

Trafficking in Persons in Indonesia: A Review on Current Anti-Trafficking Legislation Development

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Abstract

Trafficking in persons has become a global phenomena, including within Indonesia. Even now, Indonesia is identified as a source, transit, and destination country for victims of trafficking in persons for the purposes of forced labor and commercial sexual exploitation. The victims include women, children, and men. However, Indonesia is committed to preventing trafficking in persons, punishing offenders, and protecting victims of trafficking. Towards this end, Indonesia is taking many strategic and practical steps to eradicate trafficking in persons; including enacting current specific anti-trafficking law to cope with this type of crime; i.e., Law No. 21 of 2007 on the Eradication of Criminal Act of Trafficking in Persons. This article examines the development of anti trafficking legislation in Indonesia, including international instruments, prior legislation, and current legislation adopted in coping with the criminal act of trafficking in persons. The results would provide more undertsnading pertaining to trafficking in persons in Indonesia and the development of acts adopted by the country in adressing this criminal act.

Keywords: Indonesia, trafficking in persons, legislation development

1. Introduction

Trafficking in persons (hereafter TIP) has received increasing global attention over the past decade. TIP is a modern form of human slavery and a severe human rights violation. The majority of identified victims of TIP are women and children, many of whom are deceived by perpetrators with false promises of a better life. Victims of TIP experience a wide range of abuse, including physical, psychological and sexual violence (IOM, 2010). Therefore, TIP is not only concerned with a human rights violation, it also bears serious health implications, including reproductive and sexual health consequences, and sexually transmitted infections (IOM, 2010). Initially, TIP is simply related to trafficking in women and girls for forced sex exploitation and domestic servitude. Today, there is recognition that women, children and men are trafficked into many different forms of labour, and for sexual exploitation (WHO, 2012).

At global level, it is estimated that the minimum number of TIP victims at any given time is 2.5 million. TIP victims are spreading in many regions, particularly in Asia and the Pacific, followed in industrialized countries, in Latin America and the Caribbean, in the Middle East and Northern Africa, in countries with economies in transition, and in sub-Saharan countries (UNODC, 2008). Meanwhile, the US government estimates approximately 800,000 people are trafficked across national borders annually. This does not include the millions trafficked within their own countries (USDOS, 2014).

In South East Asia, there are also many countries used as origin, transit and destination countries for TIP. Many victims are frequently sent to countries in Western Europe, North America, Asia, and to other regions of the world. Trafficking of young girls from South-East Asian countries for commercial sexual exploitation is a common form of TIP the region. This type of TIP is taking place either between countries or within countries. There are also indications that there is trafficking of young girls to the Middle East as well as other destinations for the purpose of sexual exploitation (UNODC, 2008).

Although there are no definite numbers of victims, it is estimated that 200,000 women are trafficked annually in South East Asia (Emmers, 2004). IOM (2010) also figure out that every year, approximately 300,000 to 450,000 people are trafficked within Asia, with more than half taking place in South East Asia. In particular, IOM (2010) estimates that 200,000-250,000 women and children in South East Asia are trafficked into sex work each year. Within this region, Indonesia is identified as a place of source, transit and destination for sex work, with a large number of women trafficked into domestic servitude or essentially becoming slaves due to “debt bondage”

Indonesia and governments around the world recently are working hard to eradicate TIP. It is not only because of the personal and psychological toll it takes on society, but also because it facilitates the illegal movement of immigrants across borders and provides a ready source of income for organized crime groups and even terrorist through intricate money laundering schemes (UNODC, 2014). Although women, men and children may all be trafficked for various purposes, reports on TIP suggests that those who are trafficked are more likely to be women and children. Current evidence indicates that men and boys are more commonly trafficked for various other forms of labor which is differ by country or region (WHO, 2012).

May efforts to eradicate TIP have been made through international treaty law, centered on the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (hereafter the UN Protocol). The UN Protocol requires states parties to take the necessary measures to criminalize the offense of TIP, prevent TIP, protect and assist victims of TIP, and promote international cooperation to eradicate TIP. Despite this protocol prohibition against TIP, the responses to TIP cases differ in the various countries and the different regions of the world (Mattar, 2002). In addition, definitions of TIP vary in practice within and among sectors involved with policy, service entitlements, criminal justice and research (WHO, 2012).

