

PREVENTING HUMAN TRAFFICKING IN INDONESIA: THE ROLE OF LEGAL EMPOWERMENT PROGRAMS

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Abstract

Trafficking in persons or human trafficking, especially women and children, must be eradicated because it violates human dignity and human rights. This article examines and explores the root causes of human trafficking, the criminal sanctions, and the decisions of judges/trials on trafficking in persons in Indonesia to prevent trafficking in persons through legal empowerment. It is based on normative legal research, that is, legal research conducted by examining literature or secondary data. The study reveals that there are at least 10 (ten) root causes of trafficking in persons, which occur in various places in the world, including in Indonesia, namely poverty, lack or low level

of education, demand for cheap labor/demand for sex, lack of the implementation of the human rights laws for vulnerable groups, lack of legitimate economic opportunities, Social factors and cultural practices, conflict and natural disaster, trafficking market as a business that generates a large profit, lack of safe migration options, traffickers. There are criminal sanctions against trafficking in persons in Indonesian legislation. This article highlights the importance of the use of legal empowerment in Indonesia to prevent trafficking in persons and address its root causes.

Keywords: Prevention, Human Trafficking, Legal Empowerment

Introduction

Trafficking in persons or human trafficking, especially women and children, is a human security challenge that must be eradicated because it contradicts human dignity, human rights, and international law. This phenomenon has spread in the form of organized and unorganized crime networks, both international and domestic.¹ Thus, it threatens society, nation, and state, as well as norms of life-based on

¹ See Consideration Law of Republic Indonesia 21/2007 on Eradication Human Trafficking Crime. See also Tran Thanh Hung and Le Tien Hoang, *Preventing Human Trafficking in Vietnam through Economic Empowerment Programs*, said that: It is investigated that human trafficking is a growing global problem, especially the trafficking from Asia, Africa, and the Middle East to Europe, International Journal of Criminology and Sociology, 2020, 9, 1-8. Also see United Nations Office on Drugs and Crime, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, said that: The widespread contemporary exploitation of men, women and children is unacceptable to people of conscience the world over. Traditional approaches to preventing trafficking in human beings, to protect and assist trafficked persons and bring criminals to justice have had some small impact on the global phenomenon, but not enough. United Nations, New York, 2008. See also see United Nations Office on Drugs and Crime Vienna, *Global Report on Trafficking in Persons 2020*, said that: Female victims continue to be particularly affected by trafficking in persons. In 2018, for every 10 victims detected globally, about five were adult women and two were girls. About one third of the overall detected victims were children, both girls (19 per cent) and boys (15 per cent), while 20 per cent were adult men. United Nations, New York, 2020.

respect for human rights. The desire to prevent and tackle the crime of trafficking in persons is based on noble values: national and international commitments to carry out early prevention efforts, take action against perpetrators, protect victims, and increase cooperation.²

Indonesia is one of the countries where there is trafficking in persons, both men and women. Girls and boys are trafficked and exploited in a wide range of sexual exploitation (prostitution and pedophilia) and working in rough places with low wages, such as on plantations, laborers, and domestic workers. It now occurs across the country, and there is a trend towards cross-border trafficking. Indonesian victims are trafficked to Malaysia, Singapore, Brunei Darussalam, Taiwan, Japan, the Middle East, and several European countries and regions such as Hong Kong. Indonesia is also a destination country for trafficking in persons from China, Thailand, Uzbekistan, Ukraine, and several other countries, especially for sexual exploitation purposes.³

In general explanation, Law 21/2007 in Indonesia stated that trafficking in persons is also one of the worst forms of treatment for violations of human dignity. The increasing prevalence of trafficking in persons in various countries, including Indonesia and other developing countries, has become a concern for Indonesia as a nation, the international community, and members of international organizations, especially the United Nations (UN). Based on empirical evidence, women and children are the group most commonly victims of

² See consideration Law of Republic Indonesia 21/2007, *Op.Cit.*

³ Icha Rastika, "Indonesia Negara Asal dan Tujuan Perdagangan Orang, Terutama untuk Eksploitasi Seksual", <https://nasional.kompas.com/read/2020/07/30>. See also Fiona David. 2009. "Research on Trafficking in Persons in South East Asia: A Comment on Recent Trends, along with Remaining Gaps and Challenges." Human Trafficking: New Directions for Research, 95. Also Fiona David, 2010. "Labor Trafficking." AIC Reports. Research and Public Policy Series. Also, Fiona David, Pauline David, and Anne T. Gallagher. 2010. "ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases."

trafficking in persons. Victims are trafficked not only for prostitution or other forms of sexual exploitation but also for other exploitation purposes, including forced labor or services, slavery, or practices similar to slavery. The perpetrator of the crime of trafficking in persons recruits, transports, transfers, harbors, or receives persons to trap or exploit the person in the practice of exploitation in all its forms with threats of violence, use of force, kidnapping, forgery, fraud, abuse of power or position vulnerable, or providing payments or benefits to obtain the consent of a person having control over the victim.⁴

Forms of exploitation include forced labor or forced services, slavery, and practices similar to slavery; forced labor or forced services are conditions of work that arise through methods, plans, or patterns intended to make a person believe that if he does not perform specific work, then he or his dependents will suffer both physically and psychologically. Slavery is the condition of a person being under the ownership of another. A practice similar to slavery is the act of placing a person in the power of another. Thus, that person cannot refuse a job that the other person has unlawfully ordered him to do, even though that person does not want it. The crime of trafficking in persons involves not only individuals but also corporations and state administrators who abuse their authority and power. The network of perpetrators of the crime of trafficking in persons has a range of operations not only between regions within the country but also between countries.⁵

According to data from the Ministry of Social Affairs, from 2016 to June 2019, there were 4,906 victims of trafficking in persons in Indonesia. Meanwhile, data from the Online Information System for the Protection of Women and Children of the Ministry of Women's Empowerment and Child Protection shows that from January 2019 to June 2020, there were 155 cases of trafficking in persons with 195

⁴ See General Explanation of Act 21/2007 on Eradication Human Trafficking Crime.

