

Criminal Responsibilities of Criminal Trafficking in Persons with Mail-Order Bride Mode Between China and Indonesia

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Abstract: This article discusses legal provisions regarding the criminal act of trafficking in persons between Indonesia and China with the mail-order bride mode, which has recently occurred in various regions in Indonesia, and the criminal responsibility of the perpetrators of the trafficking in persons. The primary sources of this research are Law No. 21 of 2007 on the Eradication of Human Trafficking, the Criminal Law of the People's Republic of China, Law No. 13 of 2017 concerning the Ratification of the Agreement between the Republic of Indonesia and the People's Republic of China regarding Extradition, and the results of interviews with various party. The secondary sources come from scientific works that study or are related to the object of this research. Using juridical-empirical approach, this study results indicate that the criminal act of trafficking in persons with the order mode of the bride and groom between men with Chinese citizenship and women with Indonesian citizenship was committed by several parties, including Indonesian agents, Chinese agents, mail-order bride service users, and intermediary parties (*makcomblang*). The perpetrators of the crime of trafficking persons who are in Indonesia can be subject to criminal sanctions as stipulated in Law No. 21 of 2007 on the Eradication of Human Trafficking. Meanwhile, perpetrators who are domiciled in China can be subject to criminal sanctions through extradition based on an extradition agreement between China and Indonesia (July 1, 2009) which has been ratified by Law No. 13 of 2017 concerning the Ratification of the Agreement between the Republic of Indonesia and the People's Republic of China regarding Extradition.

Keywords: the Eradication of Human Trafficking; mail-order bride, criminal responsibility, criminal sanctions.

Abstrak: Artikel ini mengkaji ketentuan hukum tentang tindak pidana perdagangan orang antara Indonesia dan Cina dengan modus *pengantin pesanan* yang akhir-akhir ini banyak terjadi di berbagai daerah di Indonesia dan pertanggungjawaban pidana para pelaku tindak

pidana perdagangan orang tersebut. Sumber utama penelitian ini adalah Undang-Undang Nomor 21 Tahun 2007 tentang Tindak Pidana Perdagangan Orang (TPPO), Criminal Law of the People's Republic of China, Undang-Undang Nomor 13 Tahun 2017 tentang Pengesahan Persetujuan antara Republik Indonesia dengan Republik Rakyat Cina, dan hasil wawancara dengan berbagai pihak. Adapun sumber sekundernya berasal dari karya-karya ilmiah yang mengkaji atau berkaitan dengan objek penelitian ini. Menggunakan pendekatan yuridis-empiris, penelitian ini menemukan bahwa tindak pidana perdagangan orang dengan modus *pengantin pesanan* antara laki-laki berkewarganegaraan Cina dengan perempuan berkewarganegaraan Indonesia dilakukan oleh beberapa pihak, yang meliputi agen Indonesia, agen Cina, pengguna jasa *pengantin pesanan*, dan pihak perantara (*makcomblang*). Para pelaku tindak pidana perdagangan orang yang berada di Indonesia ini dapat dikenai sanksi pidana sebagaimana diatur dalam Undang-Undang Nomor 21 tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang. Sementara para pelaku yang berkedudukan di negara Cina dapat dikenai sanksi pidana melalui pemberlakuan ekstradisi berdasarkan persetujuan ekstradisi antara Cina dan Indonesia (1 Juli 2009) dan telah disahkan dengan Undang-Undang Nomor 13 Tahun 2017 tentang Pengesahan Persetujuan antara Republik Indonesia dengan Republik Rakyat Cina.

Kata Kunci: Tindak Pidana Perdagangan Orang; *pengantin pesanan*, pertanggungjawaban pidana; sanksi pidana.

Introduction

In the current era of globalization, the mode of crime in the criminal act of trafficking in persons as a form of modern slavery has experienced development and improvement. The more developed and advanced technology, information, communication, and transportation, the more developed the mode of crime. The practice of trafficking in persons is often carried out behind closed doors and moves outside the law.¹ The crime of trafficking in persons is growing, especially in the form of the crime of trafficking in women,

¹ Andi Silviana Ulfa, "Pertanggungjawaban Pidana Bagi Korban Perdagangan Orang Yang Diperiksa Melakukan Tindak Pidana Lain Dalam Perspektif Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang," *Badamai Law Journal* 3, no. 1 (2017): 1–20.

which is one aspect of transnational migration. It is also a complex global issue.

Trafficking in women is a severe problem because it involves violence against women and the commodification of women through manipulation, exploitation, and free trade.² This new mode of human trafficking can be found on the internet, such as the emergence of the “mail-order bride” phenomenon. The practice of trafficking in persons through mail-order bride aims at making profits solely for the providing agents.³

Based on data obtained from the International Labor Organization (ILO) in 2016, there were 15.4 million people trapped in forced marriage, which could lead to prostitution.⁴ Meanwhile, based on data from the Directorate for the Protection of Indonesian Citizens (PWNI-BHI), Ministry of Foreign Affairs of the Republic of Indonesia, from 2015-2019, there were 115 cases of mail-order bride between China and Indonesia reported to the Directorate of PWNI and BHI.⁵ Trafficking in persons in the form of mail-order bride can be said to be a new model influenced by the development of internet technology.⁶

This mode of mail-order bride partly developed into organized criminal acts of trafficking in persons. Those involved in trafficking are intermediaries who deal directly with men and women and those who bring the two together.⁷ As an organized crime, mail-order brides

² Sabirin, “Perdagangan Perempuan Dengan Dalih Perkawinan,” *RAHEEMA: Jurnal Studi Gender Dan Anak* 4, no. 1 (2017): 57.

