

THE IMPACT OF TRADE CRIMINAL ACTIONS ON THE PROTECTION OF STATE CITIZENS' RIGHT TO HAVE DECENT LIFE AND THE RIGHT TO OBTAIN THE EMPLOYMENT IN EAST NUSA TENGGARA PROVINCE

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Abstract

The crime of human trafficking is an extraordinary crime so that when there is an effort to overcome it will also have an impact on human rights in the form of the right to obtain a decent living and the right to obtain work. The legal problem examined in this paper is to what extent is the impact of handling human trafficking on the protection of human rights in the perspective of the right to a decent living and the right to work? This research is an empirical juridical research. The results of the study found that the issuance of East Nusa Tenggara governor's decree No. 358 / KEP / HK / 2018 concerning the Termination of the Appointment of Inter-Regional Worker Candidates from East Nusa Tenggara Province Out of East Nusa Tenggara Province is very inaccurate because there are not enough jobs available for East Nusa Tenggara people so it is suggested that there is a need for top priority from the Provincial Government of East Nusa Tenggara to provide employment for the people of East Nusa Tenggara Province.

Keywords: right to obtain a decent livelihood, right to obtain employment in trafficking in persons

INTRODUCTION

The goal of the Indonesian people to create a just and prosperous society can be seen in paragraph IV of the Preamble of the 1945 Constitution which states:

"Then, in order to form an Indonesian government that protects all Indonesian people and all Indonesian blood and to realize public welfare, educate the nation's life and participate in carrying out world order based on independence, lasting peace and social justice, Indonesian national independence is drawn up. in the Constitution of the Republic of Indonesia which is formed in a state structure of the Republic of Indonesia which is sovereignty of the people based on the Almighty God, Humanity that is just and civilized, Indonesian Unity and Popularity which is led by wisdom in deliberation or representation and by realizing a wisdom social justice for all the people of Indonesia"²²².

The fourth paragraph of the Preamble to the 1945 Constitution is set out in Article 27, Article 28, Article 29, Article 30 and Article 34 in the Body of the 1945 Constitution. This means that the Indonesian state is based on law (Article 1 paragraph (3) of the Law The 1945 Constitution recognizes human rights and human rights Article 28 J paragraphs (1) and (2) of

²²² Amendments to the 1945 Constitution First to fourth opening in a single text. Presindo Yogyakarta Media Publisher 2004, p. 4

the 1945 Constitution. The constitutional rights of citizens which include human rights and citizens' rights which is recognized and guaranteed in the 1945 Constitution applies to every Indonesian citizen without exception, both the people and officials, both ministers and farmers and others are equal in advance of the law (principle of equality before the law), even in Article 28 I paragraph (2) The 1945 Constitution states: "Everyone has the right to be free from discriminatory treatment on any basis and has the right to get protection against discriminatory treatment".

Article 1 paragraph (3) of Law No. 39 of 1999 concerning Human Rights states: "Discrimination is any restriction, harassment or exclusion that is directly or indirectly based on human differences on the basis of religion, ethnicity, race, ethnicity, class, class, social status, economic status, gender, language, political beliefs, which results in unemployment, deviations from the elimination of recognition, implementation of the use of human rights and basic freedoms in the life of both individuals and collectives in the political, economic, legal, social, cultural and other aspects of life"²²³.

Regarding acts that are diametrically opposed to the constitution is clearly a violation of human rights, there is no difference between fellow citizens before the constitution (equality before the law) Jimly Asshiddiqie in relation to the above mentioned:

"Fulfillment of citizens' constitutional rights must be carried out in accordance with diverse conditions of citizens. Reality in Indonesian society shows the different abilities to access the protection and fulfillment of rights granted by the state. The difference in ability is not of one's own volition, certain groups but because the developing social structure tends to marginalize it. Protection and fulfillment of constitutional rights carried out without regard to these differences, so that every citizen has the same ability and can get the same protection and fulfillment of constitutional rights, special treatment is needed for certain groups. Only with such special treatment can equality be achieved in the protection and fulfillment of the constitutional rights of every citizen "²²⁴.

The 1945 Constitution has guaranteed the special treatment stated in Article 27 paragraph (2) which states: "Every citizen has the right to work and a decent living for humanity". Furthermore, in Article 28 paragraph (2) of the 1945 Constitution it is stated:

²²³ Law Number 39 of 1999 concerning Human Rights.

