

Sexual Violence And Its Relationship With Human Trafficking And The Provisions Of Commercial Law

Nomensen Freddy Siahaan, Agustina Wati

Universitas Mulawarman, Samarinda, Kalimantan, Indonesia

nomensen.freddy1989@gmail.com

ABSTRACT

This research discusses the phenomenon of sexual violence related to the practice of human trafficking and how the provisions of commercial law play a role in this context. Sexual violence is often part of the exploitation experienced by victims of human trafficking, where women and children are the most vulnerable groups. This study highlights how trade law regulations, both national and international, can affect human trafficking practices and efforts to prevent and enforce sexual violence. This analysis involves a multidisciplinary approach, combining legal, social, and economic aspects to provide a comprehensive understanding of the relationship between sexual violence, human trafficking, and commercial law. The results of this study are expected to contribute to the development of more effective policies in preventing and tackling human trafficking and protecting victims of sexual violence.

Keywords: *Sexual Harassment, Human Trafficking, Commercial Sex Workers*

This article is licensed under [CC BY-SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/) 

INTRODUCTION

The issue of sexual violence, particularly within academic institutions, has garnered increasing attention in recent years. The phenomenon of alleged sexual harassment at Pancasila University, described as "the first case that ensnared the highest official on campus," highlights the pressing need for further analysis of sexual violence and its broader social and legal implications. This case is significant not only because of the involvement of a high-ranking official but also because of the potential psychological consequences for the victims, which can be long-lasting and devastating (Nichols, 2016).

The author has chosen to focus on sexual violence and the provisions of commercial law for several reasons. First, victims of sexual violence are particularly vulnerable to psychological disorders, such as trauma, depression, and anxiety, which can lead to a loss of self-worth and a sense of hopelessness (Herman & Cullinan, 1997). In extreme cases, victims may resort to desperate measures, including involvement in human trafficking or other forms of exploitation, to cope with their perceived loss of a future and rejection by society (Zimmerman et al., 2011). This creates a vicious cycle, where victims of one crime become victims of another.

The choice of commercial law as a framework for this analysis stems from the legal dimensions of human trafficking, which is a growing concern both domestically and internationally. Human trafficking, which often involves the illegal sale or exploitation of individuals, is a violation of commercial law and human rights (Organization, 2018). By exploring the relationship between sexual violence and the risk of subsequent involvement in human trafficking, this study aims to address the broader social and legal issues at play.

Understanding these variables is crucial for creating legal frameworks that not only punish offenders but also protect victims from further harm.

METHOD

This study employs normative legal research methods, which focus on analyzing legal norms and regulations relevant to the research topic. Normative legal research is a scientific procedure aimed at discovering the truth through logical reasoning based on the established principles of law. This method relies on the systematic examination of legal materials, including legislation, case law, and legal doctrines, to provide a comprehensive understanding of the issue under study. The data used in this study are primarily secondary in nature, consisting of laws, regulations, legal precedents, and scholarly legal commentaries that are pertinent to the topic of sexual violence and commercial law. To ensure the relevancy and accuracy of the data, the research first identified relevant laws and regulations by conducting a thorough review of Indonesian legal frameworks, such as the Criminal Code (KUHP), Law No. 21 of 2007 on the Eradication of Human Trafficking, and international conventions ratified by Indonesia. In addition to legislation, the study examined previous academic research, case law, and legal commentaries to gain a broader perspective on how legal principles apply to the issue of sexual violence and human trafficking.

Once the relevant legal materials were collected, the data analysis process began with the systematic interpretation of legal texts, focusing on their application to sexual violence and commercial law. This included evaluating the purpose, scope, and application of laws, as well as identifying any inconsistencies or gaps. A comparative legal analysis was also employed, where necessary, to contrast Indonesian laws with international conventions and legal practices from other countries, highlighting differences and suggesting improvements. Finally, the findings were synthesized to propose recommendations for enhancing legal protections against sexual violence and human trafficking. This detailed methodological approach ensures that the research is grounded in thorough legal analysis, enabling readers to understand the steps taken to collect and interpret the data without needing to refer to external sources.