³ Novianti, “Tinjauan Yuridis Kejahatan Perdagangan Manusia (Human Trafficking) Sebagai Kejahatan Lintas Batas Negara,” *Jurnal Ilmu Hukum Jambi* 5, no. 2 (2014): 51–52.

⁴ Maureen Sofia Christy, Rahayu Rahayu, and Elfia Farida, “Kewajiban Negara Melindungi Perempuan Korban Perdagangan Orang (Studi Kasus: Perdagangan 11 Perempuan Di Sukabumi Dengan Modus Perkawinan Tahun 2018),” *Diponegoro Law Journal* 8, no. 3 (2019): 2159–76.

⁵ Ariella A. Yoteni, “Upaya Pemerintahan Indonesia Dalam Menangani Kasus Perdagangan Orang: Studi Kasus Pengantin Pesanan (Mail Order Bride) Indonesia-China,” *Papua Journal of Diplomacy and International Relations* 1, no. 1 (2021): 10.

⁶ Justin S Merriman, “Holy Matrimony Plus Shipping and Handling: A Libertarian Perspective on The Mail-Order Bride Industry,” *The Independent Review* 17, no. 1 (2012): 81–93.

⁷ Merriman. 58

involve recruiting agents tasked with taking care of various things needed in the process of the crime. They often use substantial fees, causing prospective workers to be trapped in debt bondage. These recruits are then illegally employed abroad, and this causes them to become targets of human trafficking.⁸

Research on mail-order brides as a crime of trafficking in persons, including the work of Sabirin (2017) entitled “*Trafficking of Women under the Pretext of Marriage*”.⁹ The results of this study state that cases of trafficking in persons through mail-order brides involve intermediaries who bring together male and female partners. However, they are not responsible when problems occur later.¹⁰ Another study by Zulkipli Lessy (2006) titled “*Order Bride: Modus Operandi Human Trafficking in Indonesia*”.¹¹ This paper discusses the problem of ordering a bride as one of the modes in the criminal act of trafficking in persons. His research showed that the mail-order bride intended to prostitute the victim to a place of prostitution or to enslave the victim.¹²

This article tries to continue and fill, at the same time, a space that previous researchers have not studied. This article focuses on efforts to punish perpetrators involved in trafficking in persons with the mail-order bride mode. So far, this punishment has only been given to perpetrators tasked with finding victims of mail-order brides. In contrast, perpetrators who have direct contact with seekers for mail-order brides or men who mail-order brides have not been legally followed up. Thus, they have not been held legally responsible for their crimes. This does not follow the provisions of Law No. 21 of 2007 on the Eradication of Human Trafficking.

Based on these problems, this study aims to analyze criminal law provisions on participation and forms of criminal responsibility for the perpetrators of trafficking in persons based on Law No. 21 of 2007 on the Eradication of Human Trafficking. This research is

⁸ Zulkipli Lessy, “Pengantin Pesanan Pos (Mail Order Bride): Modus Operandi Human Trafficking Di Indonesia,” *Musawa* 4, no. 3 (2006): 345.

⁹ Sabirin, “Perdagangan Perempuan Dengan Dalih Perkawinan.”

¹⁰ Sabirin.

¹¹ Lessy, “Pengantin Pesanan Pos (Mail Order Bride): Modus Operandi Human Trafficking Di Indonesia.”

¹² Lessy.

qualitative research with a normative juridical approach. This study examines the mail-order bride as a criminal act of participation in the criminal act of trafficking in persons and the criminal responsibility of the perpetrators of the mail-order bride between China and Indonesia. This research is necessary because the criminal responsibility process has not yet been given to foreign perpetrators tasked with recruiting mail-order bride service users. This research can contribute ideas to the development of law, especially criminal science, which are related to the accountability of perpetrators of the crime of trafficking in persons with the mode of mail-order bride between China and Indonesia, either against perpetrators who are in Indonesia or China, by observing from the perspective of regulations law of Indonesia or the transnational rule of law.

Mail-Order Bride as a Human Trafficking Crime

The crime of trafficking in persons is a form of modern slavery that often occurs against people today for commercial purposes, sexual exploitation, or forced labor. Also, trafficking comes from the word “traffic”, which means trade and has the meaning of illegal trade.¹³ Meanwhile, according to Article 1 of Law No. 21 of 2007, trafficking in persons shall mean:

“the recruitment, transportation, harboring, sending, transfer, or receipt of a person using threat or use of force, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within the country or cross the border, for exploitation or which causes the exploitation of a person.”¹⁴

Based on the definitions above, there are at least four main elements in the practice of trafficking in persons. First, there are acts or acts of recruiting, transporting, accommodating, sending,

¹³ Cahya Wulandari and Sonny Saptoajie Wicaksono, “Tindak Pidana Perdagangan Orang (Human Trafficking) Khususnya Terhadap Perempuan Dan Anak: Suatu Permasalahan Dan Penanganannya Di Kota Semarang,” *Yustisia Jurnal Hukum* 3, no. 3 (2014): 15–26.

