

Strengthening National Regulations in Combating Cross-Border Trafficking: Empirical Approach and the Way Forward

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Abstract: At practical level, both nationally and internationally, various efforts have been made to deal with increasingly acute human trafficking. However, as it turns out in practice, all existing legal instruments have not had a deterrent effect and have broken the chain of human trafficking to this day. Even more so in Indonesia. This article focuses on examining the answer to the problem, namely the national policy to prevent human trafficking and the efforts that can be made to eradicate increasingly complex human trafficking. This qualitative study is related to the policy and implementation of international and national policies to address human trafficking in cross-country border legal research. This paper provides information on the latest trends in research. The results show that the current moment of globalization is witnessing an extraordinary movement of people, legitimate and illegitimate, across national and international borders. This global movement of people has created panic across borders. It manifests itself in strengthening border controls and tightening immigration laws as a threat to the nation-state's security.

Keywords: Criminal Law; Cross-Country; Human Trafficking; Human Rights; Legal Policy

1. Introduction

Human trafficking is nowadays specifically driven by aspects of economic globalization. From the aspect of driving factors, trade liberalization and structural adjustment policies have limited employment opportunities and social services in poor countries.¹ From the aspect of attracting factors, the continued demand of destination countries for the needs of cheap migrant workers coupled with increasingly easy access through information technology.²

Human trafficking involving Indonesian migrant workers may cause various problems, both for Indonesia as the source country and the destination country. The problems

¹ Akee, Randall, Arnab K. Basu, Arjun Bedi, and Nancy H. Chau. "Transnational trafficking, law enforcement, and victim protection: A middleman trafficker's perspective." *The Journal of Law and Economics* 57, no. 2 (2014): 349-386.

² Priyono, FX Joko, and Achmad Purbo Sudiro. Intergovernmental Cooperation Mechanisms in Combating Transnational Human Trafficking within ASEAN. *Academic Journal of Interdisciplinary Studies*, 9(2) (2020): 120-120.

include increasing tension in bilateral relations of political, economic, social, and cultural aspects. Furthermore, Indonesia has been referred to as a supplier country whose woman workers are vulnerable to smuggling, trafficking, and exploitation in the destination country.³ As a supplier country, Indonesia is classified as one that offers low wages; thus, indicating the failure of the country to provide employment and security.⁴

In the Palermo Protocol, trafficking in persons is generally defined as a crime that intentionally trades and exploits other people for profit. However, in general, transnational human trafficking is understood by the general public as selling people to other people. Public understanding of transnational trafficking in persons is still considered lacking. The main issue of transnational trafficking in persons should be well socialized to the public, law enforcers, and community leaders. The main problem of transnational trafficking in persons is not just selling people to other people, but there are many factors related to transnational trafficking in persons. This problem is especially true for victims of trafficking. The understanding of transnational trafficking in persons, whether in the community, law enforcement officers, government, or activists, still has different opinions on this issue.

Kevin Bales describes that transnational trafficking in persons is a new slavery in modern times as an organized, systemic business with low costs, big profits, and cheap lives.⁵ It is now recognized that transnational trafficking in persons is a global problem. There is no single country that denies but admits that a country's borders can cause transnational trafficking in persons. The international community still sees the existence of activities equivalent to slavery but in a more modern form which is then referred to as contemporary forms of slavery.

In various countries, including Indonesia, transnational trafficking in persons has also become a victim. Some of them are made into prostitutes, paid entertainers, and human gratifications. There is no definite data yet on how many Indonesians have become victims of transnational trafficking. Still, at least until now, no less than 4,500 people have become victims of trafficking every year.⁶ Legally, transnational trafficking in persons has been regulated by various laws and regulations internationally through the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, or commonly called the Palermo Protocol. Several countries globally, including Indonesia, now indeed have Law No. 21 of 2007 on the Eradication of Trafficking in Persons.