Indonesia also considers TIP as a serious criminal act and commits itself to the fight against TIP. This includes commitments to work together to prevent human trafficking, to identify and protect the victims, and to ensure that offenders are sentenced. Towards this end, Indonesia is working hard to put these commitments into action (IOM, 2005). This, it has done by enacting Law No. 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons (here after LECATIP). This paper aims at reviewing the development of anti trafficking legislation in Indonesia, particularly LECATIP. This include, for example, understanding the prohibited acts contained in LECATIP and the sentence threatened to the offender.

2. Anti-Trafficking Legislation Development

2.1 Overview of TIP in Indonesia

Indonesia is primarily a country of origin for trafficking in women and children. Indonesian women and children are trafficked to Southeast Asia, East Asia, the Middle East, Australia, North America, and Europe (Protection, 2009). In particular, the US government claims that many Indonesian women and girls are trafficked to Malaysia, Taiwan, and the Middle East where they are subjected to forced labor in prostitution and domestic servitude (USDOS, 2015).

Although TIP is often identified as a cross-border crime, TIP also occurs within national boundaries, known as domestic TIP (Efat and Anisuzzaman, 2015). Rosenberg (2003) claims that domestic TIP is also a major issue within Indonesia. The victims of TIP, especially women and children, are subject to problems of exploitation. This includes violations of labor rights, unsafe working conditions, physical, psychological and sexual abuse, illegal confinement, withholding of identification and immigration documents, debt bondage, reduced or withheld wages, deceit about conditions or type of work, and detention and imprisonment. In addition, the victims are trafficked for the purposes of commercial sexual exploitation, as domestic workers, child brides, and child laborers (UNICEF, 2006). The US government estimates many Indonesian women and girls are exploited in domestic servitude and sex trafficking. Many victims are exploited in prostitution in the Batam district of the Riau Islands province and in West Papua province, as well as are subjected to sex trafficking near mining operations in Maluku, Papua, and Jambi provinces (USDOS, 2015).

Apart from being a country of origin, recent evidence indicates that Indonesia is now regarded as a transit and country of destination of TIP. There have been reports concerning the presence of foreign women who enter Indonesia as commercial sex workers (UNICEF, 2006). Reports on TIP have exposed the presence of foreign women from neighboring countries, China, East Asia, and several European countries working in prostitution (Protection 2009). According International Labor Organization (ILO), TIP in Indonesia prevails due to several factors including rural poverty, lack of access to quality education, gender inequality in the labour market and distribution of resources, family expectations toward daughters' household income contribution, lack of enforcement of relevant laws, and increasing materialism and consumerism in rural areas (ILO, 2004).

As for Indonesian migrants, reports on TIP demonstrate migrate abroad for work in a variety of industries, including manufacturing, agriculture, construction and domestic work. Yet, they are particularly vulnerable to labour exploitation and human rights violation. Labour exploitation can involve abusive working conditions where an employee is forced to work, wage manipulation, excessive working days or hours, and low salary. This

labour exploitation can result from TIP where a person has been recruited, transferred or received, by means of threat, coercion or deception, for the purpose of exploitation. Such a condition can be partly attributed to high levels of undocumented labour migration and illegal practices by labour agents, as well as abuse among employers of domestic workers in some countries (Andreovski and Lyneham, 2014).

With respect to trafficking in children, current evidence indicates that TIP practices, especially especially child trafficking, can be found in many border areas with neighboring countries, such as Riau, Medan, and West Kalimantan provinces. Child trafficking is also happen in big cities such as Jakarta, Surabaya and Semarang. Even in small towns, child trafficking is prevalent, especially in areas of tourism destination. Such a social phenomenon is of course of concern of many parties, considering the victims is under suppressed, always under a pimp supervision, and get a law income (Sulistiyo, 2012).