¹⁴Article 1 of the Law No. 21 of 2007 on the Eradication of Human Trafficking.

transferring or receiving someone carried out by the actors, either directly or indirectly. Second, using specific methods used by the perpetrators in hooking the victims.¹⁵ Third, migration or movement, namely the movement of people from one area to another or from one country to another, is carried out by force or accompanied by threats of violence. Fourth, there is a purpose to exploit or cause someone to be exploited, either physically, economically, or sexually. In general, this exploitation is carried out in several forms: forced prostitution, domestic help, illegal labor, illegal adoption, sex tourism, entertainment, pornography, and not infrequently for other criminal activities.¹⁶

In the anti-trafficking law, there is a new mode of trafficking in persons, namely by making women the object of trade in the form of mail-order brides.¹⁷ Marriage through the mail-order bride model is part of human trafficking when there is exploitation both sexually and economically through fraud, misery, and document detention so that one cannot escape from exploitation, as well as close access to

¹⁵ The ways that are often carried out in the practice of trafficking are by threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage, giving payments or benefits in order to obtain approval from a person who has control over the other person. See Supriyadi Widodo Eddyono, *Perdagangan Manusia dalam Rancangan KUHP* (Jakarta: ELSAM cooperates with The Asia Foundation and USAID, 2005): 7-8; Harkristuti Harkrisnowo, *Laporan Perdagangan Manusia di Indonesia* (Jakarta: Sentra HAM UI, 2003), p. 30; dan Fuad Mustafid, "Perdagangan orang dalam Perspektif HAM dan Filsafat Hukum Islam", *Al-Ahkam*, Vol. 29, no. 1 (2019): 88-89; <https://journal.walisongo.ac.id/index.php/ahkam/article/view/3134>.

¹⁶ Abdul Rahman Parkoso and Putri Ayu Nurmalinga, "Kebijakan Hukum Terhadap Tindak Pidana Perdagangan Orang," *Seminar Nasional Hukum Universitas Negeri Semarang* 4, no. 1 (2018): 14. See Eddyono, *Perdagangan Manusia dalam Rancangan KUHP*, 7-8; Harkrisnowo, *Laporan Perdagangan Manusia di Indonesia*, 30 dan Fuad Mustafid, *Perdagangan orang dalam Perspektif HAM dan Filsafat Hukum Islam*, *Al-Ahkam*, vol. 29, no. 1 (2019): 88-89

¹⁷ Mail-order brides is a terminology that refers to purchasing goods or services through e-mail facilities. Buyers order the desired product (women) from sellers through several methods, such as by telephone or website. Then, the ordered product is sent to the buyer according to the address provided. However, in general, the ordered product is picked up by the buyer himself. See Mahrus Ali & Bayu Aji P, *Perdagangan Orang Dimensi, Instrumen Internasional dan Pengaturannya di Indonesia*, (Bandung: Citra Aditya Bakti, 2011), p. 40.

information and communication with families.¹⁸ In human trafficking, women are only considered merchandise that can be traded and enjoyed by other people. There is in line with Dellyana's opinion, which states that in today's modern society, women are used for trade. She was no longer secluded but told to show off her naked body. Women are considered goods that can be bought and sold.¹⁹

The existence of parties who benefit from mail-order bride marriages becomes the basis for the implementation of trafficking in women (trafficking in women) through marriage. There are two models developed in viewing marriage as a mode of trafficking in women, namely:²⁰

1. Women are channeled into the sex industry or prostitution, or their energy is also extorted to work to earn a living while the customer (husband) lives a life of extravagance.
2. Suppose the marriage is commercialized, which is usually through arranged marriages or also known as a mail-order bride. In that case, trafficking in women through marriage is also known as trafficking of brides.

The criminal act of trafficking in persons with the ordered bride mode developed into a crime engineered to appear to be a legal act using various parties' involvement in the crime in an organized manner. Vicki Trapalis stated that these practices in the industry under the guise of human trafficking are under the umbrella of criminal organizations taking refuge in a company that has ties to international crime syndicates. This syndicate is also arranged regularly and has a hierarchy, where each individual has their respective duties. Some act as recipients, forgers of documents, document providers, introductions, or organizers. The profits

¹⁸ Farhana, *Aspek Hukum Perdagangan Orang Di Indonesia* (Jakarta: Sinar Grafika, 2012).

¹⁹ Arkanudin Yulianti and D. Likman, "Perdagangan (Trafficking) Perempuan Etnis Tionghoa Melalui Perkawinan Pesanan Di Kota Singkawang," *Jurnal Tesis PMIS-UNTAN-PSS*, 2013, 1–8.

²⁰ Andy Yetriyani, *Politik Perdagangan Perempuan* (Yogyakarta: galang Press, 2004).

obtained from this activity are then divided according to their respective roles.²¹

Organized crime, commonly known as a crime syndicate, is a criminal act committed by a group of crimes organized by a social structure with the ultimate goal of making profits from illegal actions.²² Based on the roles played by each party, the perpetrators of trafficking in women can be divided into three: (1) parties who play a role at the beginning of trafficking; (2) parties who provide or sell trafficked persons; and (3) parties who play a role at the end of the trafficking chain as recipients/buyers of trafficked persons or as parties who hold victims for forced labor and who benefit from that work.²³

Mail-Order Bride between China and Indonesia

In Indonesia, marriages with new-order bride models appeared in 2015, found in the Singkawang and Sambas areas. However, the practice of marriage spread and is found in many areas of Indonesia, such as North Kalimantan, Jakarta, Central Java, West Java, East Java, and Southeast Sulawesi.²⁴

Initially, mail-order brides were a form of transnational marriage carried out by women of Chinese descent in Singkawang, West Kalimantan, with “ordering men” from Taiwan and Hong Kong. In its development, marriages with this order model increasingly occur in various regions. In the case that occurred in West Kalimantan, marriages between women of Chinese descent and men from Taiwan have developed into big business with a value of tens or even hundreds of millions of rupiah.²⁵ The practice of marriage like this continues to develop into a criminal act of trafficking persons to make big profits. It is part of a business that

²¹ Mahrus Ali and Bayu Aji P, *Perdagangan Orang Dimensi, Instrumen Internasional Dan Pengaturannya Di Indonesia* (Bandung: Citra Aditya Bakti, 2011).

