Any person who intentionally causes or facilitates lewdness by another person with another person, and makes it a pursuit or habit, is threatened with imprisonment for a maximum of one year and four months or a fine of a maximum of fifteen thousand rupiah."*

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<sup>26</sup> Liana Juanita, Abdul Hamid, and Laely Wulandary, 'Penerapan Pasal 2 Ayat (1) Jo Pasal 10 Undang-Undang RI Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang (Studi Putusan Nomor 89/Pid.Sus/2022/PN Lsm)', *Jurnal Parkesia*, 2.1 (2024), 41-50 (p. 49) <<https://doi.org/https://doi.org/10.29303/parhesia.v2i1.3827>>.

The provisions of Article 296 of the Criminal Code only prohibit anyone who deliberately connects or facilitates obscene acts committed by other people. This article is a regulation regarding the prohibition of the prostitution business which determines that punishment can only be imposed on people who deliberately cause prostitution.<sup>27</sup>

*Article 506*

*"Anyone who makes a profit from a woman's obscene acts and makes it a search is threatened with imprisonment for a maximum of one year."*

The provisions of Article 506 of the Criminal Code are not legal rules that can be used to ensnare perpetrators of prostitution. In R. Soesilo's language, the provisions of Article 506 of the Criminal Code are legal rules that can only be used to ensnare pimps (obscene brokers), namely people who help.<sup>28</sup> These two articles can only ensnare prostitution intermediaries, namely pimps, pimps, or owners and/or managers of embroidery houses.<sup>29</sup> The Criminal Code (KUHP) does not yet specifically regulate criminal threats for users or consumers of prostitution services, they can only be punished by being bound by marriage (zina) under the provisions of Article 284 of the Criminal Code or involving minors under the provisions of Article 295 of the Criminal Code. Users or consumers of prostitution services who are married can be charged with the offense of adultery as regulated in Article 284 of the Criminal Code.<sup>30</sup> Adultery is a complaint offense, so there must be a complaint from the legal partner who committed adultery. If there is no complaint, then the user or consumer of prostitution services cannot be said to have committed a criminal act as regulated in Article 284 of the Criminal Code.<sup>31</sup>

*Article 284*

- (1) *Threatened with a maximum imprisonment of nine months:*
1. a. *A married man who commits overspel, even though it is known that article 27 BW applies to him,*
  - b. *A married woman who commits gender, even though it is known that article 27 BW applies to her;*
  - 2.a. *A man who participates in committing the act, even though he knows that the person who is also guilty is married;*
  - b. *A married woman who participates in committing this act, even though she knows that the person who is also guilty is married and Article 27 BW applies to her.*

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<sup>27</sup> Tongat Tongat, 'Tanggung Jawab Pidana Pemakai Jasa Prostitusi (Suatu Pendekatan Yuridis-Religius)', *Hukum Pidana Dan Pembangunan Hukum*, 1.2 (2019), 1-10 (p. 3) <<https://doi.org/10.25105/hpph.vii2.5551>>.

<sup>28</sup> Tongat, p. 4.

<sup>29</sup> Juan Christopher Maramis and Hironimus Taroreh, 'Pelaku Yang Terlibat Dalam Prostitusi Online Menurut Hukum', *Lex Privatum*, 13.2 (2024), p. 8.

<sup>30</sup> Apriliani Kusumawati and Nur Rochaeti, 'Memutus Mata Rantai Praktik Prostitusi Di Indonesia Melalui Kriminalisasi Pengguna Jasa Prostitusi', *Jurnal Pembangunan Hukum Indonesia*, 1.3 (2019), 366-78 (p. 370) <<https://doi.org/10.14710/jphi.vii3.366-378>>.

<sup>31</sup> Winda Hayu Rahmawati, 'Pertanggungjawaban Pidana Pengguna Jasa Prostitusi Online', *Media Juris*, 3.3 (2020), 367 (p. 370) <<https://doi.org/10.20473/mi.v3i3.23047>>.

- (2) *Prosecution is not carried out except on the complaint of the husband/wife who is tainted, and if article 27 BW applies to them, within three months followed by a request for divorce or separation of tables and beds for that reason as well.*
- (3) *Articles 72, 73 and 75 do not apply to this complaint.*
- (4) *The complaint can be withdrawn as long as the examination in the court session has not begun.*

The construction of Article 284 of the Criminal Code indicates that there are obstacles to its implementation. Several juridical obstacles to the application of Article 284 of the Criminal Code, including for the crime of prostitution, can be stated as follows:<sup>32</sup>

- a. The provisions of Article 284 of the Criminal Code cannot be applied to men and women who are single. This is the biggest weakness that has been an obstacle in implementing Article 284 of the Criminal Code.
- b. Through the formulation of the provisions of Article 284 of the Criminal Code, the crime of adultery is constructed as a type of criminal act of complaint (*klacht-delicten*), even complaints regarding adultery will not be followed up if within 3 (three) months it is not followed by a request for divorce or separate tables and beds.

