

Analysis of The Crime of Human Trafficking in Indonesia (Case Study: Human Trafficking with Marriage Mode in West Kalimantan)

Syifa Amalia

Law Program Study, Immigration Polytechnic

Email: syifaamalia15@gmail.com

Robby Syahputra

Law Program Study, Immigration Polytechnic

Email: robbysyahputra217@gmail.com

Alfatih Jagad

Law Program Study, Immigration Polytechnic

Email: alfatihjagad0493@gmail.com

ABSTRACT

The condition of globalization has both positive and negative impacts on people in Indonesia. Many new things were done to gain an advantage for a certain party. One of them is the emergence of cases of human trafficking with various modes. These people trade often look for weak targets to target—likely women and children. Trafficking in persons is now categorized as a severe crime. So, the need for strict law enforcement for this crime is expected to be eradicated, either reduced or even eliminated. This research aims to analyse the factors causing women and children as the main target of human trafficking, the law enforcement and preventive measures of human trafficking in Indonesia. The research method uses a descriptive qualitative approach and is supported by secondary data based on available literature to explore case studies of human trafficking. How to solve problems, protect and enforce the law in the international sphere and Indonesia. The main factors that encourage human trafficking are economic factors or poverty, law enforcement factors. Women and children are the main target of this crime because they are considered weak and belong to a vulnerable group. The Law enforcement and preventive measure of human trafficking in Indonesia conducted under Human Trafficking Act and Immigration Act.

Keywords: *criminal acts; trafficking in persons; law enforcement; legal analysis.*

INTRODUCTIONS

Indonesia has a strategic position in the international world. As we know, Indonesia is flanked by two continents and two oceans. Asian and Australian continents, the Pacific Ocean, and the Indian Ocean. Of course, this aspect is a crossroads and supports the world, especially in international trade. In the opinion of experts, Cochrane and Pain argued that globalization is a sign of the emergence of a global economic and cultural system that makes people worldwide into one global society. The geographical aspect, the potential of natural and human resources support the exotic natural beauty of Indonesia, which lures foreign tourists to often vacation in Indonesia. This potential has resulted in the increasing traffic flow of people entering and leaving the territory of Indonesia, both Indonesian citizens and foreign nationals. It is one of the causes of globalization. And globalization also has a negative impact.

The negative impact of globalization is that it complicates and expands the forms of transnational crime. These illegal activities affect the security of the state, the economy, and the wider community. Namely, the emergence of harmful threats in the form of many refugees and asylum seekers, people smuggling, child trafficking (human trafficking), increasing narcotics trafficking syndicates, growing terrorist networks, and others.

Human trafficking and smuggling activities have been reported as the most significant illegal activity of profitable businesses globally. There are various modes. They were starting from being offered jobs to victims abroad with large salaries to being forced and kidnapped. They are even making asylum seekers or refugees a model of organized crime.

Human trafficking itself is defined as the act of recruiting a person with threats of violence, kidnapping, confinement, forgery, fraud, to obtain the consent of the person who has control over the other person, whether carried out within a country or between countries, for exploitation or causing people to be exploited.¹

Human trafficking is a crime and a serious violation of human rights. It is supported by Article 3 of the UN Protocol, which states that trafficking in persons means the recruitment, transfer, transfer, harboring or receipt of persons, using the threat or use of force or other forms of coercion, of abduction, of deception, of deception or the abuse of power or a position of vulnerability or of giving or receiving payments or obtaining benefits to obtain the consent of a person having power over another person, for exploitation.² In the practice of human trafficking, generally, the victims are women and children. They are a vulnerable group that is often used as an easy target for traffickers. Various modes of recruiting victims also vary, ranging from offers abroad with large salaries to other persuasions through social networks such as Facebook. And there is also a way of coercion and kidnapping. The perpetrators of human trafficking carry out several modes to ensnare victims, especially women and children who have a weak economy and lack knowledge.

In many cases of human trafficking, looking at recent cases, the author chooses the case of human trafficking in West Kalimantan because human trafficking is caused by individuals who target the weak, such as women and children. Many cases of human trafficking have occurred in Indonesia, and the police have detected a few syndicates. One of them is the case of this trade in West Kalimantan. Therefore, the author makes a case study in this case, and it is still quite new.

The recruitment mode found from the cases handled was by persuasion. The perpetrators did this with teenagers, which is usually done in malls that are offered luxury and money. There is a way to provide jobs outside the city/country with a large salary. As seen in the case in West Kalimantan, the modus operandi is that the perpetrator recruits victims to be sold to men with the lure of marrying them and then taking them to China.³ The crime of human trafficking is included in the category of transnational crime. In this case, human trafficking no longer recognizes regional boundaries, both between cities and provinces in Indonesia but occurs across countries.

