

The Effectiveness of the Indonesian Anti Human Trafficking Regulation and Law Enforcement

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ABSTRACT: All around the world, men, women and children are subject to be victimized by human trafficking for sexual, forced labor and other forms of exploitation. Human trafficking can be defined as a process where people being recruited in their community and country of origin and transported to the destination where they are being exploited for purposes of forced labor, prostitution, domestic servitude, and other forms of exploitation. The implementation of Indonesian laws and regulations as well as it's enforcement personnel for fighting against human trafficking has not been evaluated in quantitative and qualitative measures. Therefore this research will analyze and evaluate the effectiveness of the Indonesian anti human trafficking regulation and law enforcement. This research will analyze and evaluate the effectiveness of the Indonesian anti human trafficking regulation and law enforcement. The main cause of trafficking is the lack of information about trafficking, poverty and the low level of education and skills possessed. The problem of trafficking is a complex problem and needed the complex handling.

KEYWORD : *human trafficking, trafficking, trafficking law, anti-human trafficking regulation*

I. INTRODUCTION

All around the world, men, women and children are subject to be victimized by human trafficking for sexual, forced labor and other forms of exploitation. The estimated economic and social cost for human trafficking ranging from poverty to social inclusion, to justice and rule of law issues. (UNODC, 2009)

Human trafficking can be defined as a process where people being recruited in their community and country of origin and transported to the destination where they are being exploited for purposes of forced labor, prostitution, domestic servitude, and other forms of exploitation.

Human trafficking is generally understood to refer to the process through which individuals are placed or maintained in an exploitative situation for economic gain. Trafficking can occur within a country or may involve movement across borders. Women, men and children are trafficked for a range of purposes, including forced and exploitative labour in factories, farms and private households, sexual exploitation, and forced marriage. Trafficking affects all regions and most countries of the world. (Nations, 2014)

There are variety of methods used by traffickers to create a vulnerable condition for the victims so that the victims do not have any other choice but to obey. One of the common methods used by traffickers is debt-bondage in which the traffickers tell their victims that they owe money relating to their travel and living expenses and that they will not be released until the debt has been repaid.

Traffickers also use other methods including starvation, imprisonment, physical abuse (beatings and rape), verbal abuse, removal of victims' identification documents (e.g. passport), threats of violence to the victims and the victims' families, and forced drug use.

Especially in the case of cross-border trafficking, victims often do not speak the local language or do not have any social network to assist them sothat they are depending on members of their own ethnic group receiving them in the destination country. Furthermore, victims' illegal status makes it difficult for them to seek help from law enforcement, the healthcare system and/or other public services. The table below describe the processes, means and purpose as used by the traffickers.

Table 1.
Processes, Means and Purpose as used on Human Trafficking

Process	Means	Purpose
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- Recruitment	- Threat	Exploitation which includes: a) Prostitution and other forms of sexual exploitation b) Forced labor and services c) Slavery and similar practices d) Involuntary servitude e) Removal of organs
- Transportation	- Force	
- Transfer	- Coercion	
- Harboring	- Abduction	
- Receipt of persons	- Fraud	
	- Deception	
	- Abuse of power	
	- Abuse of vulnerability	

Source: UNODC (2009), Anti-Human Trafficking Manual for Criminal Justice Practitioners

Indonesia as a country with an estimated 255,461.7 population (http://www.bi.go.id/sdds/series/pop/index_pop.asp) is faced with the issue of human trafficking for sex abuse and forced labor. Indonesia is the major supplier for housemaid. 6.5 million to 9 million of Indonesian migrant workers are found worldwide. Many of these workers voluntarily migrate but are later coerced into abusive conditions.

A website dedicated for the protection and welfare of Indonesian migrant workers in buruhmigran.or.id reported abuses and violences on these workers (<http://buruhmigran.or.id/en/topik/kisah-2/kisah/>). Non- payment, sexual and physical abuse, depression and over stressed due to detention in prison in Abu Dhabi – where they pregnant and giving birth in detention (<http://buruhmigran.or.id/2013/11/06/kisah-marni-dan-para-tnk-w-di-penjara-abu-dhabi/>), inhumane physical abuses by their employers (ear cut-off, physically tortured, not equipped with adequate resting and meal, very limited rest duration and whipping on their body), etc.