The provisions of Article 295 of the Criminal Code regulate crimes against morality, especially those involving minors who are under the power, supervision, or care of the perpetrator.

#### *Article 295*

- (1) *Threatened:*
  1. *with a maximum imprisonment of five years for anyone who intentionally causes or facilitates the commission of obscene acts by his child, stepchild, adopted child, or child under his supervision who is not yet an adult, or by a minor whose care, education or care is entrusted to him, or by his servants or subordinates who are not old enough, with other people;*
  2. *with a maximum imprisonment of four years for anyone who intentionally connects or facilitates obscene acts, except those mentioned in point 1 above, which are committed by a person whom he knows to be a minor or who he should reasonably suspect of being so, with another person*
- (2) *If the crime is committed as a search or habit, then the penalty can be increased by one-third.*

Thus, it can be concluded that criminal responsibility for prostitution in the Criminal Code is only imposed on pimps as regulated in Article 296 and Article 506 of the Criminal Code. So users of prostitution services often escape the law, because there are no regulations governing the punishment of users of prostitution services. Users of prostitution services can be punished by being bound by marriage (*zina*) by the provisions of Article 284 of the Criminal Code or involving minors by the provisions of Article 295 of the Criminal Code.

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<sup>32</sup> Yolanda Islamy and Herman Katimin, 'Upaya Kriminalisasi Terhadap Pengguna Jasa Prostitusi Dalam Perspektif Hukum Positif Di Indonesia', *Jurnal Ilmiah Galuh Justisi*, 9.1 (2021), 76 (p. 83) <<https://doi.org/10.25157/justisi.v9i1.4212>>.



The practice of prostitution involving adult women as the main actors creates stigma in society. Adult women and children are one of the groups most vulnerable to becoming victims of prostitution practices. The consequences that arise for those who become victims involve physical impacts and psychological impacts.<sup>33</sup> Physical impact includes physical suffering that can result in injury to various parts of the body. In addition, unwanted pregnancy can be a serious impact of rape committed by the perpetrator, and the victim is also at risk of contracting sexually transmitted diseases.<sup>34</sup> On the other hand, the psychological impacts that arise include stress and depression due to what they have experienced, victims will also often isolate themselves from their surroundings, this can even be made worse by victims distancing themselves from their own families, and victims often lose their opportunity to participate. Experiencing social, moral, and spiritual change.<sup>35</sup> Thus, prostitution hurts the victim and can affect the growth and development of children as the nation's next generation.

Human trafficking is a modern form of slavery, occurring both at the national and international levels. Efforts to overcome human trafficking crimes are not enough if only carried out nationally, but also require cooperation at the international level.<sup>36</sup> Human trafficking is an extraordinary, organized, and transnational crime, so it can be categorized as transnational organized crime (TOC).<sup>37</sup> In response to this crime, the United Nations (UN) ratified an international instrument, namely the Palermo Protocol, which relates to human trafficking.<sup>38</sup> The Palermo Protocol (Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children) is a protocol to prevent, suppress, and punish trafficking in persons, especially women and children.<sup>39</sup>

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<sup>33</sup> Ellora Sukardi and others, 'Memberantas Prostitusi Online Pada Masa Pandemi Covid-19 Melalui Sosialisasi Hukum Perspektif Teori Keadilan Bermartabat', *Jurnal Lemhannas RI*, 9.1 (2023), 99–113 (p. 102) <<https://doi.org/10.55960/jlri.v9i1.380>>.

<sup>34</sup> Siti Mas'udah, 'The Meaning of Sexual Violence and Society Stigma Against Victims of Sexual Violence', *Society*, 10.1 (2022), 1–12 (p. 2) <<https://doi.org/10.33019/society.v10i1.384>>.

<sup>35</sup> Salsabila Dewi Vitasari, Satria Sukananda, and Sandra Wijaya, 'Pelaksanaan Pemberian Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang', *DIVERSI : Jurnal Hukum*, 6.1 (2020), 92 (p. 102) <<https://doi.org/10.32503/diversi.v6i1.998>>.

<sup>36</sup> Renaldi Afriansyah, Valentine Febrianti, and Irma Sari, 'Upaya Asean Dalam Menangani Human Trafficking Di Regional Asean ( Studi Kasus : Perdagangan Perempuan & Anak )', *Aufklarung: Jurnal Pendidikan, Sosial Dan Humaniora*, 2.3 (2022), 225 (p. 229).

<sup>37</sup> KFDT Pande, B F K Lestari, and ..., 'Tinjauan Kriminologis Terhadap Tindak Pidana Perdagangan Orang (Human Trafficking) Yang Dilakukan Oleh Perempuan (Studi Kasus Di Lembaga ...', *Unizar Recht Journal (URJ)*, 2.2 (2023), p. 310 <<https://urj.unizar.ac.id/urj/article/view/107%0Ahttps://urj.unizar.ac.id/urj/article/download/107/45>>.

