

## **EFFECTS OF LEGISLATION OVERLAPPING REGARDING TRANSNATIONAL CRIME (TRAFFICKING IN PERSONS)**

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### **Abstract**

*Globalization has a dominant role in the trade of goods or services, people, technologies, and information. The globalization targets are cultural, economic, and political globalization. Unintentionally, problems arise in society, such as transnational rights issues (transnational crime) caused by globalization. The most common transnational crime is sexual exploitation, which occurs in both men and women. Therefore, regarding the handling of TIP in Indonesia, complementary and correlated regulations or legislation are needed to eradicate TIP. Considering that currently, there are regulations that overlap with each other. As happened in the criminal act of trafficking in persons and the law on the protection of Indonesian migrant workers, the two laws should synergize to prevent, handle, and eradicate TIP. Thus, law enforcers can also be maximal in carrying out their duties, especially in taking action against TIP perpetrators.*

**Keywords:** *Trafficking in Persons; Transnational Crime; Legislation; Crime;*

### **1. INTRODUCTION**

As a developing country located in a cross-continental and oceanic region, Indonesia is one of the countries vulnerable to transnational crime. It showed by the increase in the migration trend from and to Indonesia every year. One of them can be seen through the migration of migrant workers from Indonesia. Based on data from the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) 2019 that from 2017 to 2019, the number of placements for Indonesian migrant workers showed an increase, whereas in 2017 262,899 migrant workers migrated outside the territory of Indonesia. Then in 2018, there were 283,640 people and in 2019 276,553 people were migrating abroad.<sup>1</sup> According to the same data, compared to men, the number of women who migrate each year is much larger. In 2017 there were 184,640 women and 78,259 men, in 2018 there were 198,974 women and 84,666 men, and in 2019 there were 191,237 women and 85,316 men.<sup>2</sup>

This phenomenon poses a higher possibility of transnational crime because the increasing number of people moving from and to Indonesia has a close

<sup>1</sup> Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia (BNP2TKI), (2019), 1-3. Accessed on June 8<sup>th</sup> 2022. <https://bp2mi.go.id/statistik-detail/data-penempatan-dan-perlindungan-tki-periode-tahun-2019>.

<sup>2</sup> *Ibid*

relation to criminal activity. That action is supported not only by the movement of goods and services but also technology. These things become the advantage of globalization in today's era. That is why globalization does have positive sides but without being naïve during this time, globalization also gives access to groups of people that committed the crime.

Globalization conceptually means a combination of multifaceted uneven, often contradictory economic, political, social, and cultural processes.<sup>3</sup> This situation is one of the triggers for the emergence of conflict because the unification of the world community accidentally, stimulates conflicts and upheavals both in the national and transnational scope,<sup>4</sup> and the globalization of crime thrives in conditions of the inability of criminal law to go global.<sup>5</sup> It can be said that globalization has benefited participants both in the legal and illegal economy.<sup>6</sup>

Without a doubt, transnational crime and business are sectors that might receive benefits and have significant opportunities caused by globalization.<sup>7</sup> It is because of the widening access and limited barriers from one country to another. Transnational crime is the management of criminal activities that have implications for violations of a country's domestic law, which is labeled as a dangerous activity by individuals and/or crime syndicates at the global level.<sup>8</sup> Those criminal activities include trafficking in persons, narcotics transactions, arms transactions, cybercrime, money laundering, corruption, and violent crimes such as terrorism and war crimes.<sup>9</sup>

This article will specify to study the Trafficking in Persons (TIP) in Indonesia because the spread of TIP cases requires a lot of in-depth studies in economic and social fields and other related fields like law studies. After all, TIP includes various elements in society, which is why being able to handle those cases also requires the diver's studies and efforts like legal studies. Especially, in terms of case handling and or enforcing criminal acts of the TIP itself. This is because the development of TIP is unfortunately not followed by cooperation between countries. In this case, the cooperation that related to handling criminal cases, especially for the arrest of perpetrators and their prosecution.<sup>10</sup>

United Nations on Drugs and Crime (UNODC) even revealed through the 2020 global report on trafficking in persons that the factor of economic need occupies the highest position (by 51 %) as a factor used by perpetrators of TIP.<sup>11</sup> On the other hand, economic

<sup>3</sup> C Richard Snyder, "Hope Theory: Rainbows in the Mind," *Psychological Inquiry* 13, no. 4 (2002): 249–275.