Many of these workers were even given death sentences or came back with permant injuries to them. The International Organization of Migration (IOM), estimates that 43 to 50 percent – or some 3 to 4.5 million – of Indonesia’s expatriate workforce are victims of conditions indicative of trafficking. Indonesian women are vulnerable to trafficking for sexual and labor exploitation. Between 69 to 75 percent of all overseas Indonesian workers are female, and the vast majority working as domestic workers.

Table 1. Data of Trafficking in Person, 2004-2009

Year	Number of cases	P21*	actor	Victims	
				adult	child
2004	76	35	83	103	
2005	71	27	83	125	18
2006	84	56	155	496	129
2007	123	50	139	210	71
2008	53	38	11	8	22
2009	142	67	163	208	67

*: cases taken to the courts

Source: BaReskrim Polri (2009) in Amaliah (2009).

In 2010 Indonesian women reported being subjected to rape while working abroad were 471 which came back from the Middle East pregnant as the result of rape, and an additional 161 returned with children who had been born in the Middle East. Labor recruiters, often known as PJTKIs, operating both legally and illegally in Indonesia, are a main conduit through which male and female laborers seek employment opportunities abroad. Some PJTKIs operate similar to trafficking rings and impose high recruitment fees, which make migrants vulnerable to debt bondage. This is particularly pronounced among sex trafficking victims. There are reports that these recruitment brokers use ties to government officials or police to operate outside the law and escape punishment.

Indonesian Government has several regulation relating to human trafficking:

- Law no 21 year 2007 on the Eradication of the Criminal Act of
- Trafficking in Persons
- Law no 39 year 2004 on Placement and Protection on Indonesia’s Migrant Workers
- Law no 10 year 2012 on Optional Protocol to the Convention on the

- Rights of the Child on the sale of Children, Child Prostitution and Child Pornography
- Law no 23 Year 2002 on Child Protection;
- Law no 7 year 1984 on Convention on The Elimination of all Forms of Discrimination Against Women
- Government Regulation no 9 year 2008 *on Tata Cara dan Mekanisme Pelayanan Terpadu Bagi Saksi dan/atau Korban Tindak Pidana Perdagangan Orang*. (Procedures and Mechanisms for Integrated Services for Witnesses and/ or Victims of Crime of Trafficking in Persons) (Amaliah, 2009).

During 2010, the government undertook efforts to improve coordination and reporting of its anti-trafficking efforts. However, the government did not enact necessary migrant worker legislation or apply sufficient criminal sanctions to labor recruiters who subject Indonesian migrants to labor trafficking. Moreover, the government did not demonstrate vigorous efforts to investigate, prosecute, and criminally punish law enforcement officials complicit in human trafficking, and this remains a severe impediment to the government's and NGOs' anti-trafficking efforts.

In April 2011, the government established the National Coalition for the Elimination of Commercial Sexual Exploitation of Children at the University of Indonesia to address the problem of child trafficking. Additionally, the Ministry of Manpower reportedly listed approximately 100 labor recruiting companies (PJTJKIs) suspected of malpractice and abuses that potentially contribute to labor trafficking; to date, however, the government has not penalized any of these PJTKIs. The government has not reported efforts to reduce the demand for forced labor or for commercial sex acts.

II. INTERNATIONAL RELATIONS

International Relations can be simplified as the analysis of relations between nations – more accurately, states – this approach taken by realists and neo-realists and rejected or substantially qualified by exponents of competing perspectives, whom think the term ‘global politics’ or ‘world politics’ is a better term for describing what the subject should study in the contemporary age (Baylis and Smith 2005 Scott Burchill et al., 2005)

The study of international relations analyzes the followings:

- Dominant actors
- Dominant relationships
- Empirical issues
- Ethical issues
- Issues in the philosophy of the social sciences
- The prospects for multidisciplinary. (Scott Burchill et al., 2005).

Human Trafficking

The UN Protocol defines human trafficking as:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” (Zimmerman & Stöckl, 2012).

Individuals may be trafficked within their own country or across international borders. Trafficking involves nearly every part of the world – as places of origin/ recruitment, transit or destination. This illegal activities for trading humans has reaped enormous profits for trafficking agents (Zimmerman & Stöckl, 2012).