RESULTS AND DISCUSSION

Analysis of Sexual Violence Based on Commercial Law Perspective

A. Sexual Violence

Galtung's view of violence is widely referred to and is the basis for realizing world peace, according to Galtung, violence is interconnected and affects each other. Johan Galtung introduced the Violence Triangle, that violence has 3 dimensions, namely direct violence, structural violence, and cultural violence.

The first form of violence: Direct Violence, is a form of violence that is directly committed by the perpetrator, this form of violence can be seen from the physical and psychological side, where there are perpetrators and victims. This model of violence is common violence, for example physical and psychological violence. This form of violence can be seen from the form of physical and psychological violence where there are victims and perpetrators, examples of this violence are, torture, humiliation, bullying, personal discrimination, etc.

The second form of violence: Structural Violence, a form of structural violence is violence that involves a structure that houses society, therefore this violence is similar to a form of social

injustice. This model of violence can be said to be formed by invisible and structurally formed forces that cause the fulfillment of basic human rights to be hindered. Examples of structural violence are racial laws, restrictions on women's political rights, inequality in access to education, income inequality, etc.

The third form of violence is Cultural/Symbolic Violence, this model of violence is a socio-cultural aspect of society that allows or supports the occurrence of two models of violence, direct violence and structural violence. This model of violence is influenced by the culture of society, which is influenced by attitudes or prejudices, examples of this violence are racism, sexism, fascism, persecution, etc.

Galtung describes the triangle of hardness with the iceberg phenomenon model, that not all forms of hardness are visible on the surface like the iceberg phenomenon, the surface of the visible mountain is much smaller than the part of the iceberg that is below the surface and is invisible. Direct violence, which is directly visible in society, on the iceberg of direct violence is on the surface and visible, while structural violence *and* cultural violence *are* part of the iceberg that remains below the surface of the water because it is invisible.

Victims who experience sexual violence are very vulnerable to psychological disorders and may experience protracted disappointment that may vent their disappointment by selling themselves through human trafficking because they feel that they no longer have a future and are not accepted by society. If human trafficking occurs, it will add new problems to the social phenomenon of the community because it is not in accordance with the provisions of commercial law. Human Trafficking is a series of rights and obligations of both parties, who promise each other, namely the seller and the buyer. The sale and purchase agreement is regulated in Articles 1457 to Article 1540 of the Civil Code (hereinafter referred to as the Civil Code). The definition of sale and purchase according to Article 1457 of the Civil Code is "An agreement, by which one party binds himself to deliver an object, and the other party to pay the price that has been promised"

From the definition of sale and purchase according to Article 1457 of the Civil Code mentioned above, it can be concluded that sale and purchase is a reciprocal agreement, where the seller promises to give up ownership rights to an item and the buyer promises to pay a sum of money in return. The title of an item that was originally owned by the seller, will change hands to the buyer if there has been a juridical surrender in accordance with the provisions of Article 1459 of the Civil Code. A sale and purchase agreement is deemed to have taken place between the two parties, immediately after which these persons reach an agreement on the property and its price, even though the property has not been delivered, nor the price has not been paid (Article 1458 of the Civil Code) (Sari et al., 2015). These goods and prices are the main elements of the sale and purchase agreement.

In this context, according to the Author, there are elements of goods and prices that meet the category of buying and selling according to this Article. The goods traded are human bodies or human organs. According to Article 1517 of the Civil Code, if the buyer does not pay the purchase price, then it is a default that gives reason to the seller to claim compensation or cancellation of the agreement according to the provisions of Articles 1266 and 1267 of the Civil Code the "price" must be a sum of money. If an agreement does not refer to these two things (goods and money), then it will change the agreement to exchange, or if the price is in the form of services, the agreement will become an employment agreement, and so on. In the

sense of buying and selling, it is understood that on the one hand there are goods and on the other hand there is money.

Regarding the types of money, it can be explained that, although the sale and purchase takes place in Indonesia, it is not required that the price is fixed in rupiah, but it is allowed for the parties to set it in any currency (Ichsan & Hamsal, 2019). Obligatory sale and purchase in Article 1459 of the Civil Code explains that the title to the goods sold will not change hands to the buyer as long as there has not been a juridical transfer according to Articles 612, 613, and 616 of the Civil Code. From the nature of the obligator in the sale and purchase agreement, it can be translated into several things which in essence are also included in the nature of the obligator.