<sup>4</sup> Retna Dwi Estuningtyas, "Dampak Globalisasi Pada Politik, Ekonomi, Cara Berfikir Dan Ideologi Serta Tantangan Dakwahnya," *Al-Munzir* 11, no. 2 (2018): 195–218.

<sup>5</sup> David Nelken, "Afterword: Studying Criminal Justice in Globalising Times," *Comparative Criminal Justice and Globalization. Farnham: Ashgate*, 2011, 183–210.

<sup>6</sup> Chris Cunneen, "Mark Findlay, The Globalisation of Crime. Understanding Transitional Relationships in Context," *Current Issues in Criminal Justice* 12, no. 1 (2000): 129–31. ISBN 0521621259.

<sup>7</sup> *Opcit.* Pp. 389

<sup>8</sup> Lestari Agusalm dan Fanny Suzuda Pohan, "Globalisasi Ekonomi Dan Pengaruhnya Terhadap Kemiskinan Dan Ketimpangan Pendapatan Di Indonesia. Conference Paper" (*Jurnal MODUS dan Ristekdikti*, 2017), 103-119.

<sup>9</sup> Usman Ahmad Karofi and Jason Mwanza, "Globalisation and Crime," *Bangladesh E-Journal of Sociology* 3, no. 1 (2006): 70–87.

<sup>10</sup> Nurul Azizah Zayda, Agus Haryanto dan Arief Bakhtiar Darmawan, *Tindak Pidana Transnasional Terorganisasi di Asia Tenggara*, (Yogyakarta: Oceania Press, 2020). 35-48

<sup>11</sup> UNODC UNODC, "Global Report on Trafficking in Persons" (United Nations Office on Drugs and Crime Vienna, 2009). Accessed on 20<sup>th</sup> 2022. [https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP\\_2020\\_15jan\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf)

problems are also one of the main factors that encourage someone to migrate.<sup>12</sup> Around two percent of migrant workers from Indonesia are victims of human trafficking.<sup>13</sup>

On the other hand, a publication issued by the Indonesia Ministry of Women's Empowerment and Child Protection in 2020 said that the number of TIP cases increased from the previous year. In 2020 there were 351 cases of TIP in women and children, while in 2019 there were 216 cases.<sup>14</sup> UNODC report also mentions, there are several forms of exploitation experienced by victims of TIP, 50 % of victims of TIP are sexually exploited, 38 % of victims become forced labor, 6 % of victims commit criminal acts, etc. The same report stated that the victims of TIP did not only occur to women and girls but also men and boys. Although the number of female victims occupy the top position at 46 %, then 19 % for girls, 20 % for men, and 15 % for boys.<sup>15</sup>

Even so, the government has tried to implement several regulations related to TIP cases in Indonesia. However, in practice, these regulations do not work as expected because it is not uncommon to find overlaps between certain regulations or legislations regarding TIP. Therefore, with the high number of TIP cases in Indonesia and the existence of several imbalances in the handling and enforcement of criminal cases of trafficking in persons in Indonesia, this article tries to discuss are What is the solution to the legislation overlapping? and how the legislation overlapping adversely affect the protection and enforcement of TIP?

The research method in this study is socio-legal, which examines how the products of legislation are applied.<sup>16</sup> This study aims to provide and complement socio-legal research conducted normatively. It is because socio-legal studies as a concept that considers the process of how to form legal products, and the role of law itself in accordance to solve problems and disputes.<sup>17</sup> Here, this research also uses several literature reviews to review and get more information related to this research. On the other hand, this study uses some qualitative data to determine the implementation of law enforcement protection for victims of TIP in Indonesia.

## 2. DISCUSSION

### 2.1. Trafficking in Persons (TIP)

According to the general provision of Law Number 5 of 2009 concerning the Ratification of the United Nations Convention Against Transnational Organized Crime.

<sup>12</sup> Fitri Hasdianti, "Strategi Coping Pada Pekerja Migran Indonesia Dari Lombok Timur: Analisis Kebutuhan Strategis Dan Kebutuhan Praktis Gender Pada Pekerja Migran Internasional (Malaysia)" (Depok: Universitas Indonesia, 2021).

<sup>13</sup> Muhammad Naseh et al., "Karakteristik Pelaku Kejahatan Transnasional Terorganisasi Di Indonesia Dan Eropa," *Jurnal Hubungan Internasional* 8, no. 1 (2019): 48–60, <https://doi.org/DOI: 10.18196/hi.81144>. DOI: 10.18196/hi.81144.