²² Ali and P.92

²³ Maria Efitia Ayu and Sherlu Ayuna Putri, “Perdagangan Perempuan Dan Anak Serta Tindak Pidana Korupsi Sebagai Kejahatan Transnasional Terorganisir Berdasarkan Konvensi Palermo,” *Jurnal Bina Mulia Hukum* 3, no. 1 (2018): 61–72.

²⁴ Ariella A. Yoteni, “Upaya Pemerintahan Indonesia Dalam Menangani Kasus Perdagangan Orang: Studi Kasus Pengantin Pesanan (Mail Order Bride) Indonesia-China.”

²⁵ Sabirin, “Perdagangan Perempuan Dengan Dalih Perkawinan.”

later develops into a well-organized practice of prostitution and becomes a concrete form of international prostitution. Sabirin said:

“The mail-order bride business has similarities between one and the other in terms of history, social, and culture, which continues to be the forerunner of prostitution. Reality shows that this industry is an important manifestation of international prostitution. The goal is not as a cultural (cultural) exchange, but to profit from this service”.²⁶

In the case of an ordered bride at NHD, a woman from Tegal, Central Java, the victim was forced to work as a cleaning service in an office owned by her husband’s family and was only given food left over from the office. The victim was forced to continue working when he was sick without being given medicine or taken to a doctor. He was also not given a salary while working.²⁷

One of the cases of mail-order brides that occurred between China and other Indonesia was a case that occurred in West Java, which resulted in 11 women from West Java becoming victims in the mail-order bride mode. According to LL’s confession, one of the victims of the mail-order bride mode was first visited by Vivi and offered to be the wife (bride) of a foreigner with the lure of a significant monthly fee. He was also promised to return home regularly. At first, everything went according to the promise, but soon LL was sexually assaulted and abused by her husband. The West Java Regional Police, who received a report regarding this case, immediately conducted a raid on the three principal perpetrators of the practice of trafficking in women, namely Vivi, who acts as a female recruiter in Indonesia; Aki, a foreign national who acts as an intermediary for Chinese men; and YH alias A who plays a role in helping recruit women in Indonesia to be traded.²⁸ On May 2, 2019,

²⁶ Sabirin.

²⁷ Anita Yuniarti, “SBMI Bersama LBH Anshor Jemput Korban TPPO,” accessed September 11, 2021, <http://sbmi.or.id/2019/09/sbmi-bersama-lbh-anshor-jemput-korban-tppo>.

²⁸ Yulita Futty Hapsari, “Dijual Untuk ‘Nikah Bayaran’ Ke Cina, 11 Wanita Indonesia Disiksa Bak Hewan, Hukum Hambat Kepulangan,” accessed September 11, 2021, <https://www.tribunnews.com/nasional/2018/09/20/dijual-untuk-nikah-bayaran-ke-cina-11-wanita-indonesia-disiksa-bak-hewan-hukum-hambat-kepulangan>.

the West Java High Court sentenced the offenders to eight to nine years in prison and a fine of IDR200,000,000 (two hundred million rupiahs).²⁹

The Crime of Trafficking in Persons with the Mail-Order Bride Mode as a Participation Crime

Criminal law as a codification of law not only regulates various actions that are subject to sanctions if violated but also regulates the people involved in these criminal acts. According to Van Hattum, an action cannot be separated from the person who has committed the action.³⁰ This can be said that an act deemed to have violated the law is not only discussed from the side of the action but also by the people who are considered to have committed the act, either directly or indirectly. A criminal act is sometimes not only committed by individuals but is often carried out by several people or involving others. In criminal law, perpetrators involved in criminal acts are referred to as perpetrators of criminal acts of participation. Participation is an understanding that includes all forms of participation/involvement of a person or persons, both psychologically and physically, by carrying out each action to give birth to a crime.³¹

In the criminal act of trafficking in persons with the mail-order bride mode, the crime is committed by a customer who wishes to use the services of a mail-order bride by contacting a service provider agent. The agent then recruited the ordered bride and groom, who were the victim's target. In this recruitment, potential victims are usually promised a good life and a certain amount of money that will be received by the victim each month.

²⁹ Tjhia Dju Dju alias Vivi based on decision case number 1329/Pid.sus/2018/PN Bdg and Yusup Halim Alias Aan alias Iwa based on decision case number 1330/Pid.sus/2018/PN BDG were sentenced to eight years in prison and a fine of IDR200,000,000. Meanwhile, Guo Changsan, based on the decision of case number 1328/Pid.sus/2018/PN BDG, was sentenced to nine years in prison and a fine of IDR200,000,000.

³⁰ P.A.F Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: Citra Aditya Bakti, 2013).