Trafficking is differentiated with smuggling of migrants. Trafficking is a crime against an individual. Smuggling of migrants is generally a crime against the government, as a breach of immigration laws. Trafficking involves exploitation that can continue well after the victim has arrived at their destination. Migrant smuggling generally ends once a person has arrived at their destination. Trafficking involves victims of a crime who have either never consented to migrating for work or, if they did consent initially, that consent has become meaningless due to the deception and abuse they suffer. In contrast, smuggling of migrants involves migrants who have consented to the smuggling. Trafficking can occur within a country (internal or domestic Trafficking), and between countries (international Trafficking). In contrast, migrant smuggling is always transnational (David, 2006: 3).

Trafficking victimized all types of women, men and children for various purposes, although evidences strongly suggests that those who are trafficked into the sex industry and as domestic servants are more likely to be women and children, while reports on trafficking of males more commonly for the purpose of other forms of labour (Zimmerman & Stöckl, 2012).

Trafficking does not require the crossing of an international border. The definition covers internal as well as cross-border trafficking. That is, it is legally possible for trafficking to take place within a single country, including the victim's own.

Trafficking is not the same as migrant smuggling. Migrant smuggling involves the illegal, facilitated movement across an international border for profit. While it may involve deception and/or abusive treatment, the purpose of migrant smuggling is to profit from the movement, not the eventual exploitation as in the case of trafficking. Trafficking does not always require movement. The definition of trafficking identifies movement as just one possible way that the "action" element can be satisfied. Terms such as "receipt" and "harbouring" mean that trafficking does not just refer to the process whereby someone is moved into situations of exploitation; it also extends to the maintenance of that person in a situation of exploitation.

Human rights law has prohibited discrimination on the basis of race and sex. The law demanded equal or at least certain key rights for non-citizens; it has decried and outlawed arbitrary detention, forced labour, debt bondage, forced marriage, and the sexual exploitation of children and women; and it has championed freedom of movement and the right to leave and return to one's own country.

The practices of trafficking violate the human rights law which forbids debt bondage. Debt bondage is the pledging of personal services as security for a debt where the value of those services is not applied towards the liquidation of the debt or their length or nature is not limited and defined. Debt bondage is used as a means of controlling and exploiting trafficked persons (United Nations, 2014).

The practices of trafficking also violate Human rights law which prohibits forced labour. Forced labour as defined by Convention No. 29 concerning Forced or Compulsory Labour of the International Labour Organization (ILO) as: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [herself] voluntarily".

Trafficking also involve slavery, servitude, child sexual exploitation, forced marriage, servile forms of marriage, child marriage, enforced prostitution and the exploitation of prostitution are also trafficking-related practices that are prohibited under international human rights law (United Nations, 2014)

Law and Regulation on Human Trafficking

There are several regulations governing anti trafficking in Indonesia, namely:

- Law no 21 year 2007 on the Eradication of the Criminal Act of Trafficking in Persons
- Law no 39 year 2004 on Placement and Protection on Indonesia's Migrant Workers (will be amended this year)
- Law no 10 year 2012 on Optional Protocol to the Convention on the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography
- Law no 23 Year 2002 on Child Protection;
- Law no 7 year 1984 on Convention on The Elimination of all Forms of Discrimination Against Women
- Government Regulation no 9 year 2008 on *Tata Cara dan Mekanisme Pelayanan Terpadu Bagi Saksi dan/ atau Korban Tindak Pidana Perdagangan Orang* (Procedures and Mechanisms for Integrated Services for Witnesses and/ or Victims of Crime of Trafficking in Persons)

III. DESCRIPTIVE METHODOLOGY

The type of this research is descriptive. Descriptive research offers a detailed picture or account of some social phenomenon, setting, experience, group, etc. Quantitative methods document social variation in terms of numerical categories and rely on statistics to summarize large amounts of data (Ruane, 2005).

Qualitative method is a research method which produce descriptive data in the forms of written words or speech and observable behaviour (Moleong, 2013:4). The analysis for qualitative method using 5 W + 1H formula (Who, What, When, Where, Why and How) (Elvinaro, 2010:58). The method commonly used for qualitative study are focus group discussion, in depth interview, case study and observation as well as content analysis, framing, and semiotics (Kriyantono, 2009:62)

This research uses qualitative approach using in-depth interview with Mr. Sabda Haptian, The Chief of Criminal Division for the Protection of Indonesian Overseas Citizen of Kemenlu about the aspects of effectiveness of the Indonesian regulation and law enforcement on anti human trafficking.

