

LESSONS LEARNED: CHALLENGES AND BARRIERS TO LAW ENFORCEMENT ON HUMAN TRAFFICKING IN INDONESIA

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ABSTRACT

Human trafficking is a traditional crime, but it still exists to this day. Indonesia is one of the countries in Southeast Asia that are still grappling with the crime of human trafficking; this is because human trafficking victims in Indonesia have reached 1 million people per year. This paper discusses law enforcement on human trafficking and factors causing the high number of crimes of human trafficking in Indonesia. This research used the normative research type, with qualitative research method. The results show that law enforcement on human trafficking is being continuously pursued to its logical conclusion by Indonesia, in order to bring the perpetrators of human trafficking crimes to justice. The main factors causing the high number of human trafficking crimes in Indonesia are the high-profit and low-risk factors. Based on this, the author recommends that law enforcement officers should consistently enforce applicable laws and punish as many perpetrators of human trafficking crimes as possible. Also, the government should ensure regular enlightenment campaigns and adequate training for law enforcers. If these measures are adopted, the high number of human trafficking crimes in Indonesia would be brought under control.

Keywords: Law Enforcement, Human Trafficking, Indonesia.

INTRODUCTION

Trafficking in persons is a serious crime and a grave violation of human rights. Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. Almost every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims. The United Nations Office on Drugs and Crime, as the guardian of the United Nations Convention against Transnational Organized Crime and the Protocols thereof, assists States in their efforts to implement the Protocol to Prevent, Suppress and Punish Trafficking in Persons (Trafficking in Persons Protocol) (UNODC, 2018).

Human trafficking cases continue to occur in Indonesia; this situation is very concerning, considering that Indonesia has the largest population in Southeast Asia. Various news reports, in the print and electronic media, in Indonesia have stated that human trafficking is very closely related to prostitution, pornography, and exploitation. Women and children are the most vulnerable groups, and they easily become victims of human trafficking. In addition, the geographical location of Indonesia is quite strategic (archipelagic country), making it easy for traders to sell people through sea routes that are difficult for law enforcement agents to detect. This is the main reason why Indonesia has a national law that specifically regulates human trafficking; the law is referred to as the Law of the Republic of Indonesia Number 21 Year 2007 on the Enforcement of the Crime of Trafficking in Persons.

Indonesia is a key source of cross-border and domestic trafficking in persons. A large majority of the victims are women being trafficked through recruitment channels for labor purposes or sexual exploitation. Trafficking into the country is rapidly becoming an issue,

with victims originating from other ASEAN countries or as far as South America to work in the sex or fishing industry. Over the past decade, Indonesia has shown great commitments, at national, regional and international levels, to combat this serious human security threat, and the International Organization for Migration (IOM) Indonesia has established itself as a key counter-trafficking partner of the Government of Indonesia (International Organization for Migration (IOM) Indonesia, 2018) However, the sad reality is that in Indonesia, victims of trafficking have reached 1 million people per year. Data from the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia states that Indonesia is a source of transit and recipient of trafficked victims. West Java, West Nusa Tenggara and East Java are the areas from which the largest numbers of victims (women and children) are trafficked. Despite the existing legislation, more and more people become victims of trafficking because of the lack of coordination. In addition, it is very difficult to prove a case of trafficking in persons in court. Many parties have to cooperate before a case of trafficking in persons can be proved (Sindo, 2018).

Also, data revealed that the case of human trafficking in East Nusa Tenggara (one of the provinces in Indonesia) is still very high. Throughout the year 2016, there were at least 61 cases and 92 victims (Rappler, 2018). Based on the foregoing, this paper discusses how the law on human trafficking in Indonesia can be enforced and what factors are responsible for the high number of human trafficking crimes in Indonesia.

