

# Overview of Current Legislation and Its Supporting Legislations Concerning Trafficking in Children In Indonesia

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## Abstract

Child trafficking is alarming in Indonesia. The country is recognized as a country of origin, transit and destination for victims of trafficking in children. Many of Indonesian young girls are trafficked to Southeast Asia, East Asia, the Middle East, as well as trafficked to Australia, North America, and Europe. Many of the victims are subjected to sexual exploitation and servitude. In addition, domestic trafficking in children is also a major issue within Indonesia. The victims are subject to violations of human right, unsafe working conditions, and sexual abuse. Considering current legislations on criminal act of trafficking in children is not capable of providing a comprehensive and integrated legal basis for the eradication of the crime, the Government of Indonesia enacted the current legislation: i.e., Law No. 21 of 2007. Today, every person involved in trafficking in persons shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of IDR 120 million and a maximum of IDR 600 million. The current legislation recently has been equipped with its implementing regulation, namely Government Regulation No. 9 of 2008 and Presidential Regulation No. 69 of 2008.

**Keywords:** trafficking in children, current legislation, supporting legislation

## 1. Introduction

Trafficking in persons, especially women and children, has received increasing global attention over the past decade. Trafficking in persons is widely recognized as a modern form of human slavery and human rights violations are severe. Global figures revealed that the majority of victims of human trafficking are women and children. Many trafficking victims are trapped by the perpetrator who offers false promises of a better life. In fact, trafficking victim subjected to various abuses. This includes physical, psychological and sexual violence. In general, trafficking in persons is simply related to trafficking in women and children for forced sex exploitation and domestic servitude. Nonetheless, there is a tendency that, in some regions, women and children are also trafficked into various forms of forced labor and for sexual exploitation (IOM, 2010; WHO, 2012).

Globally, the number of trafficking victims is approximately 2.5 million a year. Trafficking victims were scattered in various regions including in Asia and the Pacific, in the industrialized countries, Latin America and the Caribbean, the Middle East, North Africa, and sub-Saharan countries (UNODC, 2008). In this perspective, approximately 800,000 people are trafficked across national borders a year and millions of people are trafficked within their own countries (USDS, 2014). In South East Asia, some regions are identified as origin, transit and destination regions for trafficking in persons, especially trafficking in children. As an origin of trafficking in children, victims are trafficked across South East Asia. The broad dispersion of South East Asian victims has been evident for several years. As a destination of trafficking in children, South East Asian countries are mainly affected by domestic trafficking in children or trafficking in children from the neighboring countries (UNODC 2014). In this perspective, trafficking in children could be conceptualized as the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation; whereas a child is defined as a person under the age of 18 years (ECPAT, 2014). Trafficking in children, especially young girls, from South-East Asian countries for commercial sexual exploitation is prevalent in the region. Trafficking in children is taking place either between countries or within countries (UNODC, 2008).

According to Emmers (2015), approximately 200,000 women and children are trafficked annually in South East Asia. This is in line with IOM (2010) who estimates that approximately 300,000 to 450,000 women and children are trafficked a year within Asia. More than half of this crime taking place in South East Asia. Although women and children maybe trafficked for various purposes, current evidence indicates approximately 200,000 to 250,000 women and children are trafficked annually into sex work. Within South East Asia region, UNODC (2014) identifies Indonesia as a significant origin and destination for sex work. In this perspective, many women and children are trafficked into sex work and domestic servitude due to debt bondage.

Many efforts to eradicate trafficking in children by Indonesia and governments around the world through international treaty law, centering 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. The UN Protocol requires state parties to take the necessary measures to prevent

trafficking in persons and prosecute the offense of trafficking in persons. In addition, The UN Protocol mandate state parties to protect and assist victims of trafficking in persons and promote international cooperation to eradicate trafficking in persons. However, the responses to trafficking in persons differ in the various countries and the different regions of the world (Mattar, 2002). However, definitions of trafficking in persons vary within and among sectors and the responses to trafficking in persons differ in the various countries (Mattar, 2002; WHO 2012).