³¹ Ike Indra Agus Setyowati, "Pembantuan Dan Penyertaan (Deelmening) Dalam Kasus Perkosaan Anak," *Media Iuris* 1, no. 2 (2018): 284.

According to Bobi Anwar Ma'arif, in the criminal case of trafficking in persons with the mode of mail-order brides between China and Indonesia, there were several stages in recruiting. Service users in the criminal act of trafficking in persons involve two agents operating in China and Indonesia. Each agent has duties and responsibilities, which can be explained as follows:³²

1. Agents operating in China are tasked with recruiting prospective grooms (users of mail-order brides), while agents located in Indonesia are tasked with recruiting prospective brides (victims);
2. Agents located in China charge a fee of IDR400,000,000 to prospective users of mail-order brides (grooms);
3. After getting the groom, the agent in China will give the order to the Indonesian agent with an agreement to get paid if he gets the bride;
4. Agents in Indonesia will give orders to parties known as *makcomblang* who are in cities to villages to get prospective brides to be married off. The *makcomblang* will give a dowry of IDR15,000,000 to IDR20,000,000 to the prospective bride or her family.

Based on Bobi Anwar's statement, in the case of the criminal act of trafficking in persons with the mail-order bride mode, there were three parties involved in the crime, namely:

1. An agent in China whose job is to find grooms/users of mail-order brides;
2. An agent in Indonesia whose job is to act as an intermediary in finding a potential bride (victim); and
3. *Makcomblang*, whose job is to look for prospective brides directly.

In this case, it can be seen that several parties with their respective duties. Therefore, this crime is a participatory crime in which it is committed by involving parties of different nationalities, namely China and Indonesia. In criminal law, arrangements regarding the criminal act of participation are regulated in Article 55 of the

³² Interview with Bobi Anwar Ma'arif, as Secretary General of SBMI, June 12, 2020.

Criminal Code. In Article 55 of the Criminal Code section (1) and (2) it is stated that: (1) those who committed, ordered to do, and who took part in committing the act; and (2) those who, by giving or promising something, by abusing power or dignity, by violence, threats or misdirection, or by providing opportunities, means or information, deliberately encourage other people to commit acts can be punished as the perpetrators of offenses.³³

In the case of mail-order bride, after the Chinese man (mail-order bride services users) gives some money to the first intermediary (agent located in China), the intermediary will prepare various documents needed by the Chinese man to visit Indonesia with the aim of meeting with the bride and groom. After that, the first intermediary will contact his partner in Indonesia to prepare accommodation and a meeting schedule with the prospective bride.³⁴ In this case, there is cooperation carried out by Chinese agents as the first intermediaries and Indonesian agents as partners or second intermediaries, as well as cooperation with Chinese men as users of mail-order bride services. This cooperation has led to the realization of a criminal act.³⁵

According to Pompe, a person who participates in a criminal act can only be convicted if he has the intention and fulfills the other elements of the offense. If the intention is not in the person who participated in the crime, that person cannot be punished.³⁶ In this case, Pompe argued that there are two forms of intent, namely:³⁷

- a. the intention to cooperate in order to create an offense between the perpetrators; in the sense that there is an agreement or meeting of minds between them, and
- b. genuine cooperation in realizing the offense.

Meanwhile, Moeljatno stated that there was close cooperation between participants when a criminal act was committed within limits

³³ Article 55 of the Criminal Code (KUHP)

³⁴ Lessy, "Pengantin Pesanan Pos (Mail Order Bride): Modus Operandi Human Trafficking Di Indonesia."

³⁵ Adami Chazawi, *Pelajaran Hukum Pidana 3, Percobaan Dan Penyertaan* (Jakarta: Grafindo Persada, 2002).

³⁶ Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2015).

³⁷ Hiariej.

specified in the *net*, and each person was responsible for the actions of other participants. These actions cannot be seen one by one and stand alone but must be seen concerning the actions of other actors. Thus, each actor must be viewed and assessed concerning and as a whole with the actions of other participants.³⁸

In the criminal act of trafficking in persons using the mail-order bride mode, Bobi Anwar explained that Chinese agents collaborated and entered into agreements with Indonesian agents to commit the crime of trafficking in persons using the mail-order bride mode. Chinese agents are tasked with finding interested users of mail-order bride services, and Indonesian agents are tasked with finding women who will be married to users of these services. After the Indonesian agent has found the prospective bride (victim), the Indonesian agent will receive an amount of money given by the Chinese agent as part of the results of the agreement that has been made.³⁹

Based on this, it can be said that mail-order bride service users were also involved in this crime by giving some money to Chinese agents to get victims. Therefore, concerning the opinions of Pompe and Molejatno regarding *medeplegen* with cooperation carried out by Chinese agents, Indonesian agents, and service users in the criminal act of trafficking in persons with the mail-order bride mode, there is a deliberate form of cooperation. This cooperation manifests itself as committing a criminal act of trafficking in persons, which results in the exploitation of victims. These actions or actions, although different, have a relationship with one another. All these actions have unity in the realization of the criminal act of trafficking in persons with the mode of mail-order brides.

In addition to Indonesian agents participating in the criminal act of trafficking in persons using the mail-order bride mode, people who act as intermediaries (*makcomblang*) can also be said to have participated in the act. Forms of participation that can be punished as assistants regulated in Article 56 of the Criminal Code are: (a) those who intentionally assist when a crime is committed; and (b)

³⁸ Moeljatno, *Hukum Pidana Delik-Delik Percobaan Delik-Delik Penyertaan* (Jakarta: Bina Aksara, 1985).

