

**JURIDICAL REVIEW OF THE CRIME OF HUMAN TRAFFICKING**  
**Study of Decision No. 176/Pid.Sus/2017/PN.Amb.****Mia Ayu Permatasari**Faculty of Law, Universitas Muhammadiyah Surakarta, Indonesia  
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[kus283@ums.ac.id](mailto:kus283@ums.ac.id)**ABSTRACT**

This study aims to analyze the legal implications of the District Court's decision based on decision number 176/Pid.Sus/2017/PN.Amb. Human trafficking is an act that is very unlawful especially when committed against women and children. The rampant trafficking that has occurred always makes women and children the target, because the mode used is to seduce and provide lures to victims, which causes an increase in the crime of human trafficking. The research method used is the normative juridical approach method with data analysis techniques, namely descriptive analytics. The results of his research show that the decision Number 176/Pid.Sus/2017/PN.Amb, normatively does not have a significant impact on legal protection for victims, namely girls in cases of human trafficking. The District Court's decision focused on the defendant alone but less focused on the victim. In this court decision, it is quite good in giving punishment to the defendant, however, one of the rights needed by the victim, namely restitution, has not been granted by the panel of judges and does not have any impact on the immaterial losses suffered by the victim. Protection and attention to the interests of victims are seen as the main thing in efforts to protect the law against the crime of human trafficking which is regulated in Law No. 21 of 2007 concerning Eradication of the Crime of Human Trafficking and Law No. 1 of 2023 concerning the Criminal Code which has provided protection to the rights of the perpetrators.

**Keywords:** Verdict; Women; Human Trafficking**INTRODUCTION**

Indonesia is a state of law, clearly written in article 1 paragraph (3) of the 1945 Constitution. In the life of a state, it must always strive to uphold legal life in a life in society. This thought can be believed not only because of the adoption of the idea of the rule of law, but more clearly assess the trends that can occur in the life that exists in Indonesia which has developed into a more modern society. (1)

The problem of human trafficking is currently very rampant in various countries, one of which is Indonesia. This case has become the concern of all national and international communities, especially the United Nations (UN), as stated in the 2000 United Nations Protocol on Preventing, Combating and Punishing Human Trafficking, especially Women and Children (Palermo Protocol) which has been approved and signed by various countries including Indonesia. Human trafficking is mostly “recruitment, transportation, or transfer”. This can lead to forced labor. (2)

The crime of human trafficking is a significant problem that has threatened humanity since the existence of human life itself. (3) The majority of trafficking victims are women and children; this can be said to be a slavery that occurs in the modern era which is included in the multidimensional crisis felt by Indonesia. In the past until now the practice of human trafficking can be said to be quite increasing, every year it can be estimated that 2 (two) million people have been trafficked and more sadly the average victims of trafficking are women and minors.

In accordance with this statement, it can be said that crimes/violence against women are characterized by: (1) the act is directed at women, which causes women to become victims; (2) attacks women's rights; and (3) has a very detrimental effect on both physical, psychological and sexual losses. (4) Women and children victims of human trafficking are entitled to coordination of efforts designed to ameliorate the adverse effects of human trafficking, including increased trafficking rates (5).

Given the importance of resolving the Crime of Human Trafficking, which is a criminal offense that has a very complex character and scope and its scope is very broad to various countries, therefore law enforcement is not sufficient if it only uses the regulations of Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking, but also needs to use the substance of other branches of legal regulations (legal substance). (6)

Some previous studies related to this research include research conducted by Adystia, et al (2022) which examines that the victims of human trafficking crimes in the study are not so concentrated but more concentrated on the perpetrators who can be indicated by the completion of an existing problem. The results of this study Legal protection against criminal acts of human trafficking in Indonesia is sufficient but the implementation of law enforcement against victims in general can be said to be less serious.

The research conducted by Fikri Yundanto (2021) discusses the legal protection of victims in the study of decision No. 39/Pid. Sus/2019/PN Met. In this study, the results provide that the legal protection received by witnesses and victims is given on a basis of consideration by looking at the conditions of the witnesses and victims whether they have fulfilled the applicable provisions to obtain legal protection.

Based on the description above, there are differences in research, namely Adystia's research focuses on regulations governing human trafficking crimes that are less efficient and do not work optimally in providing protection to victims of human trafficking crimes in general and have not focused on victims of women and children. While Fikri Yundanto's research which discusses the decision of the Metro District Court Number 39/Pid. Sus/2019/PN Met, has focused on victims, but the protection provided is not optimal and efficient for the protection of women and children, while this study discusses a juridical review of the crime of human trafficking, the legal implications of court decision Number 175/Pid.Sus/2017/PN Amb, which is substantially related to the imposition of penalties on perpetrators of human trafficking. The purpose of this study is to analyze the criminal act of human trafficking contained in Court Decision Number 175/Pid.Sus/2017/PN Amb.

