
Trafficking of Migrant Workers in Indonesia: A Legal Enforcement and Economic Perspective of Prevention and Protection Efforts

Henny Nuraeny¹

Abstract:

Labor is one of the most fundamental aspects of production systems, economic growth and nation prosperity. The growing need for labor has contributed to the increasing number of trafficking cases. Indonesia is one of the senders of migrant labor, especially rough workers and domestic workers.

Although most personnel are sent in legal means, Indonesia, like other Southeast Asian developing countries, has not been freed from illegal labor and trafficking. This study seeks to analyze descriptively about law enforcement efforts and economic perspectives in trafficking, as well as in prevention and protection of migrant labor.

Therefore, it is required a legal effort in the prevention and protection as well as economic considerations in prevent the trafficking. The results of the study indicate that various strategic plans of criminal law policy, especially the prevention and protection of migrant workers, are in the form of cooperation and synergy between all components in society, law enforcement and government. Moreover, there are needs to establish attractive labor wage, and to provide more jobs in Indonesia.

Keywords: *trafficking, migrant worker, human rights, economic perspective, law enforcement.*

¹Department of Law, Universitas Suryakencana, email : hennynuraeny28@gmail.com

1. Introduction

The rapid economic growth in some Asian countries coupled with the high demand and wages of labor, and the lack of employment with the low wages of labor in the country of origin has, respectively, been the two pull and push factors in Indonesian labor migration (Andrevski & Lyneham, 2014). Indonesian workers have a vital role in economic development through the provision of cheap labor in some countries, such as Singapore and Malaysia (Larsen, 2010). In some countries in East Asia, particularly Hong Kong, and Taiwan, the number of Indonesian workers is significant (Loveband, 2004; Constable, 2007). Demand for Indonesian labor, also increasing in South Korea and Japan. In the Middle East, the proportion of labor originating from Indonesia is also large, besides laborers from India, Pakistan, Bangladesh and African countries (Kapiszewski, 2006). The large number of workers has contributed significantly to the remittances of funds and state foreign exchange (De Haan & Rogaly, 2002; Setyawati, 2013). Unfortunately, most of the workforce, estimated at a total of 6 million, works in the domestic and labor-intensive sectors, such as domestic workers and construction workers (Silvey, 2004). Only a few are sent abroad with special and adequate skills.

Indeed, jobs in the domestic sector and construction workers do not require skills and high levels of education. Again, the demand for this power will always be available and even increasing, as welfare improvements and GDP per capita of Southeast and East Asian countries. *More sadly*, the lack of education of the workers has had a negative impact, by encouraging the practice of trafficking in persons. Various parties, disregarding the legal aspects, have taken profits financially, by smuggling and sending thousands of migrant workers illegally overseas each year.

On that basis, preventing and protecting the law against the sending of migrant workers, not only through the formulation level, but must be followed by the application and judicial level as well as by strengthening the economic basis at home, aimed at the welfare of the community. This study seeks to analyze descriptively about law enforcement efforts and economic perspectives in trafficking, as well as in prevention and protection of labor. Therefore, to anticipate it required a legal effort in the prevention and protection.

2. Trafficking in persons

Trafficking in persons, often called trafficking, comes from the English word of traffic, meant commerce, and trade or the sale or exchange of such things as merchandise, bills, and money. The term is then interpreted by trade. Trafficking according to Black's Law Dictionary is mentioned as the act of transporting, trading, or dealing, esp. in people or illegal goods. While human trafficking is: *"the illegal recruitment, transportation, transfer, harboring, or receipt of a person, from one to another country, with the intent to hold the person captive or exploit the person for labor, services, or body parts. Human trafficking offenses include forced*

prostitution, force marriages, sweat-shop labor, slavery, and harvesting organs from unwilling donor” (Garner, 2009).

This term used in unauthorized trading / illegal human trafficking, which is often associated with slavery or servitude. According to Blacks Law Dictionary, slavery is a situation in which one person has absolute power over the lives, fortune, and liberty of another (Garner, 2009). Indonesian General Dictionary defines slavery as servant or treat as slave, and everything about slave (Moeliono, 1994).