³⁹ Interview with Bobi Anwar Ma'arif, as Secretary General of SBMI.

intentionally provide opportunities, means, or information to commit crimes. They can be punished for aiding a crime.⁴⁰

If it is related to the mail-order bride case with Article 56 of the Criminal Code, the *makcomblang* had also assisted by deliberately assisting when the crime was committed. He also assisted in recruiting potential victims by assisting in finding and persuading potential victims to marry Chinese citizens as users of mail-order bride services, which resulted in victims being recruited and experiencing exploitation.

Each type of assistance that can be subject to criminal sanctions as stated in Article 56 of the Criminal Code are:⁴¹

1. The assistant must know the type of crime desired by the perpetrator (the leading perpetrator);
2. The assistance provided by the assistant is to assist the perpetrator in realizing the crime;
3. The intention of the assistant is shown to facilitate or facilitate the perpetrator to commit the crime desired by the perpetrator. In other words, the intention of the maid is not an element of the crime. Precisely the intention of the perpetrator is an element of the crime.

In the actions taken by *makcomblang* against Indonesian agents, he helped recruit potential mail-order bride victims by visiting potential victims and offering victims a decent life after marrying a Chinese man. The offer given was an attempt by the *makcomblang* to attract the interest of the potential victim to become a mail-order bride. Thus, this action has created a form of the criminal act of participation jointly by several people with their respective duties. Based on Article 55 of the Criminal Code, all the actions of these agents are part of the criminal act of participation because all of them act on purpose to cooperate to commit a crime. Meanwhile, the actions carried out by *makcomblang*, according to Article 56 of the Criminal Code, were part of the form of assistance given to Indonesian agents in recruiting victims, resulting in victims being exploited.

⁴⁰ Article 56 of the Criminal Code (KUHP)

⁴¹ E.Y Kanter and S.R Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya* (Jakarta: Storia Grafika, 2002).

Criminal Responsibilities of Criminal Trafficking in Persons with Mail-Order Bride Mode

Criminal responsibility is a mechanism built into criminal law to react to violations of the 'agreement to refuse' a criminal act.⁴² In this case, criminal liability can be applied if someone has committed a mistake that is considered against the law and has fulfilled the elements of the crime.⁴³ In the crime of trafficking in persons with the mail-order bride mode, the perpetrators involved must be held accountable for the actions that have been committed. This criminal responsibility is realized by imposing sanctions on the perpetrators of the trafficking of persons as stipulated in Law Number 21 of 2007 on the Eradication of Human Trafficking.

Article 2, section (1) of the Law No. 21 of 2007 on the Eradication of Human Trafficking has regulated legal sanctions for the perpetrators of the trafficking of persons and parties who may be considered involved in the crime. The article reads:

“Anyone who recruits, transports, harbors, sends, transfers, or receives a person through the threat of force, use of force, abduction, incarceration, fraud, deception, abuse of authority or position of vulnerability, debt bondage or the giving of payment or benefit despite the giving of consent by another individual having charge over the person, to exploit the person within the territory of the Republic of Indonesia shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of IDR120,000,000.00 (one hundred and twenty million rupiahs) and a maximum of IDR600,000,000.00 (six hundred million rupiahs).”⁴⁴

In this article, three conditions must be met in order to be able to sanction the perpetrators of the crime of trafficking in persons, namely:

⁴² Chairul Huda, *Dari Tiada Pidana Tanpa Kesalahan Menuju Kepada Tiada Pertanggungjawaban Pidana Tanpa Kesalahan* (Jakarta: Kencana, 2006).

⁴³ Kanter and Sianturi, *Asas-Asas Hukum Pidana Di Indonesia Dan Penerapannya*.

⁴⁴ Article 2 section (1) of the Law No. 21 of 2007 on the Eradication of Human Trafficking.

1. Processes or forms of action, namely transporting, storing, sending, transferring, or receiving;
2. These methods are carried out using threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage, or giving payments or benefits.
3. The purpose of the act committed to exploiting that person.⁴⁵

These forms of action do not have to co-occur and be carried out by one person but can be carried out by each actor who already has a prior agreement. In cases of trafficking in persons, sometimes the actions of the perpetrators are only in charge of recruiting victims, while others oversee transporting, accommodating, sending, moving, or receiving victims.⁴⁶ Elements of the crime of trafficking in persons, such as coercion, threats, and imprisonment, were not carried out by the main perpetrators. In cases of mixed marriages involving foreigners, the crime was committed by the consumer, namely the husband of the victim of human trafficking who is abroad.⁴⁷

In the case of mail-order brides as one of the modes of criminal acts of trafficking in persons, the perpetrator recruits women to be potential brides. In this case, the Chinese agent cooperates with the Indonesian agent to conduct the recruitment. Next, the Indonesian agent will order someone who can be called a *makcomblang* to find a mail-order bride. In recruiting, the *makcomblang* will promise a more decent life and some money that the potential victim will receive. However, after the woman married and accompanied her husband to China, she was employed and exploited.⁴⁸ If it is related to Article 2 of Law No. 21 of 2007 on the Eradication of Human Trafficking, the actions taken by the perpetrators have fulfilled the elements of Article 2 because the perpetrators have recruited victims by deceiving victims

⁴⁵ Fuad Mustafid, "Perdagangan Orang Dalam Perspektif HAM Dan Filsafat Hukum Islam," *Al-Ahkam* 29, no. 1 (2019): 85–108.

