

Legal Analysis of Criminal Liability of Intellectual Actors in Human Trafficking Crimes Outside the Territory of the Republic of Indonesia

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Abstract: Any person who commits the criminal act of trafficking in persons by bringing Indonesian citizens outside the territory of the Unitary State of the Republic of Indonesia with the intention of exploitation may be held criminally liable under Article 4 of Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons. This study aims to analyze issues related to the ambiguity of the term “bringing” as contained in Article 4 of the Law on the Eradication of Trafficking in Persons. The unclear meaning of the term “bringing” is regulated in a limited manner, namely only targeting field perpetrators. This provision has implications for interpreting trafficking in persons committed abroad as only applicable to field perpetrators. The formulation of the problem in this study is how the applicability of Article 4 of the Law on the Eradication of Trafficking in Persons relates to criminal liability for participation in bringing Indonesian citizens abroad for the purpose of exploitation outside the territory of the Republic of Indonesia. The results of the study indicate that the provisions of Article 4 of the Law on the Eradication of Trafficking in Persons, in relation to criminal liability for perpetrators of trafficking in persons outside the territory of the Republic of Indonesia, only impose criminal liability on field perpetrators and not on intellectual actors who serve as the masterminds behind the trafficking crimes committed outside the territory of the Republic of Indonesia. Field perpetrators are considered to have fulfilled the element of “bringing,” such as those who “recruit, pick up, shelter, and transport” victims to destination countries outside the territory of the Republic of Indonesia.

Keywords: juridical analysis, criminal act, trafficking in persons.

INTRODUCTION

Human trafficking (Human Trafficking) is a modern form of human slavery. Human trafficking defined in the general provisions of Article 1 paragraph (1) of Law Number 21 of 2007 concerning the eradication of the crime of human trafficking (hereinafter referred to as the PTPPO Law), namely as follows; “Human trafficking is the act of recruiting, transporting, harboring, sending, transferring, or receiving a person by means of threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits, to obtain the consent of a person who has control over the other person, whether carried out within the country or between countries, for the purpose of exploitation or causing the person to be exploited.” In the context of law enforcement on human trafficking crimes, there is little comprehensive, integrated data explaining the state of law enforcement in Indonesia. The Indonesian National Police (hereinafter referred to as POLRI) reported that from June 2022 to 2023, POLRI arrested approximately 500 (five hundred) suspects of human trafficking under the guise of migrant workers.

The legal subjects involved in the crime of human trafficking are not just one perpetrator, but rather a group of people or more. Some perpetrators directly commit the crime, while others are the masterminds behind it. (actor intellectual), whether it is ordering to do,

participating in doing, persuading to do and there are also people who assist in the crime. So by looking at the statement or method of committing the crime above, a more detailed explanation is needed regarding the criminal responsibility of the person who does, orders to do, participates in doing, persuading to do and there are also those who provide assistance in the crime of human trafficking or they are all called criminal accomplices. In this accomplice, the responsibility of each participant in the implementation of a crime is questioned, therefore the question is what part of the law should be imposed on each participant in the implementation of the crime, and seeing what contribution is given by each participant, so that the crime can be carried out and their responsibility for that role/assistance.

The provisions of Article 4 of Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (hereinafter referred to as the PTPPO Law) formulate the term "carrying" as follows: any person who takes an Indonesian citizen outside the territory of the Republic of Indonesia with the intention of exploiting him/her can be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years, as well as a fine of at least 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of 600,000,000.00 (six hundred million rupiah).

The formulation of the word "carry" in this article has the connotation of an act that can only be carried out by a field actor, or what in criminal law terms is called my minister, namely the party carrying out the order. Therefore, criminal liability under Article 4 of the PTPPO Law only applies to the perpetrator who picks up, accommodates, and delivers the victim. This also aligns with the findings of previous research by Dina Desvita Pramesti Putri in her study entitled "The Concept of Criminalizing Foreign Nationals in the Crime of Human Trafficking Through Online Fraud", which states that;

The main weakness of the Human Trafficking Act lies in its limited provisions regarding the modus operandi of human trafficking, particularly regarding exploitation outside the territory of the Unitary State of the Republic of Indonesia. The provisions stipulated in Articles 3 and 4 of the Human Trafficking Act only cover the act of "bringing" someone out of or bringing someone into Indonesian territory, making perpetrators involved in the process of moving people the primary subjects who can be prosecuted. However, in reality, human trafficking often involves international networks consisting of various actors, including perpetrators who organize the process of human trafficking from abroad without having to carry out the direct act of moving. This limitation results in only perpetrators in the field being prosecuted, while intellectual or mastermind which are outside Indonesian jurisdiction are difficult to reach.

Research results from Institute for Criminal Justice Reform (ICJR) stated that Law No. 21 of 2007 was established as a manifestation of Indonesia's commitment to ratifying the Palermo Protocol. However, upon closer examination, there are several fundamental shortcomings in the PTPPO Law, which are also reflected in the practice of court decisions. First, Article 2 paragraph (1) of the PTPPO Law regulates a series of criminal acts of human trafficking in accordance with the Palermo Protocol, but only applies for the purpose of exploitation within the territory of the Republic of Indonesia. Second, for exploitation outside the territory of Indonesia, it is regulated in Article 4 of the PTPPO Law which prohibits the transportation of Indonesian citizens abroad for the purpose of exploitation. However, this provision only applies to the act or process of "taking" Indonesian citizens outside the territory of Indonesia. The implication of this regulation is the limited legal protection for Indonesian victims of human trafficking who are exploited abroad. Perpetrators can only be held criminally responsible if they are directly involved in the act of "taking" the victim, so this provision is more targeted at perpetrators in the field. An

example can be seen in the case of convict Diana Aman, victim Yufrinda Selan from NTT. In decision 12/Pid.Sus/2017/PN.Kpg, the judge invoked Article 4 of the PTPPO Law, but deemed the evidence for "transporting an Indonesian citizen outside Indonesian territory" weak. The "transportation" element was proven through the recruitment process, which does not meet criminal law standards.

The lack of a legal framework regarding human trafficking for the purpose of exploitation outside Indonesia within the legal framework of the Law. PTPPO, for acts intended for exploitation outside Indonesia is regulated in Article 4, which prohibits the transportation of Indonesian citizens abroad for the purpose of exploitation outside Indonesia. However, it only covers the act/process of "transporting" Indonesian citizens outside Indonesia. Article 4 also does not include the element of "method," which is one of the three key elements. This note has an impact on court decisions. A similar situation also occurred in Decision 2074 K/Pid.Sus/2017, where the cassation judge stated that the perpetrator's involvement in this crime was only as "picking up, accommodating, and delivering" the victims. The panel of cassation judges stated that the casea quowas declared not to have fulfilled the elements of human trafficking and found himself guilty of Article 69 of Law No. 18 of 2017, which states that "individuals are prohibited from placing Indonesian Migrant Workers." Previously, the District Court and High Court had found the defendant guilty of human trafficking.

Based on references to previous research results related to the prohibition of taking Indonesian citizens outside the territory of the Unitary State of the Republic of Indonesia (hereinafter referred to as NKRI) for the purpose of exploitation, as implied in the provisions of Article 4 of the PTPPO Law, this thesis research seeks to clarify the legal issue regarding the ambiguity or unclear meaning of the phrase "taking" Indonesian citizens outside the territory of the NKRI with the intention of exploitation. In practice, this provision only impacts criminal liability for field actors, namely parties who carry out recruitment, sending, transporting, harboring, and other actions that can be qualified as field actions.

The limited legal framework for prosecuting key perpetrators outside the Republic of Indonesia, who act as intellectuals or masterminds in human trafficking, is a fundamental problem. This situation has led to a continued increase in human trafficking cases and makes eradication difficult. According to the author, this situation can be likened to cutting down a tree without removing its roots, which will allow the tree to continue to grow and develop.