Then what factors make women and children often the object of the Crime of Trafficking in Persons? Like in the example of the Trafficking in-person case occurred in West Kalimantan with victims of AT and RS? And how are law enforcement efforts in human trafficking activities in Indonesia, and how are they prevented?

¹ Undang – Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang

² United Nation Protocol

³ Detik.com. (2019). *Ini Tampang Pelaku Perdagangan Orang Bermodus Istri Pesanan*. Available from: <https://news.detik.com/foto-news/d-4749357/ini-tampang-pelaku-perdagangan-orang-bermodus-istri-pesanan>. [Accessed September 30, 2021]

METHOD

This research was conducted using Doctrinal research, and using a theoretical approach, statute approach, and case approach. The case using in this research is cases of human trafficking that occurred in West Kalimantan.

The Data using in this research is secondary data, namely data from the existing literature. Such as scientific journals, books, the internet, applicable laws and regulations, and other sources that can be used as literacy in research. Data collected through literature study.

ANALYSIS AND DISCUSSION

Theory and Law

Theory

Trafficking in Persons in Indonesia, the definition of organized according to the expert is as follows:⁴

Donald Cressey said that “Organized crime is a crime that entrusts its administration to someone who is establishing a meager division of labor, in which there is an appraiser, collector, and enforcer.”

Meanwhile, according to Peng Wang and Jingyi Wang, “Transnational organized crime is an act of a group involving two or more countries which is a criminal act, at least according to one country.”⁵

Law and Regulation

Human trafficking have regulated in an Act, dand other executive regulation, namely:

1. Undang–Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang
2. Peraturan Pemerintah No. 9 Tahun 2008 Tentang Tata Cara dan Mekanisme Pelayanan Terpadu Bagi Saksi dan/atau Korban Tindak Pidana Perdagangan Orang.
3. Peraturan Presiden No. 69 Tahun 2008 tentang Pembentukan Gugus Tugas Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang.
4. Peraturan Menteri Koordinator Kesejahteraan Rakyat No. 25 Tahun 2009 Tentang Rencana Aksi Nasional Tindak Pidana Perdagangan Orang.
5. Peraturan Menteri Negara Pemberdayaan Perempuan No. 08 Tahun 2008 Tentang Pembentukan Sub-Gugus Tugas Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang.

Factors of Women and Children Being Targets of Human Trafficking

Globalization has a significant impact on countries with one another. It is globalization has resulted in seemingly eliminating the boundaries of interaction between nations in the world. One of the negative impacts arising from the globalization of the modern era today is the emergence of various types of modern crimes that are transnational in an organized crime network. The crime is transformed into transnational organized crime. One example of transnational organized crime is human trafficking.⁶

⁴ Farhana. (2010). *Aspek Hukum Perdagangan Orang di Indonesia*. Jakarta: Sinar Grafika, p. 20

⁵ Hukum Online. (2019). *Ulasan lengkap : Perbedaan Kejahatan Internasional dengan Transnasional*. Available from: <https://www.hukumonline.com/klinik/detail/ulasan/lt5dd55a78997ed/perbedaan-kejahatan-internasional-dengan-transnasional>. [Accessed September 14, 2021]

⁶ Maria Efita Ayu & Sherly Ayuna Putri. (2018) “Perdagangan Perempuan dan Anak Serta Tindak Pidana Korupsi Sebagai Kejahatan Transnasional Terorganisir berdasarkan Konvensi Palermo.” *Jurnal Bina Mulia Hukum*, 3(1).

Article 3 of the UN Protocol states that trafficking in persons means the recruitment, transfer, transfer, harboring or receipt of persons, using the threat or use of force or other forms of coercion, of abduction, of deception, or the abuse of power or a position of vulnerability or of giving or receiving. Payment or gain to obtain the consent of a person having power over another person for exploitation.⁷

Human trafficking, especially for women and children, is not a new problem in Indonesia and for other countries in the world. There have been many efforts made by various countries to eliminate the elimination of Trafficking in Persons and People Smuggling, especially women and children, across national borders for prostitution. For comparison, Trafficking in Persons and People Smuggling are crimes with the 3rd (three) largest profit value after Arms Smuggling and Drug Trafficking crimes.⁸

People who have a low standard of living can easily be persuaded to be sold by giving jobs, getting married, and being promised some money or a better life. A country with a high population level also makes it difficult for someone to find work. Therefore, the objects and victims of human trafficking are the majority of women and children. It is supported by criminological theory. The theory of criminal behavior (Human behavior) explains that there are many factors behind a crime. There are social and economic resources, cost of living, needs, and motivations of people who commit various crimes, how they reduce their commitment to the law, their learning process commit crimes, and the way brands look for opportunities to commit crimes.