It is known that for several years since 2007, Indonesia has had its own legal rules governing the crime of eradicating trafficking in persons. However, in its application in the field, the practice of transnational trafficking in persons still occurs. It can even be

³ United States Department of Justice (USDJ). 2002. *Trafficking in Persons Report*. Washington: USDJ, p. 61.

⁴ Sulaksono, Endro. "The Patterns of Human Trafficking of Indonesian Migrant Workers: Case Study of the Riau Islands and Johor Border Crossing." *Masyarakat, Jurnal Sosiologi* 23, no. 2 (2018): 167-186.

⁵ Bales, Kevin, (1999). *Disposable People: New Slavery in the Global Economy*, Calif: University of California Press, Berkeley. p.34

⁶ Harkrisnowo. (2003). *Laporan Perdagangan Manusia di Indonesia*. Universitas Indonesia, Jakarta, p. 56.

said that its eradication is still very minimal, even though the effectiveness of the regulations is still very low. The legislation depends on its implementation, especially by law enforcement officials, the community, and other relevant agencies. Lack of awareness of the cooperation of law enforcement officers and collusion between law enforcement officers and transnational trafficking criminal syndicates, among others, are often stated as factors that hinder the effectiveness of positive legal regulations in law enforcement efforts in eradicating transnational trafficking in persons, especially in Indonesia.

Indonesia's strategic area in trade routes in Asia because there are many islands and has borders with other countries that can be reached by land, for example, is the right access to illegally trading transnational people abroad, even if it is done legally, it is nothing but the result of collusion with related parties. It is not surprising that Indonesia is said to be a sending country in transnational trafficking in persons. However, it is not the only country because there are other sending countries as well. However, it turns out that Indonesia is not only a sending country but also a receiving country.

Efforts to eliminate transnational trafficking in persons in Indonesia seem to be half-hearted and concerning. Likewise, the government's support for the enforcement of human rights is still only political, not yet at the implementation stage. Politically, Indonesia has ratified many international agreements regarding eliminating transnational trafficking in persons, but their legal implementation has not been optimal. There have been no clear and tangible steps, such as a government social contract, to eradicate human trafficking in Indonesia.

Above all, the problem of transnational trafficking in persons is multi-dimensional because it can be a problem of immigration, employment, crime, and human rights. Therefore, preventing and eradicating transnational trafficking in persons is not an easy matter or can be facilitated. Hence, approaches in law vary, both legal approaches to immigration, employment, criminal, human rights, and legal approaches to the protection of women and children.

The victims of transnational trafficking, especially women and children trafficked, are placed in entertainment venues and hotels. However, the pimps in ensnaring the victims generally still apply the old method, namely offering jobs in restaurants or restaurants. In stores with big salaries. With the development of technology and information, at present, the problem of transnational trafficking in persons is not only by persuading but also employing violence such as by kidnapping victims to be trafficked to other parties in need. The abducted trafficking victims are from rural areas, but the victims can also come from urban areas. This article focuses on examining the answer to the problem, namely the national policy to prevent human trafficking and the efforts that can be made to eradicate increasingly complex human trafficking.

2. Method

This research is socio-legal research, an interdisciplinary research method linking law and society. Law is considered as a behavior variable for compliance with applicable regulations. Primary legal materials are legal materials that are authoritative or have

authority.⁷ This study is a qualitative study related to policy and implementation of international and national policies in addressing human trafficking in cross-country border legal research. This paper provides information on the latest trends in research.

3. Strengthening National Regulations in Combating Cross-Border Trafficking

Transnational trafficking in persons is very common in Indonesia. The victims will usually suffer for life because they are made slaves by threats of violence to benefit the people who enslave them. Usually, victims are tricked with sweet promises, and then they are sold or framed to be forced to do what the criminal wants. The perpetrators of trafficking in persons must be punished and then brutally killed because they are very cruel and have no sense of humanity. Even if they go to prison, they are not necessarily aware of their mistakes and can disturb the community again.