<sup>14</sup> Anjani Nur Permatasari, "Sering Menyasar Perempuan Dan Anak: Ini Modus Dan Dampak Praktik Perdagangan Manusia. KompasTV," <https://www.kompas.tv/article/159970/sering-menyasar-perempuan-dan-anak-ini-modus-dan-dampak-praktik-perdagangan-manusia>, 2022,

<sup>15</sup> UNO, "United Nation On Drugs and Crime (UNODC), Global Report in Trafficking in Persons 2020, (United Nation Publication, Sales No. E.20.IV.3, January 2021).," n.d., [https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP\\_2020\\_15jan\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf).

<sup>16</sup> Jonaedi Efendi, Jhonny Ibrahim, and Prasetijo Rijadi, "Metode Penelitian Hukum: Normatif Dan Empiris," 2016. Pg. 152.

<sup>17</sup> *Ibid.* Pg. 153.

Transnational crime is defined as a form of crime that threatens social, economic, political, security, and world peace.<sup>18</sup> The term transnational refers to cooperation formed by criminal groups from various countries to efficiently manage certain criminal markets.<sup>19</sup>

Moeljatno revealed that a criminal act is a gesture that is prohibited and threatened with punishment for anyone who violates the prohibition. And the criminal act must be known by the community as an act that can be done to attain the social sphere of society as expected in that society.<sup>20</sup> In the same words as Moeljatno, the International Labor Organization (ILO) said that the criminal act is part of a series of actions or omissions which will constitute a criminal offense if the series of actions or the negligence is not interrupted by a voluntary determination of the party committing the crime.<sup>21</sup>

More specifically the issue of trafficking in persons or also known as human trafficking according to the United Nations High Commissioner for Human Rights (UNHCR) is the process of individuals being placed or maintained in an exploitative situation to generate an economic benefit.<sup>22</sup> Under the United Nations Convention Against Transnational Organized Crime, TIP has defined as the recruitment; transportation; transfer; harboring; or receipt of persons; utilizing the threat; or use of force; or other forms of coercion; abduction; fraud; or the abuse of power; or a position of vulnerability; or giving or receiving of payments; or benefits to obtain the consent of a person having control over another person for exploitation.<sup>23</sup>

Human trafficking itself can occur in women, men, and children within a country or may involve transnational migrations.<sup>24</sup> This is not only happening in Indonesia but also in other countries in the world. Human trafficking or TIP is carried out for a variety of purposes including forced labor and exploitation in factories, agriculture and households, sexual exploitation, and forced marriage.<sup>25</sup>

The trafficking victims protection act of 2000 defines human trafficking as (a) trafficking which includes commercial sex acts carried out by force, fraud, or coercion where the person who is persuaded to commit the act has not yet reached the age of 18 years, and (b) recruitment, hiding, transporting, providing or obtaining someone

<sup>18</sup> Undang-Undang Republik Indonesia Nomor, "Tahun 2009 Tentang Pengesahan United Nations Convention Against Transnational Organized Crime (Konvensi Perserikatan Bangsa-Bangsa Menentang Tindak Pidana Transnasional Yang Terorganisasi)," *LN Nomor 5 (5AD)*.

<sup>19</sup> Michele Sabatino, "The Process of Globalization and Transnational Organized Crime," *Journal of International Business and Economics* 16, no. 2 (2016): 61–82., DOI: 10.18374/JIBE-16-2.6

<sup>20</sup> Moeljatno, *Asas-Asas Hukum Pidana* (Jakarta: Bina Aksara, 1984)..

<sup>21</sup> "International Labour Organization (ILO), Criminal Offences Act: CAP. 18 Arrangement of Sections (Revised Edition). Kingdom of Tonga (1988).," accessed June 10, 2022, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/73337/95725/F665862081/TON73337.pdf>.

<sup>22</sup> "United Nations High Commissioner for Human Rights (UNHCR), Human Rights and Human Trafficking, (New York and Geneva: United Nations, 2014).," n.d. Accessed on June, 10<sup>th</sup> 2022. [https://www.ohchr.org/Documents/Publications/FS36\\_en.pdf](https://www.ohchr.org/Documents/Publications/FS36_en.pdf)

<sup>23</sup> "United Nations General Assembly, United Nations Convention against Transnational Organized Crime; Annex II: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Aga," n.d. United Nations General Assembly, United Nations Convention against Transnational Organized Crime; Annex II: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 8 January (2001).

<sup>24</sup> Karofi and Mwanza, "Globalisation and Crime."