The main factors that encourage human trafficking are economic factors or poverty, law enforcement factors, the number of people in a country that makes it difficult to get a job, and the last is the patriarchal culture in which a man is the highest power holder in an area, and children are vulnerable groups who are often used as easy targets for traffickers.⁹

Women and children are considered weak and easy to become objects of crime. The modus operandi of recruitment of vulnerable groups is usually by seduction, promising various pleasures and luxuries, deceiving or false promises, trapping, threatening, abusing authority, entangling with debt, marrying or courting, kidnapping, holding, or raping.¹⁰ These things make many women and children become victims of the Crime of Human Trafficking.

The need for understanding human rights is that human rights are not limited to rights that must be owned, but services for those rights need to be carried out equally for all humans. Human rights violations that occur in Indonesia need to be motivated by this. At another level, appreciation of human rights in Indonesia also needs to be sharpened to not just focus on major human rights issues.¹¹

Analysis of the Criminal Case of Human Trafficking in West Kalimantan

There are many cases of Human Trafficking where women and minors are victims. One of them is the case of the Criminal Act of Trafficking in Persons that occurred in West Kalimantan, where a suspect carried out trafficking in persons with the lure of giving victims millions of

⁷ United Nations Protocol

⁸ KPAI. (2014). *Waspada Bahaya Perdagangan Orang (Trafficking) dan Penyelundupan Manusia (Smuggling)*. Available from: <https://www.kpai.go.id/publikasi/artikel/waspada-bahaya-perdagangan-orang-trafficking-dan-penyelundupan-manusia-smuggling>. [Accessed September 30, 2021]

⁹ *Ibid.*

¹⁰ Maria Efitu Ayu & Sherly Ayuna Putri, *Loc. Cit.*

¹¹ Kurniawan Kunto Yulqirso & Nunung Prajart. (2005). "HAM di Indonesia: Menuju Democratic Governance." *Jurnal Ilmu Sosial Politik*, 8(3).

Rupiah in money and a decent life. From this case, two people became victims in this case with the initials AT and RS, and one of the two victims was still a minor.¹²

1) Chronology

It was explained to the news source *viva.co.id* that this crime of human trafficking began starting from an offer given by a person with the initials A to AT to marry someone with a Chinese citizen. After that, AT, together with his mother and A met with suspects T and AL, and at that time, AT was promised a large dowry of 20 million rupiahs and a house and could send money to his parents every month if he received an offer from the suspect, namely marrying a citizen. The Chinese state. The AT victim also agreed and took care of the passport at the Singkawang Immigration Office. Two months later, AT was dispatched to China and married to a Chinese citizen named Yang Anjie. And sadly, it turned out that her husband was in a state of mental retardation and all that was promised was a lie, finally AT fled to the Indonesian Embassy in Beijing to ask for protection.

According to a search conducted by the police, suspect T's actions were not alone but were assisted by another suspect with the initials B who was in Hong Kong. For his actions, the suspect was charged with Articles 4 and 6 of Law no. 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons (TPPO) with a maximum penalty of 15 years and a minimum of 3 years in prison, and a maximum fine of Rp. 600 million and a minimum of Rp. 120 million.

2) Relation to expert theory and law

The case of Trafficking in Persons committed by suspect T can be categorized as an Organized Transnational Crime. According to Peng Wang and Jingyi Wang themselves, transnational organized crime is a crime committed by a group of people involving two countries or across countries.¹³ Suspect T did this in a very structured and organized manner with the help of his Navy friend in Kalimantan and his friend with the initial B who was in another country, namely Hong Kong, to launch his business.

In its basic legal practice, human trafficking includes the recruitment process to the act of buying and selling people. The existence of Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons as protection for acts of trafficking in persons. Legal policy in the realm of trafficking in person concerns elements of the central government and is also related to policies issued by local governments. Laws as regulatory instruments in Indonesia are based on regional policies to protect their citizens. Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons is the government's effort to provide legal protection, either directly or indirectly, to potential victims and/or victims.¹⁴

Law Enforcement Efforts by the Government in Acts of Human Trafficking

1) Law Enforcement

The main factors that encourage human trafficking are economic factors or poverty, law enforcement factors, the number of people in a country that makes it difficult to get a job, and the last is a patriarchal culture in which a man is the highest power holder in a region. In an effort to enforce the law on human trafficking activities in Indonesia, of course, many international conventions have been carried out on this matter. One of them is the

¹² Viva. (2019). *Kisah Pilu WNI Korban Pengantin Pesanan di China*. Available from: https://www.viva.co.id/berita/nasional/1184074-kisah-pilu-wni-korban-pengantin-pesanan-di-china?page=all&utm_medium=all-page. [Accessed September 13, 2021]

¹³ Hukum Online, *Loc.Cit*.