This can be seen from the object (what is the object), the price that has been agreed by both parties in the sale and purchase agreement, and the last is the rights and obligations of the parties. In this case there is a sale and purchase price agreed between the seller and the buyer. The objects traded are human bodies or human organs.

Based on the principle of consensuality in the sale and purchase agreement, since the agreement was reached regarding the sale and purchase of goods and prices, even though there has not been delivery of goods or payment, since then a sale and purchase agreement has been born. The principle of consensuality itself according to article 1458 of the Civil Code regulates as follows: "Buying and selling has taken place between the two parties as soon as they reach an agreement on the goods and prices even though the goods have not been delivered and the price has not been paid". According to the author, in this case there has been an agreement between the parties, namely the seller and buyer of the turtle and the buyer bought at a certain price. Means in other words fulfilling the element of agreement.

The word consensuality comes from the Latin consensus which means agreement. The word agreement implies that the parties concerned have reached a conformity of will. This means that what is desired by the parties has achieved an equality, then from the conformity of the will an agreement is achieved. For example, the seller as the first party wants to give up property rights to an item after getting a certain amount of money in return. Similarly, on the second party as the buyer who wants the title to the goods must be willing to give a certain nominal amount (money) to the seller as the previous holder of property rights.

Sale and purchase which is obligatory in Article 1359 of the Civil Code, that the title to the goods sold will not transfer into the hands of the buyer as long as there has not been a surrender according to the provisions of Article 612 of the Civil Code which states that the delivery of movable objects is carried out by real delivery, Article 613 that the delivery of receivables on behalf of the company, is carried out by making an authentic deed or under hand. The nature of the obligator in the sale and purchase agreement according to the Civil Code means that the sale and purchase agreement will arise reciprocal rights and obligations to the parties. That is, when laying down to the seller the obligation to surrender title to the goods sold, further giving him the right to demand payment of the price that has become an agreement. While the buyer is obliged to pay the price in property rights, but objects that are in their power and can be traded, provided that at the time of delivery the type and amount can be determined.

According to (Widjaja & Muljadi, 2021), the general provisions regarding the engagement to hand over something (Article 1235 of the Civil Code), and the provisions specifically

regulated in the provisions of the sale and purchase (Article 1474), the seller has 3 (three) main obligations starting from the moment the sale and purchase occurs according to the provisions of Article 1458 of the Civil Code. According to the provisions, in principle the seller has an obligation to (Widjaja & Muljadi, 2021):

- 1) Maintain and care for objects that will be handed over to the buyer until the time of delivery
- 2) Deliver the property sold at a predetermined time, or if not at a specified time, at the request of the buyer.
- 3) Bear the objects sold.

Article 1474 of the Civil Code explains that, as a party, the seller has two important obligations in the implementation of the agreement. The obligation is to deliver an item and bear it. Regarding submission or levering in the Civil Code, adheres to the 'causal system', which is a system that depends the validity of levering on two conditions:

- 1) Submission or levering has been carried out by the one who has the right to do free (beschikking sbevoegd) against the person who is levering.
- 2) The validity of the title in the sale and purchase agreement that is the basis for levering (submission).

From the conditions mentioned above, especially the validity of the title on which the levering is based, it is intended that the obligator agreement is the basis for the levering. The person who 'has the right to do free' is the owner of his own goods or a person authorized by him.

According to the author, how the seller bears the levering or delivery of the illegal human bodies or human organs. himself if it turns out that the buyer also agreed to buy it. And both parties must have known in advance that the illegal trade activities of human bodies or human organs violated the laws and regulations. So, in this case both parties are fully responsible for the legal consequences attached to them.

Four legal conditions of the agreement according to Article 1320 of the Civil Code are the agreement of those who bind him, the ability to make an engagement, a specific question point, and a cause that is not forbidden. Furthermore, as detailed in the article Types of Agreements and Their Legal Conditions along with the elaboration of each point related to the legal terms of an agreement in the eyes of law. The legal terms of the agreement are the agreement, the ability to make alliances, the subject of questions, and the reasons that are not prohibited.