In essence, transnational trafficking in persons deprives other people of their rights and freedoms employing threats or coercion to benefit those who "buy" them. Let's eradicate various forms of human trafficking in the world by helping to free the victims and punish the perpetrators with the harshest punishment because any of us can become victims. In the map of cross-border migration in Southeast Asia and the Mekong, Indonesia's position is as a supplier of labor, especially to Malaysia.

Most of Indonesia's migration to Malaysia is illegal, so it is full of problems, including being the object of transnational trafficking in persons for prostitution or forced and illegal labor. Comprehensive statistical data on trafficking in persons in Indonesia is currently not available. It is difficult to find accurate data on the trade, given its covert activities. This means that the data available only comes from reported cases, even though not all reported cases of transnational trafficking in persons. However, it is estimated that hundreds of thousands of people have experienced it.

In dealing with transnational trafficking in persons, bilateral cooperation between countries is also required. Although cooperation has not been specifically carried out on trafficking in persons, Indonesia has cooperated in legal action with other countries through the ratification of bilateral agreements, including through:

- a. Law Number 1 of 1999 concerning the ratification of the agreement between the Republic of Indonesia and Australia concerning the Treaty Between RI and Australia on Mutual Assistance in Criminal Matters
- b. Law Number 1 of 2001 concerning the Agreement between the Government of Indonesia and the Government of Hong Kong for the Surrender of Fugitive Offenders.

Various efforts have been and are being carried out by the Indonesian government to combat the crime of transnational trafficking in persons through efforts to prevent and eradicate transnational trafficking in persons. The people need to be explained about the

⁷ Irwansyah. (2020). *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*, Yogyakarta: Mirra Buana Media, p. 41.

seriousness of transnational trafficking in persons with all its implications. The social transformation of society is an important basis for eradicating social phenomena, including trafficking in women. This transformation implies that society will have thoughts and consciences that prioritize human welfare, especially women, overcoming the interests of monetary gain and lust satisfaction.

To prevent transnational trafficking in persons in Indonesia, several programs such as social and economic programs, information dissemination, and access to education in areas prone to trafficking in persons must be carried out by the government. Communities in the area of origin of migrants need to be empowered towards an understanding of labor procedures. The local manpower department must play a more active role in an integrated manner with related parties such as traditional, religious, cultural leaders, local village or sub-district government officials, including travel agents, to fix all possible exploitation of potential migrants' families. The government must also fix all lines of the process for the departure and placement of migrant workers by bureaucrats or the private sector. The dominant role of the private sector in the placement of migrant workers must be reduced because, so far, they have always been free from responsibility when problems arise in the field, especially those related to trafficking in persons.

The Indonesian government continued its efforts to prosecute and punish transnational traffickers during the year. Through a comprehensive anti-trafficking law enacted in 2007, Indonesia prohibits all forms of transnational trafficking in persons who carry a prison sentence of three to 15 years.⁸ These penalties are quite strict and correspond to those established for other serious crimes, such as rape. However, many people and law enforcers are unfamiliar with the 2007 transnational trafficking law, so they are often reluctant or unsure how to use it to punish perpetrators effectively.

Law enforcers, especially the police, continue to be criticized for being too passive in fighting transnational trafficking and often fail to catch transnational traffickers who have fled to other regions or other countries. Police also often fail to intervene to arrest possible perpetrators or to protect victims without special reports from third parties. Several police officers are currently assigned as liaison officers to Indonesian embassies in Saudi Arabia, Malaysia, Australia, the Philippines, and Thailand to support law enforcement cooperation with local governments, including investigations into transnational trafficking. The Indonesian government also continues to work closely with foreign partners and NGOs to train law enforcement officers on transnational trafficking in persons.

