

# The Importance of International Conventions in ASEAN Countries against Trafficking in Persons, Especially Women and Children

Syafrinaldi<sup>a</sup>, Zulakrial<sup>b</sup>, Heni Susanti<sup>c</sup>, <sup>a,b,c</sup>Fakultas Hukum, Universitas Islam Riau, Jln Kaharudin Nasution No.113 Marpoyan Pekanbaru – Indonesia,  
Email: <sup>a</sup>[syafrinaldi@law.uir.ac.id](mailto:syafrinaldi@law.uir.ac.id), <sup>b</sup>[zulakrial@law.uir.ac.id](mailto:zulakrial@law.uir.ac.id),  
<sup>c</sup>[heni@law.uir.ac.id](mailto:heni@law.uir.ac.id)

Based on empirical evidence, women and children are the groups that are the most victims of trafficking in persons. Victims are trafficked not only for the purpose of prostitution or other forms of sexual exploitation, but also include other forms of exploitation, such as forced labour, slavery, or similar practices of slavery. The perpetrators of trafficking in persons commit recruitment, transfer, concealment, or acceptance of people for the purpose of trapping or exploiting the person in the practice of exploitation in all its forms with threats of violence, use of violence, kidnapping, forgery, fraud, abuse of power, or vulnerable position, or providing payments or benefits so that the consent of the person in control of the victim is obtained. The ACTIP (ASEAN Convention Against Trafficking in Persons, especially Women And Children) International Agreement Against Law No. 21 of 2007 is concerned with Criminal Trafficking in Persons. The problem approach used in this study is the normative juridical method, or also called the doctrinal law research, namely the problem approach that emphasises the applicable laws and regulations and theories that are relevant or related to the problem to be discussed. The Linkage of Law Number 21 the Year 2007, Concerning Eradication of the Criminal Act of Trafficking in Persons with the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), as well as with several other laws and regulations, has made Indonesia make efforts in handling cases of Acts Criminal Trafficking in Persons. It can be said that all efforts made by ASEAN countries in combating trafficking in persons can be said to be one step further. This is due to the existence of good communication in the form of rules which are then agreed upon by each ASEAN member country.

## Background

A number of migrant workers have traditionally been evasive of meeting the conditions of placement and permission to work abroad issued by the government, which is often done by incitement of traffickers. Many Indonesians are exploited as forced labour and in debt in Asia and the Middle East, especially the domestic workers, factory workers, construction workers, manufacturing workers, oil palm plantations in Malaysia, and fishing vessels operating in the Indian Ocean and the Pacific Ocean. Malaysia remains a major destination for Indonesian migrant workers.

The government estimates that more than one million of the 1.9 million Indonesian workers with unofficial status are in Malaysia. Indonesian adult women and adolescents are targeted by the sex trade, especially in Malaysia, Taiwan, and the Middle East. Domestic workers are the most livelihoods done by Indonesian women who work in Indonesia as well as in Singapore, Malaysia, Hong Kong, and the Middle East, but they are not considered formal workers and are not protected by local labour laws. Excessive work hours, the absence of official employment contracts, and unpaid salaries are some of the most common unfair treatments faced by Indonesian domestic assistants. Lack of access to education for women and the lure to get decent, easy work (domestic work they are used to do) with a high income, make women often tempted to look for work outside the area, including abroad. Armed with the intention and desire to help the family economy, they are often willing to do anything to get the job. As a result, they are not aware that they have become easy targets on the brokers seeking and making profits for personal interests. With sweet promises and all the persuasion from brokers, they left the area they came full of hope. The candidates have various ways to be convincing to their victims. The modus operandi that they use is to lure them to work as restaurant waiters, shop assistants, domestic workers, work in factories with high wages, and there are even brokers who pretend to be ambassadors for cultural exchange between nations. The latter mode is usually looking for young women who are interested in the arts, such as dancing and singing. They promise the potential victims to take them to several countries as ambassadors of art. For cases like this, often they will end up in places of prostitution. (Muflichah & Bintoro, 2009).