Agreement of the Parties

Their binding agreement is simplified into an agreement of the parties. If interpreted, agreement means the adjustment of free will between the parties regarding the main matters desired in the agreement. In this case, each party must have a free will (voluntary) to bind itself, where the agreement can be stated expressly or tacitly. The meaning of being free is to be free from error, coercion, and deception. If there is an element of error, coercion, or fraud, this means violating the legal terms of the agreement. This provision is as stipulated in Article 1321 of the Civil Code which explains that no consent has force if given by mistake or obtained by force or fraud.

According to the author, in this case, there has been an agreement between the parties, namely the Seller and the Buyer of human bodies or human organs. Means in other words fulfilling the element of agreement.

Competence of the Parties

In the context of the ability to make an agreement, the subjects are the parties to the agreement. Article 1329 of the Civil Code states that every person has the authority to make an engagement, unless he is declared incompetent to do so. Regarding who is declared incompetent, Article 1330 of the Civil Code explains that those who are incompetent to make consent are minors; the person put under care; and women who have married in terms prescribed by law and in general all persons who by law are prohibited from making certain consents.

In the author's opinion, the parties who make the sale and purchase are legally capable, are both adults and not under supervision. It seems almost impossible if children who buy and sell human bodies or human organs between provinces or maybe countries.

About a Certain Thing

Related to a particular subject or thing means what is an agreement or agreement by both parties. In essence, the goods referred to in the agreement are determined by type, namely goods that can be traded. This is in accordance with the provisions of Article 1332 of the Civil Code which explains that only tradable goods can be the subject of approval.

Then, Article 1333 of the Civil Code explains that an agreement must have a principal in the form of an item that is at least determined by the type. The amount of the item need not be certain, as long as the amount can then be determined or calculated. Of course, in this case there are goods that are traded and the object of sale here is human bodies or human organs.

Halal Reasons

The meaning of a cause that is not forbidden or lawful in the context of the agreement relates to the content of the agreement or the objectives to be achieved by the parties involved. The content of an agreement must not contradict the law, decency, or public order. This is in accordance with the provisions of Article 1337 of the Civil Code which explains that a cause is forbidden, if the cause is prohibited by law or if the cause is contrary to decency or public order. This is where the problem occurs. The object of the human bodies or human organs trade turned out to violate the provisions of laws and regulations. The human bodies or human organs trade is not in accordance with the argument that if these subjects (trading businesses and buyers.) contain the prohibitions stipulated in Articles 1468, 1469, and 1470 of the Civil Code, then they cannot execute the sale and purchase agreement.

CONCLUSION

The seller submits goods like human bodies or human organs, and the buyer pays a certain amount. However, the surrender can only be made if the trade is lawful or not prohibited by law. If the goods do not meet these elements, they cannot be handed over. The government should directly supervise the illegal trade in protected green turtles to prevent disturbance to the sexual harassment and human trafficking.

REFERENCES

- Herman, J. P., & Cullinan, W. E. (1997). Neurocircuitry of stress: central control of the hypothalamo–pituitary–adrenocortical axis. *Trends in Neurosciences*, 20(2), 78–84.
- Ichsan, M., & Hamsal, M. (2019). The importance of PMO practices in strategic initiative implementation: An empirical study of Indonesian banks. *Pertanika J. Soc. Sci. Humanit*,

27(2), 49–61.

Nichols, A. J. (2016). *Sex trafficking in the United States: Theory, research, policy, and practice*. Columbia University Press.

Organization, W. H. (2018). *Fifth WHO-UNODC expert consultation on new psychoactive substances: addressing the challenges of non-medical use of opioids, meeting report, 24-25 September 2018, WHO Headquarters, Geneva, Switzerland*. World Health Organization.

Sari, Y., Haryati, S., Raharjo, I., & Prasetyo, A. A. (2015). Toxoplasma and viral antibodies among HIV patients and inmates in central Java, Indonesia. *Southeast Asian Journal of Tropical Medicine and Public Health*, 46(6), 977.

Widjaja, G., & Muljadi, K. (2021). Perikatan yang lahir dari Undang-Undang. *BUKU DOSEN-2019*.

Zimmerman, C., Hossain, M., & Watts, C. (2011). Human trafficking and health: A conceptual model to inform policy, intervention and research. *Social Science & Medicine*, 73(2), 327–335.