3. Trafficking in Indonesia

The Indonesian government is very concerned about the phenomenon and reality of human trafficking and regards it as modern slavery, especially that related to women and children. Women constitute approximately 90 per cent of Indonesian migrant workers (Piper, & Uhlin, 2002). Women and children are more protected than men, because women and children are particularly vulnerable to violence, especially trade which is the embodiment of modern slavery. While trafficking in persons violates human rights, it also contains aspects that are contrary to the protection and to the general welfare. The more the practice of trafficking in persons is always accompanied by numerous acts of threats and violence, causing sense of torment from its victims in the future, especially regarding the fact that victims of human trafficking in general is the helpless party lacking good condition, physically, psychologically, and in economic beings.

Today, trafficking in persons is almost identical to slavery which is considered to violate human dignity and human rights. Historically in Indonesia, slavery has been started since the colonial period in the Dutch East Indies in 1854 when the colonial government and the Dutch parliament enacted the *Wet* (Act) Netherlands No. 2 1854 (Gazette No.2 of 1855) *Reglement op het Nederlands Beleid van der Regering - Indie* (RR). Although this act was later considered invalid by another act, no later than January 1, 1860, stating that the slavery in the Dutch East Indies had to be removed completely, there were only limited and normative rules, because in reality the slavery had not been executed. This effort was then implemented in the *Wetboek van Strafrecht* (Book of Law Criminal Law Dutch East Indies). The occurrence of slavery in the Dutch East Indies happened because the colonial government in the Indies still exercised slavery even with certain political and economic reasons, to meet the demand from owners of the sugar and plantation industries in providing slave labor (Lapian & Geru, 2006).

The first slavery and trafficking campaigns were conducted in Europe and America, spawned several anti-slavery conventions and exploitation of human labor, which then expanded to other countries in Asia and Africa, including Indonesia. The Indonesian government makes efforts in terms of policy and criminal law, by ratifying several international conventions relating to human rights and labor rights. The cornerstone of the ratifications is laid on the fact that Indonesia is one of the

largest senders of international labor, especially rough workers and domestic workers, to neighbouring Asian countries. This situation becomes an opportunity for Indonesian employment placement executors or private employment placement executives, to utilize and accommodate various interests of the workforce. However, labor conditions from Indonesia differ from those from other countries. Indonesian labor is often problematic both individually for themselves, as well as in general for the Indonesian government. The biggest problem is that Indonesian migrant workers are often the victims of trafficking.

Basically, the delivery of migrant workers can be done domestically, and can also occur between regions (village / sub-district, district, district / city), between provinces or between islands. In addition, the delivery of migrant workers between countries is usually carried out from Indonesia through crossing land and sea borders to other countries (Ford, & Lyons, 2011). Some of the destination countries are Malaysia, Singapore, Hong Kong, Taiwan, and countries in the Middle East, especially Saudi Arabia (Silvey, 2006). As a result, Indonesian migrant workers have been trafficked both domestically and abroad.

However, the number of people who become victims has been difficult to calculate, because of lacking of actual data (Wickramasekara, 2002). According to the data base of National Police Headquarters, during 2016, there were 194 victims of trafficking. Out of this amount, 120 were female victims, 21 were male, and 53 were children. In 2016, there are 11 cases of trafficking in persons still under investigation, 44 cases have been investigated, and 6 files are still in the attorney general's office. While the case that has been declared complete filing there are 25 and 1 file is stopped (Mabruroh, 2016).

4. Trafficking in Migrant Worker Case

One form of trafficking in persons in Indonesia is by sending of migrant workers. According to data of the National Agency for the Placement and Protection of Indonesian Migrant Workers, on January 31, 2016 for the period of 2011 to 2016 a total of 2,320,959 people left Indonesia to work as migrant workers. This amount is likely to increase in the next few years. According to data from the National Agency for the Placement and Protection of Indonesian Workers in January 2016 a total of more than eight million Indonesian workers work in Malaysia, the biggest destination country and followed Taiwan (Jones, 1999). Most Indonesian workers are women with education between junior high school (40.5%) and elementary school (30.17%). Furthermore, the data of the National Agency for the Placement and Protection of Indonesian Workers, approximately 1,500,000 Indonesian migrant workers working abroad for the period 2011 to 2016 are women. The large number of Indonesian women workers with limited education levels resulted in a higher level of violence affecting Indonesian women workforce. This condition is supplemented by an inadequate protection system and a large number of recruitment mafias that are not easily reached by law enforcement. Many cases of Indonesian

women workers are not revealed through complaints, especially those experiencing both verbal and physical abuses (www.sbmi.info.com, 2006).