The government of Indonesia also recognizes to trafficking in children as a serious crime. The government has been committed to prevent trafficking in children, to identify and protect the victims, and to ensure that offenders are sentenced. The government is working hard to put these commitments into action (IOM, 2005). Initially, the main provisions utilized to cope with child trafficking in Indonesia were the Criminal Code and Law No. 23 of 2002 on Child Protection. However, the existing legislations were not capable to provide a comprehensive and integrated legal basis for the Eradication of child trafficking. Therefore, the government enacted the current legislation specifically used for handling child trafficking, i.e., Law No. 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons. This paper aims to review the characteristics of the law. This study was a descriptive study conducted using primary and secondary data. Data obtained from books, print media, electronic media, writing, paper, Act, as well as the opinion of legal experts. Data were collected through field research and library research. Data were analyzed by juridical normative, ie by aligning and describe the real situation regarding the provisions related to child trafficking.

## **2. Child Trafficking in Indonesia**

Child trafficking is prevalent in Southeast Asia, including in Indonesia. Today, Indonesia is recognized as a country of origin for trafficking in children. In addition, Indonesia is also identified as a country of transit and destination for victims of trafficking in children. Many of Indonesian young girls are trafficked to Southeast Asia, East Asia, and the Middle East. Indonesian women and children are also trafficked to Australia, North America, and Europe where they are subjected to forced labor in prostitution and domestic servitude (Protection, 2009; USDS, 2014).

Although trafficking in children is often identified as a cross-border crime (Efat and Anisuzzaman, 2015), domestic trafficking in children is also a major issue within Indonesia (Rosenberg, 2003). The victims are trafficked for the purposes of exploitation such as violations of forced labor and sexual abuse. In addition, the victims are subject to other forms of exploitation such as child brides, child laborers, and commercial sexual exploitation (UNICEF, 2006). This is in line with the US government (2014) estimation in which many Indonesian young girls are trafficked for the purpose of domestic servitude and sex trafficking. Many victims are trafficked for the purposes of prostitution in Riau Islands, West Papua, Maluku, Papua, and Jambi provinces. In addition, trafficking in children is rampant in many border areas with neighboring countries, such as Riau and Medan (Sumatera Island) and West Kalimantan provinces (Kalimantan Island). Trafficking in children is also occurred in big cities such as Jakarta, Surabaya, Bandung, Medan, as well as in areas of tourism destination (Sulistiyo, 2012).

## **3. Prior legislation**

Trafficking in persons, especially children is one of the crimes that should be discussed today. Prior to the enactment of Law No. 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons, a number of legislation were applied to cope with the crime of trafficking in children.

### *3.1 President Decree No. 129 of 1998 on National Action Program of Indonesian Human Rights*

Efforts to eradicate trafficking in children in Indonesia has been started since the issuance of President Decree No. 129 of 1998 on National Action Program of Indonesian Human Rights. The decree mandates [1] the ratification of convention on eradication of criminal act of trafficking in persons and exploitation of prostitution, [2] to continue the bilateral, regional and international arrangements in order to strengthen the protection of children, especially those that can lead to any violation of the rights of children, exploitation of children and trafficking of children, and [3] to increase the regional consultations in order to reinforce the protection of children.

### *3.2 Presidential Decree No. 88 of 2001 on the National Plan of Action for the Elimination of Trafficking in Women and Children*

In 2002, the Indonesian government take more concrete steps in eradicating the crime of trafficking in persons, especially women and children, by the issuance of Presidential Decree No. 88 of 2001 on the National Plan of Action for the Elimination of Trafficking in Women and Children. The plan aims to [1] guarantee the promotion and advancement of the efforts of the protection of victims of TIP, especially in women and children, [2] realizing both preventive and repressive activities in efforts of prevention and mitigation of TIP actions,

especially women and children; and [3] pushing for the establishment or improvement of legislation relating to TIP, especially women and children. To guarantee the implementation of the plan, the government established the Task Force on the eradication of trafficking in women and children at the national, provincial, and district levels.

### *3.3 The Constitution of 1945*

In the Indonesian legal system, efforts to eradicate TIP is regulated in various laws and regulations, starting from some Article of the Constitution of the Republic of Indonesia of 1945. The Constitution is the legal basis for eradicating TIP. Some articles of the Constitution, which became legal basis for setting the eradication of TIP are (DIRI, 1989):

- a. Article 27 (2) states that every citizen have the right to work and to earn a humane livelihood
- b. Article 28A states that every person have the right to live and to defend his/her life and existence
- c. Article 28B (2) states that every child have the right to live, to grow and to develop. Every child also has the right to protection from violence and discrimination

### *3.4 The Indonesian criminal code*

Prior to the enactment of current legislation, the provisions on TIP prohibition has been regulated in the Criminal Code. Article 297 of the Penal Code concerns the prohibition of trafficking in women and children, and qualify this action as a crime. However, the provisions contained in the article does not formulate a rigid definition of TIP legally. The article also does not specify a commensurate penalties with the impact suffered by TIP victims. In addition, the application of the article is not able to cope with TIP crime in a comprehensive manner. This was based on the fact that TIP is an extraordinary crime, involving complex phenomena and transnational organized crime.