⁵ *Ibid.*

female and child victims, from that number, about 65 percent or 101 cases were sexual exploitation.⁶

Indonesia is a sending or receiving country and a transit country for those trafficked to other countries. Women and children are the most experienced victims of the Crime of Trafficking in Persons. Based on the 2018 Report of the Indonesian National Police Criminal Investigation Agency, in 2018, 70 percent of the 297 victims were female victims; from those, 190 were adult female victims, and 18 were girls. The remaining were male and man victims.⁷

Human trafficking is a growing problem from countries in Asia, Africa to the Middle East, Europe, and North America. Official data show that in Canada, 95% of identified human trafficking victims between 2009 and 2016 were women and girls. Forty-four percent of them were aged 18-24 represented. Girls younger than 18 represented 26 percent of all victims of human trafficking.⁸

This phenomenon has a high prevalence in South Africa as well. According to the US Department of State report published in 2013, it is a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking.

South Africans and foreign nationals are subjected to human trafficking within the country. Children are trafficked mainly within the nation, from poor rural areas to urban centers. Girls are subjected to sex trafficking and domestic servitude; boys are forced to work in street vending, food services, begging, criminal activities, and agriculture.⁹

⁶ Icha Rastika, "Indonesia Negara Asal Dan Tujuan Perdagangan Orang, Terutama Untuk Eksploitasi Seksual," *Kompas.Com* (Jakarta, July 2020), <https://nasional.kompas.com/read/2020/07/30/16564671/indonesia-negara-asal-dan-tujuan-perdagangan-orang-terutama-untuk>.

⁷ Sekretariat Gugus Tugas Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang, *Pencegahan Dan Penanganan Tindak Pidana Perdagangan Orang*, 2018.

⁸ Federal Bureau of Investigation Department of Justice Criminal Justice Information Division, *National Strategy to Combat Human Trafficking 2019-2024* (Canada: Government of Canada, 2019).

⁹ Shaka Yesufu, "Human Trafficking: A South Africa Perspectives," *Journal of Social Sciences and Humanities* 17, no. 6 (July 2020): 103–120.

Human trafficking remains a pressing challenge of human rights violation in the Western Balkan region¹⁰ as well. The region is a source, transit, and destination area of human trafficking. Its increasing trends and fast-changing forms indicate multiple patterns and various types of exploitation. Complex forms of coercion and vulnerability increase the potential risks of becoming victims of trafficking¹¹. Except for Serbia, which is on the Tier 2 Watch list, all its other countries (Albania, Bosnia & Herzegovina, Kosovo, Montenegro, and North Macedonia) are included in Tier 2, meaning that their governments do not fully meet the minimum standards to eliminate the trafficking of human beings but are making significant efforts in this regard¹². According to a recent evaluation of the Council of Europe¹³, the majority of child victims of trafficking identified in this region in 2020 were girls. Most of the victims were trafficked for sexual exploitation and labor exploitation. Compared to other countries in the Western Balkan region, child victims of trafficking remain high in Albania¹⁴. Moreover, the trafficking profile shows that Albanian women are exploited in sex trafficking in other European countries, including Belgium, Germany, the Netherlands, etc.¹⁵

Based on the introduction above, this article will discuss the following three problem formulations: (1) what are the root causes of human trafficking? (2) what are the criminal sanctions and decisions of

¹⁰ Merita H Meçe, “Irregular Migration Flows And Human Trafficking In The Western Balkan Countries: Challenges Of The Convergence Of Counter-Trafficking Response,” *Journal of Liberty and International Affairs* 1 (May 2016): 38–48.

¹¹ Merita H. Meçe, *Risk factors of the irregular migratory waves on the Western Balkan route: Implications in the European Union countries*. In. Balica, E., & Marinescu, V. (eds). *Migration and crime: Realities and media representations*, 2018, 45-67, Palgrave Macmillan, Cham, ISBN 978-3-319-95812-5

¹² United States of America Department of State, *Trafficking in Persons Report* (Department of State, United States of America, 2022).

¹³ Council of Europe, *Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings. Third Evaluation Round, Evaluation Report Albania* (Group of Experts on Action against Trafficking in Human Beings (GRETA), 2020).

¹⁴ Department of State, *Trafficking in Persons Report*.

¹⁵ *Ibid.*

judges/trials on trafficking in persons in Indonesia? (3) how can trafficking be prevented in persons through legal empowerment?