Indonesian migrant workers who are victims of trafficking in persons are generally attributed to low levels of education, no special skills required, low economic level and having no official documents. This is in contrast to professional migrant workers who have a skilled and educated background, which in turn make them rarely become the victims of trafficking (Nuraeny, 2016). The social background of the victims may be experiencing economic, social, political, educational, environmental, and even physical, and mental ignorance and pressure that may affect the victim's psychological situation, thereby affecting the victim to be easily trafficked. Victims as well as perpetrators of crime can be individuals, groups and communities, but the victims are the most affected party as a result of this unlawful actions. In many cases, losses and pressures suffered by the victim will cause psychological distress, trauma, and psychiatric disorders (Nuraeny, 2016).

In Indonesia, of the many cases of casualties mostly happen to women and girls. Although the destination countries are seemingly able to provide attractive job and wages, but in some cases, the working conditions and work systems, especially in the recipient countries of Malaysia and the Middle East, especially Saudi Arabia, have not able to prevent the employer abuses to Indonesian women workers, as well as able to prevent the occurrence of forced prostitution and forced labor. Similarly, the sending of migrant workers in these countries is still big problems, in which in many cases women and children are being exploited to become domestic servants and sex workers that their rights, such as salary, are frequently not fulfilled by the employers.

Even though there are many professional migrant workers from Indonesia, this is not the general case. Many incidents happen in which the workers, although sent through official dispatches, because of problems at work, fled from employers for being harshly treated, not getting salary in accordance with the agreement, and getting torture and rape (Silvey, 2004). Under the above conditions, the migrant workers escape and seek protection. This leads to some irresponsible parties to receive them and then exploit them by trafficking of persons.

There are several cases, in which traffickers in collaboration with other parties such as schools to recruit students at the vocational school to be trafficked, with modes for field practice or internship in hotels, which are actually fictitious. In addition, Indonesians are recruited with an offer to work in restaurants, factories, plantations or as domestic servants, and are then forced to undergo commodities in the sex trade. The new mode that is evolving today is the recruitment of women and young girls to work as maids in the mining industry, who will then be forced into prostitution. Some underage girls are abducted into shelters in mining or illegal logging in some Island in Indonesia, where they are forced into sex work. (Nuraeny, 2016).

These situations has led the Indonesian government to give considerable attention to migrant workers. The government has issued various forms of regulation as one form of protection in the prevention of the exploitation of migrant workers. Based on the procedure of sending the migrant workers, the candidates must refer to the legislations of the law no. 3 of 1951 on the enactment of law no. 23 of 1948 on labor supervision, the law no. 1 of 1970 about safety, the law no. 13 of 2003 on manpower, the law no. 39 of 2004 on the protection of Indonesian migrant workers abroad, the government regulation no. 3 of 2013 on the protection of overseas workers, the Presidential Regulation no. 21 of 2010 on labor inspection, the regulation of the Minister of Manpower and Transmigration no. 14 /Men/X/2010 on the implementation of the placement and protection of Indonesian migrant workers abroad, the Minister of Manpower and Transmigration decree no. 260 of 2015 concerning termination and prohibition of Indonesian migrant workers placement in individual users in middle east countries, the regulation of The Coordinating Minister For Human Development and Culture of the Republic of Indonesia no. 2 of 2016 concerning the national action plan for the eradication of trafficking in persons in 2015 – 2019, the regulation of the Minister Of Manpower And Transmigration no. 30 of 2016 concerning guidelines on the implementation of one stop service of Indonesian manpower placement, and the regulation of the Minister of Manpower and Transmigration No. 7 of 2017 on the social security program of Indonesian workers.

In reality, even though the rules on sending migrant workers have been regulated in several laws and regulations, there are still many violations of human rights, and even tend to be cruel and slavery-like. The most supportive factors of these situatione are the high demand for jobs in the informal sector that do not require special skills, being paid relatively low, and do not require complex work agreements. This help encourage the spread of migrant workers trafficking considered profitable in terms of economy and business by labor brokers.

5. Economic Review on Trafficking in Persons

The mode of sending migrant workers regarded as trafficking is usually done in various forms, but usually aims to exploit the victim for the benefit of others. In summary, sending migrant workers as one form of trafficking in persons has 3 elements. First, the process usually involves the perpetrator moving the victim away from his community by recruiting, transporting, transporting, transferring or receiving. Second, the way in which perpetrators use threats, violence, kidnappings, capture, forgery, abuse of power / vulnerable positions, or debt bondage to gain control over the victim, so as to impose coercion (Murray, 1998). Third, the aim is to exploit or cause the victim to be exploited for the financial gain of the offender. Exploitation is always associated with prostitution, confinement of victims with physical or psychological violence as forced labor, placing victims in situations of debt bondage or slavery. In some cases exploitation may also mean the utilization or organ transplants.