<sup>38</sup> Nurhadi Pratama, Kurniawati, and Nur Kamisah, 'Tinjauan Yuridis Antara Hukum Nasional Dan Hukum Internasional Terhadap Pelaku Tindak Pidana Perdagangan Orang', *Aufklarung: Jurnal Pendidikan, Sosial Dan Humaniora*, 2.4 (2022), 377–86 (p. 383).

<sup>39</sup> Rezti Aisyahbella, Purwoto, and A.M Endah Sri Astuti, 'Peran Kepolisian Dalam Penegakan Hukum Tindak Pidana Perdagangan Orang (Human Trafficking) Di Provinsi Jawa Tengah', *Diponegoro Law Journal*, 10.3 (2021), 570 (p. 574).

The Palermo Protocol, which was passed in 2000, has influenced the formation of legislation in various countries relating to human trafficking. The Palermo Protocol was ratified in Indonesia in 2009 through the Law on Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime (2009), this ratification occurred after the passing of the Trafficking Law. By ratifying the Palermo Protocol, it will have legal consequences for Indonesia because it is bound by international legal instruments.<sup>40</sup>

The main provisions in the Palermo Protocol relating to criminal law policy are regulated in Article 3 which discusses definitions and Article 5 which discusses the scope of criminalization. In this section, we will present a comparison of the definition and scope arrangements in the two regulations:

a. Comparison of Definitions of Human Trafficking

The definition of human trafficking regulated in Article 3 of the Palermo Protocol is as follows:

*Article 3 Palermo Protocol*

*Use of terms*

*For this Protocol:*

- (a) *"Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring, or receipt of persons, using the threat or use of force or other forms of coercion, abduction, fraud, deception, of the abuse of power or a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude, or the removal of organs;*
- (b) *The consent of a victim of trafficking in persons to the intended exploitation outlined in subparagraph (a) of this article shall be irrelevant where any of the means outlined in subparagraph (a) have been used;*

The definition model in the Palermo Protocol is quite different from the definition in the Trafficking Law which is regulated in several articles. Some of the articles in question are as follows:

*Article 1 number 1 of the Trafficking Law*

*"Trafficking in Persons is the act of recruiting, transporting, harboring, sending, transferring or receiving a person by threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or a vulnerable position, debt bondage or providing payments or benefits, to obtain consent from a person who has control over another person, whether carried out within countries or between countries, to exploit or cause people to be exploited."*

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<sup>40</sup> Mohammad Haikal Rasyid and Handoyo Prasetyo, 'Pemenuhan Hak Restitusi Sebagai Perlindungan Hukum Bagi Korban Human Trafficking Berdasarkan Tinjauan Hukum Pidana', *Jurnal Hukum Dan Kewarganegaraan*, 4.8 (2024), 8–10 (p. 11).

*Article 1 number 7 of the Trafficking Law*

*“Exploitation is an act with or without the victim's consent which includes but is not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, blackmail, physical, sexual or reproductive use of organs, or unlawfully removing or transplanting organs and/ or body tissue or exploiting a person's energy or abilities by another party to gain material or immaterial benefits.”*

*Article 1 number 8 of the Trafficking Law*

*“Sexual Exploitation is any form of use of the victim's sexual organs or other bodily organs to obtain profit, including but not limited to all activities of prostitution and fornication.”*

*Article 26 of the Trafficking Law*

*“The consent of a victim of human trafficking does not eliminate the prosecution of the crime of human trafficking.”*

Thus, human trafficking is an act that aims to exploit humans who are prone to sexual exploitation such as prostitution. In the context of human trafficking, both international and national instruments emphasize that "victim consent" is not recognized as a justification for acts of exploitation. This means that, even if a person appears to give their consent to be involved in an exploited situation, such consent is considered invalid in law, because it is usually obtained through manipulation, coercion, deception, or because of the victim's vulnerable position.

b. Comparison of the Scope of Criminalization

Article 5 of the Palermo Protocol provides guidelines in formulating the scope of criminalization which consists of probation provisions, assistance provisions, and the nature of human trafficking as an organized crime.

*Article 5*

*Criminalization*

1. *Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.*
2. *Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:*
  - (a) *Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;*
  - (b) *Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and*
  - (c) *Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.*

In the Trafficking Law, the three scopes referred to are regulated in the following articles:

1) Trial and assistance

*Article 10 of the Trafficking Law*

"Any person who assists or attempts to commit a criminal act of trafficking in persons, shall be punished with the same crime as intended in Article 2, Article 3, Article 4, Article 5 and Article 6."