So far, law enforcement in human trafficking (hereinafter referred to as TPPO) cases has only targeted the perpetrators on the ground, not the intellectual actors. In recent TPPO cases, the modus operandi of kidney sales in Cambodia has come under public scrutiny. Law enforcement officials' handling of TPPO cases has drawn criticism from civil society because they have so far only targeted the perpetrators on the ground, not the intellectual actors. Executive DirectorInstitute for Criminal Justice Reform(ICJR) Erasmus AT Napitupulu, noted that in the case of selling kidneys to Cambodia, the Jakarta Metropolitan Police have named 12 suspects. Nine people are part of a domestic syndicate that played a role in recruiting, accommodating, and managing the victim's travel. Then one suspect acted as a liaison between the victim and the hospital in Cambodia and the remaining two are officials from the National Police and Immigration agencies. However, there is a suspected perpetrator known as Miss Huang, who acted as the coordinator of the 12 suspects, who is currently still on the wanted list (DPO).

Based on the results of the previous research above, the law enforcement process for human trafficking (TPPO) needs to be carried out comprehensively, namely by pursuing the intellectual actors involved in these crimes. Because without accountability, "intellectual actor" In human trafficking, the law enforcement process can be likened to the tip of the iceberg, a phenomenon that can continue to occur unless the main actors are identified. This can also be caused by weaknesses in legal provisions that do not explicitly regulate criminal liability for the main actors in human trafficking. This is because Article 4 of the Law on Human Trafficking (UU PTPPO) concerning the meaning of the word "carry" connotes field actors. This means that the process of carrying can only be carried out by field actors who recruit and then transport them on their way to the destination country.

In previous research conducted by; Ibnu Tulaiji Ahmad Al Mugoffary, with the title; ""Criminal Policy on Human Trafficking Prevention Effort in the Context of Economic Crime" explain;

The arrest of the perpetrators, it must be noted that the perpetrators who are successfully arrested are small perpetrators or powerless "ordered" people. Meanwhile, those who are intellectual actors in organized crime will never be caught, let alone processed legally. Law enforcement in eradicating the crime of human trafficking, in reality not all participants as perpetrators (starting from recruiters, people who persuade with promises of high salaries, people who deceive, people who transport and move, people who help carry out human trafficking (for example, security officers at ports or airports) or rogue law enforcement officers, to the party who is actually the mastermind or planner of the human trafficking activity is not caught and questioned from the investigation stage to the trial in court.

Previous research has shown that it is difficult to apprehend and prosecute those acting as intellectual actors or masterminds in human trafficking crimes. The author differentiates this research from previous research by focusing more on the application of the teachings of participation in combating the crime of human trafficking, while this study analyzes the provisions of Article 4 of the PTPPO Law in relation to criminal liability for perpetrators who act as intellectual actors in the crime of human trafficking outside the territory of the Republic of Indonesia. The focus of the analysis lies in the legal aspect, particularly the meaning of the word "carry" as regulated in the provision.

The legal issue in this study relates to the unclear or ambiguous meaning contained in Article 4 of the PTPPO Law, namely regarding the definition of "carrying." The formulation of this article has implications for criminal liability for every perpetrator of human trafficking. In practice, criminal liability is generally applied only to perpetrators in the field, not to the intellectual actors behind the crime. From the perpetrators' roles, actions included in the category of "carrying" include recruitment, pick-up, shelter, and transport of victims to destination countries outside the territory of the Republic of Indonesia. Thus, perpetrators who only commit these acts are categorized as "carrying" as regulated in Article 4 of the PTPPO Law. Meanwhile, intellectual actors who mastermind human trafficking crimes tend to be difficult to prosecute criminally because the provisions of this article are more targeted at perpetrators in the field.

RESEARCH METHOD

According to Soerjono Soekanto, normative legal research is a type of legal research conducted by examining library materials or secondary data as basic material for research by conducting searches on regulations and literature related to the problem being studied. The type of research in this study uses normative legal research, namely starting from the existence of unclear norms in the provisions of Article 4 of the Law. PTPPO.

RESULT AND DISCUSSION

Provisions of Article 4 of Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Human Trafficking Outside the Territory of the Republic of Indonesia

The act of taking Indonesian citizens abroad for the purpose of exploitation outside the territory of the Republic of Indonesia is an act that violates the provisions of Article 4 of Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (PTPPO). Therefore, every legal subject, whether an individual, corporation, organized group, or state official involved or participating in the acts as stipulated in the provisions of Article 4 of the PTPPO Law, is obliged to be criminally responsible according to their respective roles. To complete the analysis in this study, the following is an explanation of the concept of this regulation.

When analyzing criminal liability based on these provisions, the primary consideration is the elements that must be met. According to Article 4 of the PTPPO Law, these elements include: *1) Any person 2) who brings 3) Indonesian citizens 4) outside the territory of the Republic of Indonesia 5) with the intention 6) to exploit them outside the territory of the Republic of Indonesia.*

a) The “Everyone” Element

That what is meant by the definition of "every person" according to the provisions of Article 1 paragraph (3) of Law Number 21 of 2007 concerning PTPPO is an individual (*Natural Person*) or corporation (*Legal person*) who commits the crime of human trafficking, or a legal subject as a supporter of rights and obligations who can be held legally responsible for all actions and/or deeds that he has committed.

b) The “Carry” Element

That what is meant by the concept of the element of "carrying" cannot be separated from two groups of elements in the crime of human trafficking regulated in the PTPPO Law, namely: *First*, Process elements, including: *recruitment, transportation, harboring, sending, transferring, or receiving a person*; *Second*, Elements of Method, including: *threats of violence, use of violence, kidnapping, confinement, fraud, abuse of power or a position of vulnerability, debt bondage or giving or receiving payments or benefits with the consent of a person having control over another person*. *Third*, the elements of the objective are: *with the aim of exploitation.*

c) The element “Indonesian citizens”

That what is meant by the element of Indonesian Citizen is an element that must be fulfilled, namely that the victim is an Indonesian citizen who is a victim of TPPO outside the territory of the Republic of Indonesia.

d) The element "outside the territory of the Republic of Indonesia"

That what is meant by the element "*outside the territory of the Republic of Indonesia*", including; "*the act of crossing or passing through the territorial jurisdiction of the Republic of Indonesia to the destination country*".

e) The element "With the intention of"

That what is meant by elements; "*with the intention of*" is an important element because, with the intention of referring to *mens rea* or malicious intent which in criminal law is known as the element "*on purpose*" or the perpetrator has *mens rea with the intention/intentionally doing anything for the purpose of trafficking people outside the territory of the Republic of Indonesia*.

f) The element of "Exploitation"

That what is meant by the element "*Exploitation*" is; "*actions with or without the consent of the victim which include but are not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, physical, sexual exploitation, reproductive 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.*"

The provisions of Article 4 of the PTPPO Law are categorized as formal offenses, meaning the act does not require a consequence. In other words, the ultimate goal of exploitation or the impact of the victim being exploited does not have to be met for the crime to be prosecuted. Therefore, with the qualification of a formal offense in Article 4 of the PTPPO Law, law enforcement officers have the basis to comprehensively enforce the law against anyone involved in transporting Indonesian citizens abroad. Even if the victim was not exploited, criminal liability can still be imposed on all parties involved in the case.

Based on the description of the provisions of Article 4 of the PTPPO Law, the author further elaborates on several judicial decisions relevant to the application of the article. The aim is to complement and support the analysis of the legal issues in this thesis research, particularly regarding the vagueness or unclear meaning contained in Article 4 of the PTPPO Law. To that end, the author collected several judicial decisions through a literature search in the Supreme Court Decisions Directory. These decisions are analyzed to assess how criminal liability is applied, particularly to intellectual actors who participate in the crime of human trafficking outside the territory of the Republic of Indonesia.