¹⁴ Badiklat Kejaksaan. (2021). *Bahan Ajar*. Available from: http://badiklat.kejaksaan.go.id/eakademik/uploads/bahan_ajar/bbb89b855fd48b74e478c7e1884b59.pdf [Accessed September 20, 2021]

UN convention against organized transnational crime, as stated in the explanation of law No. RI. 5 of 2009. Undertaking criminalization efforts, in principle criminalization, is the process of implementing an action that is prohibited and is threatened with punishment for those who violate it.¹⁵

The Indonesian government carries out criminalization which is stated in the form of a law. The Government of the Republic of Indonesia has carried out the intended criminalization against several forms of crime, including the crime of trafficking in persons in Law no. 21 of 2007 concerning Eradication of the Crime of Human Trafficking.

2) Prevention

To be able to prevent the criminal act of trafficking in persons, it can be started by improving the legal system, both in substance, structure, and legal culture of the community, and ending with the law enforcement process. Law enforcement essentially contains the supremacy of substantial values, namely in the form of justice, where philosophical justice is the goal and function of law formation. Therefore, in law enforcement, it is necessary to have a spirit of carrying out the law because the law always involves humans and their behavior.¹⁶

Efforts to prevent criminal acts of trafficking in persons or trafficking are carried out in several ways, namely, mapping criminal acts of trafficking in Indonesia for domestic and foreign purposes. Second, improving community education, especially alternative education for girls, including educational infrastructure. Third, increasing public awareness by providing the broadest possible information about the criminal act of trafficking in persons and all aspects related to it.

Fourth, it is necessary to ensure accessibility for families, especially women and children, to obtain education, training, income generation, and social services. These methods seem ideal, and it's just a matter of how they are implemented. Such efforts also require the involvement of all government sectors, the private sector, NGOs, international agencies, community organizations, individuals, and the mass media.¹⁷

The State and Government are tasked with carrying out the protection, respect, and fulfillment of human rights. The International Organization for Migration (IOM), since 2005, has identified and assisted 3,339 victims of trafficking in persons in Indonesia. Where almost 90% of the victims are women, and more than 25% are children. Since January 12, 2009, Law no. 5 of 2009 concerning Ratification of the United Nations Convention against Transnational Organized Crime. And on March 16, 2009, Indonesia enacted Law no. 15 of 2009 concerning Ratification of The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Traditional Organized Crime.

The Palermo Protocol encourages each State party to this convention to adopt legislative and other measures deemed necessary to prevent, crackdown on and punish trafficking in persons, especially women and children. Indonesia has enacted Law no. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.¹⁸

3) Prevention Efforts According to UU NO 6 Tahun 2011 about Immigration

Efforts to prevent Organized Transnational Attacks that Immigration officials can carry out are to apply article 89 (2) of Law No. 6 of 2011, which begins with prevention efforts. In addition, the 9th paragraph of the Elucidation of Law no. 6 of 2011 concerning

¹⁵ Lilik Mulyadi. (2004). *Kapita Selekta Hukum Pidana Kriminologi dan Victimologi*. Jakarta: Djambatan.

¹⁶ Nuraeny Henny. (2011). *Tindak Pidana Perdagangan Orang*. Jakarta: Sinar Grafika.

¹⁷ Tri Wahyu Widiastuti. (2010). "Upaya Pencegahan Tindak Pidana Perdagangan Orang (Trafficking)." *Jurnal Wacana Hukum*, 9(1): 107-120.

¹⁸ Maria Efiti Ayu & Sherly Ayuna Putri, *Loc.Cit*.

immigration also explains that the duties and functions of immigration are based on a selective policy, which means that only foreigners who are helpful and do not endanger security and general purposes are allowed to enter and be in Indonesian territory. It is one of the government's efforts to minimize the occurrence of Transnational Organized Crime.¹⁹

CONCLUSION

The case of human trafficking is a type of crime committed by organized associations covering national to international levels. The main factors that encourage human trafficking are economic factors or poverty, law enforcement factors, and the number of people in a country. And the main targets of the Crime of Trafficking in Persons (TPPO) are women and children because women and children are considered weak and belong to a vulnerable group, and are easy to become objects of crime.