*Article 23 of the Trafficking Law*

"Every person who helps the perpetrator of a criminal act of trafficking in persons escape from the criminal justice process by:

- a. giving or lending money, goods or other assets to the perpetrator;
- b. provide a place to stay for the perpetrator;
- c. hiding the perpetrator; or
- d. concealing information about the whereabouts of the perpetrator, shall be punished with imprisonment for a minimum of one year and a maximum of five years and a fine of at least IDR 40,000,000.00 and a maximum of IDR 200,000,000.00."

In the Criminal Code, attempts to commit a criminal offense are punished more lightly because the maximum principal penalty for the crime is reduced by one third as stated in Article 53 paragraph (2). A similar pattern of legal relief can also be found in assistance as stated in Article 57 paragraph (1). In the Trafficking Law, this regulation is different because the Trafficking Law does not differentiate between the main perpetrator, accomplices, or those who carry out the experiment, all of whom are subject to the same severe punishment as the main perpetrator.

2) The nature of organized crime (organized crime)

*Article 16 of the Trafficking Law*

"In the event that the criminal act of trafficking in persons is committed by an organized group, then every perpetrator of the criminal act of trafficking in persons within the organized group shall be punished with the same penalty as intended in Article 2 plus 1/3 (one third)."

The Trafficking Law clearly stipulates that the criminal act of trafficking in persons can be committed by "any person" individually or by an organized group. In the general explanation of the Trafficking Law, what is meant by "organized group" is a structured group consisting of 3 (three) or more people. In this case, the formulation of the subject in the Trafficking Law constructs the perpetrators as part of organized crime.

Changes in the formulation of the criminal act of trafficking in persons that occurred in Article 297 of the Criminal Code and the Trafficking Law which was passed in 2007 are to detail the elements in the crime of prostitution. Article 297 of the Criminal Code only formulates "Trafficking in women and trafficking in boys who are not yet adults, punishable by imprisonment for a maximum of six years", this provision was amended in 2007 as in the main offense formulated in Article 2 paragraphs (1) and (2) is formulated more comprehensively because it has several elements, namely

process, methods, goals and consequences. From a penal policy perspective, this policy begins with the formulation stage as the first stage. The formulation stage is the stage of enforcing criminal law in abstracto by the law-forming body. In this stage, legislators carry out activities to select values that are appropriate to current and future circumstances and situations, then formulate them in the form of criminal legislation to achieve the best results in criminal legislation in the sense of fulfilling the requirements. justice and efficiency. This stage is also called the legislative policy stage.<sup>41</sup> The reformulation of the criminal act of trafficking in persons means that this formulation will accommodate many things that have not been regulated in the previous regulations.

## 2. **Formulation of criminal sanctions against perpetrators of the crime of trafficking in persons for the purpose of sexual exploitation**

Criminal law determines sanctions for every legal violation committed. Criminal sanctions or often called punishments are feelings of discomfort (miserable) imposed by a judge on people who have violated legal rules or people who have committed acts prohibited by law.<sup>42</sup> In general, the sanctions system covers 3 (three) main issues, namely the type of crime (strafsoort), the severity of the crime (strafmaat), and the implementation of the crime (strafmodus).<sup>43</sup> As in the research results section, this research only focuses on the type of crime (strafsoort) and the severity of the crime (strafmaat). In terms of the type of crime (strafsoort), the formulation of sanctions in the Trafficking Law is more severe than the Criminal Code because it uses a cumulative model through the phrase "and". In terms of the severity of the crime (strafmaat), the formulation of sanctions in the Trafficking Law is also more severe because of three things. First, a special minimum is used, namely a minimum of three years. Second, the maximum prison sentence is formulated to be 2.5 times heavier than the Criminal Code, previously six years in Article 297 of the Criminal Code to fifteen years in the Trafficking Law. Third, the subsidiary fine provisions were increased from the previous 6-8 months imprisonment in the Criminal Code to one year in the Trafficking Law (see table). Thus, the formulation of criminal sanctions against perpetrators of criminal acts of human trafficking in the Trafficking Law is formulated with nuances of significant severity when compared with the Criminal Code.

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<sup>41</sup> John Kenedi, *Kebijakan Hukum Pidana (Penal Policy) Dalam Sistem Penegakan Hukum Di Indonesia, Pustaka Pelajar*, 2017, p. 7.

<sup>42</sup> Fany Annisa Putri, 'Penjatuhan Sanksi Pidana Oleh Hakim Terhadap Pelaku Tindak Pidana Praktik Mucikari', *Indonesian Journal of Criminal Law and Criminology (IJCLC)*, 3.2 (2022), 103-12 (p. 106) <<https://doi.org/10.18196/ijclc.v3i2.15528>>.

<sup>43</sup> I Wayan Wardana, 'Pidana Narkotika Di Indonesia the Death Penalty Formulation Policy on the Narcotics Crime Act in Indonesia', *Journal Kajian Hukum Dan Keadilan*, 6.8 (2014), 265-84 (p. 270).