LITERATURE REVIEW

Research Accomplished

Scott Decker (Joan, 2016) mentioned in his research that vulnerable youths or young adults could be trafficked by more than one trafficker and that human traffickers also include fathers, mothers, caregivers, and other close relatives. Research results from Harkrisnowo (Harkrisnowo, 2003) indicate that trafficking in Indonesia is not limited to certain age groups or gender. The various cases that were reviewed show that the potential victims of human trafficking are the unborn child, children, women and men. However, data show that men who are victims of trafficking are few compared to women and children who are victims of trafficking.

Laczko et al. (2002) explained that there is a sharp distinction between trafficking in persons and smuggling. Smuggling puts more emphasis on illegally shipping of people from one country to another, for the purpose of making profit. In this sense, smuggling does not involve any exploitation of people. There may be some victims during shipment, but that is not the fundamental objective. The essence of smuggling is the illegal delivery of people from one country to another. However, trafficking has a specific target; the person sent is an object of exploitation. Thus, from the beginning, there is a desire to exploit people. The existence of the elements of deception and coercion is an essential element of trafficking in persons.

According to Konrad (Christopher, 2002), the causes of trafficking are complex. There are numerous contributing factors, which should be analyzed and taken into account in political decision making. The causes include the unequal economic development of different countries, mass unemployment in many countries of origin, inequality, discrimination and gender-based violence in our societies, the prevailing market mechanisms, the patriarchal structures in the source and destination countries, the demand side including the promotion of sex tourism in many countries of the world, the mindsets of men, etc. The primary root cause is poverty, particularly among women.

Theory of Law Enforcement

Law enforcement is a source of concern and hope, pertaining to both unlawful acts that really happen (*onrecht in actu*) as well as unlawful acts that may occur.

Law enforcement is an attempt to realize the ideas and concepts of law that people expect to become reality (Dellyana, 1988). Also, it is a series of processes for the elaboration of ideas and ideals that contain moral values, such as justice and truth, into concrete forms. To achieve law enforcement, organizations such as the police, prosecutors, courts and correctional institutions, as classical elements of law enforcement, are established by the state (Rahardjo, 2009).

The legal system in Friedman's view (Lawrence, 1977) consists of three components, namely the substance, the legal structure, and the legal culture. In relation to the legal culture, Cotterrell (Lawrence, 1984) states that the concept of legal culture explains the diversity of ideas about the laws existing in various societies and its position in the social order. Friedman (Roger, 1984) added a fourth component, which he calls the component of the legal effect.

Golstein (Muladi, 1995) views criminal law enforcement from 3 different perspectives: (1) Total enforcement: law enforcement based on total application of substantive criminal law; this is not possible due to due-process retrictions of police activities, known as area of no enforcement. (2) Full enforcement: complete law enforcement after excluding the area of no enforcement. This is not a realistic expectation because of the limitations of time, personnel, investigative tools, funds, etc. (3) Actual enforcement: Because full enforcement is unrealistic due to the reasons advanced above, the police use their discretion to determine when to invoke the law. Actual enforcement is determined by the decicion of the police not to invoke the law in certain situations.

The process of law enforcement according to Soekanto (Soekanto, 2005) is influenced by five factors, including legal or statutory factor, the factor of law enforcement officers, the factor of facilities that support law enforcement process, the community factor, and cultural factor.

What is Human Trafficking?

Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines trafficking in persons as the recruitment, transportation, transfer, harboring 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. Exploitation shall include, at the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Elements of Human Trafficking

On the basis of the definition given in the Trafficking in Persons Protocol, it is evident that trafficking in persons has three constituent elements, see Table 1 (UNODC, 2018):

Table 1			
ELEMENTS OF HUMAN TRAFFICKING			
The Act (What is done)	The Means (How it is done)	The Purpose (Why it is done)	
Recruitment	Threat or use of force	Exploitation including	
Transportation	Coercion	Prostitution of others	
Transfer	Abduction	Sexual exploitation	