Method

This research method is normative legal research. Normative legal research is legal research conducted by examining literature or secondary data. It includes research on legal principles, legal systematics, vertical and horizontal synchronization, comparative law, and legal history.¹⁶ Primary data are connected with primary legal materials in the form of decisions of the Supreme Court and district court in Indonesia about human trafficking. Meanwhile, the secondary data obtained from the literature was selected and systematically collected to be a reference in performing the analysis. [SEP]

Discussion

Root Causes of Human Trafficking

The root causes of trafficking are various and often differ from one country to another. Trafficking is a complex phenomenon that is often driven or influenced by social, economic, cultural, and other factors. Many of these factors are specific to individual trafficking patterns and the States where they occur. However, many factors are familiar to trafficking in general or found in a wide range of different regions, patterns, or cases. One such factor is that offender exploit the desire of potential victims to migrate to recruit and gain initial control or cooperation, only to be replaced by more coercive measures once the victims have been moved to another state or region of the country, which may not always be the one to which they had intended to migrant.

17

¹⁶ Sorjono Soekanto & Sri Mamuji, *Penelitian Hukum Normatif* (Jakarta: PT Raja Grafindo Persada, 2004), page 23-24.

¹⁷ United Office On Drugs Nations, *Toolkit to Combat Trafficking in Persons*, 6th ed. (Austria: United Nations, 2006).

There is a wide-ranging agreement about the causes of human trafficking. For example, sexual exploitation is caused by an array of factors, including gender inequality, poverty, and lack of education, lack of awareness of trafficking.¹⁸ Others include globalization, lack of employment opportunities, economic imbalances and conflicts among regions, decline of border controls, globalized corruption, rural to urban migration.¹⁹ Similarly, Schloenhardt (2001) indicates that push and pull factors of human trafficking include political, demographic, socioeconomic and environmental nature.²⁰ Among those causes, economic factors are common and primary causes of trafficking is poverty.²¹

Human trafficking happens in every country in the world in many different forms; however, the causes behind human trafficking are essentially the same as labor trafficking, sex trafficking, child trafficking, and all other types of modern-day slavery. A better knowledge of these root causes is necessary to address them at a deeper level and promote sustainable change. The literature identifies ten causes of human trafficking around the world.²²

(1) Poverty.²³ Poverty is among the most significant contributors to human trafficking. It can drive people to become traffickers; it can cause parents to sell children or other family members into slavery. Impoverished people are targeted by traffickers, who offer

¹⁸ Frances P Bernat and Heather C Winkeller, "Human Sex Trafficking: The Global Becomes Local," *Women & Criminal Justice* 20, no. 1–2 (April 2010): 186–192.

¹⁹ Louise Shelley, *Human Trafficking: A Global Perspective* (Cambridge: Cambridge University Press, 2010).

²⁰ Andreas Schloenhardt, "Trafficking in Migrants: Illegal Migration and Organized Crime in Australia and the Asia Pacific Region," *International Journal of the Sociology of Law* 29, no. 4 (December 2001): 331–378.

²¹ Vidyamali Samarasinghe, *Female Sex Trafficking in Asia: The Resilience of Patriarchy in a Changing World*, *Routledge International Studies of Women and Place* (New York: Routledge, 2008).

²² Human Rights Careers, "10 Causes of Human Trafficking," *Human Rights Careers May Be Compensated by Course Providers*, last modified 2020, <https://www.humanrightscareers.com/issues/10-causes-of-human-trafficking/>.

²³ Bernat and Winkeller, "Human Sex Trafficking: The Global Becomes Local."

them a way to earn money when, in fact, they will actually make nothing and be treated as enslaved people. Poverty also plays a large piece in many of the other root causes of trafficking, driving people to migrate, making education and legitimate work challenging to obtain, making recovery and safety from war and disaster impossible, and more.

(2) Lack of education. A lack of education can lead to decreased opportunities for work at a living wage, and it can also lead to reduced knowledge of rights. Both outcomes can cause people to be at a greater vulnerability for human trafficking. The level of public education also dramatically influences the high rate of human trafficking. Education can empower children to make changes in their community. As they grow older, they can avoid situations and vulnerabilities of which traffickers take advantage.

(3) Demand for cheap labor/demand for sex.²⁴ Basic economics tells us that supply and demand must exist for a market to form. The demands for cheap labor and commercialized sex lead to opportunities for traffickers to exploit people. Traffickers can make a large profit by producing goods and services through cheap or free labor and selling the products or services at a higher price. Commercialized sex is a lucrative market that allows traffickers and pimps to become the only profiter from their victims through an endless cycle of buyers and high costs.

(4) Lack of human rights for vulnerable groups.²⁵ In many countries, marginalized groups lack institutionalized human rights, which can make them potential victims of trafficking. Traffickers can prey on them because they lack protection from law enforcement, their families, and even the society they live in. Also, when countries lack fundamental laws regarding human rights, traffickers feel as though they can get away with what they are doing more easily.

²⁴ Shashi Punam and Sandeep SharmaHuman, "Human Trafficking: Causes and Implications," *researchgate* (January 2018), accessed December 7, 2023, <https://ipjc.org/wp-content/uploads/2016/09/USCSAHT%20-%20HT%20and%20Root%20Causes%20module.pdf>.

²⁵ *Ibid.*

(5) Lack of legitimate economic opportunities.²⁶ The lack of legitimate economic opportunities increases the risk of exposure to human trafficking. The most disadvantaged groups in this area are migrants without work permits, those who have a low level of education, and those who have limited job opportunities in rural areas. Moreover, gender-based discrimination and stereotypes of certain ethnic groups to take a job increase their financial insecurity and likelihood of falling into the trafficking trap. Traffickers offer seemingly legitimate jobs to people who cannot get them otherwise, only to lure them into forced labor, sex trafficking, bonded labor, and more.