NGOs estimate that labour recruiters are responsible for more than half of cases of trafficking of Indonesian women abroad. Migrant workers often receive large amounts of debt accumulation from Indonesian and foreign recruitment companies and make them vulnerable to debt bondage. Some companies take advantage of this opportunity by providing debt bondage, withholding documents, and threatening with violence, so that workers continue to do forced labour. Endemic corruption among government officials facilitates practices that contribute to the vulnerability of human trafficking in the travel, hospitality and recruitment industries. (US Embassy and Consulate in Indonesia, 2018)

According to the Global Alliance against Traffic in Women (GAATW) report, there are three (3) aspects of human trafficking, namely:

1. The rise of migration from one place to another, both in the country and abroad, that is not based on the desire or free choice of the woman concerned, but due to force or pressure of the situation in the form of poverty and unemployment, resulting in a strong desire to improve their fate;
2. Increasing the number of labour distribution companies, especially illegal ones, because the profits obtained by recruiters, sellers, syndicates of companies are allegedly very large;
3. The high number of fraud cases, including in the form of false promises, bonds of debt, slavery, coercion, pressure, and extortion (Prakoso & Nurmalinga, 2018).

Behaviour towards women and children basically cannot be separated from problems related to the social construction of the local community towards the position and roles of women and children. In a broader setting, various events that occur today are sufficient to show that discrimination against women is not only found in novels and in overseas countries or in the middle of nowhere, but also in Indonesia (Harkrisnowo, 2003). International organisations which are subject to international law, whose position is now unquestioned, at first did not have certainty about it. International organisations, such as the United Nations (UN), ASEAN and other international organisations have the rights and obligations stipulated in international conventions which constitute their articles of association (Ishaq, 2016).

Countries in the world at this time have a bonding relationship so as to create a dependency, both in the economic, political, social and cultural, and many other aspects of life. Globalisation itself has an impact and influence on each country, with both positive and negative impacts. Of all the negative impacts caused by the era of globalisation, there is one impact that is in the spotlight and is a serious problem in various countries. The impact is the case of human trafficking.

Human trafficking is a crime that is very difficult to eradicate and is mentioned by the international community as a form of slavery today that has violated human rights. Human Rights itself is a translation of the English language Human Rights. These human rights are an understanding of humanity which assumes that since humans were born into the world and live in a community, they have owned their human rights, where these human rights are universal without differentiating humans according to race, religion, nation or gender. Therefore, all humans get the same opportunity to develop in accordance with their hopes and ideals (Hadikusuma, 2010).

According to Soetandyo Wignyo Sobrot, Human Rights are rights inherent in any creature that is a human, that provides moral and legal guarantees to each human being to enjoy freedom from all forms of servitude, oppression, deprivation, persecution or any treatment that causes humans to be unable to live properly as human beings who are glorified by God (Eternal, 2008).

With the development of technological advances, information, communication, and transportation, the mode of crime which is carried out in a closed manner and moves outside the law, is also increasingly developing. This person quickly developed into a transnational syndicate in a coordinated and veiled way. Victims of human trafficking can happen to anyone, both adults and children, men and women who are generally in vulnerable situations and conditions such as young divorcees and women under pressure. The modes used in trafficking crimes are diverse and have complicated work aspects.

Human smuggling is different from human trafficking. In human trafficking, the victim is unconsciously traded, but human smuggling is an act of entering citizens into the destination country in ways that are not in accordance with immigration rules. In the process, smuggled migrants usually give rewards to smugglers. In other words, people who are smuggled do their actions consciously and know the consequences of their actions.

The development of human trafficking cases that have occurred in various countries including Indonesia and other developing countries has come to the attention of the international community and international organisations, especially the United Nations. The birth (Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children) to prevent and crack down on and punish trafficking in persons, especially women and children is a form of United Nations attention, as one of the protocols produced by the United Nations Convention Opposing the United Nations Convention Against Transnational Organised Crime which took place on 12-15 December 2000 in Palermo. (T. Zakiah, 2016)