Indonesian Current Situation on Human Trafficking

Indonesia is considered as the main countries of destination and transit for victims of trafficking (VoT). The identified three provinces as key sources and transit areas for VoT are West Java, West Kalimantan,

and West Nusa Tenggara (UN, 2011). Trafficking in Persons Report 2012, described Indonesia as the main sources, destination and transit for sex trafficking, forced women labour and child labour. Over 1.6 million of illegal Indonesian worker work abroad. 69 % among them are women and children, and are exploited as prostitutes.

In its Counter-Trafficking Factsheet. IOM reported Indonesia is a key source of cross-border and internal TIP, mostly for labour or sexual exploitation. A majority of cross-border victims are women migrants being trafficked through labour recruitment channels. Trafficking into the country is also an issue, with victims originating from other ASEAN countries or as far as South America to work in the sex or fishing industries (IOM Indonesia, 2015).

Indonesia is considered as the top trafficking country globally, accounting for 3,943 people trafficked. People were trafficked by syndicate of as sex worker, slave or human part trade. Aside from being trafficked abroad the country, within Indonesia it self people are forced to work in mining and fisheries sector in rural areas, they were also forced to work as prostitutes in the mining areas on several provinces of Indonesia (<http://www.beritasatu.com/nasional/112076-indonesia-dikenal-sebagai-surga-human-trafficking.html>)

Indonesian Policy on Human Trafficking

Indonesia as Government established policies to tackle trafficking in person by:

- Improving the regulation
- establishment of Taskforce for Prevention and handling of human trafficking by presidential decree No 69 of 2008
- Creating a National Action Plan for trafficking in person by People's Welfare Coordinating Minister Regulation No. 25 of 2009
- Establish Integrated Services for Witnesses and/ or Victims of human trafficking in the District/ City by Women's Empowerment Minister Regulation No 08 of 2008 (Amaliah, 2009)

The Cause Factor of Human Trafficking

In the 2003 ILO-IPEC study in Central Java, DI Yogyakarta, East Java, Jakarta and West Java concluded that trafficking in Indonesia was a very complex problem because it was also expanded by economic and socio-cultural factors. Some things that are causes, among others:

a. Quality of life

The poor quality of life in rural areas and the strong insistence on materialistic lifestyles make children and parents vulnerable to being exploited by traffickers. In addition to discrimination against girls, such as young marriage, the value of virginity, the view of girls does not need higher education to be the key driving factor. Poverty has forced many families to plan their life support strategies, including migrating to work and work because of debt bondage, which is someone's job to pay off debt. In addition, lack of education also affects. People with limited education have fewer skills or skills, job opportunities, and they are more easily traded because by migrating to find work that does not require expertise.

b. Consumptive behaviour

Consumptive lifestyle behaviors are the most common facts. Consumptive. People tend to justify any means to meet their needs. Moreover, for adolescents a lifestyle that starts in the school or home environment can cause consumptive behaviors which certainly leads to negative things. Consumptive lifestyles have dominated society lately. The concern, because of the weak economy and high lifestyle demands, is a fundamental factor in trafficking. Adolescents and the general public should be able to control themselves to reduce a consumptive lifestyle. The rise of trafficking cases that afflict teenagers, who are used as commercial sex workers, are sometimes motivated by the victim's desire to make ends meet, such as cool cellphones, good clothes, even money to spree.

c. Community Cultural Factors

- The role of women in the family, although cultural norms emphasize that the place of women is at home as a wife and mother, it is also recognized that women are often additional / supplementary breadwinners for family needs. A sense of responsibility and obligation to make many women migrate to work in order to help their families.
- The role of children in the family, adherence to parents and the obligation to help families make children vulnerable to trafficking practices.
- Early marriage, early marriage has serious implications for girls including health hazards, dropping out of school, limited economic opportunities, personal development disorders, and often, early

divorce. Divorced girls are legally considered as adults and are vulnerable to trafficking practices because of their economic fragility.