(6) Social factors and cultural practices.²⁷ In many countries, cultural practices and social factors are a significant cause of human trafficking. In some places, bonded labor is seen as an acceptable way to pay off debt. In other locations, selling children to traffickers is the norm, especially for poorer families in rural areas.

(7) Conflict and natural disaster.²⁸ Conflict and natural disasters can lead to economic instability and lack of human rights, giving traffickers an advantage and making people more vulnerable to human trafficking situations. In conflict zones and wars, some rebel or military groups will use child soldiers and sex slaves. Additionally, both conflict and natural disasters can also lead people to migrate out of their hometowns and home countries. These forced movements make them more deprived, especially if they are looking for work or paying smugglers to get where they want to go. As the economic instability remains high, traffickers have opportunities to offer false job offers to them, leading these people into trafficking situations.

(8) Trafficking generates a large profit.²⁹ One major cause of human trafficking is the large profit that traffickers gain. This is an

²⁶ Shelley, *Human Trafficking: A Global Perspective*.

²⁷Punam and SharmaHuman, "Human Trafficking: Causes and Implications."

²⁸ Maria Gabriella Boria, *Human Trafficking and Natural Disasters: An Empirical Analysis* (Boston: Boston College Electronic Thesis or Dissertation, 2016).

²⁹ Patrick Belser, *Forced Labor and Human Trafficking: Estimating the Profits* (Geneva: International Labor Office, 2005).

incentive for them to continue trafficking people in both forced labor and sex trafficking. Traffickers use forced laborers and bonded laborers; they get cheap labor and can sell their products or services at a much higher cost. Those using sex trafficking can easily take all of the profit, forcing women to make a certain amount each night and keeping them in the situation through drugs, violent force, threats, and more.

(9) Lack of safe migration options.³⁰ Those looking to migrate out of their home countries due to safety concerns or economic opportunities are especially vulnerable to traffickers. Traffickers can use illegal smuggling as a way to trick people into forced labor or sex trafficking. And for migrants looking for jobs in other countries, traffickers typically offer them job opportunities that seem legitimate, only to move them into trafficking situations.

(10) Traffickers.³¹ Above many other factors that cause human trafficking are the traffickers themselves. Beyond cultural practices, profit, vulnerabilities of certain people groups, lack of human rights, economic instability, and more, traffickers are the ones who choose to exploit people for their own advantages. While many of these factors may play into the reasons why traffickers get into the business, they still make a willful decision to enslave people against their will—either because of the profit or because of a belief that certain people are worth less or because of a system of abuse and crime that they were raised in. Trafficking ultimately exists because people are willing to exploit others in trafficking situations.

Criminal Sanctions against Human Trafficking in Indonesia

Criminal Code of Indonesia. (a) Article 297: trafficking of boys and girls immaturity is punishable with a maximum imprisonment of six years. **(b)** Article 324: slave trade with imprisonment for a

³⁰ United Nations Office on Drugs and Crime, *Covid-19 – And the Smuggling of Migrants, (A Call for Safeguarding the Rights of Smuggled Migrants Facing Increased Risks and Vulnerabilities)* (Vienna: United Nations, 2021).

³¹ United States of America Department of State, *Trafficking in Person Report* (Department of State, United States of America, 2019).

maximum of twelve years. **(c)** Article 328: kidnapping people with a maximum imprisonment of twelve years. **(d)** Article 329: bring people illegally for a job with a maximum imprisonment of seven years. **(e)** Article 330: (1) pulling out an immature person under legitimate age can be sentenced to a maximum imprisonment of seven years. (2) Sentenced to a maximum prison of nine years if using deceit, violence, or threats of violence to children under 12 years old. **(f)** Article 332: (1) Imprisonment for a maximum of seven years, kidnap an immature girl. (2) Imprisonment of up to nine years if by deceit, violence, or threats with violence. **(g)** Article 506: pimps take advantage of women's prostitution with confinement for a maximum of one year.³²

Law 21/2007 on Eradication of Human Trafficking Crime.

(a) Article 2 (1):³³ Exploitation of people, punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years, and a minimum fine of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum Rp600,000,000.00 (six hundred million rupiah). **(b)** Article 3: Importing people into Indonesia or exploitation in other countries, punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years, a minimum fine of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum Rp600,000,000.00 (six hundred million rupiah). **(c)** Article 4: Bringing Indonesians people outside Indonesia for exploitation, punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum Rp600,000,000.00 (six hundred million rupiah). **(d)** Article 5: Adoption of children for exploitation punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of not more than 3 (three) years, a minimum Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum

³² *The Criminal Code of Indonesia*, n.d.

³³ This Article has been tested in the Constitutional Court of Indonesia but was rejected in Decision Number 32/PUU-XV/2017.