**Table 1.** Comparative table of the formulation of offenses, staffsoort (type of crime) and strafmaat (weight of the crime)

No	Offence	Threat	
		Imprisonment	Fines (IDR)
1.	Deliberately connecting or facilitating obscene acts by another person with another person, and making it a crime	Max 1	Max 15.000
2.	livelihood or habits. (Article 296 of the Criminal Code, alternative sanctions).	year 4 months	-
3.	Trafficking in women and trafficking in underage boys. (Article 297	Max 6 years	-
4.	Criminal Code, alternative sanctions, no longer valid)	Max 12 years old	-
5.	Any person who, at his own expense or at someone else's expense, carries out a slave trade or carries out acts of slave trafficking or intentionally participates directly or indirectly in one of the acts mentioned above. (Article 324 of the Criminal Code. Sanctions	Max 1 year	120.000.000 - 600.000.000

Source: Criminal Code (KUHP) and the Trafficking Law (2007)

Judging from the sanctions system, the crime of trafficking in persons in the Criminal Code is formulated alternatively, while in the Trafficking Law it is formulated cumulatively. Quoted from Wiwik (2014) that according to Criminal Law Science, there are several types of systems for formulating criminal sanctions (strafsoort), namely:<sup>44</sup>

a. Single or Imperative Formulation System

The system for formulating types of criminal sanctions (strafsoort) which is single or imperative is a formulation system where the type of crime is formulated as the only punishment for the offense in question. This single formulation system can take the form of imprisonment alone, imprisonment alone or fines alone.

b. Alternative Formulation Systems

Formulation of an alternative system where imprisonment is formulated alternatively with other types of punishment based on the order of types of criminal sanctions from heaviest to lightest. In this way, judges are given the opportunity to choose the type of punishment they wish to apply.

c. Cumulative Formulation System

The cumulative formulation system has a special characteristic, namely the presence of a criminal threat with the editorial conjunction "and" between the two types of punishment being threatened, for example "imprisonment and a fine".

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<sup>44</sup> Wiwik Afifah, 'Pertanggungjawaban Pidana Anak Konflik Hukum', *Jurnal Ilmu Hukum*, Vol. 10.19 (2014), p. 59.

d. Cumulative-Alternative Formulation System

This formulation system is often called a mixed/combined formulation system, which contains the following dimensions:

- 1) There is a cumulative formulation dimension. This aspect is a logical consequence of the cumulative formulation of the special word "and" in it;
- 2) There is an alternative formulation dimension in it. This aspect is reflected in the word "or" which is selective in the formulation of alternatives; And
- 3) There is a single formulation dimension in it. This aspect is reflected in the cumulative-alternative formulation system with the word "and/or".

The cumulative and cumulative-alternative formulation systems are not found in the Criminal Code, but are often found in formulations outside the Criminal Code. Thus, in terms of the criminal sanctions formulation system (strafsoort), the formulation of criminal sanctions contained in the Trafficking Law is formulated more seriously than in the Criminal Code because there is a change from alternative to cumulative. Overcoming the crime of trafficking in persons through penal measures is reflected in the Trafficking Law (2007). The policy for dealing with human trafficking crimes in the Trafficking Law (2007) can be seen starting from the considerations, namely:

- a. that trafficking in persons, especially women and children, is an act that is contrary to human dignity and violates human rights, so it must be eradicated;
- b. that human trafficking has spread in the form of organized and unorganized crime networks, both inter-state and domestic, thus becoming a threat to society, nation and state, as well as to the norms of life based on respect for human rights;
- c. that the desire to prevent and overcome criminal acts of human trafficking is based on noble values, national and international commitment to carry out early prevention efforts, take action against perpetrators, protect victims, and increase cooperation;

In the general explanation of the Trafficking Law (2007), it is stated that the provisions regarding the prohibition of human trafficking are basically regulated in Article 297 of the Criminal Code (KUHP). However, the provisions of the Criminal Code do not formulate a clear legal definition of human trafficking. In addition, Article 297 of the Criminal Code provides sanctions that are too light and not commensurate with the impact suffered by victims as a result of human trafficking crimes. Therefore, a special law is needed regarding the criminal act of trafficking in persons which is capable of providing a material and formal legal basis at the same time.

The criminal act of trafficking in persons is a violation of human rights, as stated in the preamble to letter b of the Trafficking Law (2007) "that trafficking in persons, especially women and children, is an act that is contrary to human dignity and violates human rights, so it must be eradicated." Human trafficking is a violation of human rights because it violates various fundamental rights that every individual naturally has. Some examples of basic natural rights that are often violated in cases of human trafficking, namely:

a. Violates the right to personal freedom and security

Trafficking in persons violates the right to personal freedom and security because it involves practices such as violence, fraud, or other coercion for the purpose of exploitation that deprives victims of their personal freedom and sense of security. This violates Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 9 paragraph (1) of the 1966 International Covenant on Civil and Political Rights (ICCPR).