⁴⁶ Ali and P, *Perdagangan Orang Dimensi, Instrumen Internasional Dan Pengaturannya Di Indonesia*.

⁴⁷ Burdan Hambali, "Penanganan Tindak Pidana Perdagangan Orang," *Jurnal Litbang Polri* 22, no. 4 (2019): 40.

⁴⁸ Hambali.

regarding the promised household life, and these actions resulted in victims being exploited.

Meanwhile, criminal sanctions for parties involved in the criminal act of trafficking in persons are regulated in Article 10 of the TIP Law. The article states:

“Anyone who assists or attempts to commit the criminal act of trafficking in persons shall be punishable by the criminal sanctions as provided under Articles 2, 3, 4, 5, and 6.”⁴⁹

Referring to the case of mail-order brides, intermediaries or *makcomblang* who are parties directly involved in recruiting victims can also be subject to criminal sanctions for being involved in recruiting by seeking or meeting directly with victims and inviting victims to marry a man of Chinese nationality.⁵⁰ Apart from that, he has also played a role in causing victims to become exploited due to the criminal act of trafficking persons.

The *makcomblang* recruits the victim by visiting the potential victim directly or through social media by promising a sum of money and a good life, so the potential victim agrees. However, after marriage, the victim did not get what was promised. Instead, he gets tortured or exploited. Therefore, in this case, recruitment by *makcomblang* by deceiving victims has resulted in victims being exploited.⁵¹ Therefore, this *makcomblang* can also be subject to criminal sanctions, as stated in Article 10 of Law No. 21 of 2007 on the Eradication of Human Trafficking.

Apart from Chinese agents, Indonesian agents, and *makcomblang*, users or mail-order brides also participate in committing the crime of trafficking in persons. This can be seen in the cases that

⁴⁹ Article 10 of the Law No. 21 of 2007 on the Eradication of Human Trafficking. Lisye Sri Rahayu, “LBH Jakarta Sebut Ada 29 WNI Jadi Korban Pengantin Pesanan di China”, June 23, 2019, in <https://news.detik.com/berita/d-4596838/lbh-jakarta-sebut-ada-29-wni-jadi-korban-pengantin-pesanan-di-china>.

⁵⁰ “Article 1 Point 9 of the Law No. 21 of 2007 on the Eradication of Human Trafficking Stated: “Recruitment Is an Act That Includes Inviting, Gathering, Bringing, or Separating Someone from Their Family or Community” (2007).

⁵¹ Article 1 Point 9 of the Law No. 21 of 2007 on the Eradication of Human Trafficking.

occurred with NHD and LL. After the victim married the ordered bride, the victim was physically and sexually abused by her husband. In this case, the user or ordering the mail-order bride takes advantage of the victim by employing the victim and taking advantage of it. Thus, according to Article 12 of the TIP Law, users or order-ordered brides can also be subject to criminal sanctions as referred to in Articles Article 2, Article 3, Article 4, Article 5, and Article 6.⁵²

Criminal Responsibility of Persons Trafficking in China

The perpetrators of trafficking in persons with the ordered bride mode can be subject to criminal sanctions because they all have planned and entered into an agreement to commit the crime of trafficking in persons. In Article 11 of Law No. 21 of 2007 on the Eradication of Human Trafficking, it is stated that anyone who plans or carries out a conspiracy to commit the crime of trafficking in persons can be punished with the same punishment as the perpetrator as referred to in Article 2, Article 3, Article 4, Article 5 and Article 6.⁵³ The legal sanctions for the perpetrators of trafficking in persons, as stated in Article 2 of Law No. 21 of 2007 on the Eradication of Human Trafficking, are:

- a. punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years; and
- b. a fine amounting to a minimum of IDR120,000,000.00 (one hundred and twenty million rupiah) and a maximum of IDR600,000,000.00 (six hundred million rupiahs).

In 2019 the Indonesian government sentenced the perpetrators of human trafficking in West Java, namely Gou Chang San and his accomplice.⁵⁴ However, in this case, the government has not been able to arrest or sentence the agents and users of mail-order brides in China. In this case, the Government of Indonesia has the jurisdiction to hold criminally responsible perpetrators of trafficking in persons in China. This is based on the expansion of jurisdiction over the

⁵² “Article 12 of the Law No.21 of 2007 on the Eradication of Human Trafficking” (2007).

⁵³ “Article 11 of the Law No.21 of 2007 on the Eradication of Human Trafficking” (2007).