Rp600,000,000.00 (six hundred million rupiah). **(e)** Article 6: Sending children into and out of the country so that they are exploited, punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum Rp600,000,000.00 (six hundred million rupiah). **(f)** Article 7: (1) If it causes the victim to suffer a severe injury, serious mental disorder, disease, or all kind of infectious diseases that endanger life, pregnancy, or impaired or loss of reproductive function, then the penalty is increased by 1/3 (one third). (2) If it causes the death of the victim, the sentence is a minimum of 5 years, and a maximum is life imprisonment. **(g)** Article 8: For State administrators that conduct the abuse of power that can lead to human trafficking, the punishment will be increased 1 /3 (one-third). **(h)** Article 9: To move other people to commit the crime of trafficking in persons, punished with imprisonment for a minimum of 1 (one) year and a maximum of 6 (six) years. A minimum fine of Rp40,000,000.00 (forty million rupiah) and a maximum of Rp240,000,000.00 (two hundred and forty million rupiah). **(i)** Articles 10 & 11: assisting or conducting experiments or planning or committing a conspiracy to commit the crime of trafficking in persons, punished with the same punishment as the perpetrator. **(j)** Article 12: Exploits victims of the crime of trafficking in persons by having intercourse or other obscene acts with victims of the crime of trafficking in persons, that shall be punished with the same punishment. **(k)** Article 15: In addition to imprisonment, the criminal act of trafficking in persons committed by corporations is a three-time fine and an additional penalty (a) revocation of business license; (b) confiscation of assets resulting from criminal acts; (c) revocation of legal entity status; (d) dismissal of management; and/or (e) prohibition of the management from establishing a corporation in the same line of business. **(l)** Article 16: The crime of trafficking in persons is carried out by organized groups and punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp120,000,000.00 (one

hundred and twenty million rupiah) and a maximum Rp600,000,000.00 (six hundred million rupiah). **(m)** Article 17: If the crime is committed against a child shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum Rp600,000,000.00 (six hundred million rupiah), then the penalty is increased with 1/3 (one third).³⁴

Law 18/2017 on Protection of Indonesian Migrant Workers. Article 79: To give data and incorrect information to fulfill of each document, sentenced to imprisonment for a maximum of 2 (two) years and/or a maximum fine of Rp200,000,000.00 (two hundred million rupiah). Article 80: To put Indonesian Migrant Workers who do not meet the requirements age sentenced to a maximum imprisonment of 3 (three) years and a maximum fine of Rp500,000,000.00 (five hundred million rupiah). Article 81: Individuals who carry out the placement of Indonesian Migrant Workers are sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of Rp5,000,000,000.00 (fifteen billion rupiah). Article 82: Sentenced to a maximum imprisonment of 10 (ten) year and a maximum fine of Rp15,000,000,000.00 (fifteen billion rupiah), every person who give position to Indonesian Migrant Workers on: a. Inappropriate position and type of work with a work agreement to the detriment of the candidate of Indonesian Migrant Workers, b. a job that contrary with rules. Article 83: Everyone who does not meet the requirements: at least 18 (eighteen) years old, competent, physically and mentally healthy, registered and has a social security membership number; and have complete required documents, sentenced to a maximum imprisonment 10 (ten) years or a maximum fine Rp15,000,000,000.00 (fifteen billion rupiah). Article 84: (1) Every official who intentionally dispatches Indonesian Migrant Workers who do not meet the requirements for completeness of documents is sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp1,000,000,000.00 (one billion

³⁴ Law 21/2007 on Eradication of Human Trafficking Crime., Article 2 – 17.

rupiah). (2) Every official who intentionally detains the departure of Indonesian Migrant Workers who have met the requirements for completeness of documents is sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp1,000,000,000.00 (one billion rupiah). Article 85: Sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp5,000,000,000.00 (five billion rupiah), every person who: a. placing Indonesian Migrant Workers in work that is not following the Employment Agreement which has been agreed and signed by the Indonesian Migrant Workers; b. placing Indonesian Migrant Workers in positions that do not match their skills, talents, interests, and abilities. c. Transfer Company License of Placement Indonesian Migrant Workers to the other party. Article 86: Sentenced to a maximum imprisonment of 5 (five) years and a maximum fine of Rp15,000,000,000.00 (fifteen billion rupiah), every person who: a. charges a placement fee component that has been borne by the prospective Employer to the Candidate Indonesian Migrant Workers. b. placing Prospective Indonesian Migrant Workers in certain countries that are declared closed. c. placing Indonesian Migrant Workers without Company License of Placement Indonesian Migrant Workers. d. placing Indonesian Migrant Workers in a country placement destination that does not have laws and regulations that protect foreign workers, does not have a written agreement between the government of the destination country of placement and the government of the Republic of Indonesia, and/or does not have a Social Security and/or insurance system protecting foreign workers.³⁵

Court Decision Against Human Trafficking in Indonesia and the Legal Empowerment Program

There are some decisions of the court as a part of law enforcement regarding human trafficking that occurs in Indonesia as follows:

³⁵ Law 18/2017 on Protection of Indonesian Migrant Workers, article 79 – 86.