*Article 3 UDHR*

*"Everyone has the right to life, liberty and safety as an individual."*

*Article 9 paragraph (1) ICCPR*

*"Everyone has the right to personal freedom and security. No one may be arbitrarily arrested or detained. No one may be deprived of his liberty except on legitimate grounds, in accordance with procedures established by law."*

Human trafficking violates the right to freedom from slavery because victims are often treated like slaves, have limited movement, are forced to work without limits, and if they do not carry out these orders, they will be tortured by the slave owner.<sup>45</sup> This violates Article 4 of the Universal Declaration of Human Rights (UDHR) and Article 8 of the 1966 International Covenant on Civil and Political Rights (ICCPR).

b. Violates the right to freedom from slavery

*Article 4 UDHR*

*"No one shall be enslaved or servitude; Slavery and the slave trade in any form must be prohibited."*

*Article 8 ICCPR*

- (1) No one shall be enslaved; slavery and the slave trade in all its forms must be prohibited;
- (2) No one can be enslaved. Violates the right not to be treated inhumanely or degradingly

Trafficking in persons violates the right not to be treated inhumanely or degradingly because victims of human trafficking often experience physical, mental and emotional violence, including torture, inhumane or degrading treatment.<sup>46</sup> This violates Article 5 of the Universal Declaration of

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<sup>45</sup> Siti Zakiyatul Humairoh, 'Trafficking Woman and Child: Kajian Terhadap Hadis-Hadis Tentang Perdagangan Manusia', *Jurnal Kajian Islam Interdisipliner*, 4.2 (2020), 187 (p. 198) <<https://doi.org/10.14421/jkii.v4i2.1105>>.

<sup>46</sup> Sarifa Suhra, 'Kekerasan Perempuan Dan Anak Dalam Media Dan Upaya', *Pusat Studi Gender Dan Anak UIN Alauddin Makassar*, 3.2 (2019), 227-42 (p. 227).



Human Rights (DUHAM) and Article 32 paragraph (1) of the Human Rights Law (1999).

c. Violates the right not to be treated inhumanly or degrading

Article 5 UDHR

"No one shall be subjected to torture or cruel treatment, inhumane treatment or punishment or humiliation."

Article 32 paragraph (1) of the Human Rights Law

"Everyone has the right to be free from torture, punishment or treatment that is cruel, inhuman, degrading to their human status and dignity."

The criminal act of trafficking in persons is an organized crime and a transnational crime, as stated in the preamble to letter c of the Trafficking Law (2007) "that trafficking in persons has become widespread in the form of organized and unorganized crime networks, both inter-state and domestic, so that it becomes a threat to society, nation and state, as well as to the norms of life based on respect for human rights." Human trafficking is a well-organized crime, from conventional to modern methods by building networks from national to international.<sup>47</sup> Organized crime includes any group of people whose primary activity is to commit crimes in violation of criminal law to gain profit and power.<sup>48</sup> Transnational crimes in their operations are carried out neatly. However, its covert and organized existence with diverse and complex operating modes makes it difficult to detect and take action against the perpetrators. To deal with transnational crime, many countries and international organizations have worked together to develop legal frameworks and law enforcement tools that enable more effective response through international agreements, cooperation between countries, and efforts to increase law enforcement capabilities globally.<sup>49</sup>

Efforts to prevent and overcome criminal acts of human trafficking in Indonesia include various strategic steps involving approaches of prevention, action, protection and cooperation, as stated in the preamble to letter d of the Trafficking Law (2007) "that the desire to prevent and overcome criminal acts of human trafficking is based on the values noble values, national and international commitment to carry out early prevention efforts, take action against perpetrators, protect victims, and increase cooperation." Women and children are a vulnerable group to become victims of human trafficking because in the social structure in

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<sup>47</sup> Abdurrakhman Alhakim, Ampuan Situmeang, and Jeannette Andhini Nurrulia Mashita, 'Peran Imigrasi Dalam Pencegahan Dan Pengawasan Tindak Pidana Perdagangan Orang Menurut Perspektif Imigrasi Kota Batam', *Jurnal Hukum To-Ra : Hukum Untuk Mengatur Dan Melindungi Masyarakat*, 9.3 (2023), 322-38 (p. 327) <<https://doi.org/10.55809/tora.v9i3.263>>.

<sup>48</sup> Brian Septiadi Daud and Eko Sopoyono, 'Penerapan Sanksi Pidana Terhadap Pelaku Perdagangan Manusia Di Indonesia (Application of Criminal Sanctions Against Human Trafficking in Indonesia)', *Jurnal Pembangunan Hukum Indonesia*, 1.3 (2019), 352-65 (p. 353).