Based on empirical evidence, women and children are the most numerous and most vulnerable groups to become victims of trafficking in persons. Victims are trafficked not only for the purpose of prostitution or other forms of sexual exploitation, but also include other forms of exploitation, for example, slavery, or similar practices of slavery or forced labour. The perpetrators of trafficking in persons commit recruitment, transfer, concealment, or acceptance of people for the purpose of trapping, exploiting the person in the practice of exploitation in all its forms with threats of violence, use of violence, kidnapping, forgery, fraud, abuse of power, or vulnerable position, or providing payments or benefits so that the consent of the person in control of the victim is obtained. (Kordi, M.Ghufan, 2013)

In addition to recognising the importance of cooperation between ASEAN countries, ASEAN countries also recognise trafficking in persons, including government corruption, poverty, economic instability, inefficient legal systems, organised crime, and demand factors that trigger all forms of exploitation of people, especially women and children, which leads to trafficking in persons, so it must be dealt with effectively. All ASEAN member countries recognise that regardless of whether they are countries of origin, transit or destination, each country has a shared responsibility and commitment to prevent trafficking in persons and protect and assist victims of trafficking in persons, with the consideration that the distance and borders of ASEAN member countries are interconnected and in the spirit of regionalism. As well as

realising the importance of establishing a regional instrument that opposes the crime of trafficking in persons, which is legally binding and helps ASEAN Member States, both originating, transiting and destination, in overcoming their respective national challenges, priorities, and strategies in combating crime trafficking in persons, the ASEAN Convention Against Trafficking in Persons, Especially Women And Children (ACTIP) was formed (Convention, ASEAN).

As proof of the form of international cooperation, Act Number 21 of 2007 concerns the Eradication of Trafficking in Persons in the form of mutual legal assistance agreements in criminal and / or other technical cooperation. This is because the form and nature of the crime of trafficking in persons constitute a crime that does not only occur in one territory of the State, but also between the territories of the State. Law Number 21 Year 2007, Regarding Eradication of Trafficking in Persons is a manifestation of the commitment of the Indonesian people to implement the 2000 UN Protocol, which has been approved and signed by the Indonesian government, concerning preventing, and combating Trafficking in Persons Specifically for Women and Children (the Palermo Protocol) and punish the perpetrators of this trafficking in persons (Farhana, 2010, p. 31).

The formulation of trafficking in persons, specifically trafficking in women and children (Trafficking) is contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children (2000). This protocol is intended to prevent, suppress and punish traffickers. The Protocol states that what is meant by trafficking is the recruitment, transportation, transfer, concealment or acceptance of a person through the use of threats or pressure or other forms of violence, kidnapping, fraud, fraud, abuse of power, or vulnerable positions or giving / receiving payments or gain profit so that it gets the approval of someone who is in control of that other person for exploitation purposes.

Based on the definition of trafficking in the Protocol was re-adapted in Law Number 21 Year 2007 in Chapter I regarding General Provisions Article 1 which reads: "Trafficking in Persons is the act of recruiting, transporting, collecting, transporting, transferring, or accepting someone with the threat of violence, use violence, kidnapping, confinement, counterfeiting, fraud, abuse of power or vulnerable position, debt bondage or payment or benefits, so as to obtain the approval of the person in control of that other person, whether committed within the state or between the states. The crime of trafficking in persons is also imposed for those who commit adoption but aim to exploit the child. Exploitation in number 7 is stated as an act without the consent of the victim, which includes prostitution, forced labour or services, slavery or similar to slavery, oppression, exploitation, physical exploitation, sexual abuse, use of reproductive organs, or transplanting organs or tissues or using labour and one's ability by another party to benefit materially or immaterially (ACADEMIC TASK on the Ratification of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children).

Perpetrators of criminal acts of Trafficking in persons, is subject to sanctions both imprisonment plus criminal sanctions. Sanctions in the form of imprisonment imposed at least 3 (three) years and a maximum lifetime, plus a minimum fine of Rp.40,000,000.00 (forty million rupiah) and a maximum of Rp.5 000,000,000.00 (Five billion rupiah). If seen from the text of the convention, trafficking in persons is a serious crime by providing a minimum limit of the threat of imprisonment for 4 years or sanctions heavier than that. The minimum sanctions provided for in Law Number 21 Year 2007, concerning Eradication of the Criminal Act of Trafficking in Persons are not in accordance with the ACTIP convention text. However, if the criminal act is committed against a child, then this Law then provides a burden to the criminal threat which is to add 1/3 (one third) of the criminal threat that is handed down. However, this law has not provided a penalty for the offender if the victim is a person with a disability, bearing in mind that a person with a disability does not have the ability to protect himself from threats, and heavier penalties against perpetrators of trafficking in persons who have committed the same or similar crime.