- Debt bondage, the practice of renting out family members to pay off loans is a support strategy for family life that can be accepted by the community. People who are placed as laborers because of debt bondage in particular, are vulnerable to arbitrary conditions and conditions similar to slavery.
- Lack of birth registration, people without adequate identification are more easily prey to trafficking because their age and citizenship are not documented. Children who are trafficked, for example, are easier to trust in any adult who requests it.
- Corruption and weak law enforcement, corrupt law enforcement and immigration officials can be bribed by traffickers to not care about criminal activities. Government officials can also be bribed to provide incorrect information on ID cards, birth certificates, and passports that make migrant workers more vulnerable to trafficking due to illegal migration. The lack of state budget funds to tackle trafficking efforts hinders the ability of law enforcers to effectively ensnare and prosecute traffickers.

d. Mass media

The mass media still has not given full attention to the news and complete information about trafficking and has not provided an optimal contribution in efforts to prevent and eliminate it. In fact, not a few actually preach the less educative and pornographic nature that encourages the strengthening of trafficking and other moral crime activities.

Forms of Trafficking in Indonesia

There are several types or forms of human trafficking that occur in women and children, including:

- Forced Sex Work and Sex Exploitation, both abroad and in the territory of Indonesia.
- Domestic Helper (PRT), both outside and in the territory of Indonesia.
- Other Forms of Migrant Work, both outside and in the territory of Indonesia.
- Dancers, Entertainers and Cultural Exchange especially abroad.
- Bridal Orders, especially overseas.
- Some Forms of Workers / Child Labor, especially in Indonesia.
- Baby trafficking / sale, both abroad and in Indonesia.

Ways to eliminate Human Trafficking, including:

- Punishment.

It is recommended that government regulations in the form of laws, Perpres or regional regulations give severe and strict sanctions to the perpetrators of human trafficking, especially syndicates / bosses / main actors. In its implementation, the punishment given may not be selective and give a deterrent effect to the perpetrators. Existing rules must be implemented completely, not only as a rule without realization.

- Legal Enforcement Cooperation.

Trafficking in persons is a threat to internal security because it has become a very large source of income for international crime syndicates. As part of transnational organized crime, trafficking in persons cannot be fought partially or individually by each country. Countries that are anti-slavery and intend to protect the lives of their citizens must unite in collaboration to fight trafficking in persons. Intergovernmental Cooperation (G-to-G) between NGOs, community organizations and individuals at home and abroad must be fostered and developed so that a force is able to eradicate organized crime. Therefore there is a need for cooperation of all parties both domestically and abroad to eliminate this Human Trafficking.

- Cross-Border Traffic Monitoring

The Unitary State of the Republic of Indonesia has an area of 5,193,252 km² consisting of a large part of the ocean and only 36.6% in the form of land. The existing land is a series of 17,000 islands covering a total area of 1,904,443 km² so that the boundaries between regencies / cities and provinces in the country, as well as with neighboring countries become very "porous", easily penetrated in various ways.

The border between the provinces on the island of Sumatra and Singapore and with Peninsular Malaysia by sea, is very easy to penetrate. Likewise, the border between the provinces in Kalimantan and East Malaysia (Sarawak and Sabah) is very easy to pass through "mouse walks" from West Kalimantan to Kuching, Sarawak or from East Kalimantan to Tawau, Sabah. Similarly, what happened on the border between Papua and Papua New Guinea. Therefore it is necessary to monitor cross-border traffic between countries.

- Victim Protection

Protection of victims of trafficking includes activities: shelter in a safe place, repatriation (to their home area or into the country), including efforts to provide legal assistance and assistance, rehabilitation (physical health,

psychological recovery), reintegration (reintegration to their families or community environment).) and empowerment efforts (economy, education) so that victims are not trapped back in trafficking in persons.

IV. CONCLUSION

Human Trafficking is a problem that has existed since human culture existed and continues to occur today. The main cause of trafficking is the lack of information about trafficking, poverty and the low level of education and skills possessed by the community, especially those in rural areas, the difficulty of employment, and also the lack of law enforcement in Indonesia concerning handling trafficking.

Legislation for overcoming trafficking has been updated by the government through Law No. 21 of 2007 concerning the Eradication of Crime in Trafficking in Persons, but the problem of trafficking has not completed yet. In this case it is not easy to eliminate trafficking activities, because the problem of trafficking is a complex problem. For this reason, a very complex handling is needed in various ways through cross-sectoral. In this regard, a special policy in the form of a regulation from the government is also needed to assist the existing Law, related to the possibility of weaknesses in legislation in the implementation of the response to human trafficking. Through this simple article, efforts to eradicate human trafficking get a response from various parties, so that they get positive results, there is no more oppression, slavery, and violence in this life.

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