²²⁴ Jimly Asshiddiqie, Women's Constitutional Rights and Challenges of Their Enforcement, Indonesian Constitutional Court, pp. 14-15

"Everyone has the right to work and to receive compensation and fair and proper treatment in employment relations".

Based on the description above, it is an obligation for the government, in this case the regional government of the Province of East Nusa Tenggara in particular, which is given the trust of all people of East Nusa Tenggara Province to open up employment opportunities, so that every citizen gets a job and a decent compensation for the welfare of life of each citizens and their families. Therefore also programs that are made and implemented by the government must be programs that are pro to the interests of all the people of East Nusa Tenggara Province for the welfare of the people of East Nusa Tenggara Province, not unequal, unbalanced and irrational programs. This means comprehensive programs that touch the interests of all the people of East Nusa Tenggara Province.

Based on the brief description above, the State of Indonesia in particular the government of East Nusa Tenggara Province is obliged to provide the right to decent work and livelihoods for humanity especially the people of East Nusa Tenggara Province. In addition, it cannot be forgotten that there are constitutional obligations for every citizen in integrating in the life of the nation and state.

The Government's obligation to prosper people's lives because the Government has been given the confidence to lead, manage this country so that the goals of a prosperous, prosperous society can be realized. The obligation of citizens to carry out acts in accordance with the provisions of the applicable legislation in order to realize order and peace in the community. The obligation of the state (government) to treat each of its citizens equally before the law and Government (equality before the law), to achieve a prosperous and decent life and this is one of human rights, basic human rights (human rights) which cannot be eliminated (excluded).

The right of every human being to live a decent life, have a job and be free from poverty (freedom from want), "these are the rights that humans have according to their nature which cannot be separated from their nature and because it is sacred"²²⁵.

Long before the United Nations (United Nations), made a universal statement on human rights, Universal Declaration of Human Rights, December 10, 1946, the 1945 Constitution had contained and included human rights (HAM), among others, the right to embrace religion and worship according to religion and belief, opinion, the right to obtain employment and a decent living for humanity. Four Freedoms from Roosevelt relating to HAM mentioned²²⁶:

1. Freedom From Want (free from a sense of equipment);
2. Freedom From Fear (free from fear);
3. Freedom Of Speech (free to express opinions);
4. Freedom Of Religion (freedom of religion);

In the body of the 1945 Constitution (after the amendment), the contents are full of recognition and protection of human rights, which are listed in Article 27 paragraph (1), paragraph (2), paragraph (3), Article 28 in Chapter XA with title of human rights, starting from Article 28 A to Article 28 J paragraph (1) and paragraph (2). The recognition and protection of human rights in the 1945 Constitution does not mean that the work of the government has been completed. Various programs must be made and implemented in such a way. The developments carried out must be a development program that takes the side of the people. Economic development must be rational, impartial and impartial to the interests of the people. Economic development must be distributed evenly to all regions in Indonesia. Do not just economic development centered on the island of Java, employment must be opened as wide as possible for all levels of society, so that people can work in accordance with their abilities and expertise.

²²⁵ Kuntjoro Purbopranto, *Human Rights and Pancasila*, p. 19

²²⁶ J.C.T. Simorangkir, *Indonesian Law and Constitution*, Gunung Agung Jakarta, 1983, p. 33

Article 27 paragraph (2) of the 1945 Constitution expressly states: "Every citizen has the right to work and a decent living for humanity". This is a mandate that the government must and will not carry out. The work provided by the government through its programs for the people, the people have an income to support themselves, their families and are expected to enjoy a better and better life for the future. The existence of socioeconomic status work has become more elevated, reducing various kinds of crimes that occur in the community. Getting a job is one of the recognition and protection of human rights (Article 27 paragraph (2) of the 1945 Constitution. However, the realization of the provisions of Article 27 paragraph (2) of the 1945 Constitution is not easy or easy.

Reality shows the limited employment in the archipelago caused many Indonesian citizens who did not get work to work and consequently could not live properly. In fact, almost every job vacancy announcement, job fairs are filled with citizens to scramble to register, apply for jobs in accordance with the conditions determined by the business world. Likewise announcements from certain Ministries for the acceptance of certain prospective civil servants, the long queue of citizen registration can no longer be denied.