⁵⁴ Ariella A. Yoteni, “Upaya Pemerintahan Indonesia Dalam Menangani Kasus Perdagangan Orang: Studi Kasus Pengantin Pesanan (Mail Order Bride) Indonesia-China.”

territorial principle, namely the expansion of the territorial principle of Technical Principles. This technical extension includes subjective territorial principles and objective territorial principles. The subjective territorial principle justifies a state adjudicating an act that begins in its territory but ends or causes consequences in the territory of another state. Meanwhile, the objective territorial principle justifies the state adjudicating acts committed in other countries but causing consequences in its territory.⁵⁵

Based on this territorial expansion principle, the Government of Indonesia can use its legal jurisdiction to prosecute perpetrators in China. In this case, extradition may apply.⁵⁶ To carry out extradition, Indonesia has made an agreement with China dated July 1, 2009. It has been ratified by Law No. 13 of 2017 concerning the Ratification of the Agreement between the Republic of Indonesia and the People's Republic of China regarding Extradition.⁵⁷

One of the principles that can be used as a basis for extradition requests is the principle of double criminality. Based on this principle, an act committed by a person who is requested for extradition must constitute a crime or a criminal offense under the criminal law of the requesting country or the criminal law of the requested country.⁵⁸

Formulating the double crime principle in the extradition treaty between China and Indonesia uses the eliminating system. In this system, the types of crimes or offenses that can be used as a basis for the requested person's extradition are not determined in detail and imitatively as in the list system. However, they are determined based on the minimum limit of sanctions. Strictly speaking, only crimes or crimes that are punishable by national criminal sanctions for both

⁵⁵ Hiariej, *Prinsip-Prinsip Hukum Pidana*.

⁵⁶ Extradition is the surrender by a country to a country requesting the surrender of a person suspected or convicted of committing a crime outside the territory of the surrendering country and within the jurisdiction of the territory of the submitting country because they are required to try and convict him. Article 1 of Law No. 1 of 1979 concerning Extradition.

⁵⁷ "Law No. 13 of 2017 Concerning Treaty Between The Republic of Indonesia and The People's Republic of China on Extradition." (2017).

⁵⁸ I Wayan Parthiana, *Ekstradisi Dalam Hukum Internasional Modern* (Bandung: Yrama Widya, 2010).

parties can be used as a basis for the extradition of the person requested.⁵⁹

In the agreement between China and Indonesia regarding extradition, Article 2 section 1 point (a) states:

- (a) If the request for extradition aims to carry out a judicial process, the crime can be punished under the law of both parties with a penalty of imprisonment for more than one year or a more severe penalty.⁶⁰

Indonesia already has Law No. 21 of 2007 on the Eradication of Human Trafficking. In the Law No. 21 of 2007 on the Eradication of Human Trafficking regarding the sanctions given to the perpetrators of the crime of trafficking in persons are punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of IDR120,000,000.00 (one hundred and twenty million rupiahs) and a maximum of IDR600,000,000.00 (six hundred million rupiahs). Meanwhile, in the Criminal Law of the People's Republic of China, Article 240 regarding trafficking in women states:

“Whoever abducts and traffics in a woman or a child shall be sentenced to fixed-term imprisonment of not less than five years and not more than ten years and concurrently be sentenced to a fine. Under any of the following circumstances, the offender shall be sentenced to fixed-term imprisonment of not less than ten years or life imprisonment and concurrently be sentenced to a fine or confiscation of property. If the circumstances are dire, the offender shall be sentenced to death and concurrently be sentenced to confiscation of property:

- (1) being a ringleader of a gang engaged in abducting and trafficking women and children;
- (2) abducting and trafficking in three or more women and/or children
- (3) raping the women who are abducted and trafficked;

⁵⁹ Parthiana.

⁶⁰ “Article 2 Section 1 Point (a) Extradition Agreement between the Republic of Indonesia and the People's Republic of China Dated July 1, 2009.” (2009), 2.

- (4) enticing or forcing the woman who is abducted and trafficked to engage in prostitution, or selling such woman to any other person or persons who will force the woman to engage in prostitution;
- (5) to sell the victim, kidnap a woman or a child through violence, threat or anesthesia;
- (6) to sell the victim, steal an infant or a baby;
- (7) causing severe bodily injury or death or other serious consequences of the woman or child who is abducted and trafficked in or of their relatives; or
- (8) selling a woman or a child out of the territory of China. Abducting and trafficking in a woman or child is meant any of the following acts: abducting, kidnapping, buying, trafficking in, fetching, sending, or transferring a woman or child.”⁶¹

Therefore, the crime of trafficking in persons committed by a Chinese person or agent is part of a crime whose perpetrators can be extradited because they have met the standards referred to in Article 2 section 1 point (a) of the agreement between the Republic of Indonesia and the People’s Republic of China regarding extradition and have ratified by Law No. 13 of 2017 concerning the Ratification of the Agreement between the Republic of Indonesia and the People’s Republic of China regarding Extradition. Therefore, if it is associated with trafficking in persons with a mail-order bride mode, the Indonesian state can and can implement its legal arrangements regarding extradition requests to hold criminals of trafficking offenders in China accountable, both agents and users of its services.

Conclusion

The criminal act of trafficking in persons with the mode of mail-order brides is an organized crime. This action was not only carried out by one actor but was carried out jointly with other actors as a participatory crime. Several parties are involved in the criminal act of trafficking in persons with the mail-order bride mode, namely Indonesian agents, Chinese agents, mail-order bride service users, and intermediary parties (*makcomblang*). The perpetrators of the crime of

⁶¹ “Articles 240 Criminal Law of the People’s Republic of China” (n.d.), 24.

trafficking in persons with the mail-order bride mode can be subject to criminal sanctions based on 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons because they have committed conspiracy, assisted the perpetrators, and used the victims of ordered brides. Meanwhile, for perpetrators who are domiciled in China, the Government of Indonesia can carry out extradition based on the extradition agreement between China and Indonesia dated July 1, 2009, where the agreement legalized with Law No. 13 of 2017 concerning the Ratification of the Agreement between the Republic of Indonesia and the People's Republic of China regarding Extradition.

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