Harboring	Fraud	Forced labor	= Trafficking
Receipt of persons	Deception	Slavery or similar practices	
	Abuse of power or vulnerability	Removal of organs	
	Giving payments or benefits	Other types of exploitation	

According to the U.S. State Department, 600,000 to 800,000 people are trafficked across international borders every year; among them, 80% are female and half are children. Most of the people trafficked come from low-level income or developing countries and are taken to developed countries (Helga, 2002). Victims are generally promised a better life and a job with attractive rewards by the merchants. Generally, they are forced to work as prostitutes, laborers, domestic helpers, and even beggars. Violence or threat of violence is usually used to control them (Global Survivor Network, 1997).

RESEARCH METHODS

In this study, the author used the normative research type (Kadarudin, 2015) with qualitative research method, which (in general) generates words, rather than numbers, as data for analysis (Quinn et al., 2007) and seeks answers to a question (Anonim, (n.d.)). The approach used is observation and interpretation (Cathy, 2017), which makes these phenomena observable (Wolff-Michael, 2015) equipped with in-depth interviews (Kai, 2017) of the relevant parties to this study. This paper provides information on the latest trend in research (Shao-Hsun, 2017).

RESULTS AND DISCUSSION

Law Enforcement against Human Trafficking in Indonesia

Twenty years ago, international cooperation against trafficking in persons was close to nonexistent. This changed suddenly and irreversibly in 2000, with the signing of the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons (TIP), especially Women and Children. Since then, regional and bilateral cooperation initiatives on TIP have increased tremendously. In addition to these interstate agreements, recent years have witnessed the emergence and spread of novel forms of soft or voluntary rule making, developed by intergovernmental organizations (IGOs) and private actors. As a result, the control of TIP has evolved from a state-centric regime to a complex transnational regime, in which public and private actors share responsibilities over various global governance tasks, including information sharing, standard setting, monitoring and evaluation (Laura, 2017). Human trafficking is a very real and devastating form of abuse and exploitation that affects women, men, and children from all walks of life (Countryman et al., 2017).

In the last few years, a few countries were involved in high profile judicial disputes, which led to a decline in appearance before the international proceedings (Anwar et al., 2016). The most important factor in a country's relationship with other countries is the ever-changing world order. Therefore, the means of diplomacy used by states also undergo transformation to realize national interest (Kadarudin, 2013). The role of international agreements (Kadarudin, 2013) is very important in law enforcement against human trafficking crimes, because if there is a domestic legal vacuum, an international agreement would then become the reference. The international instruments related to human trafficking include the following: Universal Declaration of Human Rights; International Covenant on

Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child and its relevant Optional Protocol; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (ILO No. 182); Convention on the Elimination of All Forms of Discrimination against Women; United Nations Protocol to Suppress, Prevent and Punish Trafficking in Persons especially Women and Children supplementing the Convention against Transnational Organized Crime; SAARC Convention on Combating Trafficking in Women and Children for Prostitution.

In the domestic context of Indonesia, some of the legal instruments used by law enforcement agencies are as follows: The Penal Code (KUHP) and the Draft of the Penal Code (R-KUHP), Law of the Republic of Indonesia Number 39 Year 1999 concerning Human Rights, Law of the Republic of Indonesia Number 1 Year 2000 on Legalization of ILO Convention No 182 Concerning The Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, Law of the Republic of Indonesia Number 26 Year 2000 on the Human Rights Court, Law of the Republic of Indonesia Number 23 Year 2002 on Child Protection, Law of the Republic of Indonesia Number 36 Year 2009 on Health, Law of the Republic of Indonesia Number 8 Year 2010 on the Prevention and Eradication of Money Laundering Crime, Law of the Republic of Indonesia Number 35 Year 2014 on Amendment to the Law of the Republic of Indonesia Number 23 Year 2002 on Child Protection.