Economic factors are one of the dominant factors of urbanization and migration to get job vacancies to achieve a decent life as a human. Meeting the needs of community members is the responsibility of the government :

Article 28 letter i paragraph (4) of the 1945 Constitution states: "Protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government".

Article 28 H paragraph (1) of the 1945 Constitution states: "Every person has the right to live in physical and spiritual prosperity, to live, and to obtain a good and healthy environment and to obtain health services".

Economic conditions in a country that does not favor the small people of Indonesia, economic conditions that are less attractive in Indonesia, many Indonesian citizens cross to neighboring countries, countries that are friendly with Indonesia to find and get jobs to improve the situation a better economy. Sad indeed, but this is an undeniable reality.

This is what happened in East Nusa Tenggara Province as one of the provinces contributing labor out of the region. The economic conditions are still far from the welfare standards and the lack of attention from the local government in terms of providing access for the people of East Nusa Tenggara Province to get a decent living and the lack of new jobs for job seekers in the province of East Nusa Tenggara (hereinafter in this paper will be abbreviated NTT) makes the people of NTT more willing to find work outside the region both in Indonesia and abroad.

The target areas that are targeted for job seekers from NTT are to find work in order to improve their lives and get a decent living, namely the regions of Kalimantan, Surabaya and Jakarta. These three regions are the target areas for NTT job seekers to work specifically in the territory of Indonesia. While the destination areas for NTT job seekers looking for work abroad are Malaysia and Hongkong.

Responding to the above phenomenon, NTT Governor Mr. Viktor B. Laiskodat adopted a strict policy to limit the pace of growth of NTT people looking for work outside NTT by issuing a regulation in the form of NTT Provincial Governor Decree No. 358 / KEP / HK / 2018 concerning Termination of Appointment of Prospective Workers Between Inter Regional Work of Origin of the Province of East Nusa Tenggara Out of the Province of East Nusa Tenggara. With the issuance of this Governor's Decree, a Task Force for the Prevention of Trafficking in Persons was established at the Eltari Airport in Kupang as a special task force tasked with preventing the departure of workers from leaving. Based on this brief description, the researcher is interested in conducting a further study on existing legal issues related to the protection of human rights.

ISSUES

Based on a brief description of the above background, the legal issues that will be examined by the author in this research proposal: To what extent is the impact of handling trafficking in persons on the protection of human rights in the perspective of the right to obtain a decent living and the right to get a job?

METHOD

Based on the discussion of the discussion if seen from the type of research, this research is a type that is descriptive "descriptive research". Therefore, in his paper Kountur²²⁷ means that descriptive research is research that wants to give a description or description of a situation as clearly as possible without any treatment of the object under study. The nature of this research is descriptive and aims to describe, inventory and analyze theories and regulations relating to the problem under study.

Referring to the type of research above, the type of research used by prospective researchers in the context of writing scientific papers is the type of Empirical Juridical research, namely research by explaining the provisions in the applicable laws and regulations. then analyzed by comparing between the demands of the ideal values that exist in the field as supporters, namely pengaktaan or embodiment of values or norms on an empirical level. From this research it can be seen the gap between expectations and reality "das sollen and das sein", where the implementation or implementation of roles is in accordance with the mandate of the norm. This is where the fusion of normative and empirical elements is manifested. The integration of normative and empirical elements here is to see the working or effective law in society, as Barder Johan Nasution said²²⁸.

²²⁷ Kountur Ronny, 2003, *Research Methods for Thesis and Thesis Writing*, PPM, Jakarta, p. 105

²²⁸ Barder Johan Nasution, 2008, *Legal Science Research Methods*, Mandar Maju, Bandung, p. 123

Based on the types and types of research above, in order to obtain research material, the approach method used by researchers in conducting scientific approaches to the legal issues studied includes empirical juridical approaches, conceptual juridical approaches and Case approaches.

Data or legal and non-legal materials obtained in this study will be analyzed in a descriptive juridical manner using a deductive method, namely general data on legal conceptions in the form of the principles of the postulate law, as well as teachings (doctrines) and severe opinions of experts arranged systematically. as a composition of legal facts to study the legal issues raised by the author.

DISCUSSION

The Impact Of The Prevention Of Trafficking In Persons Against Human Rights Protection In The Perspective Of The Right To Get A Decent Livelihood And The Right To A Job

In Indonesia, all applicable laws and regulations refer to basic laws or constitutions both written and unwritten. The written basic law that applies in Indonesia is the 1945 Constitution. However, after the second amendment to the 1945 Constitution in 2000 and the issuance of MPR Decree No. XVII / MPR / 998 concerning Human Rights, the development of human rights has increased rapidly. Especially after the issuance of Law Number 39 of 1999 concerning Human Rights.