Description of the Judge's Decision Regarding Human Trafficking Outside the Territory of the Republic of Indonesia

That from the results of the author's research on several decisions that use these provisions, it needs to be emphasized that there are many more similar decisions that use the provisions of Article 4 of the Law. PTPPO. However, due to time constraints, these decisions can be used as examples that question the criminal responsibility for intellectual actors. In the context of the judge's decision related to the application of the provisions of Article 4 of the Law. PTPPO, it was observed that in these decisions, only those who had the capacity as field actors were punished. Therefore, to clarify this matter, it can be observed in several decisions that the author has narrated as the object of the author's study to describe and analyze the applicability of the provisions of Article 4 of the Law. PTPPO, namely as follows;

Based on Decision Number 2598 K/Pid.Sus/2017 against the defendant Martha Kali Kula, the judge stated that the defendant was legally and convincingly proven guilty of committing the crime of taking Indonesian citizens abroad to be exploited, as regulated

in Article 4 in conjunction with Article 48 of Law No. 21 of 2007 concerning PTPPO and Article 55 paragraph (1) point 1 of the Criminal Code. In his considerations, the judge emphasized that the defendant acted as a recipient and provider of support (*accomplice*), by accepting the victim Yufrinda Selan from witness Yasmin Benyamin Ndun without official documents as a migrant worker, then handing her over to Eduward Leneng who also did not have documents, then temporarily leaving her with Putriana Novitasari. After the passport application process, the victim was taken to Eltari Kupang Airport to be sent to Surabaya by Lion Air and received by Yusak Subekti Gunanto. The defendant also received money from Eduward Leneng through a transfer to his personal account, some of which was given to witness Yasmin Benyamin, and some was used for personal needs. Thus, Martha Kali Kula was declared to have participated in a series of acts of human trafficking.

In Supreme Court Decision No. 95/Pid.Sus/2017/A against defendant Nikolas Lake, the judges found the defendant legally and convincingly guilty of participating in transporting Indonesian citizens abroad for exploitation and sentenced him to three years in prison. The panel of judges emphasized that the defendant acted as both a recipient and a provider of support. *accomplice* In the recruitment, shelter, and transportation of victim Yufrinda Selan, who lacked official migrant worker documentation, the defendants jointly received the victim from witness Yasmin Benyamin Ndun, handed her over to Eduward Leneng, and temporarily placed her at the home of witness Putriana Novitasari before her departure abroad.

In Decision Number 2606 K/Pid.Sus/2017 against defendant Eduard Leneng, the judge stated that the defendant was legally and convincingly proven guilty of participating in taking Indonesian citizens abroad for exploitation. The defendant was sentenced to five years in prison. The judge explained that Eduard Leneng participated in human trafficking by processing illegal documents for victim Yufrinda Selan who previously did not have documents, and then sending her to Malaysia via Surabaya, Pekanbaru, Bengkalis, and Tanjung Balai Port using the Pasifik Star ship.

Meanwhile, in Decision Number 1656/Pid.Sus/2023/PN Mdn against defendant Rudi Syafril Lubis, the judge stated that the defendant committed the crime of human trafficking through the recruitment, transportation, harboring, sending, and transferring Indonesian citizens abroad for exploitation. The defendant was accused of offering illegal work in Malaysia to two women, Nova Pradila and Asih alias Cia Putri, and recruiting three men, Rikki, Denis Astono, and Ikhwanudin. When stopped by the police, the victims were found with the defendant in Medan. In the process, the defendant requested KTP (ID card), KK (family card), and passport documents with traveler status, and took care of all departure logistics, including tickets and delivery to the port. Rudi Syafril Lubis has sent a total of 19 Indonesian migrant workers to Malaysia since April 2022 through two agents, Rahmad and Lia, using WhatsApp communication and land transportation. The defendant received payments via bank transfer and cash, as well as promises of payment from third parties. However, some of the shipments were not realized because Rudi was arrested by the police, who also secured a number of pieces of evidence such as ATM cards, savings books, cell phones, cars, and cash related to the illegal activities.

Based on the judge's rulings explained previously, it is clear that the perpetrators found guilty under Article 4 of the PTPPO Law only acted as field actors. They carried out actions such as recruiting, accommodating, sending, offering employment, facilitating, and processing documents illegally. The judge's considerations in these rulings indicate that this chronology represents legal facts revealed during the trial. From the cases analyzed, it is clear that the *modus operandi* used by the perpetrators was systematic and complex. For

example, there was a flow of funds for the operational activities of field actors/*trafficker*. The process of recruitment, shelter, and transportation of victims to the destination country. Upon arrival in the destination country, victims are received by the receiving party. Each of these processes typically involves more than one person, and each individual plays a different role in the sequence of actions. Therefore, it is crucial to ensure that the intellectual actors behind the entire human trafficking operation are investigated and held criminally accountable.

In addition to being charged under Article 4 of the PTPPO Law, the defendants were also charged in conjunction with Article 55 of the Criminal Code as *perpetrator* (direct perpetrator) or *accomplice* (participating) physically in every stage of the criminal process. However, if we look closely, in the destination country, there are recipient victims and agents who manage the flow of funds from the beginning, making it clear that intellectual actors play a central role in human trafficking across the territory of the Republic of Indonesia. Therefore, the following analysis will focus on criminal liability and the involvement of intellectual actors in human trafficking outside Indonesia.

Legal Analysis of Criminal Responsibility for Intellectual Actors in Human Trafficking Outside the Territory of the Republic of Indonesia

Based on the author's investigation of several decisions applying Article 4 of the Anti-Terrorism Law, the defendants' roles were generally limited to activities such as recruiting, picking up, delivering, or preparing the victim's documents. The term "carrying" in Article 4 of the Anti-Terrorism Law should not be interpreted narrowly, as if it only refers to physical acts committed directly with the victim. Such a narrow understanding is a misinterpretation of the phrase "carrying" as stipulated in the provision.

In line with this, research conducted by Aditya Weriansyah confirms that the interpretation of the phrase "carry" in Article 4 should not be limited narrowly. In previous research conducted by Aditya Weriansyah et al., entitled *Legal Review of the Implementation of Law No. 21 of 2007 Concerning the Eradication of the Crime of Human Trafficking in Indonesia (Annotation of Cases of the Crime of Human Trafficking and Cases Related to Cross-Border Human Trafficking)* published by *International Organization for Migration (IOM) Indonesia*, this was also emphasized.

Furthermore, the following are several conclusions related to the annotation of Decision No. 19/Pid.Sus/2020/PN. Jkt. (Good Practice): 1) Fulfillment of the element of "carrying" in Article 4 of the PTPPO Law is not limited to being interpreted as the act of carrying someone who must be together with the perpetrator. Instead, the act of carrying can be carried out by means of transportation or through delivery or dispatch without the perpetrator having to accompany them as considered by the judge in this case. 2) Judges should have a broader perspective on crimes, especially the crime of human trafficking that involves cross-border matters. Judges must consider the broader impact of losses experienced nationally, but also losses to other countries (international).¹

Research conducted by Aditya Weriansyah explicitly explains that fulfilling the element of "carrying" in Article 4 of the PTPPO Law is not only limited to the act of physically carrying someone with the perpetrator. The element of "carrying" can be fulfilled even if the perpetrator does not accompany the victim, as seen in the judge's considerations in Decision Number: 19/Pid.Sus/2020/PN. Jkt. This shows that judges

¹Aditya Weriansyah, et al., *Legal Review of the Implementation of Law No. 21 of 2007 Concerning the Eradication of the Crime of Human Trafficking in Indonesia (Annotation of Cases of the Crime of Human Trafficking (TPPO) and Cases Related to Cross-Border Tppo)*, International Organization for Migration (IOM) Indonesia, p. 106.

should have a broader perspective on the crime of cross-border human trafficking, taking into account the impact of losses that are not only felt nationally but also by other countries. Previous research conducted by Suryani, entitled "*Law Enforcement against Perpetrators of Human Trafficking Crimes Based on Decision Number: 3107/Pid.Sus/2018/PN Mdn*", also provides an explanation in line with this.