The imposition of sanctions for perpetrators is given if the actions result in the death of the victim, but have not yet regulated whether it is only due to acts of violence and forms of exploitation carried out so that the victim dies or includes if the victim dies due to suicide. In the case of a criminal act of trafficking in persons committed by a corporation, other than imprisonment and fines against its management, a criminal that can be imposed on a corporation is a fine with 3 (three) times the penalties as referred to in Article 2, Article 3, Article 4, Article 5 and Article 6. In addition to criminal fines, corporations can also be imposed with additional crimes, one of which is the seizure of assets resulting from criminal acts. However, this Law does not yet regulate whether confiscation of proceeds of criminal assets can also be imposed on individuals.

In addition to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children, there are also ASEAN Conventions Against Trafficking in Persons, Especially Women and Children, which are conventions implemented by ASEAN in tackling the crime of trafficking in persons, especially women and children. ASEAN agree on the establishment of the ASEAN Convention Against Trafficking in Persons, especially Women and Children. The convention was signed by all members of ASEAN countries on November 21 2015 and became effective after ratification into national law. The ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ASEAN Convention Against Trafficking in Persons, Especially Women and Children) taken for elaboration on how national legislation programs and legal politics influence the inclusion of international treaties in national law.

## **Conclusion**

The Linkage of Law Number 21 Year 2007, Concerning Eradication of the Criminal Act of Trafficking in Persons with the ASEAN Convention Against Trafficking in Persons, Especially



Women and Children (ACTIP) as well as with several other laws and regulations, has made Indonesia make efforts in handling cases of Acts Criminal Trafficking in Persons. It can be said that all efforts made by ASEAN countries in combating trafficking in persons can be said to be one step further. This is due to the existence of good communication in the form of rules, which are then agreed upon by each ASEAN member country, for exploitation purposes or to cause people to be exploited.



## REFERENCES

Academic guidelines Draft Bill on Ratification of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children. (n.d.).

Convention, ASEAN. (n.d.). ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP).

Farhana (2010). Legal Aspects of Trafficking in Persons in Indonesia. Jakarta: Sinar Grafika.

Hadikusuma, H. (2010). Indonesian Legal Language. Bandung: PT Alumni.

Harkrisnowo, H. (2003). Report on Human Trafficking in Indonesia. Jakarta: UI Human Rights Center.

<http://repository.usu.ac.id/bitstream/handle/123456789/66257/Chapter%20III-V.pdf?sequence=2&isAllowed=y>. (n.d.). Retrieved September 20, 2019, from [usu.ac.id](http://repository.usu.ac.id): <http://repository.usu.ac.id>

Ishaq. (2016). Introduction to Indonesian Law. (Efendi, Ed.) Jakarta: PT Raja Grafindo Persada.

US Embassies and Consulates in Indonesia. (2018). Retrieved September 2019, from <https://id.usembassy.gov/en/our-relationship-id/official-reports-id/reporting-new-years-trading-people-2018/>: <https://id.usembassy.gov/> id /

Kausarian, H., Sri Sumantyo, J. T., Kuze, H., Aminuddin, J., & Waqar, M. M. (2017). Analysis of polarimetric decomposition, backscattering coefficient, and sample properties for identification and layer thickness estimation of silica sand distribution using L-band synthetic aperture radar. *Canadian Journal of Remote Sensing*, 43(2), 95-108.

Kausarian, H., Sumantyo, J. T. S., Kuze, H., Karya, D., & Panggabean, G. F. (2016). Silica Sand Identification using ALOS PALSAR Full Polarimetry on The Northern Coastline of Rupert Island, Indonesia. *International Journal on Advanced Science, Engineering and Information Technology*, 6(5), 568-573.

Kausarian, H., Lei, S., Goh, T. L., & Cui, Y. (2019). A new geological map for formation distribution on southern part of south China sea: West Kalimantan, Indonesia. *International Journal of GEOMATE*, 17(63), 249-254.