<sup>25</sup> *Ibid*

to become labor or service by using force, deception and or coercion to commit acts of slavery, debt trap or unintentional slavery.<sup>26</sup>

The case of TIP targets the poor who are isolated and vulnerable, where they are closely related to powerlessness, social exclusion, and economic vulnerability.<sup>27</sup> In addition, TIP can take other forms or disguises such as migrant workers, child labor, child trafficking through adoption, marriage, and implantation of organs.<sup>28</sup> Women and children are part of the most vulnerable group when compared to men. In terms of sexual exploitation and this is (most) common in third-world countries, where victims are obtained in various ways.<sup>29</sup> In Asia, there are millions of women and children who are brought into the prostitution system, like street prostitution, entertainment clubs, sex, luxury places, sex tourism, and prison-like brothels. It even found that husbands, other family members, or their boyfriends often became pimps and recruited women to be trafficked or sold.<sup>30</sup>

Sexual exploitation is a form of using sexual organs or other organs of the victim for profit, including but not limited to all activities of prostitution and fornication.<sup>31</sup> This is particularly the case for women and children who are sent overseas, often through unprocedural or illegal travel. It is also known as people smuggling. In addition, it can be done by changing the identity and or data of the women and children in question to pass the immigration checks and be able to work in that country.<sup>32</sup>

In addition to the high labor migration, transnational crime does not only occur due to the economic conditions and status of the community. However, it is an implication and consequence of the current very dynamic conditions, especially in computer technology, gadgets, and the internet.<sup>33</sup> The evolution of technology can be a market that facilitates the transfer of information and communication. As result, it directly makes it easier for individuals and communities to access things and influence each other even though they are in different countries without significant barriers and boundaries.<sup>34</sup>

Other consequences are also caused by migration and the global community today, where the increase in TIP builds other consequences. From physical abuse and torture of victims to a psychological and emotional trauma that has economic and political implications for existing crimes. Moreover, the crimes that occur seem to be eternal yet

<sup>26</sup> "The United States Department of Justice," n.d. The United States Department of Justice. Accessed on June, 20<sup>th</sup> 2022. <https://www.justice.gov/humantrafficking>

<sup>27</sup> "United Nation On Drugs and Crime, An Introduction to Human Trafficking: Vulnerability, Impact, and Action. (New York: United Nation Publication).," accessed June 20, 2022, [https://www.unodc.org/documents/human-trafficking/An\\_Introduction\\_to\\_Human\\_Trafficking\\_-\\_Background\\_Paper.pdf](https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf).

<sup>28</sup> Goma Edwardus Iwantri, "Manusia Yang Dijadikan Komoditas: Fenomena Human Trafficking Di Provinsi Nusa Tenggara Timur," *Populasi* 28, no. 1 (2020): 30–43.

<sup>29</sup> Janice G Raymond et al., "A Comparative Study of Women Trafficked in the Migration Process," *Coalition Against Trafficking in Women University of Massachusetts PO Box 9338* (2002).

<sup>30</sup> *Ibid*

<sup>31</sup> "Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang,"

<sup>32</sup> Lathifah Hanim and Adityo Putro Prakoso, "Perlindungan Hukum Terhadap Korban Kejahatan Perdagangan Orang (Studi Tentang Implementasi Undang-Undang No. 21 Tahun 2007)," *Jurnal Pembaharuan Hukum* 2, no. 2 (2015): 234–44.

<sup>33</sup> Naseh et al., "Karakteristik Pelaku Kejahatan Transnasional Terorganisasi Di Indonesia Dan Eropa." Muhammad Naseh dkk, Karakteristik Pelaku Kejahatan Transnasional Terorganisasi di Indonesia dan Eropa. *Jurnal Hubungan Internasional*. Vol. 8, No. 1/April-September (2019). 48-60. DOI: 10.18196/hi.81144.

<sup>34</sup> *Ibid*.

never-ending. And it is not only targeting individuals but also society.<sup>35</sup> In each series of economic conditions and crimes, the existence of criminal law has a major role to impose sanctions on all forms of crime that occur.<sup>36</sup> This is because the consequences experienced by victims of TIP can be different and vary from one another. In the case of a crime, a victim can suffer losses such as material, physical, psychological, and social. The consequences experienced can also vary, depending on the conditions experienced according to the existing loss group, there may be one or two losses or only part of it or even all of it.<sup>37</sup>

The description above explains how the TIP problem in Indonesia has become a complex problem faced by various parties, so it requires proper handling from the government to reduce or enforce TIP cases. Along with today's developments that cannot be limited that humans will continue to move and move. Movement and displacement, including them, are to migrate. It should be our concern that the needs (of people for migration) are then misused by irresponsible groups. As with other transnational crimes, each country needs to enhance multilateral cooperation and intelligence sharing among state law enforcement agencies at the sub-regional, regional, and international levels.<sup>38</sup> For the sake of both maintaining the stability of the security of one country and another, considering that this transnational crime has become an extraordinary problem that is common and has many parties and countries.