1. **Decision Number 178/Pid.B/2018/PN Cjr.** The District Court of Cianjur. **Name & Identity:** SUSI SUSANTI Binti ACEP WIRAYAT. Occupation: household servant. **Decision:** The Defendant SUSI SUSANTI Binti ACEP WIRAYAT, proven legally and convincingly guilty of committing a crime, “Individuals Place Indonesian Migrant Workers,” as in the third Alternative charge. Imprisonment for 2 (two) years and a fine of Rp200,000,000,00 (two hundred million rupiah) provided that if the fine is not paid, then it will be replaced with confinement for 2 (two) months.³⁶
2. **Decision Number 27/Pid.Sus/2019/PN Kpg.** The District Court of Kupang. **Name & Identity:** Benjamin Bria. Occupation: Private. Education: Junior high school. **Decision:** The Defendant BENYAMIN BRIA has been legally and convincingly proven guilty of participating in the criminal act of “trafficking in persons”. Sentencing the Defendant BENYAMIN BRIA because of that with imprisonment for 5 (five) years and a fine of Rp120,000,000,00 (one hundred and twenty million rupiah), which, if the fine cannot be paid, is replaced with imprisonment for 3 (three) months. (3) Determine the period of arrest and detention that the Defendant has served is deducted entirely from the sentence imposed.³⁷
3. **Decision Number 9/Pid.B/2018/PN. Cjr.** The District Court of Cianjur. **Name & Identity:** SITI NURAI DAH Alias ENUR binti ABAS. Occupation: Housewife. **Decision:** To declare that the Defendant is SITI NURAI DAH, or ENUR Binti ABAS, as stated above, has been legally and convincingly proven guilty of committing a crime “Ordering Transportation for the Purpose of Exploitation” person” as the first alternative indictment. Sentencing the Defendant, therefore, with

³⁶ Decision Number: 178/Pid.B/2018/PN Cjr.

³⁷ Decision Number: 27/Pid.Sus/2019/PN Kpg.

imprisonment for 3 (three) years and 6 (six) months and a fine of Rp120,000,000,00 (one hundred and twenty million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 4 (four) months. (3) Determine the period of arrest and the period of detention that has been served. The Defendant is deducted entirely from the sentence imposed.³⁸

4. **Decision Number 215/Pid.Sus/2021/PN.Idm.** The District Court of Indramayu. **Name & Identity:** ANDI SOPANDI or ANDI bin UUM. Occupation: Entrepreneur. Defendant II: Full Name: AIROH or ISMA binti RUSTANDI. Occupation: Entrepreneur. **Decision:** Defendant I ANDI SOPANDI or ANDI bin UUM and Defendant II DAIROH or ISMA binti RUSTANDI have been legally proven and convincingly guilty of committing the crime of "PARTICIPATING" DOING BRINGING INDONESIAN CITIZENS OUTSIDE THE TERRITORY OF THE REPUBLIC OF INDONESIA WITH THE PURPOSE OF EXPLOITED OUTSIDE THE TERRITORY OF THE REPUBLIC OF INDONESIA" as referred to in the first alternative indictment. Sentencing the Defendant, I. ANDI SOPANDI or ANDI bin UUM and Defendant II DAIROH or ISMA binti RUSTANDI because of that with imprisonment for 4 (four) years and 6. respectively (six) months and a fine of Rp200,000,000.00 (two hundred million rupiah) provided that if the fine is not paid, it will or can be replaced with imprisonment for 1 (one) month. Punishing the Defendants jointly and severally paying restitution to the victims in the amount of Rp64,075,867.5 (sixty-four million seventy-five thousand eight hundred sixty-seven rupiah point five cents), no later than 14 (fourteen) days after this decision becomes permanent legal force; if do not pay, your property will be confiscated and auctioned by the Prosecutor to cover the

³⁸ Decision Number: 9/Pid.B/2018/PN. Cjr.

restitution with the following provisions, if the convicts do not have sufficient property then it is replaced with imprisonment for 1 (one) month.³⁹

5. **The Decision of the Supreme Court Number 2272 K/Pid.Sus/2009. Name & Identity:** Muhammad Rizal Bin Hatnin or Mizi or Ezy. Occupation: Labor. Education: Senior High School. **Decision:** to impose a sentence on the Defendant by imprisonment for 7 (seven) years and a fine of Rp120,000,000.00 (one hundred and twenty million rupiah); if the Defendant does not pay the fine, it is replaced with imprisonment for 3 (three) months.⁴⁰
6. **The Decision of the Supreme Court Number 584 K/Pid.Sus/2013. Name & Identity:** SETYO BANTOLO. Occupation: Private. **Decision:** The Defendant, SETYO BANTOLO, has been proven to be legally and convincingly guilty of committing a crime intentionally providing opportunities, means, or information to commit the crime of sending children into or out of the country in any way resulting in the child being exploited. Sentencing the Defendant with imprisonment for 1 (one) year 6 (six months). (3) Imposing a fine of Rp120,000,000.00 (one hundred and twenty million) rupiah; if the fine is not paid, it is replaced with imprisonment for 3 (three) months.⁴¹
7. **Decision Number 362/Pid.Sus/2020/PN Bls.** The District Court of Bengkalis. **Name & Identity:** Supyan or Supiyan or Piyan Muhammad. Occupation: Farmer. **Decision:** the Defendant Supyan or Supiyan or Piyan Muhammad was proven legally and convincingly guilty of committing the crime criminal who commits, who participates in committing acts that have been conducting an experiment by not meeting the

³⁹ Decision Number: 215/Pid.Sus/2021/PN.Idm.

⁴⁰ Decision Number: 2272 K/Pid.Sus/2009. Supreme Court.