Law of the Republic of Indonesia Number 39 Year 1999 concerning Human Rights states the following: Human rights are rights inherent to the human being as a creature of God that must be respected, upheld and protected by the state, law, government and everyone for the respect and protection of human dignity. Human rights are the basic rights that human beings have since they were born; therefore human trafficking is a very heinous crime and violates the basic values of humanity.

As mentioned in the introduction, in 2016 there were at least 61 human trafficking cases in Indonesia and 92 victims. Of the 61 cases that were handled by the East Nusa Tenggara Regional Police, 21 cases have been declared complete (P21) by the local Prosecutor's Office. However, 31 cases are still in the investigation stage and 9 cases are still being investigated with the number of suspects as many as 70 people. There are some horrific cases among the abovementioned cases, such as the cases of Dolfina Abuk from Timor Tengah Utara, Yufrida Selan and Damaris Neonufa from Timor Tengah Selatan; they were all migrant workers. All three died in Malaysia and were repatriated with their bodies full of stitches. . In the last few years, East Nusa Tenggara Province has being the region with the highest trafficking cases in Indonesia. In 2014, the National Project Coordinator of the International Organization for Migration counted at least 7,193 victims of human trafficking (Rappler, 2018).

Based on the criminal law enforcement theory proposed by Golstein, total enforcement of criminal law is impossible, because law enforcement agents are strictly limited by criminal procedural laws, which cover, among other things, arrest, detention, search, and seizure. In addition, a substantive criminal law itself may have limits; for example, a complaint is required as a condition of prosecution on complaints (*klachtdelicten*). This restricted scope is called the area of no enforcement. According to Muladi (Muladi, 1995) as a systemic process, the enforcement of criminal law manifests itself as the application of criminal law in 3 systems: First, the application of the law is seen as a normative system, i.e. the application of the whole rule of law that describes social values that are supported by criminal sanctions. Second, the application of the law is seen as an administrative system that includes interactions between various law enforcement apparatuses, which are the sub-system of the court. Third, the application of criminal law is a social system, in the sense that in defining criminal acts, the various perspectives of thought

that exist within the society must also be taken into account. In relation to the various dimensions above, it can be argued that the actual results of the application of criminal law should describe the overall outcome of interaction between law, administrative practices and social actors.

The abolition of forced labor has been on the agenda of the ILO since its founding. The initial emphasis was on forced labor imposed by the state. It is now recognized that most contemporary forced labor takes place within the private economy. In 2005 and 2007, the ILO published two major reports on forced labor; its re-emergence in the current era and its legal implications with respect to Convention No. 29 and 105. Both reports made it clear that forced labor exists in both industrialized and developing countries (Andrees, 2008). There are many cases where victims of forced labor and trafficking have escaped from rude and cruel employers (ODIHR, 2006). The National Referral Mechanism is a framework that allows state actors fulfill their obligations to protect and promote the human rights of victims of forced labor and trafficking and coordinate their efforts in strategic partnerships with various parties (Rice, 2004). Employment inspectors have an important role in identifying and monitoring private employment agencies, including covert agencies, such as travel agencies, modeling, providers of domestic workers or other entities (ILO, 2006). The ILO has published a guideline on private employment agencies and training manuals that deal more specifically with the recruitment of migrant workers, with the aim of preventing trafficking in persons (ILO, 2007). Human trafficking cases in Indonesia are closely related to forced labor or casualties of abusive employers, as experienced by 3 Indonesian Workers, Dolfina Abuk, Yufrida Selan and Damaris Neonufa, who died in Malaysia and were repatriated with their bodies full of stitches.