## 2.2. Policies regarding Trafficking in Persons cases in Indonesia

Relation with the high number of migrants from Indonesia caused the high number of TIP cases in Indonesia. The government as an institution that oversees the community, has sought various ways and efforts to handle and overcome transnational crimes especially TIP. Things that can be done to prevent the occurrence of TIP, namely: (a) the existence of a mapping process for TIP in Indonesia with domestic or overseas destinations. (b) an increase in education for the community, especially alternative education for girls, including educational infrastructure (c) an increase in public knowledge by facilitating the public with information related to TIP or matters related to TIP (d) Guarantees are needed regarding efforts to increase the capacity and ability of families, especially women and children, to obtain education, training, income generation and social services.<sup>39</sup>

Efforts made by the government in tackling, handling, and enforcing TIP cases in Indonesia are specifically regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, in which the general section of Article

<sup>35</sup> "United Nation On Drugs and Crime, An Introduction to Human Trafficking: Vulnerability, Impact, and Action. (New York: United Nation Publication)."

<sup>36</sup> Antonio Pele, "La Dignidad Humana: Modelo Contemporáneo y Modelos Tradicionales," *Revista Brasileira de Direito* 11, no. 2 (2015): 7-17.

<sup>37</sup> "Ibrahim Dkk, Implementasi Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang (Studi Kasus Putusan Pengadilan Negeri Bandung No: 806/PID.B/2013/PN.BDG),"

<sup>38</sup> Bruce Bagley, "Globalization and Transnational Organized Crime: The Russian Mafia in Latin America and the Caribbean," *The Political Economy of the Drug Industry: Latin America and the International System*, Gainesville: University Press of Florida, 2004, 261-96.

<sup>39</sup> Tri Wahyu Widiastuti, "Upaya Pencegahan Tindak Pidana Perdagangan Orang (Trafficking)," *Wacana Hukum* 9, no. 1 (2010). Pg. 107-120.

1 paragraph 1 to paragraph 12 is explained starting from the definition to categorization of criminal acts committed and related to TIP. Then Article 1 paragraph 13, paragraph 14, and paragraph 15 it is explained the guarantees obtained by victims of TIP from the state as quoted below:

1. Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, Article 1 paragraph 13 to paragraph 15:
2. (Paragraph 13) Restitution is the payment of compensation imposed on the perpetrator based on a court decision with the permanent legal force for material and/or immaterial losses suffered by the victim or his heirs.
3. (Paragraph 14) Rehabilitation is recovery from disturbances to physical, psychological, and social conditions to be able to carry out their roles again naturally both in the family and in the community.
4. (Paragraph 15) Debt entrapment is the act of placing people in the status or condition of pledging or being forced to pledge themselves or their families or persons who are their responsibility, or their services as a form of debt repayment.

From the law, it is known that there are three important things guaranteed by law for victims of TIP, namely: Restitution, Rehabilitation, and Debt Trap. This is an effort given by the government as a form of fulfilling the rights and guarantees for the rights of its citizens who are victims of TIP. Not only that, Chapter. V related to the protection of witnesses and victims, particularly in Articles 43 to 55, it is explained in detail how the law protects witnesses and victims of TIP.

Besides, Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, there are several regulations governing TIP, both in Indonesia and the world. The Indonesian government's national regulations related to TIP are as follows:

- a. Article 297 of the Criminal Code (KUHP)
- b. Criminal Procedure Code (KUHAP)
- c. Law Number 23 of 2002 concerning Child Protection
- d. Law Number 7 of 1984 concerning Ratification of the Convention Regarding the Elimination of All Forms of Discrimination Against Women
- e. Law No. 26/2000 on Human Rights Court
- f. Law Number 13 of 2006 concerning Protection of Witnesses and Victims
- g. Law Number 39 of 1999 concerning Human Rights
- h. Government Regulation Number 9 of 2008 concerning Procedures and Mechanisms for Integrated Services for Witnesses and/or Victims of the Crime of Trafficking in Persons
- i. Government Regulation Number 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims
- j. Law Number 4 of 1979 concerning Child Welfare