⁴¹ Decision Number: Number: 584 K/Pid.Sus/2013. Supreme Court.

requirements as referred to in Article 68, intentionally carrying out the placement of Indonesian migrant workers abroad as stated in the indictment Prosecutor's second alternative. Imposing a sentence to the Defendant, therefore, with a criminal imprisonment for 9 (nine) months.⁴²

Legal empowerment is “the use of law to increase the control that disadvantaged populations exercise over their lives”.⁴³ It is also the use of legal services and related development activities to increase vulnerable populations’ control over their lives.⁴⁴ It empowers them through the use of legal processes.⁴⁵ As a part of legal empowerment program is eliminating or eradicating the root cause of trafficking in persons namely: poverty, lack of education, demand for cheap labor/demand for sex, lack of human rights for vulnerable groups, lack of legitimate economic opportunities, social factors and cultural practices, conflict, and natural disaster, trafficking generates a large profit, lack of safe migration options, traffickers. Besides this, legal empowerment is also carried out through socialization or propagation of criminal sanctions against trafficking in persons as stipulated in the Criminal Code of Indonesia, Law 21/2007 on Eradication of Human Trafficking Crime, and Law 18/2017 on Protection of Indonesian Migrant Workers. And lastly is, the judge's decision in the district court or the supreme court against the perpetrators who carry out human trafficking as a part of legal empowerment.

⁴² Decision Number: 362/Pid.Sus/2020/PN Bls.

⁴³ S Golub and K McQuay, ‘*Legal Empowerment: Advancing Good Governance and Poverty Reduction*’, in *Law and Policy Reform at the Asian Development Bank*, 2001.

⁴⁴ S Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Carnegie Endowment for International Peace Rule of Law Series, No. 41, Democracy and Rule of Law Project (2003).

⁴⁵ L Cotula, *Legal Empowerment for Local Resource Control: Securing Local Resource Rights Within Foreign Investment Projects in Africa* (2007).

Conclusion

This paper used normative legal research to examine the importance of the application of legal empowerment programs to address the root causes of human trafficking in Indonesia. It briefly explained the scale of this phenomenon nationally and internationally, highlighting its dynamic roots. It focused on the Indonesian context where at least 10 (ten) causes are prevalent, namely poverty, lack of education, demand for cheap labor/demand for sex, lack of human rights for vulnerable groups, lack of legitimate economic opportunities, social factors and cultural practices, conflict and natural disaster, trafficking generates a large profit, lack of safe migration options, traffickers.

It also emphasized criminal sanctions against trafficking in persons as stipulated in the Criminal Code of Indonesia, Law 21/2007 on Eradication of Human Trafficking Crime, Law 18/2017 on Protection of Indonesian Migrant Workers, and judge's decision in the district court or the supreme court against the perpetrators who carry out human trafficking. It is clear that referring to several judges' decisions that are seen from the occupation of the accused or perpetrator are household servants, housewives, laborers, private workers, and farmers. They all have underpaid jobs, and the education of convicts or perpetrators is junior high school and senior high school.

Human trafficking prevention through legal empowerment in Indonesia is eliminating or eradicating the root causes of trafficking in persons, socialization, or propagation of criminal sanctions against trafficking in persons. This is stipulated in the Criminal Code of Indonesia, Law 21/2007 on Eradication of Human Trafficking Crime, and Law 18/2017 on Protection of Indonesian Migrant Workers. And lastly, the judge's decision in the district court or the supreme court against the perpetrators who carry out human trafficking as a part of legal empowerment.

It is hoped that the root causes of human trafficking, namely poverty, lack of education, demand for cheap labor/demand for sex,

lack of human rights for vulnerable groups, lack of legitimate economic opportunities, social factors and cultural practices, conflict, and natural disaster, trafficking generates a large profit, lack of safe migration options, traffickers, need to be continuously known and disseminated so that everyone can be aware of them. This will limit their possibility of falling into a trafficking trap.

It is recommended that the criminal provisions for trafficking in persons need socialization. To be carried out precisely with a particular focus on job and education, outreach work should be increased to directly draw their attention to legal provisions that support their rights enshrined in their domestic law and other legal frameworks.

It is recommended to eliminate or eradicate the root cause of trafficking in persons, socialization or propagation of criminal sanctions against trafficking in persons as stipulated in the Criminal Code of Indonesia, Law 21/2007 on Eradication of Human Trafficking Crime, and Law 18/2017 on Protection of Indonesian Migrant Workers, and lastly is the judge's decision in the district court or the supreme court against the perpetrators who carry out human trafficking as a part of legal empowerment. Based on several judges' decisions, it is clear that it is seen from the occupation of the accused or perpetrator are household servant, housewives, laborer, private workers, and farmers, all of which are low-level jobs, as well as the education of convicts or perpetrators are junior high school, and senior high school, is carried out by increasing everyone's legal awareness so that trafficking in persons does not occur again.

References

Book

- Belser, Patrick, *Forced Labor and Human Trafficking: Estimating the Profits*, International Labor Office Geneva, March 2005.
- Boria, Maria Gabriella, *Human Trafficking and Natural Disasters: An Empirical Analysis*, Boston College Electronic Thesis or Dissertation, 2016.
- Council of Europe, *Access to Justice and Effective Remedies for Victims of Trafficking in Human Beings. Third Evaluation Round, Evaluation Report Albania*. Group of Experts on Action against Trafficking in Human Beings (GRETA), 2020, Council of Europe.
- Department of State, United States of America, *Trafficking in Person Report*, June 2019.
- Department of State, United States of America, *Trafficking in Persons Report 2022*, United States Department of State (2022).
- Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Division, *2019 Crime in The United States, Human Trafficking, 2019*. Also see Government of Canada, *National Strategy to Combat Human Trafficking 2019-2024*.
- FATF Report, *Financial Flows from Human Trafficking*, July 2018.
- Samarasinghe, Vidyamali. *Female sex trafficking in Asia: the resilience of patriarchy in a changing world*, *Routledge international studies of women and place*. New York: Routledge, 2008.
- Soekanto, Soerjono. *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. Jakarta: PT. Raja Grafindo Persada, 2008.
- Shelley, Louise. *Human Trafficking: A Global Perspective*. Cambridge: Cambridge University Press, 2010.
- Sekretariat Gugus Tugas Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang, *Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang*, Report 2018.
- United Nations Human Rights, Office of the High Commissioner, *Human Rights and Human Trafficking*, Fact Sheet No. 36, New

York and Geneva, 2014.