The main problem in human trafficking law enforcement is that intellectual actors escape prosecution, while those on the ground are the ones being punished. The main actors typically operate behind the scenes, without direct contact with victims, and control the recruitment and departure process, making them difficult to prosecute. Conversely, village recruiters, transporters, or brokers, who are in weak positions and simply carry out orders, are often the only ones punished. This situation indicates that network controllers remain free, while those on the ground bear all criminal responsibility.²

The issue of criminal accountability for intellectual actors in human trafficking cases outside the territory of the Republic of Indonesia (NKRI) remains challenging, as existing regulations do not fully align with or reflect the spirit of the Palermo Protocol. This is because the Protocol affirms the state's obligation to establish legislation that can effectively punish perpetrators of human trafficking. However, the phrase "bring" in Article 4 of the PTPPO Law often gives rise to various interpretations and legal uncertainty. Law enforcement officials often face difficulties in pursuing intellectual actors outside the territory of the Republic of Indonesia, due to weak legal provisions and limited jurisdiction based on the location of the crime.

The Palermo Protocol, on the other hand, provides a more comprehensive framework and clear legal legitimacy for both aspects. Therefore, there are two main issues that require attention: first, the unclear norms in the formulation of Article 4 of the PTPPO Law, which have not been fully aligned with the principles of the Palermo Protocol; second, the vagueness of these norms has given rise to various interpretations among law enforcement agencies, resulting in disagreements in law enforcement against intellectual actors involved in cross-border human trafficking.

Previous research by; Nur Rahmawati, with the title; "*The Role of the Indonesian Government and the IOM in Addressing the Problem of Trafficking of Indonesian Women to the Middle East*" explained; "Transnational crime, in this case human trafficking, occurs due to poor regulations, weak law enforcement, low levels of education, lack of job opportunities, and poverty are factors that cause human trafficking."³

Indonesia has ratified the Palermo Protocol, which obliges countries to prosecute and punish any individual involved in human trafficking, including intellectual actors. This protocol serves as an international legal instrument that is part of the legal unification effort to eradicate the crime of human trafficking. With the ratification of the Palermo Protocol, each country gains legal legitimacy to enforce laws against transnational crimes, including human trafficking across national borders. This protocol, known as *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, aims to prevent, prosecute and punish trafficking in persons, especially women and children, as a complement to the UN convention on *transnational organized crime*.

²Suryani, et.al, Law Enforcement against Perpetrators of Human Trafficking Crimes Based on Decisions (Number: 3107/Pid.Sus/2018/PN Mdn). Journal of Education, Humanities and Social Sciences (JEHSS), 4 (3), 1347–1352.

³Nur Rahmawati, Ardli Johan Kusuma, The Role of the Indonesian Government with IOM in Addressing the Problem of Trafficking of Indonesian Women to the Middle East, (University of 17 August 1945 Jakarta), (Global Insight Journal, Vol 07, No. 01 October - March 2022), ISSN 2541-318, p. 53.

The Palermo Protocol/UNTOC establishes the international legal basis requiring states to criminalize intellectual actors in human trafficking crimes. Intellectual actors are held accountable through the following categories: *Organizing, Directing, Instigating, atau Conspiring*. They are subject to criminal penalties even if they do not physically recruit or exploit. States are required to adopt provisions that allow for prosecution of those who instigate, control, and finance human trafficking. The Palermo Convention, a convention to prevent, eradicate, and punish human trafficking, especially women and children, has become an international legal instrument capable of addressing the complexity of the trafficking problem.⁴

The author examines the classic reason often appearing in the media, which states that the state experiences difficulties in prosecuting intellectual actors of human trafficking who are outside the territory of the Republic of Indonesia, primarily due to jurisdictional issues in the application of Indonesian law to perpetrators. This difficulty is related to the modus operandi of human trafficking, which is carried out for exploitation abroad. This is caused by the limited legal instruments/weak provisions in the PTPPO Law that can be used to pursue intellectual actors outside the territory of the Republic of Indonesia. This phenomenon was also discussed in a previous study by Dina Desvita Pramesti Putri, entitled "The Concept of Criminalizing Foreign Citizens in the Crime of Human Trafficking Through Online Fraud."

The main weakness of the Human Trafficking Act lies in its limited provisions regarding the modus operandi of human trafficking, particularly regarding exploitation outside the territory of the Unitary State of the Republic of Indonesia. The provisions stipulated in Articles 3 and 4 of the Human Trafficking Act only cover the act of "bringing" someone out of or bringing someone into Indonesian territory, making perpetrators involved in the process of moving people the primary subjects who can be prosecuted. However, in reality, human trafficking often involves international networks consisting of various actors, including perpetrators who organize the process of human trafficking from abroad without having to carry out the direct act of moving. This limitation results in only perpetrators in the field being prosecuted, while intellectual *ormastermind* which are outside Indonesian jurisdiction are difficult to reach.⁵

Thus, from the research results *Institute Criminal Justice Reform*, (ICJR), regarding the Evaluation of the Legal Framework for TPPO, namely as follows;

The lack of a legal framework regarding human trafficking for the purpose of exploitation outside Indonesia within the legal framework of the Law. PTPPO, for acts intended for exploitation outside Indonesia is regulated in Article 4, which prohibits the transportation of Indonesian citizens abroad for the purpose of exploitation outside Indonesia. However, it only covers the act/process of "transporting" Indonesian citizens outside Indonesia. Article 4 also does not include the element of "method," which is one of the three key elements. This note has an impact on court decisions. A similar situation also occurred in Decision 2074 K/Pid.Sus/2017, where the cassation judge stated that the perpetrator's involvement in this crime was only as "picking up, accommodating, and delivering" the victims. The panel of cassation judges stated that the case *a quo* was declared not to have fulfilled the elements of human trafficking and found himself guilty of Article

⁴Bayu Aji Pramono & Mahrus Ali, *Human Trafficking, Dimensions, International Instruments and Its Regulation in Indonesia*, Citra Aditya, Jakarta: 2011, p. 20.

⁵Dina Desvita Pramesti Putri, *The Concept of Criminalizing Foreign Citizens in the Crime of Human Trafficking Through Online Fraud*, (Thesis, Legal Studies Program, Faculty of Law, Semarang State University, 2025), p. 2.

69 of Law No. 18 of 2017, which states that "individuals are prohibited from placing Indonesian Migrant Workers." Previously, the District Court and High Court had found the defendant guilty of human trafficking.⁶

The Palermo Protocol clearly states that law enforcement officials should not hesitate to take action against intellectual actors involved in human trafficking outside the territory of the Republic of Indonesia. Based on the ratification of the Palermo Protocol, Indonesia has strong legal legitimacy to prosecute these intellectual actors, even if they are located abroad. Criminal liability for intellectual actors in human trafficking according to the Palermo Protocol (*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*) serves as an additional instrument of *United Nations Convention against Transnational Organized Crime* (UNTOC). This protocol affirms the UN's global commitment to prevent and eradicate trafficking in persons, protect victims, and promote international cooperation. As an additional protocol (*supplementary protocol*), all provisions regarding the criminal responsibility of perpetrators, including intellectual actors, refer directly to UNTOC.

In observing the provisions on responsibility in UNTOC, the Palermo Protocol does not regulate individual responsibility in detail, the legal basis can be seen in the provisions of Article 5 UNTOC, which requires states to commit criminal acts in the form of: a) *Participation in an organized criminal group*; The state is obliged to criminalize anyone who: *Conspires* (conspiracy) to commit a serious crime; *Organizes, directs, aids, abets* or participate in the activities of an organized crime group. Thus, intellectual actors can be punished as: *Organizer* (organizer), *Controller/director*, or *Person who intentionally contributes to a criminal group's activity*. *Liability of legal persons* (Article 10) If the intellectual actor works through a business entity, UNTOC requires the state to establish criminal, civil or administrative liability for *corporate* which is used.