## **4. Current legislation**

Considering current legislation relating to the criminal act of trafficking in childrens is not capable of providing a comprehensive and integrated legal basis for the eradication of the crime, the Government of Indonesia enacted Law No. 21 of 2007 on the Eradication of Criminal Act of Trafficking in Persons are as follows

### *4.1 The Substance of Articles Contained in Law No. 21 of 2007 on the Eradication of Criminal Act of Trafficking in Persons*

Law No. 21 of 2007 on the Eradication of Criminal Act of Trafficking in Persons adopts a comprehensive approach to address various aspects of trafficking in persons (UNICEF, 2006). According to the Law, trafficking in persons is defined as any act of recruitment, transportation, temporary placement, sending, transferring, or receipt of persons by means of the threat or use of force, of kidnapping, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, conducted within the country or between countries, for the purpose of exploitation or causing a person being exploited. This definition reflects the 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 particular, Law No. 21 of 2007 on the Eradication of Criminal Act of Trafficking in Persons consists of 67 Article which is distributed into nine Chapters as follows (MWE, 2010).

#### a. Chapter 1 (General Provisions)

Chapter 1 consists only of one article, namely Article 1. In general, this chapter the definitions of terms related to trafficking in persons which are applicable in this law.

#### b. Chapter 2 (Criminal Act of Trafficking in Persons)

This chapter comprises of 17 articles: article 2 to article 18. This chapter describes a description pertaining to criminal act of trafficking in persons and sentencing provisions against criminal act of trafficking in persons. For example, Article 2 describes that every person involved in criminal act of trafficking in persons shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of IDR 120 million and a maximum of IDR 600 million.

#### c. Chapter 3 (Other Criminal Actions Relating To the Criminal Act of Trafficking in Persons)

This chapter contains 9 articles: article 19 to article 27. This chapter comprises of a description pertaining to other criminal actions relating to the criminal act of trafficking in persons and sentencing provisions against these actions. For example, Article 19 states that anyone who gives false information on a state document with the aim of facilitating the commission of the criminal act of trafficking in persons shall be punishable by a prison sentence of a minimum period of 1 (one) year and a maximum period of 7 (seven) years and a fine amounting to a minimum of IDR 40 million and a maximum of IDR 280 million.

d. Chapter 4 (Investigation, Prosecution, and Examination in a Court Proceeding)

Chapter four contains 15 articles: article 28 to article 42. This chapter comprises of a description pertaining to investigation, prosecution, and examination in a court proceeding. For example, Article 28 states that Investigation, prosecution, and examination in a court proceeding shall be conducted in accordance with the applicable Law of Criminal Procedure.

e. Chapter 5 (Protection of Witnesses and Victims)

Chapter five contains 13 articles: article 43 to article 55. This chapter comprises of a description concerning protection of witnesses and victims. For example, Article 44 (1) describes that witnesses and/or victims of the criminal act of trafficking in persons are entitled to have the confidentiality of their identity maintained, while Article 45 (1) describes that a special service unit at the local police station must be established in each province and district for the purpose of examining witnesses and/or victims during investigations of cases of the criminal act of trafficking in persons.

f. Chapter 6 (Prevention and Treatment)

Chapter six contains three articles: article 56 to article 58. This chapter comprises of a description concerning prevention and treatment. For example, Article 57 mandates that the Government and Regional Governments to prevent the criminal act of trafficking in persons, to formulate policies, programs, actions, and to allocate budgets to prevent and address trafficking in persons.

g. Chapter 7 (International Cooperation and Community Participation)

Chapter seven contains five articles: article 59 to article 63. This chapter comprises of a description concerning international cooperation and community participation. For example, Article 59 mandates that the Government of the Republic of Indonesia to seek out international cooperation to ensure effectiveness of the prevention and the eradication of trafficking in persons; whether bilaterally, regionally, or multilaterally.

h. Chapter 8 (Transitional Provisions)

Chapter eight contains one article (Article 64) concerning transitional provisions. In this perspective, it is stated that when this law enters into effect, cases of trafficking in persons that are still under investigation, prosecution or judicial process shall continue to be processed pursuant to the applicable laws.

i. Chapter 9 (Transitional Provisions)

Chapter nine contains three articles: article 65 to article 67. This chapter is concerned with closing provisions. For example, Article 66 states that implementing regulations mandated under this Law must be enacted no later than six months following this Law coming into effect.