In the international realm, apart from the United Nations (UN), there are organizations under the auspices of the United Nations that specifically deal with TIP. Several organizations or institutions that deal with issues and problems related to TIP, including:

- a. *United Nations High Commissioner for Human Rights (UNHCR)*
- b. *United Nations Against Transnational Organized Crime (UNTOC)*
- c. *United Nations Global Initiative to Fight Human Trafficking (UN.GIFT)*
- d. *United Nations on Drugs and Crime (UNODC)*
- e. *ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP)*

The international regulations related to TIP that were introduced and proposed by organizations or institutions that focus on and care about TIP are as follows:

- a. *United Nations Convention against Transnational Organized Crime, with two protocols relating to transnational crimes in the resolution of the general assembly of PPP 55/25 on 15 November 2000, namely:*
  - a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children Supplementing the United Nations Convention against transnational organized crime.
  - b) Protocol against the Smuggling of Migrants by Land, Air, and Sea, Supplementing the United Nations Convention against Transnational Organized Crime.

To support the enforcement of existing instruments and protocols, UNODC also established the United Nations Global Initiative to Fight Human Trafficking in 2007. One of the ways to do this is to support the capacity of international law to combat human trafficking.

- b. Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts, and Components, and Ammunition, Supplementing United Nations against Transnational Organized crime. Resolution adopted by the UN General Assembly 55/255 on 31 May 2001.
- c. Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution, And Child Pornography
- d. Convention on the Elimination of all Forms of Discrimination Against Women
- e. International Agreement for the suppression of White Slave Traffic.
- f. Convention on the Suppression of Traffick in Women and Children.
- g. Convention of the Suppression of Traffick in Person and the Exploitation of the Prostitution of Others.
- h. International Agreement for the Suppression of White Slave Traffic.
- i. Convention on the Suppression of Traffic in Women and Children
- j. International Convention of the Suppression of the Traffick in Women of full age
- k. Convention of the Suppression of Traffick in Person and the Exploitation of the Prostitution of Others
- l. ASEAN Convention Against Trafficking in Persons, Especially Women and Children atau disingkat ACTIP.

The ratification of this convention is one of the efforts made by the Indonesian government in realizing its commitment together with foreign or cross-border governments, especially to eradicating TIP. With the ratification of this convention, it is hoped that it will increase understanding and cooperation between countries in ASEAN in dealing with TIP. Things that need to be underlined in this convention are:

There are four main elements to ACTIP that strengthen the international response to trafficking in persons, including:

1. Establish a definition of “Trafficking in Persons” which relates to exploitation, forced labor, slavery, and servitude that emphasizes the vulnerability of women and children. Child is defined as any person who is not yet 18 years of age.
2. Offer tools for law enforcement, border control, and courts by requiring countries to:
  - a. Criminalizing trafficking in persons.
  - b. Support the state’s obligation to investigate, investigate and punish perpetrators of trafficking in persons.
  - c. Establish appropriate punishments for convicts/suspects of trafficking in persons.
  - d. Strengthen border control and issuance of travel documents and quality control.
3. Expand the coverage of protection and support from the state for victims and witnesses through:
  - a. Ensure privacy and security.
  - b. Provide information and legal procedures.
  - c. Providing services for physical and psychological recovery.
  - d. Take steps to avoid immediate deportation.
  - e. Guarantee the safe return of victims, and.
  - f. Recognize the special requirements for child victims.
4. Emphasize prevention strategies including providing information and education to victims, law enforcement officers, other government officials, and the public through targeted research and information campaigns including prevention strategies.

One of the results of the implementation of the Indonesian government’s legal protection for victims of TIP is by ratifying law number 7 of 1984 concerning the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, making this law one of the laws devoted to eradicating all forms of women trafficking, exploitation, and prostitution. Apart from ratifying laws for the application and implementation of treaties and ratification of international conventions.

Besides ratifying laws, cross-border cooperation and mutual legal assistance on a bilateral basis have developed following the mandates of the conventions that have been carried out.<sup>40</sup> Ratifying laws following international conventions is part of Indonesia’s adaptation efforts as a developing country to maintain international relations and obtain legal protection.<sup>41</sup>

<sup>40</sup> Roderic Broadhurst, “Transnational Crime in Asia: Illicit Markets and Innovation,” in *Organized Crime and Corruption Across Borders: Exploring the Belt and Road Initiative* (Routledge, 2019). Pg. 73-98. DOI: 10.4324/9780429031045-5.