There are many cases of Human Trafficking where women and minors are victims. One of these cases resulted in two victims, namely AT and RS. The Crime of Trafficking in Persons that occurred in West Kalimantan is proof that many women and children are victims of the Crime of Human Trafficking, which is included in Transnational Organized Crime.

In its efforts, the Government of Indonesia has passed Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking and hopes that the ratification of Undang Undang No. 21 of 2007 will change the situation of human trafficking for sexual exploitation or forced labor. The criminal law policy in dealing with the act of trafficking in persons is currently quite good. The law on trafficking in persons is progressing because the criminal threat for traffickers adheres to a minimum of punishment to maximum, and victims are entitled to compensation, restitution, and compensation from perpetrators. Not only that, but Indonesian Immigration also plays an essential role in preventing the emergence of transnational organized crime through Act Number. 6 of 2011 about Immigration.

SUGGESTION

It is necessary to optimize the prevention of trafficking in persons in the form of law enforcement in Indonesia. Criminal decisions against perpetrators and their punishments also need to be optimized to provide a deterrent effect for perpetrators and public awareness to assist law enforcement in joint prevention. For example, they are reporting if there are indications of a criminal act of trafficking in persons. Criminal law policies in dealing with criminal acts of trafficking in persons, such as execution policies, also need to be improved.

Bibliography

Books:

Farhana. (2010). *Aspek Hukum Perdagangan Orang di Indonesia*. Jakarta: Sinar Grafika.

Nuraeny Henny. (2011). *Tindak Pidana Perdagangan Orang*. Jakarta: Sinar Grafika.

Lilik Mulyadi. (2004). *Kapita Selekta Hukum Pidana Kriminologi dan Victimologi*. Jakarta: Djambatan.

Journal articles:

Maslihati Nur Henny. (2012). "Upaya Pemberantasan dan Pencegahan Perdagangan Orang Melalui Hukum Internasional dan Hukum Positif Indonesia." *Jurnal Al-Azhar Indonesia Seri Pranata Sosial*, 1(3).

Maria Efitu Ayu & Sherly Ayuna Putri. (2018) "Perdagangan Perempuan dan Anak Serta

¹⁹ UU Nomor 6 Tahun 2011 about immigration

Tindak Pidana Korupsi Sebagai Kejahatan Transnasional Terorganisir berdasarkan Konvensi Palermo.” *Jurnal Bina Mulia Hukum*, 3(1).

Kurniawan Kunto Yuliorso & Nunung Prajart. (2005). “HAM di Indonesia: Menuju Democratic Governance.” *Jurnal Ilmu Sosial Politik*, 8(3).

Tri Wahyu Widiastuti. (2010). “Upaya Pencegahan Tindak Pidana Perdagangan Orang (Trafficking).” *Jurnal Wacana Hukum*, 9(1): 107-120.

Law and Regulation:

Undang – Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang

Undang-Undang Nomor 6 tahun 2011 Tentang Keimigrasian

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime year 2000

Website:

Detik.com. (2019). *Ini Tampang Pelaku Perdagangan Orang Bermodus Istri Pesanan*. Available from: <https://news.detik.com/foto-news/d-4749357/ini-tampang-pelaku-perdagangan-orang-bermodus-istri-pesanan>. [Accessed September 30, 2021]

Hukum Online. (2019). *Ulasan lengkap : Perbedaan Kejahatan Internasional dengan Transnasional*. Available from: <https://www.hukumonline.com/klinik/detail/ulasan/lt5dd55a78997ed/perbedaan-kejahatan-internasional-dengan-transnasional>. [Accessed September 14, 2021]

KPAI. (2014). *Waspada Bahaya Perdagangan Orang (Trafficking) dan Penyelundupan Manusia (Smuggling)*. Available from: <https://www.kpai.go.id/publikasi/artikel/waspada-bahaya-perdagangan-orang-trafficking-dan-penyelundupan-manusia-smuggling>. [Accessed September 30, 2021]

Viva. (2019). *Kisah Pilu WNI Korban Pengantin Pesanan di China*. Available from: https://www.viva.co.id/berita/nasional/1184074-kisah-pilu-wni-korban-pengantin-pesanan-di-china?page=all&utm_medium=all-page. [Accessed September 13, 2021]

Badiklat Kejaksaan. (2021). *Bahan Ajar*. Available from: http://badiklat.kejaksaan.go.id/eakademik/uploads/bahan_ajar/bbb89b855fdfe8b74e478c7e1884b59.pdf [Accessed September 20, 2021]