At the opening of the 1945 Constitution there was a statement about human rights, which was stated as follows: "That in fact freedom is the right of all nations and therefore, colonialism over the world must be abolished because it is not in accordance with humanity and justice".

The sound of the first paragraph of the Preamble of the 1945 Constitution shows that human rights, especially the right of independence for all nations, are guaranteed and upheld

by all nations in the world. As mentioned before, that human rights are rights that are given by God to humans. But rights are not only related to human relations with God, but rights are recognition of the community, the state, and even other countries of the rights that we have.

It has also been mentioned that the definition of human rights according to Law Number 39 of 1999 Concerning Human Rights states that human rights are a set of rights inherent in the nature of human existence as God's Creatures. That right is a gift that must be respected, upheld and protected by the state, law, government and everyone for the sake of honor and protection of human dignity.

In detail, human rights have been listed in the World statement on Human Rights proclaimed by the United Nations on December 10, 1948 which included: "That every person who has the right to life, independence and security of the body, to be recognized his personality , to obtain the same treatment as other people according to the law to obtain legal guarantees in criminal cases, such as publicly examined, are considered not guilty unless there is legal evidence, the right to enter and exit a country's territory, the right to obtain a nationality, the right to get the right of ownership over an object, the right to freely express a thought and feeling, the right to freely embrace religion, the right to own and express opinions, the right to get social security, the right to get a job, the right to trade, the right to get an education, the right to to participate in the cultural movement of society, the right to enjoy art and participate in scientific progress"²²⁹.

According to Ramdlon Haning in his book entitled Cita and Citra Human Rights in Indonesia, in general human rights can be divided into:

1. Personal rights such as the right to choose and embrace religion in accordance with beliefs, the right to citizenship, the right to travel or move, the right to express opinions, and others.

²²⁹ Ramdlon Naning. 1983. Human Rights Imagery and Image in Indonesia. The University of Indonesia Criminology Institute Indonesian Legal Aid Support Program. Jakarta . P. 16-17

2. Economic rights (Property Rights) such as the right to land, the right to ownership of goods and objects, the right to find and get a decent job and livelihood, the right to freedom of sale and purchase, the right to freedom of contract, and others.
3. Political rights (Political Rights) such as the right to vote and be elected in elections, the right to associate and create organizations, the right to participate in government activities, the right to form political parties or other organizations, the right to express opinions or also the right to engage in or take part in demonstrations.
4. Social and cultural rights such as the right to develop diverse cultures because of a pluralistic Indonesian society that is compatible with talents and interests, the right to determine, choose and get an education, the right to receive instruction,
5. Human rights to receive judicial procedures and protection (Procedural Rights) such as regulations on detention, arrest, search, justice and so on²³⁰.

In addition to the types of rights above, in the 1945 Constitution the results of the amendment II also regulate human rights. Specific arrangements regarding human rights are found in Chapter X, XA. XI, which is as follows:

Article 27:

- 1) All citizens are at the same position in law and government and are obliged to uphold the law and government with no exception.
- 2) Every citizen has the right to work and a decent living for humanity.
- 3) Every citizen has the right and duty to participate in efforts to defend the country.

Article 28

Freedom of association and assembly, expressing thoughts verbally and in writing and so forth are stipulated by law.

Article 28A

Everyone has the right to live and defend his life and lives.

Article 28B

- 1) Everyone has the right to form a family and carry on descendants through a legal marriage.
- 2) Every child has the right to survival, growth and development and is entitled to protection from violence and discrimination.

Article 28C

²³⁰ Loc.cit

- 1) Everyone has the right to develop themselves through the fulfillment of His basic needs, the right to education and benefit from science and technology, arts and culture, in order to improve the quality of life and for the welfare of humanity.
- 2) Everyone has the right to advance themselves in fighting for their rights collectively to build society, nation and state.

Article 28D

- 1) Everyone has the right to recognition, guarantees, protection and legal certainty that is fair and the same treatment before the law.
- 2) Everyone has the right to work and to receive fair and appropriate compensation and treatment in an employment relationship.
- 3) Every citizen has the right to have the same opportunity in government.
- 4) Everyone has the right to citizenship status.