Criminal liability under the Palermo Protocol requires states to criminalize human trafficking and all elements that support it. Although it does not mention the term "intellectual actors," the protocol implicitly includes them through the state's obligation to: a) Criminalize all forms of participation. States must take action against anyone who: *Instigates, Organizes, Facilitates, or Conspires* to commit human trafficking (referring to Article 5 of the UNTOC); b) Establish sanctions commensurate with the gravity of the crime. Sanctions must be effective, proportionate, and provide a deterrent effect, including against perpetrators at the highest levels of the network; c) Ensure accountability without exception for positions. Intellectual actors who hold public office, exploit their position, or abuse their power must still be subject to criminal prosecution.

The complexity of the actors involved demonstrates that human trafficking is not merely a conventional crime, but rather a transnational organized crime carried out with systematic strategies and a clear division of labor among the perpetrators. Not only are there perpetrators directly involved in recruitment, transportation, harboring, or exploitation, but there are also other parties who play important roles, ranging from those who give orders, facilitate, participate, to those who indirectly support the criminal process, including through the provision of facilities, financing, or abusive legal protection.⁷

⁶Research Results (ICJR), Evaluation of the Legal Framework for TIP, p. 114.

⁷Akhirudin, Gunardi Lie, Law Enforcement Efforts in Handling Human Trafficking Cases, *Rewang Rencang: Jurnal Hukum Lex Generalis*. Vol. 5. No. 12 (2024), pp. 6-7.

Application of the concept “*Intellectual Author*” in the provisions of national laws that adopt the Palermo Protocol, intellectual actors can be charged or categorized as; *Conspiracy* (conspiracy), *Organizing/directing criminal organized*, *Aiding/abetting* (help or facilitate), *Command responsibility*. If acting as a superior who allows exploitative practices. This confirms that physical absence at the site of human trafficking does not eliminate criminal liability.

Harmonization of provisions in the PTPPO Law is necessary to ensure they are in line with international legal standards, particularly the Palermo Protocol. Although Indonesia has ratified the Palermo Protocol through the enactment of Law No. 14 of 2009, the implementation of the PTPPO Law has not fully aligned with the protocol's provisions. This is evident in the formulation of articles that still allow for broad interpretation. Meanwhile, the Palermo Protocol requires the state to prosecute perpetrators of human trafficking, including those located outside the territory of the Republic of Indonesia. Formally, Article 4 of the PTPPO Law does regulate this, but in practice, law enforcement officials believe that this provision is not comprehensive enough to prosecute intellectual actors located outside the territory of the Republic of Indonesia.

As in previous research conducted by Bayu Setiawan and Hudi Yusuf, with the title; “*Legal Analysis of the Criminal Act of Human Trafficking*,” explains as follows;

As a country that has ratified the Palermo Protocol through Law No. 14 of 2009, Indonesia has an obligation to align its national laws with international standards. This is realized through the enactment of Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, which serves as *special law* Handling the crime of human trafficking. This law regulates various important aspects, including the definition of the crime, elements of the crime, criminal sanctions, victim protection, prevention, and international cooperation. In addition, this law also mandates the establishment of a task force for the prevention and handling of the crime of human trafficking at the national, provincial, and district/city levels to ensure effective coordination in its implementation.⁸

The Palermo Protocol stipulates that the state must pursue intellectual actors, even if they do not physically recruit or exploit them. With the adoption of the Palermo Protocol, Indonesia ratified it and enacted the PTPPO Law. This means the state is obligated to take action against the instigators, controllers, and financiers of human trafficking.

The Indonesian government has ratified several conventions related to human trafficking, one of which is; the first convention is *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) concerning the elimination of all forms of discrimination against women ratified through Law Number 7 of 1984 concerning the protection of women from all forms of discrimination. In the Convention on the Elimination of All Forms of Discrimination against Women CEDAW, which is stated in article 6, it is stated that participating countries must take appropriate action, including in the preparation of legislation to eradicate all forms of trafficking in women and exploitation of female prostitution.⁹

By examining the reasons related to the jurisdiction of the provisions of Indonesian criminal law in its application to prosecute intellectual actors in human trafficking, this has

⁸Bayu Stiawan, Hudi Yusuf, “*Legal Analysis of the Criminal Act of Human Trafficking*,” JICN: (Journal of Intellectuals and Scholars), Vol. 2 No. 4, 2025 E-ISSN, p. 4554.

⁹Kusumawardhani, Prevention and Overcoming of Trafficking in Women Oriented towards Victim Protection, (Journal of Society and Culture, 2010), 12, 334.

actually been answered by the ratification of the Palermo Protocol which at least provides legitimacy for the Indonesian National Police to pursue intellectual actors/*master mind* human trafficking outside the territory of the Republic of Indonesia. As explained in the online law with the title; "*Indonesia ratifies the related protocol human trafficking*", as follows;

With the ratification of this Protocol, the jurisdictional issue is somewhat resolved. Although Indonesia already has Law No. 21 of 2007, its implementation is difficult in practice due to jurisdictional constraints. Indonesian police officers investigating human trafficking crimes have limited freedom. Through ratification, Andi said, *extra territorial jurisdiction*. This protocol is one of the protocols that aims to complement Law No. 5 of 2009 concerning Ratification *The United Nations Convention against Transnational Organized Crime* Andi continued, there are several laws that have been strengthened as a result of the approval of this protocol, one of which is Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking.¹⁰

With this ratification, it provides the basis for the implementation of extraterritorial jurisdiction, which means that the UN through the protocol provides legitimacy to Indonesia to enforce the law against intellectual actors outside its territorial territory, both directly and indirectly through international cooperation agreements. In addition, in the category of ASEAN countries, Indonesia has also joined the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), which is a joint agreement to increase cooperation between ASEAN countries to combat the crime of human trafficking that crosses these countries.

Asean Convention on Trafficking in Persons, Especially Women and Children. Eradication of human trafficking crimes, especially those that occur to women and children, cannot be handled by Indonesia alone, but must also be handled by all countries in the ASEAN region which are countries of origin, transit, and/or destination of TPPO. Therefore, the Government of the Republic of Indonesia sees the need to increase cooperation with countries that are members of ASEAN, prevent and eradicate TPPO, especially women and children by signing the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) on November 21, 2015 in Kuala Lumpur, Malaysia.¹¹

Through ASEAN *Convention on Trafficking in Persons, Especially Women and Children*, Indonesia is also committed to upholding the law and protecting victims, especially women and children. By signing the ASEAN Convention (ACTIP), ASEAN member states affirmed their shared commitment to eradicating human trafficking. This provides a strong legal basis for prosecuting human traffickers, both internationally and within the ASEAN region, both as transit and destination countries.

Criminal Liability for Intellectual Actors Who Take Indonesian Citizens to Be Exploited Outside the Territory of the Republic of Indonesia

This analysis aims to understand how intellectual actors can be held criminally accountable. The analysis of judges' decisions, as outlined in the research description, indicates a tendency for criminal liability imposed by judges to refer to Article 4 of the PTPPO Law. However, the roles punished in these decisions are generally those of field

¹⁰<https://www.hukumonline.com/berita/a/indonesia-ratifikasi-protokol-pencegahan-ihuman-traffickingi--hol21103/>

¹¹Ministry of Women and Children Protection (KemenPPA), accessed: December 2025, <https://www.kemenpppa.go.id/lib/uploads/list/f3b9b-buku-laptah-2018.pdf> Kompas.

actors, while intellectual actors are not directly affected. Therefore, it is important to examine the inclusion aspect in criminal law as an instrument for constructing criminal accountability for all parties involved in the crime of human trafficking.