The government of the Republic of Indonesia has increased its law enforcement efforts. The 2007 anti-trafficking law prohibits all forms of trafficking and prescribes penalties of three to 15 years imprisonment, which are sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. In December, the Supreme Court issued a new regulation expanding the courts' ability to prosecute corporations for complicity in trafficking. The anti-trafficking unit of the Indonesian national police reported 110 new trafficking investigations in 2016, a decrease from the 221 cases reported the previous year, though figures from 2015 may have included forced marriage and organ trafficking cases. Similarly, the Supreme Court reported 256 convictions, compared with the 119 convictions reported the previous year; convictions included sentences of up to seven years. The police reported referring 46 cases to prosecution, compared with 66 cases in 2015; the perpetrators in at least 30 of the 46 cases were convicted. The other 16 cases are still being deliberated in the courts. In December 2007, the Ministry of Foreign Affairs conducted training for 25 investigators and prosecutors in three key provinces on the 2007 anti-trafficking law. Still, the lack of familiarity with the anti-trafficking law led some prosecutors and judges throughout the country to decline cases or use other laws to prosecute traffickers (US Embassy and & Consulates in Indonesia, 2018).

At the time of this report, the police had investigated a high-profile trafficking case involving a migrant worker from East Nusa Tenggara who had committed suicide in Kuala Lumpur [56]. The president instructed the police anti-trafficking unit and local authorities to conduct a joint investigation of trafficking syndicates operating in NTT, and they succeeded in arresting 16 suspects, recruiters, travel document forgers, and airport ground handlers, all connected to seven previously unknown trafficking syndicates that operate throughout Indonesia. Among the arrestees were two immigration officers suspected of complicity in trafficking; their prosecutions were ongoing at the time of this report. In a separate case, a suspect arrested for operating an online prostitution business was convicted under the anti-trafficking law and sentenced to four years in prison, along with a fine of 120 million rupiah (\$8,969). At the time of this report, authorities continued to investigate five of the companies

involved in subjecting hundreds of Burmese fishermen to forced labor on fishing boats in Ambon in 2015. The government convicted a child sex tourist from Australia and sentenced him to 15 years in jail under the Child Protection Law .

Factors Causing Human Trafficking in Indonesia

In 2002, Indonesia was categorized by the United States as a non-standard state in its fight against organized crime, as a serious effort to eliminate trafficking; accurate data on these crimes is hard to find. Hammer (1999) mentions that the situation of illegal migrant workers is especially problematic, exemplify(ing) the jurisdictional struggle between a state's sovereignty and its control over immigration versus the obligation of the state to uphold the human rights of all individuals found within its territory.

Human trafficking in Indonesia is not caused by a single factor. It occurs because of different conditions and problems. The following are several factors that cause human trafficking, among others: (1) Lack of awareness on the part of job seekers who do not know the dangers of trafficking and the ways used to deceive or trap victims. (2) Poverty is believed to be one of the triggers of trafficking. Poverty has forced many people to look for work elsewhere, regardless of the risks associated with the work culture, which takes advantage of the situation of women who are weak and also the situation of children who must obey the wishes of their parents or those forced into early marriage. (3) Usually victims are forced to go look for work abroad or out of the region, due to family or parent demand; the weakness of recording/documentation of the birth of a child or a resident makes it is very easy to falsify identity data. (4) Also, the weakness of law enforcement officers and related parties in tracking cases of trafficking is another factor. Therefore, every approach or solution must be comprehensive in order to cover all aspects of the problem. This requires Indonesia to continue to improve its law enforcement efforts and enlighten its citizens on the dangers of human trafficking crimes.

Human trafficking is a market-driven criminal industry, which is based on the principles of supply and demand, like drugs and arms trafficking. Many factors make children and adults vulnerable to human trafficking. However, human trafficking does not exist solely because many people are vulnerable to exploitation. Instead, human trafficking is fueled by a demand for cheap labor, services, and commercial sex. Human traffickers are those who employ force, fraud, or coercion to victimize others in their desire to profit from the existing demand. To ultimately solve the problem of human trafficking, it is essential to address these demand-driven factors as well as alter the overall market incentives of high-profit and low-risk that traffickers currently exploit. In this context, enlightenment campaigns from both the central and local governments to enlighten the public about the dangers of becoming a victim of human trafficking should be maximized.