#### *4.2 Supporting legislation Supporting legislation*

Currently, Law No. 21 of 2007 on the Eradication of Criminal Act of Trafficking in Persons has been equipped with its implementing regulation, namely: Currently, Law No. 21 of 2007 on the Eradication of Criminal Act of Trafficking in Persons has been equipped with its implementing regulation, namely:

a. Government Regulation No. 9 of 2008

To implement the provisions contained in Article 46 (2) of Law No. 21 of 2007 on Eradication of Criminal Act of Trafficking in Persons, it was necessary to stipulate government regulation pertaining to the procedure and mechanism of integrated services for witnesses and/or victims of trafficking in persons. In this regulations, the integrated services means a series of activities to protect witnesses and/or victims of trafficking in persons carried out collectively by concerned institutions concerned, as a single unit of medical rehabilitation, social rehabilitation, repatriation, social reintegration, and legal assistance for witnesses and/or victims of trafficking in persons. In this perspective, trafficking in persons refers to any action or series of actions that meet the elements of the crime of trafficking in persons specified in the legislation. Meanwhile, a witness and/or victim is a person who experience psychological, mental, physical, sexual, economic, and/or social suffer caused the crime of trafficking in persons. The regulation comprises of eight chapters: general conditions, establishment of integrated service centre, facilities and infrastructure, integrated service support officer, procedures and mechanisms of integrated service, monitoring and evaluation, financing, and concluding provisions (Government Regulation No. 9 of 2008).

b. Presidential Regulation No. 69 of 2008.

To implement the provisions contained in Article 58 (7) of Law No. 21 of 2007 on Eradication of Criminal Act of Trafficking in Persons, it was necessary to stipulate the Presidential regulation pertaining to the task force for the prevention and control of TIP. This regulation enhance the regulations stipulated in the Presidential Decree No. 88 of 2002 on the National Action Plan for the Eradication of Trafficking in Women and Children. The presidential decree mandates the establishment of task force for TIP Prevention and control at the national, provincial, and district/city levels. National task force aims to coordinates TIP Prevention and control at the national level. Provincial task force is in charge of coordinating TIP Prevention and control at the provincial level. Task Force District/city task force is in charge of coordinating TIP Prevention and control at the district/city level (Presidential Regulation No. 69 of 2008).

c. Law No. 23 of 2002

The Indonesian government recognizes that children have a strategic role and unique position in ensuring the continued existence of the nation and the state in the future. Therefore, each child must be afforded the opportunities to develop and grow. Some of the provisions of Law No. 23 of 2002 on Child Protection related to trafficking in children are Article 59, Article 68 and Article 78. As stated in Article 59, the Indonesian government is responsible to provide special protection to children who find themselves being exploited economically or sexually, children who are traded, children who are the victims of kidnapping, sale and trading, children who are the victims of both physical and/or mental violence, and children who are the victims of abuse. Article 68 prohibits any person from permitting, undertaking, ordering to be undertaken or participating in the kidnapping, sale or trading in children. Meanwhile, Article 78 states that every person who deliberately exposes children to be exploited economically or sexually, children to be traded, children to become the victims of kidnapping, sale and trading, and children to become the victims of violence shall be subject to a term of imprisonment of not more than five (5) years and/or a maximum fine of IDR 100 million (Law No. 23 of 2002).

d. Law No. 39 of 1999

The Indonesian government recognizes that human rights, including the rights of children, is a gift of God Almighty that must be respected, upheld and protected by the state. Child is a person aged 18 (eighteen) years old and unmarried, including children who are still in the womb. Some of the provisions of Law No. 39 of 1999 on Human Right related to trafficking in children are Article 20 and Article 65. Article 20 (1) states that no one to be involved in slavery or servitude, while Article 20 (2) states that slavery or servitude, slave trade, trafficking in women and any activities with similar purpose is prohibited. Meanwhile, Article 65 states that every child is entitled to protection from sexual exploitation and abuse, kidnapping, child trafficking, and all forms of narcotics, psychotropic and other addictive substances abuse (Law No. 39 of 1999).