<sup>49</sup> Denny Simanjuntak, 'Urgensi Kerja Sama Internasional Kepolisian Indonesia Dan Malaysia Dalam Penanggulangan Kejahatan Lintas Negara Perdagangan Orang "Trafficking In Persons"', *Jurnal Cahaya Mandalika ISSN 2721-4796 (Online)*, 5.1 (2024), 410-23 (p. 413) <<https://doi.org/10.36312/jcm.v5i1.2768>>.

Indonesia, women and children have low self-bargaining value (subordinate) and the market places women and children as objects.<sup>50</sup> Indonesia's legal politics regarding the protection of women and children shows a strong commitment to protecting these vulnerable groups from various forms of violence and exploitation.<sup>51</sup> This is reflected in the frequent revisions to the Child Protection Law and the Sexual Violence Crime Law, as follows:

- a. The Child Protection Law (2002);
- b. The Child Protection Law (Amendment 2014);
- c. The Child Protection Law (Amendment 2016); and
- d. The Sexual Violence Crime Law (2022).

The revision of the Child Protection Law aims to guarantee and protect children and their rights so that they can live, grow and participate as well as possible, in accordance with human dignity and protection from violence and discrimination.<sup>52</sup> Even though the Child Protection Law has undergone several revisions, the government continues to ratify the TPKS Law, even though some of the substance of the criminal acts are already found in the Child Protection Law. The TPKS Law exists to regulate all forms of sexual violence, protect the rights of victims, and provide integrated legal procedures.<sup>53</sup> The existence of this law shows that Indonesia is increasingly aware of the position of women and children as vulnerable groups and in need of optimal legal protection. The increase in the weight of criminal sanctions (*stafmaat*) in the Trafficking Law (2007), marked by the use of the word "and" in formulating the threat of punishment, can be attributed to the application of the absolute theory (retaliation). The absolute theory or theory of retaliation in criminal law emphasizes that punishment is given as retribution for crimes that have been committed, without considering other factors such as rehabilitation.<sup>54</sup> The use of the word "and" in formulating criminal sanctions shows that there was an effort by the framers of the Trafficking Law (2007) to strengthen and increase the punishment cumulatively so that the perpetrators would be punished or made to suffer more which could lead to a deterrent effect on the perpetrators.<sup>55</sup> This is in line with the basic principles of

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<sup>50</sup> Cahya Wulandari and Sonny Saptoajie Wicaksono, 'Tindak Pidana Perdagangan Orang (Human Trafficking) Khususnya Terhadap Perempuan Dan Anak: Suatu Permasalahan Dan Penanganannya Di Kota Semarang, *Journal Yustisia*, Edidi 90, 2014, Hlm.', *Yustisia*, 3.3 (2014), 15-26 (p. 23) <<https://doi.org/https://doi.org/10.20961/yustisia.v3i3.29272>>.

<sup>51</sup> Rochaety Nur, 'Menegakkan Ham Melalui Perlindungan Hukum Bagi Perempuan Korban Kekerasan Di Indonesia', *Palastren*, 7.1 (2019), 1-24 (p. 8).

<sup>52</sup> Rochaety Nur, p. 18.

<sup>53</sup> dan Dewi Asri Fihra Rizqi Novia Ridwan, 'Pentingnya Pendampingan Hukum Bagi Korban Tindak Pidana Kekerasan Seksual: Kebutuhan Dan Kekerasan Dan Keharusan Hukum Pidana', *Legal Standing Jurnal Ilmu Hukum*, 8.2 (2024).

<sup>54</sup> Rafif Sani, 'Peringatan Hukuman Pidana Bagi Ibu Yang Memiliki Anak Balita', *Jurnal Hukum Statuta*, 2.2 (2023), 109-20 (p. 116).

<sup>55</sup> Riza Alifianto Kurniawan, Iqbal Felisiano, and Astutik Astutik, 'Penafsiran Victim Precipitation Untuk Pemidanaan Kekerasan Seksual', *Masalah-Masalah Hukum*, 52.1 (2023), 86-96 (p. 51) <<https://doi.org/10.14710/mmh.52.1.2023.86-96>>.

absolute theory which emphasizes retributive justice, namely providing punishment commensurate with the mistakes committed.