The concept of inclusion is crucial because it broadens the scope of accountability for everyone involved in a crime. In cases where multiple individuals collaborate in committing a crime, inclusion instruments can be applied to accurately assess each individual's role. A comprehensive analysis is necessary to ensure that inclusion is applied in accordance with each party's contribution and involvement in the crime.

Complicity in the crime is an important concept in criminal law, explaining that criminal responsibility attaches not only to the main perpetrator but also to anyone who participates in the commission of the crime. This includes individuals who give orders, persuade victims, provide assistance, and those who knowingly participate in the criminal scheme. In the context of human trafficking, this concept becomes particularly relevant, given that the modus operandi used by perpetrators is increasingly complex, systematic, and tends to be hidden. Often, these crimes are carried out through legal entities or corporate entities, which serve as a cover to disguise the practice of human exploitation for economic gain.¹²

Based on the concept of complicity in criminal acts, a specific analysis of human trafficking outside the territory of the Republic of Indonesia is required. Emphasis is placed on the criminal responsibility of intellectual actors, both as *perpetrator* (who orders or commands) or as *provocation* (who encourages or encourages other perpetrators). Therefore, it is important to review these two legal instruments to provide an overview of criminal liability in the context of human trafficking outside the territory of the Republic of Indonesia.

Prof. Barda Nawawi Arief's views in his book *Advanced Criminal Law Lecture Summary*, explains in detail about the participation instruments, especially regarding the concept *perpetrator* and *provocation*, as a basis for further analysis.

Barda Nawawi Arief stated that in the category of inclusion related to the person ordering the action, it is: *perpetrator* a person who carries out an activity through the intermediary of another person, while this intermediary is only likened to a tool. Thus, in *perpetrator of death* in ordering to do something, there are two parties, namely, the direct maker, (*actor, physicist/hands-on*) and indirect makers, (*intellectual actor/hands lady*) On *perpetrator of death* there are the following elements; the tool used is a human, the tool used does not act as a dead tool, the tool used cannot be held accountable for the third element. These are the characteristics or signs of the person who ordered the action *perpetrator*. The thing that causes the tool (material maker) to not be responsible is;¹³ 1) If his mental growth is not perfect or his soul is damaged (Article 44 of the Criminal Code); 2) If he acts due to coercion (Article 48 of the Criminal Code); 3) If he does it on the orders of an illegal office as in (Article 51 paragraph 2 of the Criminal Code); 4) If he is mistaken regarding one of the elements of the crime; 5) If he does not have the intention as required for the crime.

¹²Akhirudin, Gunardi Lie, Law Enforcement Efforts in Handling Human Trafficking Cases, *Rawang Rencang: Jurnal Hukum Lex Generalis*. Vol. 5. No. 12 (2024), pp. 6-7.

¹³Barda Nawawi Arief, Op.Cit, *Advanced Criminal Law Lecture Summary*, Publisher; Faculty of Law Undip Lecture Materials Provision Agency, Semarang, 2012, p. 51.

The criminal responsibility of intellectual actors in human trafficking, particularly those committed outside the territory of the Republic of Indonesia, is crucial. Human trafficking generally involves a multi-layered structure: recruiters, those who arrange departures, and those who secretly control the operation. In this context, the theory of inclusion is highly relevant to explaining how criminal responsibility is directed toward intellectual actors as the parties who orchestrate the entire process.

From a criminal law perspective, it is important to detail and examine the forms of criminal responsibility that can be imposed on each party involved. This approach aligns with the principle of accountability in modern criminal law, which emphasizes that criminal responsibility attaches not only to the direct perpetrator but also to anyone who consciously and actively contributes to the commission of the crime, whether physically or psychologically.¹⁴

Based on construction *perpetrator*, there are two types of perpetrators in the crime of human trafficking. First, the direct perpetrator (*physical actor* or *my minister*), namely individuals who are physically involved in carrying, delivering, or performing administrative actions that appear to be part of the human trafficking process. However, these individuals may not be held criminally liable if certain conditions exist, such as ignorance, error, duress, or lack of intent to commit a crime.

Second, the perpetrator is not direct (*intellectual actor* or *Lady's hand*) is a party who orders, organizes, designs, or controls the entire process of recruiting, transporting, and exploiting victims outside the territory of the Republic of Indonesia. This type of perpetrator has full intent, initiative, and control over the crime. In the concept *perpetrator*, the direct perpetrator is seen as a "human tool" used to carry out the crime. However, they can be freed from criminal responsibility if one of the following conditions is met: 1) Mental disorder or imperfection (Article 44 of the Criminal Code); 2) Pressure or coercion from another party (Article 48 of the Criminal Code), for example threats from a human trafficking network; 3) Illegal job orders (Article 51 paragraph (2) of the Criminal Code); 4) Mistakes regarding the elements of the crime, for example thinking the victim was sent for legal work; 5) Lack of intent or intention, especially if the direct perpetrator is not aware that his actions are part of the crime of human trafficking.

In criminal law, the transfer of responsibility to intellectual actors emphasizes that material perpetrators can only be punished if there is an element of intent in their actions. However, in practice, in cases of cross-border human trafficking, many perpetrators are directly proven to have such intent, as seen in various judges' decisions outlined in the previous research description. If material perpetrators are not aware of the illegality of their actions, they cannot be held criminally responsible as parties who directly participate in human trafficking. In the context of *doenpleger*, field actors, for example, who recruit or distribute victims can only be considered to fulfill the elements of criminal responsibility if they act with intent and intent.

It is true that the elements of intent, exploitative intent, and planning lie with the intellectual actor. Therefore, criminal responsibility can be fully shifted to the intellectual actor, as long as the material actor did not know or intend that the victim would be transported illegally. In other words, the material actor, acting unintentionally, acts as a tool, while the intellectual actor bears primary criminal responsibility for the crime of human trafficking.

¹⁴Helesven Simamora, et al., Analysis of Law Enforcement against Persons Who Assist or Attempt to Commit the Crime of Human Trafficking (Case Study of Decision No: 668/Pid.Sus/2018/PN Medan), PATIK: Jurnal Hukum, Vol.8, No.3 (August 2019), p.1-9

In the context of human trafficking outside the territory of the Republic of Indonesia, the intellectual actor is the party who has: the intention to exploit, control over the network, knowledge that the victim will be exploited, the role of initiating and ordering the act, and profits from the crime. Therefore, although the direct perpetrator who transports the victim may appear to be the physical perpetrator, the real perpetrator in the perspective of criminal law is the intellectual actor who designs and controls the entire activity. In the crime of human trafficking outside the territory of the Republic of Indonesia, criminal responsibility must be directed at the intellectual actor as the main perpetrator (*perpetrator*). This is because material perpetrators often do not have the intention or are unable to take responsibility, so they are positioned as tools used by human trafficking networks.

The intellectual actor who desires, organizes, and controls the occurrence of a crime, so that all elements of guilt and criminal responsibility are attached to him. As can be seen in the research by David K. Palar entitled; "*Implementation of Deelneming's Teachings in Eradicating Human Trafficking Crimes*" stated; "The chain that exists until the emergence of victims of human trafficking is what must be unraveled using the teachings of *participation* or inclusion as regulated in articles 55 and 56 of the Criminal Code must be analyzed and implemented starting from the investigation stage to the examination in court."¹⁵

Organizer/*Provocation* regulated in the provisions of Article 55 paragraph (4), namely, a person who moves another person to commit a criminal act by using the means determined by law. So it is almost the same as ordering someone to do something *perpetrator*. In this organization there is an effort to mobilize other people as material makers/*actor phisycus*. Based on the definition of organizing above, the conditions can be set by the organizer or *Provocationis*;¹⁶ 1) There is an intention to move other people to do prohibited acts; 2) Moving it by using efforts and means as mentioned in the law is (*limiting*) limited; 3) The decision of the will of the maker arises because of the things mentioned in (1) and (2) so there is (*physicise causality*); 4) The creator of the material commits the crime that is being advocated or attempts to commit the crime.. The creator of the material must be held criminally responsible.