However, the effectiveness of these laws and regulations is highly dependent on their implementation by law enforcement officials, especially by the police, prosecutors, and other related parties.⁹ Lack of awareness of the cooperation of law enforcement officers and collaboration between law enforcement and criminal syndicates are often stated as

⁸ Trafficking in Persons Report 2010 – Indonesia, <http://www.unhcr.org/refworld/country,,USDOS,,IDN,,4c1883ecc,0.html>, Accessed on May 16, 2019.

⁹ Angkasa, Rani Hendriana, Filep Wamafma, Ogiandhafiz Juanda, and Bhanu Prakash Nunna. "Development of a Restitution Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia." *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 93-128.

factors that hinder the effectiveness of law enforcement efforts. However, guidance on migrant workers on setting minimum wage standards, workers' rights, and protection of migrant workers is not yet available.

The practice of transnational human trafficking in Indonesia has existed for a long time. However, due to the lack of public awareness and the absence of a synergistic relationship between law enforcers such as the Police, Prosecutors, Judge Advocates, which are a sub-system of the Criminal Justice System, as well as other related parties such as government agencies and NGOs both local and international so that the practice of transnational human trafficking in Indonesia is still high. In terms of transnational trafficking in persons, Indonesia is known as a sending country and a transit and receiving country. This means that Indonesia is known as a place where victims come from, and there are several areas in Indonesia where victims are exploited. The victims were trafficked within Indonesian territory and outside Indonesian territory, for example, Malaysia, Saudi Arabia, and Japan.

The phenomenon of transnational human trafficking in Indonesia, in practice, spreads in a very wide variety of actions, ranging from those that are illegal to those that are neatly regulated that take advantage of official state policies. If studied further, the main factor why transnational trafficking syndicates trap victims is the desire to work or the desire to live a better life easily. Even though the desire to work is to fulfill the need for self-existence, most of it is to meet the basic needs of life.¹⁰

The legal protection provided to victims of transnational trafficking in Indonesia should have met international legal standards regarding the protection of victims. The United Nations Principles and Guidelines International Standard of Human Trafficking Victims Identification recognizes that the identification step of persons experiencing transnational trafficking is the first step towards recognizing their rights. Often, countries with it are easy to classify all undocumented migrants as illegal or illegal immigrants.

Identifying a person as a person affected by transnational trafficking requires hard work and a more professional approach for the Indonesian government, especially law enforcement agencies. Recognition of the importance of the victim identification process is essential to ensure justice for transnational traffickers and victims of trafficking. Cooperation with law enforcement officers will always involve an element of risk for victims of transnational trafficking in persons and perhaps their families and for victims' partners who assist. The important thing is that the victim is fully a problem and a risk to every decision taken by law enforcement officers to convey their decisions consciously. In fact, victims of transnational trafficking never recover from the physical, sexual, and psychological harm that inflicts them. However, victims need to have access to available assistance and services to assist victims in the recovery process. It is not the role of law enforcement officers to provide such attention and assistance. Still, several other institutions provide these services and can provide better attention and provide assistance than law enforcement.

¹⁰ Subono, Nur Iman, and Meidi Kosandi. "The Regionalism Paradox in the Fight against Human Trafficking: Indonesia and the Limits of Regional Cooperation in ASEAN." *Journal of Leadership, Accountability & Ethics* 16, no. 2 (2019).

Efforts to meet some of the urgent needs of victims and ensure that victims have all available access to assistance are not the only issues of international humanitarian standards but have also proven to be an effective way law enforcement officials can recover victims. Hence, this can increase the number of victims willing to cooperate with the criminal justice system and access justice. It is a fact that the more victims who can be calmed and provided assistance, the more likely the victim will come forward as a witness in the next stage. Whether the victim is ready to cooperate or not, law enforcement officers must consider the urgent needs of the victim. Some of those needs include:

- a. Short-term plan for victim's physical safety.
- b. Medical treatment for injuries or illnesses affecting the physical and sexual health of the victim.
- c. Psychological assistance for trauma loss to the victim.
- d. Access to independent legal counselling and social welfare assistance during the identification phase and beyond.