Law enforcement against perpetrators of the Crime of Human Trafficking has shown a tendency to apply punishments with criminal nuances. This is reflected in the minimum penalty provisions implemented in the Trafficking Law (2007), namely a minimum prison sentence of three years and a minimum fine of IDR 120,000,000 , which reflects the intention to provide a significant deterrent effect against perpetrators and prevent similar criminal acts from occurring in the future. The following is summary data from several court decisions regarding prostitution as a trafficking:

**Tabel. 4.3.** Summary of Several Court Decisions Concerning Prostitution as a trafficking

No.	Register	District Court	Offence on the Trafficking Law (2007)	Cumulative punishment	
				prison	Fine (Rp)
1.	123/Pid.Sus/2023/PN Mks	Makassar	Article 12	5 years	120.000.000
2.	87/Pid.Sus/2021/PN Bgl	Bengkulu	Article 2 jo 12	7 years	120.000.000
3.	186/Pid.Sus/2018/PN Grt	Garut	Article 12	4 years	120.000.000
4.	272/Pid.Sus/2022/PN Btm	Manado	Article 12	5 years	120.000.000
5.	122/Pid.Sus/2020/PN Mnd	Manado	Article 12	3 years	120.000.000
6.	195/Pid.Sus/2018/PN Grt	Garut	Article 12	6 months	120.000.000
7.	131/Pid.Sus/2019/PN Bgl	Bengkulu	Article 12	3 years	120.000.000
8.	190/Pid.Sus/2020/PN Btm	Batam	Article 11	3 years	120.000.000
9.	30/Pid.Sus/2023/PN Swl	Sawahlunto	Article 12	5 years	120.000.000
10.	95/Pid.Sus/2023/PN Tjp	Tanjung Pati	Article 12	3 years	120.000.000

*Source: Directory of Supreme Court Decisions and Case Tracking Information System, processed September 2024*

Based on this table, it shows that the law enforcement of the decisions above in practice (actual enforcement) is in accordance with In Abstracto and In Concreto, as is the theory of law enforcement put forward by Barda Nawawi Arief that the theory of law enforcement is divided into 2 (two) stages. First, Law Enforcement In Abstracto, namely the process of formulating law or making laws (legislation).<sup>56</sup> The government and legislators created relevant legal instruments to regulate the crime of trafficking in persons by passing the Trafficking Law (2007). The state provides a clear legal basis for handling and punishing criminal acts of human trafficking, as well as providing protection to victims. Second, In Concreto Law Enforcement, namely applying criminal law involving elements of criminal law enforcement such as the police, prosecutors, judges, advocates and correctional institutions (judiciary).<sup>57</sup> In the context of human trafficking, this

<sup>56</sup> John Kenedi, 'Kritik Terhadap Politik Penguasa Dalam Kebijakan Penegakan Hukum Pidana', *MANHAJ: Jurnal Penelitian Dan Pengabdian*, Vol. 4, No (2016), 9 (p. 10).

<sup>57</sup> Kenedi.

includes law enforcement efforts such as prosecutors, police and judges by processing traffickers who are proven guilty through the criminal justice system (investigation, prosecution and punishment), based on the provisions in the Trafficking Law (2007). Thus, in the context of law enforcement regarding criminal acts of human trafficking, both in abstracto and in concreto are a form of actual law enforcement (actual enforcement) which functions to ensure legal justice is upheld and law violators receive sanctions appropriate to their actions.

## **Conclusion**

The prevention of prostitution as a criminal act of human trafficking should be made more serious in Article 2 of the Trafficking Law (2007), to life imprisonment or a maximum of twenty years and a minimum of five years. There is also a need to evaluate the handling of prostitution based on the Trafficking Law (2007). The judge together with the Ministry of Law and Human Rights reviewed the development of guidance for convicts in prostitution cases in order to reduce the potential for recidivism. The implementation of high criminal penalties (staffmaat) should have a positive correlation with reducing the recidivism rate in prostitution crimes as a form of deterrence.

## **Suggestion**

Overcoming prostitution as a criminal act of human trafficking in Indonesia through penal efforts that the formulation of acts regulated in the Criminal Code and the Trafficking Law (2007) have similarities in terms of the substance of the criminal act, namely that they both ensnare perpetrators who act as intermediaries or pimps in human exploitation. However, there are differences in the construction of the weight of criminal sanctions. The Criminal Code provides criminal threats with an alternative system, which allows judges to choose between imprisonment or a fine. Meanwhile, the Trafficking Law (2007) applies the threat of cumulative sanctions, where perpetrators can be charged with imprisonment and a fine at the same time. This shows that the Trafficking Law (2007) provides strict and comprehensive criminal sanctions for criminal acts of human trafficking, including the role of pimps in it.

The formulation of criminal sanctions against perpetrators of the crime of trafficking in persons for the purpose of sexual exploitation in the Trafficking Law (2007) in Persons is formulated with the pattern of increasing the severity of criminal threats (stafmaat). In this law, criminal sanctions are formulated with a uniform weight, namely imprisonment from three years to fifteen years and a fine of IDR 120,000,000 up to IDR 600,000,000 this is different from the previous formulation in the Criminal Code which used a maximum imprisonment of six years in Article 297 of the Criminal Code or twelve years in Article 324 of the Criminal Code. The increase in the severity of the threat of criminal sanctions aims to provide a more optimal deterrent to perpetrators of prostitution.

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