e. Law No. 39 of 2004

Law No. 39 of 2004 regulate the placement and protection of migrant workers carried out since the pre, during, and after placement. Consideration behind the enactment of this law, among others, is that Indonesian workers abroad often become objects of trafficking, including slavery and forced labor, violence and abuse, crime against human dignity, as well as other treatment that violates human rights. Currently the law has been equipped with its implementing regulations, namely Government Regulation No. 3 of 2013 on the Protection of Indonesian Workers Abroad, Government Regulation No. 4 of 2013 on the Implementation Procedures Placement of Indonesian Workers Abroad by the Government; and Government Regulation No. 5 of 2013 on the Procedure for Assessment and Determination of an Individual Business Partners and Users (Law No. 39 of 2004).

f. Law No. 5 of 2009

Indonesia is a member state of the United Nations who signed the Nations Convention Against Transnational Organized Crime on 15 December 2000 in Palermo, Italy. This is a manifestation of Indonesia's commitment in combating transnational organized crimes through bilateral, regional, or international cooperation framework. In 2009, the government set Law No. 5 of 2009 on the Enactment of the United Nations Convention Against Transnational Organized Crime (Law No. 5 of 2009).

g. Law No. 15 of 2009

The Indonesian government recognizes that the Protocol Against The Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime is an integral part of the United Nations Convention Against Transnational Organized Crime. In order to prevent and eradicate smuggling of migrants, all activities should be done at the national, regional and international levels (Law No. 15 of 2009)..

h. Law No. 14 of 2009

The Indonesian government recognizes that the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime an integral part of the United Nations Convention Against Transnational Organized Crime. The signing of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children by the Indonesian government is a reflection of Indonesia's participation in the establishment of world order (Law No. 14 of 2009)

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i. Presidential Regulation No. 23 of 2011

The Indonesian government acknowledges that human rights promotion and enforcement is one of the obligation

and responsibility of the State. In addition, the promotion and enforcement of human rights also requires community participation. RAN-HAM for 2004-2009 has ended and the government set RAN-HAM for 2011-2014. Following the Presidential Regulation No. 23 of 2011 on the National Action Plan For Human Rights In Indonesia for 2011-2014, one of the RAN-HAM programs for 2011-2014 is the preparation of the ratification of international instruments relating to TIP, namely Convention of Human Trafficking Termination and Optional Protocol to the Convention on Child Rights on Child Trafficking, Child Pornography and Child Prostitution (Presidential Regulation No. 23 of 2011).

## 5. Conclusion

In the context of Indonesia, trafficking in persons (including children) is defined as 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. In particular, trafficking in children is widely considered as one of the worst crimes which violates human dignity and is a form of modern slavery. Therefore, trafficking in children should be eliminated. A Child refers to a person under the age of 18 (eighteen) years old, including an unborn baby.

Today, child trafficking has become the broader form of crime. Trafficking in children is not only for the purpose of prostitution or sexual exploitation. It also includes other forms of exploitation such as forced labor and slave-like practices in the informal sectors. Therefore, trafficking in children need to be addressed more seriously both at national and international levels. The Indonesian government realizes that every child has the right to live, grow and develop and are entitled to protection from violence, exploitation, and discrimination. The crime of trafficking in children has turned into either organized or unorganized criminal networks. Trafficking in children involves individuals, corporations, and state officials who abuse their authority and power.

In 2007, the Government of Indonesia enacted Law No. 21 of 2007 on the Eradication of Criminal Act of Trafficking in Persons. The Law adopts a comprehensive approach to address various aspects of trafficking in persons, especially woman and children. The Law consists of 67 Articles which is distributed into nine Chapters. According to the Law, every person involved in criminal act of trafficking in children shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of IDR 120 million and a maximum of IDR 600 million. The penalties sufficiently stringent and commensurate with those prescribed for other serious crimes. It is also stated that the government is required to formulate policies, programs, and actions to prevent and address trafficking in children. Towards this end, the government needs to build international cooperation to ensure effectiveness of the prevention and the eradication of trafficking in children.

Law No. 21 of 2007 on the Eradication of Criminal Act of Trafficking in Persons has been equipped with its implementing regulation, namely Government Regulation No. 9 of 2008 on the Procedure and Mechanism of Integrated Services for Witnesses and/or Victims of Human Trafficking and Presidential Regulation No. 69 of 2008 on the Task Force for the Prevention and Control of Human Trafficking. These two supporting legislations were established to implement the provisions contained in Article 46 (2) and Article 58 (7) of Law No. 21 of 2007 on Eradication of Criminal Act of Trafficking in Persons. The legislation mandates the establishment of task force for the prevention and control of trafficking in persons at the national, provincial, and district/city levels.

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