Government response is crucial in coping with TIP. Effective response to TIP typically encompasses prevention, protection and prosecution approaches. While the Government of Indonesia has improved its response, efforts are falling short, particularly when addressing labour trafficking and in overall prevention and prosecution mechanisms. Since 2002 Indonesia has moved up from a Tier Three classification to Tier Two in 2007 after the enactment of LECATIP, and it presently remains (IOM, 2010).

2.2 Prior Legislation

TIP in Indonesia is one of the crimes that should be discussed today. Before the LECATIP was enacted in 2007, lawyers in Indonesia used Law No. 23 of 2002 on Child Protection and some articles in the Indonesian Penal Code. In addition, the lawyers used other TIP-related laws such as Law No. 23 of 1999 on Health, Law No. 1 of 1979 on Extradition, and Law No. 39 of 1999 on Human Rights. However these laws still lots of insufficiency to solve TIP cases in Indonesia (Lolo, 2014). According to Coordinating Ministry for People's Welfare (CMPW), there were several articles in the KUHP, which entered into force in 1918, that could be used to prosecute some acts of TIP. Article 297 of the Penal Code, for example, specifically prohibits trafficking in women and minors of the male sex. Meanwhile, current evidences demonstrate that the victims of TIP involve women, children (boys and girls), adult men, and babies. It means that adult men were not within the category of the victims protected by Article 297 of the Penal Code. Therefore, the article should be extended and does not define victims as only women and minors of the male sex. In addition, the article limits its scope to sexual exploitation. As such, the article can only criminalize TIP when victims are used for activities that in essence are sexual exploitation, not for other forms of exploitation such as forced labor, domestic servitude, and as illegally adopted children and babies (CMPW, 2005).

Another issue concerning Article 297 of the Penal Code is the definition of underage for the trafficked children. As mentioned above, none of the articles contained in the Penal Code explicitly state that victims must be underage. Hence, some articles simply specify that victims must be underage, while other articles specifically state age 12, 15, 17. Under Law No. 3 of 1997 on Juvenile Court, a child is defined as a person that has reached the age of 8 but not yet 18 years old and he/she has never entered into a marriage. In other world, a person below 18 years old who got married means that he/she is no longer categorized as a child. Meanwhile, under Law No. 23 of 2002 on Child Protection, a child is defined as a person that has not reached the age of 18, including unborn children. Therefore, there is a need one definition and one explicit provision for this age issue (CMPW, 2005). Further, Article 324 of the Penal Code can also be used for prosecuting some of trafficking in persons acts. In particular, this article prohibits acts that can be categorized as TIP. Yet, the object is specifically stated "trade slaves". Therefore, the application of this article is very limited (CMPW, 2005).

Another important foundation in the development of sentencing TIP in Indonesia was Law No. 39 of 1999 on Human Rights, passed in 1999. The existing articles concerning TIP include Article 1, 3, 4, 20, 65, and 71. Hence, for example, Article 1 of the law states that every child has the right to receive protection from exploitation and sexual harassment, abduction, child trafficking, and from various forms of misuse of narcotics, psychotropic drugs, and other addictive substances. Meanwhile, Article 20 of the law states that no one shall be subjected to slavery or servitude. Slavery or servitude, slave trade, women trafficking, and any acts in any forms that has similar intention, shall be forbidden (UNICEF, 2006).

Furthermore, Law No 23 of 2002 on Child Protection can also be used to prosecute traffickers as regulated in Article 83 and Article 88. In this perspective, Article 83: "Anyone who traffics, sells, or abducts children for his/her own benefit or for sale, is liable to a maximum imprisonment of 15 (fifteen) years and a minimum imprisonment of 3 (three) years and a maximum fine of IDR 300,000,000 (three hundred million rupiahs) and a minimum fine of IDR 60,000,000 (sixty million rupiahs). Meanwhile, as enshrined in Article 88 of the Law,

anyone who commits economic or sexual exploitation against children, with an intention to benefit himself/herself or another person, is liable to a maximum imprisonment of 10 (ten) years and/or a maximum fine of IDR 200,000,000 (two hundred million rupiahs). However, the scope of this law is limited only to children, meaning that traffickers, whose victims are not children, cannot be charged with this law (CMPW, 2005).