Kordi, M. Ghufuran. (2013). Human Rights regarding Slavery, Justice, Humanity Crimes and War. Yogyakarta: GRAHA SCIENCE.



Kosandi, Meidi. 2015. "Human Trafficking in Southeast Asia: Finding Collective Solutions through ASEAN." (May).

Minin, Darwinsyah. 2011. "Strategies for Handling Trafficking in Indonesia." *Kanun Journal of Legal Studies* 13 (54): 21–31

Mufidah. (2011). *Why Are They Traded?* (M. Sholehudin, Ed.) Malang: UIN-MALIKI Press.

Muflichah, S., & Bintoro, R. W. (2009, January 1). Trafficking: A Study of Trafficking in Women From Social, Cultural and Economic Aspects in Banyumas Regency. *Journal of Legal Dynamics*, 125-126.

Novianti. 2014. "Criminal Acts on Trafficking in Persons, Crossing National Borders i. Introduction Human Trafficking (. " *Journal of Legal Studies*: 50–66.

Prakoso, A. R., & Nurmalinda, P. A. (2018, January 24). Legal Policies Against Crimes of Trafficking in Persons. National Seminar on Law at Semarang State University, 4, 3.

Prasongko, D. (2012, December 18). <http://www.balairungpress.com/2012/12/perdrading-manusia-di-asean/>. Retrieved

September 15, 2019, from [www.balairungpress.com](http://www.balairungpress.com): <http://www.balairungpress.com>

Prakoso, A. R., & Nurmalinda, P. A. (2018, January 24). Legal Policies Against Crimes of Trafficking in Persons. National Seminar on Law at Semarang State University, 4, 3.

Prasongko, D. (2012, December 18). <http://www.balairungpress.com/2012/12/perdrading-manusia-di-asean/>. Retrieved

September 15, 2019, from [www.balairungpress.com](http://www.balairungpress.com): <http://www.balairungpress.com>

Purbakusumo, B. B. (2017). Handling Victims of Trafficking in Women in Myanmar. *Journal of International Relations*, III, 163.

Santoso, M. Imam. (2014). *International Criminal Law*. (D. Idris, Ed.) Bandung, West Java.

Shalihah, F. (2017). *Legal Sociology*. Jakarta: PT Raja Grafindo Persada.

Sali Susiana, D. W. (2015). *Trafficking in Persons: Prevention, Treatment and Protection of Victims*. (A. M. Fahham, Ed.) Central Jakarta: P3DI Secretariat General of the Indonesian Parliament and Azza Grafika.



Santoso, Seed, and and Defense of the Republic of Indonesia Lemhannas Maj. Gen. TNI (Retired), Professional Staff in Social, Cultural Affairs. "Addressing Human

Trafficking - Kompas."  
<https://nasional.kompas.com/read/2017/03/29/19382151/menyikapi.perdagang.manu.sia>.

T.Zakiah. (2016). <http://scholar.unand.ac.id/8889/3/bab%201.pdf>. Retrieved September 20, 2019, from scholar.unand.ac.id: <http://scholar.unand.ac.id>

Utami, P. (2016). Indonesian government efforts to overcome the human trafficking. International Relations.

Utamy, P. (2017, December 22). [https://www.academia.edu/35492579/politik\\_hukum\\_asahan\\_asean\\_convention\\_agai](https://www.academia.edu/35492579/politik_hukum_asahan_asean_convention_agai) nts\_trafficking\_in\_persons\_especially\_women\_and\_children\_konean\_ceanvention\_a gaints\_trafficking\_in\_persons\_especially\_women\_and\_children\_konean\_convention\_ enentang\_an\_start\_day\_docks\_name Retrieved September 21, 2019, from [www.academia.edu](http://www.academia.edu): <https://www.academia.edu>

Law No. 21 of 2007 concerning Eradication of Trafficking in Persons. (n.d.).

UU no. 12 of 2017 concerning Ratification of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ASEAN Convention Against Trafficking in Persons, Especially Women and Children). (n.d.).

UU no. 23 of 2002 concerning Child Protection. (n.d.).