United Nations Office on Drugs and Crime Vienna, *Global Report on Trafficking in Persons 2020*, United Nations, New York, 2020.

United Nations Office on Drugs and Crime, *Covid-19 – And the Smuggling of Migrants, (A Call for Safeguarding the Rights of Smuggled Migrants Facing Increased Risks and Vulnerabilities)*, United Nations, Vienna, 2021.

U.S. Department of Health and Human Services, Administration for Children and Families, Office on Trafficking in Persons (OTIP), *Trafficking Prevention and Disaster Respond*, February 2018.

Book Chapter

Meçe, Merita H. “Risk Factors of the Irregular Migratory Waves on the Western Balkan Route: Implications in the European Union countries. In Balica, E., & Marinescu, V. (eds). *Migration and Crime. Realities and Media Representations* (2018): 45-67, Palgrave Macmillan Cham. ISBN 978-3-319-95812-5.

Journal Article

Bernat, Frances P. and Heather C. Winkeller. “Human Sex Trafficking: The Global Becomes Local.” *Women & Criminal Justice* 20, (2010): 186–192. doi: <https://doi.org/10.1080/08974451003641545>.

Hung, Tran Thanh and Le Tien Hoang. “Preventing Human Trafficking in Vietnam through Economic Empowerment Programs.” *International journal of criminology and sociology* 9, (2020): 1-8.

Meçe, Merita H. “Irregular Migration Flows and Human Trafficking in the Western Balkan Countries: Challenges of the Convergence of Counter-trafficking Response”. *Journal of Liberty and International Affairs* 1 (Supp. 1), Special Issue (2016): 38-48.

Punam, Shashi & Sandeep Sharma, *Human Trafficking: Causes and implications*, See discussions, stats, and author profiles for this

publication at:

<https://www.researchgate.net/publication/338457522>;

Schloenhardt, A. "Trafficking in migrants: Illegal migration and organized crime in Australia and the Asia Pacific region." *International Journal of the Sociology of Law* 29, (2001): 331-378. doi: <https://doi.org/10.1006/ijsl.2001.0155>.

Shaka Yesufu, *Human Trafficking: A South Africa Perspectives*, *Journal of Social Sciences and Humanities*, Vol. 17. No.6 (2020), 103-120. ISSN: 1823-884x

Temesgen, Gabrie. *Root Causes and Solutions to Human Trafficking in Ethiopia*, *International Journal of Science and Research (IJSR)*

Weitzer, Ronald *Modern slavery and human trafficking*, 2020.:

Legal Document

Indonesia. The 1945 Constitution.

_____The Criminal Code of Indonesia.

Law 21/2017 on Eradication of Human Trafficking.

Law 18/2017 on the Protection of Indonesian Migrant Workers.

Case Law/Decision of The Court

Decision the Constitutional Court of Indonesia Number 32/PUU-XV/2017.

Decision of The District Court of Cianjur Number: 178/Pid.B/2018/PN Cjr.

Decision of The District Court of Kupang Number: 27/Pid.Sus/2019/PN Kpg.

Decision of The District Court of Cianjur Number 9/Pid.B/2018/PN. Cjr.

Decision of The District Court of Indramayu Number: 215/Pid.Sus/2021/PN.Idm.

Decision of Supreme Court Number: 2272 K/Pid.Sus/2009.

Decision of Supreme Court Number: 584 K/Pid.Sus/2013.

Decision of The District Court of Bengkalis Number: 362/Pid.Sus/2020/PN Bls.

Website

Association of Southeast Asia Nations, “ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases,” https://www.unodc.org/documents/human-trafficking/ASEAN_Handbook_on_International_Legal_Cooperation_in_TIP_Cases.pdf

Association of Southeast Asia Nations, “Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region.” <https://documentation.lastradainternational.org/laidocs/progress%20report%20ASEAN.pdf>.

David, Fiona. “*Research on Trafficking in Persons in South East Asia: A Comment on Recent Trends, along with Remaining Gaps and Challenges.*” https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/wdbdav/shared/shared/mainsite/microsites/IDM/workshops/ensuring_protection_070909/human_trafficking_new_directions_for_research.pdf

_____. AIC Reports. Research and Public Policy Series. “*Labor Trafficking.*” <https://www.aic.gov.au/publications/rpp/rpp108>.

Human Rights Careers. “10 Causes of Human Trafficking.” <https://www.humanrightscareers.com/issues/10-causes-of-human-trafficking/>

Rastika, Icha. “Indonesia Negara Asal dan Tujuan Perdagangan Orang, Terutama untuk Eksploitasi Seksual.” <https://nasional.kompas.com/read/2020/07/30/16564671/indonesia-negara-asal-dan-tujuan-perdagangan-orang-terutama-untuk->

United Nations Office on Drugs and Crime, “Toolkit to Combat Trafficking in Persons” [https://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook\[1\].pdf](https://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook[1].pdf)

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