The problem for law enforcement officers is to identify places that allow access to assistance measures. The cooperation between law enforcement agencies and the victim assistance sector is important and can strengthen the partnership principles of many institutions against the crime of transnational human trafficking. The most significant thing in terms of repatriation and reintegration is that it is carried out at the will of the victim concerned.¹¹ At all steps in the process, decisions made and actions are taken must be with the knowledge and consent of victims of transnational trafficking, e.g., women should not be forced to stay in shelters or prevented from leaving the shelters. Victims of transnational trafficking are also not criminal suspects.¹² Therefore legally, their freedom should not be restricted. In the same way, no victims of transnational trafficking should be rescued, repatriated, or forcibly integrated into their communities.¹³

Human trafficking, especially women and children, is still increasing. In 2019, recorded 213 cases of human trafficking and this doubled to 400 cases in 2020. Even this year, human trafficking also occurred recently in Myanmar, where 20 (twenty) Indonesian citizens became victims. Human trafficking to Myanmar via Soekarno Hatta Airport to Bangkok and Malaysia, then to Myanmar. For this reason, strengthening national policies to prevent human trafficking in Indonesia must be the main focus. Currently, legal instruments to prevent human trafficking are not yet optimal. There are still weaknesses in the legal substance that regulates the prevention of human trafficking, there is still a lack of understanding by law enforcement officials and the socio-economic conditions of society have not been addressed, increasing the number of victims of human trafficking.

¹¹ The Indonesian Ministry of Women Empowerment and Child Protection, (2004). *Pedoman Operasional Pemulangan Korban Perdagangan Perempuan dan Anak*, Jakarta, Oktober 2004.

¹² Atmasasmita, Romli. "International cooperation on combating human trafficking especially women and children: A view from Indonesia." *Indonesian J. Int'l L.* 1 (2003): 673.

¹³ Azizurrahman, Sy Hasyim, Sri Ismawati, Parulian Siagian, Abunawas Had, Muhammad Tahir, and Sy Muhammad Ridho Rizki Maulufi Alkadri. "The Early Warning System in Preventing Human Trafficking: Border (In) Security and Challenges for Indonesia." *Hasanuddin Law Review* 9, no. 3 (2023): 287-298.

Producing human trafficking that occurs with the aim of transnational exploitation in the human trafficking act is also limited to Article 3 and Article 4, namely only "taking" people abroad and/or "bringing" people into the country. This article can protect, for example, foreigners brought to Indonesia, whether as a transit country or a country where exploitation will occur. However, apart from 'entry,' all other acts of trafficking in persons in the Palermo Protocol are not referred to as criminal offenses in this article. Then, the purpose of exploitation outside the territory of Indonesia is regulated in Article 4, which prohibits the transportation of Indonesian citizens abroad for exploitation outside the territory of Indonesia, but the same as Article 3, only the act of 'bringing' Indonesian citizens outside the territory of Indonesia is permitted designated as a criminal offense, and no other acts mentioned in the definition of human trafficking.

The increasing problem of trafficking in women and children in various countries, especially developing countries, has become a concern for the international community and international organizations, especially the United Nations (UN). One of the UN's efforts to prevent and eradicate human trafficking is by issuing the Convention on Transnational Organized Crime. One form of strengthening international legal instruments to prevent and combat the crime of trafficking in persons, especially women and children as a common enemy.¹⁴ The fight against human trafficking has given rise to several regional and regional collaborations, including cooperation between the Indonesian government and international organizations and ASEAN in resolving criminal acts of human trafficking in Indonesia. The complexity of implementing the human trafficking act also faces obstacles when the victims of human trafficking are abroad and in remote places, so it is pretty challenging to gather testimonies from the victims. Even though the Indonesian government has tried to establish an Integrated Service Center as a service institution for victims of violence, victims of human trafficking do not have excellent and comprehensive information.