### **RESEARCH METHOD**

This research focuses on various aspects of theory, composition, philosophy, structure, and comparison that explain several articles in the applicable law, which in this research uses a normative juridical approach. The data sources that will be used for reference are secondary data sources that originate from the results of literature with the criminal offense of human trafficking. In this research, data collection techniques are carried out by analyzing library materials or secondary data so as to obtain valid data. This is supported by literature studies (books, literature, documents, magazines, internet, laws and regulations) obtained by the author and is theoretical. In this study using secondary data in the form of documents, concepts, opinions, opinions, the data analysis technique used is descriptive analytical.

### **RESULTS AND DISCUSSION**

In Indonesia, Human Trafficking is not a new and common thing for Indonesian people, trafficking or human trafficking has been known since the Dutch colonial era. This can be

proven during the Indonesian Women's Association Congress (KPPPI), in 1932 which discussed human trafficking. The forum has issued recommendations related to human trafficking, especially trafficking in women and children. One of the recommendations is that trafficking in women and children is closely related to the poor living patterns that have been suffered by the community, the Congress of the Indonesian Women's Association (KPPPI) believes that there is a very close relation between the problem of trafficking in women and prostitution and the main problem or driving factor, namely community poverty. During the colonial period, ordinary people were very often entangled in debt and the conditions of work for women were very poor.

Human trafficking is a dynamic crime, with definitions changing regularly to reflect social, political and economic advances. To date, there is no globally accepted definition of human trafficking. As a result, opinions differ on the best definition of human trafficking that can be used to characterize this complex issue.(7)

Human trafficking is defined as the act of recruiting, transferring, harboring, sending, moving, or receiving a person under threat of force, actual use of force, abduction, confinement, forgery, fraud, abuse of power, or a position of vulnerability, debt bondage, or the provision of payments or benefits in order to obtain the consent of a person having control over another person. This activity can occur within or between countries with the aim of exploiting or leading to the exploitation of other countries. The content of the legislation written in Law No. 21/2007 on human trafficking must be seen in the context of defending and upholding the rights of victims, especially women and children.(8)

Fifty million people are living in modern slavery in 2021, according to the latest Global Estimates of Modern Slavery. Of these, 28 million are in forced labor and 22 million are trapped in forced marriage. The number of people in modern slavery has increased significantly in the last five years. There are 10 million more people in modern slavery in 2021 compared to the global estimate in 2016. women and children remain in a particularly vulnerable position.(9) The problem of criminal acts related to human trafficking, especially those involving women and children, has been present for a long time and continues to grow every year in a number of countries, including Indonesia. In relation to human trafficking, Indonesia is now in a state of emergency for Human Trafficking (TPPO). The situation in Indonesia is dire and very concerning. Based on information from the Indonesian Migrant Workers

Protection Agency (BP2MI), 1,900 bodies of human trafficking victims were transported to Indonesia in the past year. It can be inferred that two boxes of bodies of human trafficking victims were sent to Indonesia in one day.

In fact, for example in East Nusa Tenggara (NTT), as victims of human trafficking, fifty-five bodies of Indonesian citizens (WNI) have been repatriated since January 2023. Victims of human trafficking usually depart informally or non-procedurally. The majority were allegedly eliminated by syndicates. In addition to fatalities, Indonesian Migrant Workers Protection Agency also reports that a large number of Indonesian citizens suffer from disorders, depression, and even memory loss due to human trafficking. According to Indonesian Migrant Workers Protection Agency records, as many as 3,600 Indonesians are victims of human trafficking and suffer from memory loss, depression, and other illnesses.

The teachings of Islamic law are explicit in their prohibition of the sale and trade of slaves, including free humans. Indeed, the Islamic tradition ascribes a strong censure to those who engage in the trade of slaves or humans. In this context, the Prophet also emphasized that the income derived from such transactions is strictly prohibited and cannot be used or utilized.<sup>(10)</sup>

Basically, judicial institutions are formed on the pillars of judicial bodies that should be subject to law enforcement, therefore judges who are the subsystem of the judiciary are the most important and important actors functionally carrying out justice (11). In Decision No. 175/Pid.Sus/2017/PN Amb on the crime of human trafficking, this is a decision that has been decided through three levels, namely the district court, the high court, and finally decided by the Supreme Court of the Republic of Indonesia which examined the criminal case of human trafficking with 3 defendants. The verdict stated that the defendants were proven legally and convincingly guilty of committing the crime of human trafficking as regulated and punishable in Article 2 paragraph (1) of Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking; Sentenced the defendants to 3 (three) years imprisonment each, plus a fine of IDR 150,000,000.00 (one hundred and fifty million rupiah) and if the fine is not paid, it will be replaced with 2 (two) months imprisonment;

This research will discuss decision No. 175/Pid.Sus/2017/PN Amb on human trafficking in which this decision has been considered by the judge in the cassation level decision which reads that the *judex facti* decision has also considered juridically relevant legal

facts correctly and correctly based on valid evidence in accordance with the provisions of the law, namely that the Defendant's actions were proven to have committed the crime of human trafficking with the victim witnesses EFL and F, which when the victim witnesses were trained to become prospective Indonesian Migrant Workers (TKI) who would be dispatched to Malaysia by providing work such as washing dishes, wiping windows, mopping and sweeping the house, the victim witness Eliska who was at the home of the Defendant was often hit by the child of the Defendant so the victim witness called her mother to contact her uncle in Jakarta to pick up the victim witness.