<sup>41</sup> Agus Suprijanto, “Dampak Globalisasi Ekonomi Terhadap Perekonomian Indonesia,” *CIVIS: Jurnal Ilmiah Ilmu Sosial Dan Pendidikan Kewarganegaraan* 1, no. 2 (2011). Pg. 100-119. DOI: 10.26877/civis.v1i2/Juli.592.

To maximize legal protection efforts for victims of TIP and carry out the mandate of existing regulations, the government established a PP TIP Task Force which is devoted to carrying out efforts to eradicate TIP in Indonesia. The formation of this task force was carried out in 32 provinces in Indonesia and to maximize the role of the TIP task force was also formed at the Regency / City level. Two provinces that have not yet formed a task force are the provinces of Papua and West Papua.<sup>42</sup>

However, the implementation of this convention nationally and globally is still not optimal. Regional integration and law enforcement capabilities are still limited.<sup>43</sup> Implementation at the operational level faces considerable practical and logistical challenges.<sup>44</sup> Likewise, bilateral or multilateral police task forces should be active in carrying out intelligence coordination and analysis.<sup>45</sup> In applying the regulations of the conventions mentioned above, the government also makes other efforts to handle TIP, such as handling victims of TIP following the mandate of Law Number 21 of 2007 Article 1 Paragraph 13 to Paragraph 15 concerning the handling of victims, such as:

- . Funding and managing the Trauma Center Shelter House (RPTC)
- . Partnering with NGOs or NGOs that have concerns about TIP issues or problems
- . Identify and protect victims of human trafficking exploited abroad.
- . Provide an online portal and mobile application for individuals to report exploits or other services.
- . Identify and refer victims of human trafficking from Indonesia abroad for treatment.<sup>46</sup>

With various legal protection and handling efforts carried out by the Indonesian government, it can be said that TIP is one type of crime that has received attention from the global community. However, with so many regulations and efforts, the government still has difficulty controlling the rate of TIP cases that occur in Indonesia. On the other hand, the role and implementation of these regulations still cannot be said to be maximal. Considering that some existing regulations or legal products have not covered all types of treatment that are fully needed by victims of TIP.

For example, in Law Number 7 of 1984 concerning the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women Article 6, in this article, it is stated that State parties are obliged to take appropriate actions, including the making of laws and regulations, to suppress all forms of trafficking in women, and exploitation of prostitution". It only emphasizes the prohibition of trafficking in women,<sup>47</sup> and does not specifically regulate how to protect victims.

<sup>42</sup> "Kedutaan Besar Dan Konsulat Amerika Serikat Di Indonesia. Laporan Tahunan Perdagangan Orang 2021. Accessed on June 21th 2022. <https://id.usembassy.gov/id/our-relationship-id/official-reports-id/laporan-tahunan-perdagangan-orang-2021/>," n.d.

<sup>43</sup> Broadhurst, "Transnational Crime in Asia: Illicit Markets and Innovation." Roederic, G. Broadhurst in T. Wing Lo et., al, Chapter 5: Transnational crime in Asia, Illicit markets and innovation. (Abingdon and New York: Routledge, 2019). 73-98. DOI: 10.4324/9780429031045-5.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> "Kedutaan Besar Dan Konsulat Amerika Serikat Di Indonesia. Laporan Tahunan Perdagangan Orang 2021. Accessed on June 21th 2022. <https://id.usembassy.gov/id/our-relationship-id/official-reports-id/laporan-tahunan-perdagangan-orang-2021/>."

<sup>47</sup> Fadil, "Pengaturan Hukum Internasional Tentang Larangan Perdagangan Perempuan Serta Implementasinya Di Indonesia."

### 2.3. Obstacles on handling TIP cases in Indonesia

How the policymakers handle TIP cases in Indonesia requires a lot of institutions in charge, why it is possible? There are a few institutions handling TIP according to their role in Indonesia, depending on the background. But they are also related to each other, when it comes to TIP that includes several cities, provinces, and nations.

But in practice, the government's efforts to handle TIP in Indonesia are still not optimal. This is because there are technical and administrative obstacles that occur, not only in the field but also in terms of the policy. As previously described, many policies that concentrate on dealing with TIP in Indonesia. However, among the many policies that contain regulations, legislation to ministerial and regional regulations. In practice, it has not been able to eradicate the occurrence of TIP in Indonesia to date. Several factors that cause limited handling or efforts to eradicate TIP in Indonesia.