The most important thing that must be done to victims of transnational trafficking in persons is an initial interview, then providing the victims' medical and psychological care to temporary shelters. Interviews can be conducted by Staff of the Reception Center or Shelter at Embarkation or at the point of departure abroad, using a record form, confidential in nature, to document the case and needs of the victim. The initial interview conducted by the authorized staff aimed to trace the whereabouts and status of the victim, namely identifying whether the case being faced by the interviewer was a case of transnational trafficking in persons. The interview may be the first contact between the victim and the authorities. Therefore, staff should ensure that staff is in the same position as the victim to provide comfort and assistance as needed. The Reception Center or Embarkation Detention Center staff must also assure victims that this information will not be used to convict them.

These various problems are indirectly caused by substantive weaknesses in Law No. 21 of 2007, especially regarding the regulation of criminal offenses, which can be said to be not comprehensive, such as not regulating all acts or processes of human trafficking according to the regulatory content stipulated in the Palermo Protocol. As a result,

¹⁴ Sigmon, Jane Nady. "Combating modern-day slavery: Issues in identifying and assisting victims of human trafficking worldwide." *Victims and Offenders* 3, no. 2-3 (2008): 245-257.

criminal charges are only limited to "carrying" or the transfer has already occurred so that only those involved in the field are charged. This non-comprehensive regulation results in weak law enforcement in some instances in Indonesia. It should be emphasized that the contents of the Palermo Protocol make 'exploitation' a key element of the crime of trafficking in persons, and only the 'purpose' or intention to exploit must be proven to demonstrate the crime of trafficking in persons. The exploitation itself need not have occurred.

Trafficking in persons is a particularly virulent offence against human rights, which has mostly been treated as a sub-set of irregular migration. It is however increasingly drawing the attention of policy makers as a labor issue involving "supply-demand" dynamics, and cross-country policies. Efforts that can be made to eradicate human trafficking in Indonesia are coordinating between countries in handling cases of human trafficking, carrying out mutual coordination in border areas and providing mutual assistance between countries.

Victims of transnational trafficking are often the object of violence and abuse and poor living and working conditions and may require emergency medical or psychological treatment. During the initial interview, the Reception and Shelter (embarkment) Center staff should also assess the victim's need for emergency services such as emergency medical or psychological care and arrange for the provision of these services to victims of trafficking if the victim agrees. For this reason, as human movement has become increasingly dynamic and transnational migration has increased drastically, there are no countries without immigration problems.¹⁵ At the same time, global conditions have resulted in the inequality of development among countries. Hence, the phenomenon of smuggling migrant workers via sea cannot be separated from the flaws of immigration control functions. This could threaten border security.

4. Conclusion

The positive legal system in Indonesia that regulates trafficking in persons has not yet been implemented effectively. Many law enforcement officers do not understand the contents of the laws and regulations governing the problem of transnational trafficking in persons, the victims' families are uncooperative, and the protection of certain parties against transnational traffickers is the main causative factor. The current moment of globalization is witnessing an extraordinary movement of legitimate and illegitimate people across national and international borders. This global movement of people has created a panic across borders—a panic, which is manifesting itself in the strengthening of border controls and tightening of immigration laws as a threat to the security of the nation-state. In dealing with transnational trafficking in persons, several countries also carry out legal cooperation relations bilaterally, regionally, and multilaterally. However, regulating the laws in dealing with transnational trafficking in persons in each country also has differences because it looks at the needs of each country in eradicating these

¹⁵ Noyori-Corbett, Chie, and David P. Moxley. "A transnational feminist policy analysis of the Trafficking Victims Protection Act." *International Journal of Social Welfare* 26, no. 2 (2017): 107-115.

crimes. After all, transnational trafficking in persons faced by each country is unfortunately not the same and has different perceptions.

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