The implication of Court Decision Number 175/Pid.Sus/2017/PN Amb which is clear and firm and has been considered by the judge is that the decision to the perpetrator is very satisfying, namely the rejection of the appeal made by the perpetrator of human trafficking or the defendant in decision Number 1584 K/Pid.Sus/2021, and has sentenced the defendant to imprisonment for 3 (three) years, and a fine of IDR 150,000,000.00 (One Hundred Fifty Million Rupiah). In addition to the nature of the decision, the legal implication of the decision is that it makes the laws and regulations made by the government less efficient in protecting victims, because Decision Number 175/Pid.Sus/2017/PN Amb only focuses on the perpetrator, but less focus on the victim in this case the victim was also immaterially disadvantaged, explained by the victim witness that she was often angry, cursed, and hit by F, the son of the defendant.

The legal considerations stated that the defendant was proven to have committed the crime of human trafficking by employing a person as an Indonesian Labourer without the knowledge of the victim. In the decision of the District Court, the public prosecutor had filed a claim for restitution in the amount of IDR 26,966,000.00 (twenty million nine hundred sixty-six thousand rupiahs), in lieu of 3 (three) months imprisonment, but it was not granted by the panel of judges. Because in the consideration of the judge which reads "Considering, that regarding the criminal restitution as in the prosecution of the Public Prosecutor because during the trial as witness testimony no one explained that the witness suffered a loss for the events experienced, therefore the claim of restitution is not proven;"

In addition to the above, this research argues that the decision of the Ambon District Court up to the Cassation Decision of the Supreme Court of the Republic of Indonesia was satisfactory enough to punish the defendants in the case of the crime of human trafficking and the panel of judges also gave consideration to the age of the victim who was still underage.

Which states that the defendant has committed recruitment and exploitation of children in the territory of the Republic of Indonesia as an element of Article 2 paragraph (1) of Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking. The legal protection of child victims of human trafficking can be interpreted as one of the legal protection efforts for various freedoms and human rights of children as well as various needs and interests to provide welfare for children.(12)

Legal protection that has been regulated in the Law on Criminal Code against victims in the form of compensation listed in Article 66 paragraph (1) letter (d) of Law Number 1 Year 2023 on the Criminal Code, compensation in this provision is the same as restitution as regulated in laws and regulations governing the protection of witnesses and victims. The public prosecutor representing the victim had also applied for restitution but it was not granted by the panel of judges for the reasons previously discussed.(13)

Law enforcement that is handling human trafficking cases can be said to be less than optimal in fighting for victims' restitution rights, which is only limited to asking or informing the existence of restitution rights that have been obtained by victims. This can have significant implications regarding the level of risk of trust from victims to law enforcement which can be reduced (14). In Indonesia, the implementation of restitution rights for victims of crime has not yet been implemented, with many victims failing to obtain restitution from the perpetrator due to a lack of knowledge of restitution rights and the procedures for applying for it.(15)

Many cases of trafficking occur in accordance with the opinion of the perpetrator who always uses the excuse that the victim is willing and has given consent and agreed to participate in human trafficking. This statement is reinforced in Article 455 of Law No. 1 of 2023 on the Criminal Code, which states that the consent of the victim of trafficking does not result in the elimination of the crime of human trafficking. The element of purpose also shows that the crime of human trafficking is a formal criminal offence, it can be said to be a formal criminal offence because the existence of the criminal offence of human trafficking and the elements of the criminal offence that have been formulated are sufficient and do not need to cause consequences.(16)

## **CONCLUSION**

The implications of District Court Decision No. 176/Pid.Sus/2017/PN.Amb,

normatively, do not have a significant impact on legal protection for victims, namely girls in cases of human trafficking. The District Court's decision focused on the defendant alone but less on the victim. In this court decision, it is quite good in giving punishment to the defendant, however, one of the rights needed by the victim, namely restitution, has not been granted by the panel of judges and does not have any impact on the immaterial losses suffered by the victim. Protection and attention to the interests of victims are seen as the main thing in efforts to protect the law against the crime of human trafficking regulated in Law No. 21 of 2007 concerning Eradication of the Crime of Human Trafficking and Law No. 1 of 2023 concerning the Criminal Code which has provided protection to the rights of the perpetrators.

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