In sum, before LECATIP was enacted, TIP was indeed regulated in Indonesian legislation. However, the existing regulations were considered as far from adequate and could not be used to criminalize all acts within the current definition. In addition, many legal processes have been taken to eradicate TIP and took offenders to court. However, many law enforcers have complained on impediments from legislations that have made the punishments inflicted against the offenders not really severe and did not serve as deterrent to them (CMPW, 2005).

2.3 Current legislation

Considering prior legislation relating to TIP is not capable of providing a comprehensive and integrated legal basis for the eradication of such criminal acts, the Government of Indonesia enacted LECATIP in 2007. This law adopts a comprehensive approach to addressing trafficking in persons (UNICEF, 2006).

2.3.1 *Understanding the Definition of Trafficking in Persons*

The definition of TIP as contained in LECATIP reflects the term's definition set out under the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (IOM, 2009). In this perspective, the definition of TIP can be found in Article 1 of LECATIP (IOM, 2009): i.e. "Trafficking in Persons shall mean the recruitment, transportation, harboring, sending, transfer, or receipt of a person by means of threat or use of force, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within the country or cross-border, for the purpose of exploitation or which causes the exploitation of a person".

To assist in understanding the definition of TIP as provided under Article 1 of LECATIP, the definition can be broken down into three key elements: the act, the means, and the purpose (IOM, 2009). LECATIP specifies that "the act" means the recruitment, transportation, harboring, sending, transfer, or receipt of a person. In this perspective, not all of the elements specified have to be met (IOM, 2009). "The means" is concerned with the method used to lure the victim. Possible means are the threat or use of force, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within the country or cross-border. In this perspective, not all of the methods described must be used. The use of only one element would qualify (IOM, 2009). "The purpose" refers to the purpose of exploitation or which causes the exploitation of a person. Exploitation includes but is not limited to prostitution, forced labour or service, slavery or practices similar to slavery, repression, extortion, physical abuse, sexual abuse, abuse of the reproductive organs, or the illegal transfer or transplantation of body organs or the use of another persons' labour or ability for one's own material or immaterial profit. The purpose of exploitation, it should be understood that exploitation does not need to actually occur. If the intention to exploit the victim can be proven, the perpetrator can already be indicted under the Law (IOM, 2009).

2.3.2 *Principles of Sentencing*

Referring to Article 1 (1) of LECATIP, TIP is concerned with the recruitment, transportation, harboring, sending, transfer, or receipt of a person by means of threat or use of force, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within the country or cross-border, for the purpose of exploitation or which causes the exploitation of a person. Meanwhile, the criminal act of TIP could be referenced as any crime or series of crimes which meet the qualifications set out in LECATIP (MWE, 2010).

Based on the definition above, it was known that there are two elements of the criminal offense in TIP. The first element is acts relating to the recruitment, transportation, harboring, sending, transfer, or receipt of a person, and the second is the use of threat or force, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. Furthermore, LECATIP distinguish the crime of trafficking into two: criminal act of TIP and other criminal actions relating to the criminal act of TIP. The provisions on act of

TIP is contained in Article 2 to Article 9 (Chapter II), while provisions on other criminal actions relating to the criminal act of TIP is listed in article 19 to article 24 (Chapter III). Meanwhile, as enshrined in Article 1 (5) and Article 1 (5) of LECATIP, subject to law on TIP involves individual and corporate. In this perspective, individual refers to an individual or corporate entity who commits the criminal act of TIP while a corporate entity refers to an organized group of persons and/or assets, whether constituting a legal entity or a non-legal entity (MWE, 2010).