Article 28E

- 1) Everyone is free to embrace religion and worship according to their religion, choose education and teaching, choose work, choose citizenship, choose a place to live in the territory of the country and leave it, and has the right to return.
- 2) Everyone has the right to freedom to believe in beliefs, express thoughts and attitudes, according to his conscience.
- 3) Everyone has the right to freedom of association, assembly and expression.

Article 28F

Everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, own, store, process and deliver information using all types of available channels.

Article 28G

- 1) Every person has the right to protect themselves, family, honor, dignity, and property under his authority, and is entitled to a sense of security and protection from the threat of fear to do or not do something that is a human right.
- 2) Everyone has the right to be free from torture or treatment that demeans human dignity and has the right to obtain political asylum from other countries.

Article 28H

- 1) Everyone has the right to live in physical and spiritual prosperity, to live, and to have a good and healthy living environment and to have health services.
- 2) Every person has the right to get special facilities and treatment to obtain equal opportunities and benefits in order to achieve equality and justice.

- 3) Every person has the right to social security that enables his or her full development as a dignified human being.
- 4) Every person has the right to have private property rights and these property rights may not be taken arbitrarily by anyone.

Article 28I

- 1) The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted on the basis of a retroactive law are human rights that cannot be reduced under any circumstances.
- 2) Everyone has the right to be free from discriminatory treatment on any basis and has the right to get protection against such discriminatory treatment.
- 3) Cultural identity and traditional community rights are respected in line with the times and civilizations.
- 4) Protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government.
- 5) To uphold and protect human rights in accordance with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and stated in legislation.

Article 28J

- 1) Everyone must respect the human rights of others in the orderly life of the community, nation and state.
- 2) In exercising their rights and freedoms, every person is obliged to submit to limitations set forth in the law with the sole purpose of ensuring the recognition and respect for the rights and freedoms of others, and to fulfill fair demands in accordance with moral considerations, values religion, security and public order in a democratic society.

Article 29

(2) The state guarantees the independence of each population to embrace their religion and to worship according to their religion and beliefs.

In addition to the 1945 Constitution, Law No. 39 of 1999 concerning Human Rights also regulates several human rights such as:

- 1) Right to life
- 2) The right to have a family
- 3) The right to develop oneself
- 4) The right to obtain justice
- 5) Right to personal freedom

- 6) The right to security
- 7) Right to welfare
- 8) The right to participate in government
- 9) Women's rights
- 10) Children's rights

In Law No. 13 of 2003 concerning Manpower also regulates human rights for workers including:

Article 5

Every worker has the same opportunity without discrimination to get a job.

Article 6

Every worker / laborer has the right to get the same treatment without discrimination from the employer.

Another matter concerning the rights for workers is regulated in Chapter X of Law Number 13 Year 2003 concerning Protection, Wages and Welfare which is regulated in Articles 67 through 101.

Based on the descriptions above, it is clear that the right to obtain a decent living and the right to obtain decent work throughout the territory of the Republic of Indonesia is a form of human rights protection given to every citizen including citizens of East Nusa Tenggara who wish to work within the territory Indonesian country.

It is clear that with the issuance of the decision of the governor of the province of East Nusa Tenggara No. 358 / KEP / HK / 2018 concerning the Termination of the Appointment of Candidates for Inter-Regional Workers of Origin from the Province of East Nusa Tenggara Out of East Nusa Tenggara Province is very contrary to the principle of protection of human rights such as which is amended by the 1945 Constitution and the Human Rights Law.

CONCLUSION

Referring to the discussion above, the right to get a decent living and the right to get a job is a form of human rights granted by the state to every citizen so that with the issuance of the Governor of East Nusa Tenggara Province No. 358 / KEP / HK / 2018 concerning Termination of the Appointment of Prospective Inter-Labor Workers Between Regions of East Nusa Tenggara Province Out of East Nusa Tenggara Province is very contradictory to the principle of protection of human rights.

SUGGESTION

Based on the description above conclusions, the suggestion to be conveyed is that the decision of the governor of East Nusa Tenggara Province Number 358 / KEP / HK / 2018 concerning the Termination of Appointment of Inter-Regional Worker Candidates from East Nusa Tenggara Province to East Nusa Tenggara Province should not be issued first first thing to note is the provision of employment in advance for the people of East Nusa Tenggara.

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