Low Risk: Human traffickers perceive that there is little risk or deterrence to their criminal operations. While investigations, prosecutions, and penalties have increased in recent years, many traffickers still believe that the high profit margin is worth the risk of detection. Factors that enhance the low risk include the following: lack of governance and law enforcement training, low community awareness, ineffective or unused laws, lack of law enforcement investigation, scarce resources for victim recovery services, and social blaming of victims. Other factors include the challenges faced by foreign nationals who are trafficked in getting international protection and the difficulties in prosecuting those responsible for the crime of human trafficking; international cooperation (among law enforcement agencies in many countries) is one solution to the problem of human trafficking.

High Profits: When individuals are willing to buy commercial sex, they create a market and make it profitable for traffickers to sexually exploit children and adults. When consumers are willing to buy goods and services from industries that rely on forced labor,

they create a profit incentive for labor traffickers to maximize revenue with minimal production costs. This is why many residents of East Nusa Tenggara (Indonesia) are victims of human trafficking.

Left unchecked, human trafficking will continue to flourish in environments where traffickers can reap substantial monetary gains with relative low risk of getting caught or losing profits. As such, communities can help to reduce sex trafficking in their areas by not buying sex and not participating in the commercial sex industry. Community members can use online tools, such as Slavery Footprint, to see how human trafficking exists in the services and products they consume, buy fair trade and survivor-made products, and hold their favorite brands accountable for fair labor practices. Alongside the efforts of service providers, criminal prosecutors, and law enforcement, these community efforts can help to reduce the demand for sex and labor trafficking. The Government of Indonesia has not fully met the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government has demonstrated increasing efforts compared with the situation in the past; therefore, Indonesia remains on Tier 2. The government demonstrated increasing efforts by obtaining more convictions for trafficking offenses, conducting training for officials and public awareness campaigns targeted at communities with higher risk of trafficking; also, the government is creating new mechanisms to strengthen its victim identification procedures in furtherance of its 2015-2019 National Action Plan to Eradicate Trafficking in Persons. In 2016, the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia reported partnering with a communications company to collate open source information on 943 trafficking victims featured in 65 prints, online, and broadcast media sources, in an attempt to broaden victim identification methods. Separately, the Commission for the Protection of Children officially identified 307 child trafficking victims. However, it was unclear if either of these processes led to investigations or the provision of victim protective services. The government's overseas crisis center complaint system received 4,761 complaints from workers residing overseas, including 56 confirmed trafficking cases and 1,928 cases with trafficking indicators. Although the government reportedly initiated investigations based on these complaints, figures were unavailable.

The government body managing this complaint system also led an interagency effort to establish five integrated one-stop service centers to assist and educate Indonesians aiming to travel abroad for work and those returning from overseas. One of the service centers reported assisting 4,500 deportees with safe migration education, renewal of passports, working visas, and reintegration services. An international organization partnered with the government to identify and provide services to 336 Indonesian and foreign trafficking victims, including 159 individuals subjected to trafficking in the fishing industry [54]. The government continues to strive to provide countermeasures against factors that cause the high number of human trafficking crimes in Indonesia.

CONCLUSION AND RECOMMENDATIONS

Conclusion

Based on the results and discussion, the author arrived at the following conclusions: First, Indonesia continues to maximize its law enforcement efforts on human trafficking. Although the human trafficking crime rate is still high, cooperation in each sector is expected

to reduce the crime rate every year. Second, high-profit and low-risk are the two main factors causing the high number of human trafficking crimes in Indonesia.

Recommendations

Based on these conclusions, the author makes the following important recommendations: First, law enforcement agencies in Indonesia must consistently apply the rule of law and subject the perpetrators of human trafficking crimes to the maximum punishment. Second, community enlightenment programs and training for law enforcement agents are important in addressing the causes of the high number of human trafficking crimes in Indonesia.

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