It is important to note that LECATIP was made based in the respect of human right principles. As such, LECATIP does not allow for the death penalty to be sentenced on traffickers, meaning that the right to life of the trafficker is respected. However, LECATIP considers TIP as an extraordinary crime; provides severe sentence for offenders, including a cumulative sentence. In particular, LECATIP provides two types of sentences: primary sentence and cumulative sentence. Primary sentence includes imprisonment and fine. Imprisonment sentence ranged from 3 years imprisonment to 15 years imprisonment. Fine sentence varied between IDR 120,000,000 and IDR 600,000,000. This provision applies to Article 2 (1), Article 2 (2), Article 3, Article 4, Article 5, Article 6, Article 10, Article 11, Article 12, and Article 21(3). Sentence for criminal act of TIP provided under Articles 2, 3, 4, 5, 6, 7, 8 and 9 (Chapter 2) shall be applied cumulatively. Sentence for other criminal actions relating to the criminal act of trafficking in persons, from Article 19, 20, 21, 22, 23, and 24 (Chapter 3) is also applied cumulatively. In this perspective, offenders not only be imposed by imprisonment sentence but a fine sentence will also be determined. This includes offenders who are sentenced to life imprisonment. Fine sentence varied between IDR 200,000,000 and IDR 5 billion (Article 7 (2)) (MWE, 2010).

Furthermore, LECATIP also provide an increased sentence. In this perspective, criminal act of TIP are subject to an increased sentence for the following conditions. If the act causing the victim to suffer major injury or major mental disturbance, to contract a life-threatening contagious disease, to become pregnant, or damage or loss to her/his reproductive organs, as defined in Article 7 (1), the applicable sentence will be added by 1/3 (one-third) of the sentence provided under Article 2 (2), Article 3, Article 4, Article 5, and Article 6 (IOM, 2009). Furthermore, as stipulated in Article 7 (2), if the criminal act results in the death of the victim, the applicable punishment is by prison sentence of a minimum period of five years and a maximum of a life term and a fine amounting to a minimum of IDR 200,000,000 and a maximum of IDR 5,000,000,000 (IOM, 2009). As for criminal act of TIP committed by a state official, under Article 8 (1), the applicable sentence will be added by 1/3 (one-third) of the sentence provided under Article 2 (2), Article 3, Article 4, Article 5, and Article 6. In addition, the offender may be punished with the additional criminal sanction of dishonorable discharge from his/her position, as Article 8 (2) stipulates (IOM, 2009).

Furthermore, increased sentence is also applicable to corporate entities. In this perspective, Article 15 (1) stipulate that in the case where the criminal act of TIP is committed by a corporate entity, in addition to the sentence and fine imposed on the management, a sanction can be imposed on the entity in the form of [an additional] fine amounting to 3 (three) times the amount of fine as provided under Articles 2, 3, 4, 5 and 6. Meanwhile, Article 15 (2) stipulates that a convicted corporate entity may be subject to revocation of its business license, confiscation of proceeds derived from the crime in question, revocation of status as a legal entity, dismissal of the management, and prohibition on the management to establish another corporate entity within the same line of business (IOM, 2009).

Besides, increased sentence is also applicable to organized groups. As enshrined in Article 16, in cases of the criminal act of TIP is committed by an organized group, the applicable sentence will be added by 1/3 (one-third) of the sentence provided under Article 2. This provision applies to each of the offenders in such group. Increased sentence is also applicable if the criminal act described under Articles 2, 3, and 4 is committed against a child. In this perspective, the applicable sentence shall be increased by 1/3 (one-third), as Article 8 (2) stipulates (IOM, 2009).

3. Conclusion

The Government of Indonesia considers that TIP constitutes a crime which violates human dignity and respect and human rights. Hence, TIP is concerned with the recruitment, transportation, harbouring or receipt of people for the purposes of exploitation. Apart from being a country of origin, Indonesia is now identified as a transit and country of destination of TIP. TIP in Indonesia has escalated to take the form of organized and non-organized crime networks having a global as well as a domestic scope. It poses a threat against society, the people and the country, and also against human rights principles, therefore should be eradicated.

TIP eradication in Indonesia shall be undertaken comprehensively through law enforcement mechanisms.

Therefore, in 2007, the Government of Indonesia enacted Law No. 21 of 2007 on ECATIP. With the enactment of the law, it is hoped that Indonesian law enforcement officials are able to cope with TIP issues occurred. In particular, the enactment of the law would create an effective mechanism in preventing and countering the criminal act of TIP based upon noble values as well as commitments to undertake efforts to effect prevention, prosecution of perpetrators, protection for victims, and enhancement of collaborations.

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