In the context of transnational human trafficking, intellectual actors are often not present on the ground, but rather act as planners, controllers, or those who organize the recruitment, transportation, or exploitation of victims. Using the concept of advocacy above, intellectual actors can be held criminally responsible if: They intentionally mobilize recruiters, transporters, or document handlers to carry out human trafficking outside the Republic of Indonesia.

Intellectual actors use prohibited means, such as giving instructions, manipulating information, promising benefits, or providing certain facilities that enable human trafficking to occur. Field actors commit human trafficking under the encouragement or instruction of the intellectual actor. If the crime of human trafficking is actually committed or at least attempted, the field actors can also be punished. Therefore, intellectual actors in human trafficking can be punished as promoters.

Considering the issue of inclusion as the person who ordered or encouraged human trafficking, the perpetrator should be held criminally accountable. Even if not directly involved in the field, as long as it can be proven that they initiated, mobilized, or directed

¹⁵David K. Palar et al., *Implementation of the Deelneming Teachings in Eradicating Cases of Human Trafficking Crimes*, Lex Crimen Journal [Vol. 11 No. 3 \(2022\)](#).

¹⁶ *Barda Nawawi Arief, Op.Cit*, p. 59.

the trafficking, this ensures that the transnational human trafficking network can be eradicated, down to its primary controllers.

Previous research also explained that law enforcement cannot interpret the element of carrying, as a crucial element in the provision, narrowly. For example, it might be interpreted only as referring to physical acts involving the victim. Rather, it must be viewed broadly, including the intellectual actors involved in the case. Trial facts, both through witness and victim testimony, often emerge, indicating that there are other perpetrators besides those who recruit in the field. As shown in previous research conducted by; Gloria Carvallo, Bhisu V. Wilhelmus, Orpa G. Manuain, with titles; *"Basic Considerations of Judges in Sentencing Perpetrators of Human Trafficking Crimes"* (Case Study Decision Number: 160/ PID.SUS /2018/PN.KPG);

The aggravating factor for the defendant can still be said to give freedom to the perpetrators of the Crime of Human Trafficking because the facts obtained by the author in the decision number 160 / Pid.Sus / 2018 / PN.Kpg do not correspond to the facts in the decision number 159 / Pid.Sus / 2018 / PN.Kpg. This makes the decision number 160 / Pid.Sus / 2018 / PN.Kpg unfair because the East Nusa Tenggara region is the largest pocket or contributor of victims of the Crime of Human Trafficking, especially areas in NTT, for example, such as South Central Timor, which is where the Constitutional Court is invited to work abroad, so there needs to be a punishment that provides a deterrent effect for each perpetrator so that the purpose of punishment is created which aims to prevent the commission of criminal acts by enforcing legal norms for the protection and protection of society and socializing convicts by providing guidance and guidance to become good and useful people after completing their sentences.¹⁷

The complexity of criminal law enforcement against intellectual actors in human trafficking crimes outside the territory of the Republic of Indonesia stems not only from differing views among law enforcement officials but also from the vagueness of the meaning of "carrying" in Article 4 of the PTPPO Law. This means that the provision does not provide a more concrete or complete explanation of what the phrase "carrying" encompasses. Therefore, it cannot be interpreted narrowly. As found in the previous analysis, the interpretation of "carrying" connotes a physical act. Both physical and non-physical processes should be included in the category of "carrying" in order to eradicate human trafficking on a large scale.

First, regarding the process component contained in Article 4 of the PTPPO Law, namely the element of "carrying," this does indeed pose a dilemma, considering that the PTPPO Law itself does not provide a definition of what is meant by carrying. It only states that carrying is part of recruitment. This raises the question of to what extent the defendant's actions can be considered carrying? Does the defendant have to physically accompany the victims from Indonesia to the destination of exploitation? Or is simply sending the victims without physically accompanying them to the destination sufficient to fulfill the element of carrying. The lack of careful formulation of norms by the legislature, in this context the PTPPO Law, can be a factor hampering law enforcement efforts in eradicating the crime of human trafficking.¹⁸

¹⁷Gloria Carvallo, Bhisu V. Wilhelmus, Orpa G. Manuain, *Basic Considerations of Judges in Sentencing Perpetrators of Human Trafficking Crimes* (Case Study of Decision Number: 160/ PID.SUS / 2018 / PN.KPG), (Artemis Law Journal, Faculty of Law, Nusa Cendana University, Vol. 1 No. 2, May 2024 E-ISSN: 3030-9387 553, p. 562.

¹⁸ Laczko, Frank, and Marco A. Gramegna. "Developing Better Indicators of Human Trafficking." *The Brown Journal of World Affairs* 10, no. 1 (2003): hlm.183.

In the analysis of criminal liability for intellectual actors involved in human trafficking outside the territory of the Republic of Indonesia, the primary focus is how criminal liability for intellectual actors is categorized as complicity in human trafficking using Article 4 of the PTPPO Law. This broadens the scope of accountability for intellectual actors. *master mind* in human trafficking outside the territory of the Republic of Indonesia. This means that the provisions of Article 4 can be interpreted broadly, not narrowly. Therefore, it is necessary to elaborate on the relevant provisions to ensure that they can be used to enforce the law against anyone involved in human trafficking outside the territory of the Republic of Indonesia.

The process component in Article 4 of the PTPPO Law is very limited, in contrast to Article 2 of the PTPPO Law which defines recruitment, transportation, shelter, sending, transfer, or receipt. If the interpretation of the element of "carrying" is interpreted narrowly, namely that there must be physical participation, then in the case a quo the element of "carrying" should not be fulfilled. However, if interpreted broadly, namely simply sending the victims without having to physically accompany them to their destination, then this will obscure the element of "sending" in other articles. The process limitation in Article 4 of the PTPPO Law theoretically greatly limits the scope of criminalization of human trafficking with victims exploited abroad.¹⁹ In the a quo case, the interpretation of the element of "bringing" is not explicitly explained by the Panel of Judges, but what the Panel of Judges means regarding the element of "bringing" can be seen in the following considerations: "Considering, that subsequently witnesses MYU, witness MYA, witness A and witness RP were brought to the Indonesian Fisherman Foundation (IFF) East Jakarta by the Defendant from Pemalang on the orders of witness JONI KASIYANTO alias JONI on February 13, 2019;" "Considering, that subsequently on February 14, 2019 witnesses MYU, witness MYA, witness A, witness RP and witness BM were brought by witness ABUR from the Indonesian Fisherman Foundation (IFF) to Soekarno Hatta Airport to take a flight to Busan, South Korea;" Regarding this matter, the Panel of Judges has been wise in determining the element of "bringing", especially Article 4 of the PTPPO Law must be interpreted broadly.

In looking at criminal responsibility for intellectual actors who are abroad, in relation to the inclusion in the provisions of Articles 55 and 56 of the Criminal Code, intellectual actors can be categorized as those who order the act to be carried out (*perpetrator*) or who organizes (*provocation*) committing the crime of human trafficking outside the territory of the Republic of Indonesia. Therefore, we will explicitly analyze the legal provisions regarding this inclusion in the category of acts that violate Article 4 of the PTPPO Law, specifically examining how criminal liability applies to intellectual actors located outside the territory of the Republic of Indonesia.