There are overlapping policies related to the handling of TIP

This happened as was the case with the Law on the placement and protection of Indonesian workers abroad and the Law on the Criminal Act of Trafficking in Persons, where discrepancies were found between the two laws. Whereas these two laws are interrelated where the existence of the law on the placement and protection of Indonesian workers abroad does not hinder the prevention and handling of TIP itself.<sup>48</sup> The two laws are one example of the uncorrelation between the existing laws and regulations. This is certainly one of the obstacles in efforts to handle TIP in Indonesia.

There are difficulties for law enforcement parties such as the Indonesian National Police (Polri) and District Courts in dealing with TIP issues

This is due to the limited scope of existing laws, both the criminal act of trafficking in persons and the law on the protection of Indonesian migrant workers. The law should be one of the most important references in handling both protection and law enforcement for victims, witnesses, and perpetrators of TIP. However, to enforce the Law on the Criminal Act of Trafficking in Persons, the National Police in this case has difficulty conducting investigations due to obstacles in the suspicion or imposition of articles in the law.<sup>49</sup> Therefore, the police are more likely to use the law for the protection of Indonesian migrant workers. While the law on the protection of Indonesian migrant workers brings good things to the law enforcement of TIP, the law tends to be felt weak in the judiciary because the sentences handed down tend to be light.<sup>50</sup>

Formation of a Task Force for the Prevention and Handling of the Crime of Trafficking in Persons

Presidential Regulation of the Republic of Indonesia Number 22 of 2021 concerning Amendments to Presidential Regulation Number 69 of 2008 concerning the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons has not fully contained concrete efforts to prevent and handle TIP that currently exists. It can even

<sup>48</sup> Okky Chahyo Nugroho, "Tanggung Jawab Negara Dalam Penanganan Tindak Pidana Perdagangan Orang," *Jurnal Penelitian Hukum De Jure* 18, no. 4 (2018): 543, <https://doi.org/DOI: 10.30641/dejure.2018.V18>. DOI: 10.30641/dejure.2018.V18.

<sup>49</sup> A Wahyurudhanto, "Kerjasama Antar-Negara Dalam Penanganan Tindak Pidana Perdagangan Orang (TPPO) (Studi Kasus Kerjasama Indonesia-Malaysia)," *Jurnal Ilmu Kepolisian* 13, no. 1 (2019): 16.

<sup>50</sup> *Ibid.* Pg. 81

be said that the existing task force is still merely coordinating.<sup>51</sup> This is stated in the presidential regulation that this task force tends to be coordinating and advocating related to the prevention and handling of TIP in Indonesia.

### 3. CONCLUSION

The development of globalization has a close relationship with the development of crime rates. It is because the current open movement of goods/services, people, and information has resulted in the fusion of barriers between regions and countries. In terms of crimes that occur, easier access and migration provide an opening for certain elements to commit crimes. One of them is a transnational crime, where this transnational crime also develops along with the development of cultural, technological, social, economic, and political exchanges.

The most vulnerable and widespread transnational crime is sexual exploitation, in which victims no longer recognize gender. It can happen to both men and women, children, or adults. Although it was found in several data publications that the most vulnerable to being sexually exploited were women and children. However, it is undeniable that cases of sexual exploitation also occur in men. Perpetrators of sexual exploitation also come from the closest people such as family, husbands, girlfriends, and the social environment nearby. That is why the problem of TIP is not only a concern of government institutions but also anti-TPPO institutions or organizations. including one of them is the formation of a task force to carry out prevention and handling related to TIP. However, these efforts still have their own obstacles for law enforcers in the field.

For this reason, there is a need for synchronization between policies or regulations related to TIP. This is important because, in the effort to handle TIP, clear and strong law enforcement is needed so that it can ensnare TIP perpetrators. This is because in its implementation there are still discrepancies and inconsistencies between existing regulations and their implementation in the field. In this case, government elements or policymakers are involved in the TIP case. One of these gaps is in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, which contains forms of handling that are still considered not strong enough to ensnare and provide a deterrent effect for TIP perpetrators. On the other hand, better advocacy and outreach from government and non-government institutions are needed to prevent TIP cases.

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<sup>51</sup> Nugroho, “Tanggung Jawab Negara Dalam Penanganan Tindak Pidana Perdagangan Orang.”

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