In previous research conducted by Aditya Weriansyah, which was essentially explained, "*Reviewing the provisions regarding the element of "carrying" in Article 4 of the PTPPO Law, the scope of Article 4 is narrower when compared to the provisions regarding the process elements regulated in Article 2. Ideally, the provisions in Article 4 are not only limited to the act of carrying, but also include other process elements such as sending, recruiting, and placing.*"²⁰

¹⁹Aditya Weriansyah, et al., Legal Review of the Implementation of Law No. 21 of 2007 Concerning the Eradication of the Crime of Human Trafficking in Indonesia (Annotation of Cases of the Crime of Human Trafficking (TPPO) and Cases Related to Cross-Border Tppo), International Organization for Migration (IOM) Indonesia, p. 63.

²⁰Aditya Weriansyah, et al., Legal Review of the Implementation of Law No. 21 of 2007 Concerning the Eradication of the Crime of Human Trafficking in Indonesia (Annotation of Cases of the Crime of Human

The narrow interpretation of the element "carry" in Article 4 of the Anti-Trafficking Law (UU PTPPO) has become a major obstacle to law enforcement, as this element is often understood only as the physical act of transporting a victim. However, previous research has shown that "carrying" should be interpreted broadly, including the act of sending, sending, or arranging departure without being physically present. Law enforcement tends to only reach actors on the ground, such as village recruiters, victim escorts, or document administrators. Meanwhile, the intellectual actors who organize, direct, fund, or control the network are often left untouched. This results in disproportionate criminal liability and fails to address the true structure of the crime. The ambiguity of Article 4 of the UU PTPPO has led to multiple interpretations among law enforcement.

The ambiguity of the meaning of "carry" not only undermines efforts to prove transnational human trafficking but also contradicts Indonesia's obligations following its ratification of the Palermo Protocol. The Palermo Protocol and the UNTOC provide strong legitimacy for Indonesia to prosecute intellectual actors, including those located outside the territory of the Unitary State of the Republic of Indonesia. Through the principle of extraterritorial jurisdiction, the state has a clear legal basis to pursue perpetrators at the controller, planner, or financier level. Under international standards, intellectual actors are criminalized as: *Organizer, Director/Controller, Conspirator, Helper/Abettor, Instigator*. Thus, their physical absence does not absolve them of criminal responsibility. The alignment between the Anti-Terrorism Law and the Palermo Protocol is not optimal, creating legal loopholes that often allow key perpetrators to escape. Narrow, incomplete norms that do not include various international modes of operation further narrow the scope for criminalization.

Indonesia's legal jurisdiction has actually been expanded internationally, both through the Palermo Protocol and ACTIP (*ASEAN Convention Against Trafficking in Persons*). Thus, the excuses of "jurisdictional difficulties" or "limited legal instruments" can no longer be used as a justification for allowing intellectual actors to go unpunished. Law enforcement that only targets perpetrators in the field is inconsistent with the objective of the PTPPO Law, which is to eradicate human trafficking comprehensively. To achieve this goal, criminal prosecution must be directed at the masterminds or intellectual actors who control the human trafficking chain behind the scenes.

Analysis of Legal Certainty in the Crime of Human Trafficking Outside the Territory of the Republic of Indonesia

Legal Certainty according to Van Apeldoorn, emphasizes that legal certainty requires clarity of norms so that they can be determined (*determinability*) in concrete cases, and provide protection against arbitrary action by law enforcement officers. In the context of the provisions of Article 4 of the PTPPO Law, it creates unclear norms in terms of their implementation in concrete cases, as in the judge's decision regarding the application of the provisions of Article 4 of the PTPPO Law.

Normatively, the phrase "carry," as stipulated in Article 4 of the PTPPO Law, tends to be interpreted physically and directly. In law enforcement practice, those most easily prosecuted are those involved in the field, such as recruiters, delivery people, drivers, or couriers. Meanwhile, intellectual actors (controllers, financiers, network organizers, and order givers) often escape criminal prosecution because they don't directly carry out the act of "carrying." This situation demonstrates the absence of *determinability*. As Van Apeldoorn

Trafficking (TPPO) and Cases Related to Cross-Border Tppo), International Organization for Migration (IOM) Indonesia, p. 107.

intended, the norm does not provide clarity to law enforcement officials in determining who can be held criminally responsible. The formulation of the norm should clarify that carrying out the act includes not only physical acts but also non-physical acts such as ordering or encouraging someone to do something.

Van Apeldoorn also defines legal certainty as legal security, namely protection against overly broad judicial authority. However, because the phrase "bring" is open to interpretation, judges have considerable latitude for interpretation. Intellectual actors are often deemed "not fulfilling the elements" despite being the primary controllers of crime. As a result, the law fails to provide protection, *justiciable*, especially for victims of human trafficking, because only the technical perpetrators are punished, while the main perpetrators are not touched.

Gustav Radbruch's Theory of Legal Certainty and the Weaknesses in the Formulation of Article 4 of the Law on Trafficking in Persons of ... This causes distortion of criminal responsibility as well as substantive injustice because the main perpetrators are not held accountable.

According to Radbruch, legal certainty should not be merely formal. In the case of human trafficking, legal certainty is actually enjoyed by intellectual actors due to the loopholes in the norm. Meanwhile, victims and society lose justice. Thus, Article 4 of the Anti-Terrorism Law creates a false legal certainty, namely certainty for the main perpetrator to avoid punishment, not certainty for victims to obtain justice. Implications for the Criminal Liability of Intellectual Actors Based on these two theories, it can be analyzed that: In Van Apeldoorn's theory, the phrase "bring" does not fulfill the principle of legal certainty because it cannot be determined concretely who is responsible; It opens up space for arbitrariness and inconsistency in law enforcement. In Gustav Radbruch's theory, the formulation of Article 4: Is not clearly formulated; Is not based on facts about organized human trafficking crimes; Fails to achieve the goal of legal certainty as a product of positive law. As a result, intellectual actors of human trafficking are not touched by criminal responsibility, while perpetrators in the field are the only parties punished.

CONCLUSION

Intellectual actors have the same or even greater criminal responsibility than field actors, because the elements of intent, planning, control, and the purpose of exploitation lie with the intellectual actors. In the practice of human trafficking, field actors often only carry out instructions, are under pressure, or even misunderstand their actions, so that in the construction of criminal law they can be positioned as *manus ministra* (physical perpetrators), while intellectual actors are *manus domina* (actual perpetrators). Judges' decisions that only use Article 4 of the Anti-Trafficking Law tend to punish field actors, not intellectual actors, primarily because the interpretation of the element of "carrying" is still carried out narrowly. This results in criminal accountability for intellectual actors being limited and often overlooked in the law enforcement process. The concept of involvement (*deelneming*) as regulated in Articles 55 and 56 of the Criminal Code, particularly the categories of *doenpleger* (those who order to do) and *uitlokker* (those who encourage), is a fundamental instrument for expanding the scope of criminalization of intellectual actors in cross-border human trafficking. Intellectual actors can be held accountable even if they do not carry out physical actions.

In the *doenpleger* construction, criminal responsibility is directed at the intellectual actor when the perpetrator in the field cannot be held accountable (due to ignorance, error, duress, or malicious intent). Thus, all elements of culpability shift to the intellectual actor who controls the crime. In the *uitlokking* construction, the intellectual actor can be punished

if he intentionally moves, influences, or triggers the perpetrator in the field to commit human trafficking through certain means such as instructions, promises, threats, rewards, or information manipulation.

The vagueness of the meaning of the element "carry" in Article 4 of the Anti-Trafficking Law has hampered law enforcement, as it does not specify whether the act must be physical or can encompass the entire process of transporting the victim. This ambiguity often leads judges to interpret it narrowly, making it difficult to prosecute the intellectual actors. In many cases, judges have interpreted the meaning of "carry" narrowly, examining the physical act, administrative actions, and the arrangements for transporting the victim. Intellectual actors located abroad can still be held criminally liable using the doctrine of accomplice, as long as their actions are related to crimes committed in Indonesia. Thus, the jurisdiction expands its reach to prosecute key actors in human trafficking networks.

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