Hence, the process of sending migrant workers can be done by individuals, groups, corporations, and sometimes involves the family (parents / siblings), relatives, friends, or neighbors of the victims. The perpetrators of the crime of trafficking are usually not directly involved looking for the victim, but often using many indirectly connected accomplices (intermediary/broker). This mode is often carried out by traffickers to terminate the relationship and information, whenever the victim then submitted their case to the authorities / law enforcement officers. Thus the apparatus would be difficult to track or look for the main perpetrators.

The migrant worker trafficking has an economic impact, that make it seemingly impossible to be completely eliminated, due to the contradiction between victims and traffickers. While the victims are mistreated, the traffickers who did not do any work becoming richer and accumulate wealth. Moreover, the crime mode is usually done by applying debt bondage to the worker family from the time of recruitment, either to prospective migrant workers or other forms of trafficking. Traffickers and recruiters generally take advantage of the economic conditions of potential victims, by giving the lure guarantee the entire cost will be borne, coupled with the success stories of other migrant workers. Prospective workers who have economic and information constraints, without further thinking then agree and submit all the needs of their departure to the recruiters (Nuraeny, 2016). This potential victim motivation is used by the perpetrator to perform the action, because the business is very promising and bring high economic value.

6. Efforts to Prevent and Protect Against Trafficking

Although the various strategic plans and countermeasures both in the form of prevention and protection have been planned and implemented, the actions are still facing many obstacles. From the various cases affecting migrant workers, it is certain that the level of protection of migrant workers remains weak. The legal treatment of cases involving multiple parties has not been solved well. Especially to the settlement of cases that directly or indirectly have legal consequences, it should be evocative of the concerns of all parties, especially the concern of the Indonesian government to increase legal and social protection efforts to its citizens, who become migrants to seek employment abroad (Yeoh, Huang, & Gonzalez III, 1999).

Similarly, in the prevention and legal protection of migrant worker shipping as one of the trafficking modes of people, efforts can be made not only by legal actions but more on implementing government policies (Killias, 2010). Therefore, in reality the legal enforcement of trafficking can not be equated among geographical contexts, but more depends on the root cause. The complexity of the problem needs to be sought through a comprehensive policy governing the relevant parties, including the role of the government that should provide a form of protection on migrant workers for any form of action that violates its human rights.

In solving this problem, the government has improved law enforcement action on trafficking crimes, even though efforts to overcome trafficking of persons conducted through exploitative recruitment practices especially by private Indonesian private seller companies is still occurred. In addition, there have been few reports of attempts to prosecute and punish the traffickers.

The government continues to take preventive measures against the sending of illegal migrant workers through cooperation with various NGOs and international organizations in an effort to raise awareness of the dangers of the practice of trafficking in persons (Piper, 2003). The Ministry of Women Empowerment, acting as a key element of the government and coordinator for the National Human Trafficking Task Force, has regulated the regulation of the Coordinating Minister for Human Development and Culture of the Republic of Indonesia no. 2 of 2016 on the national action plan for the eradication of trafficking of persons of the 2015 – 2019.

This regulation is implemented by involving many ministers, such as the Coordinating Minister for Human Development and Culture, Minister of Women Empowerment and Child Protection, Minister of Home Affairs, Minister of Foreign Affairs, Minister of Finance, Minister of Religious Affairs, Minister of Law and Human Rights, Minister of Transportation, Minister of Manpower and Transmigration, Minister of Social Affairs, Minister of Health, Minister of National Education, Minister of Culture and Tourism, Minister of Communication and Information, State Minister for Development Planning, Minister of State for Youth and Sports, Chief of Police, Attorney General, Head of National Agency for Placement and Protection of Indonesian Workers, Head of the State Intelligence Agency, and Head of Central Bureau of Statistics (Ministry of Women and Child Protection, 2016). The task force is a coordinating agency concerned with the prevention and handling of trafficking in persons, particularly advocacy, socialization, job training, monitoring the progress of the implementation of victim protection in terms of rehabilitation, repatriation and social reintegration, monitoring the progress of law enforcement, and implementing reporting and evaluation (Nuraeny, 2013).

One concept that is being run in the prevention and prosecution of illegal shipments of migrant workers can be taken from a task force in Cianjur District, West Java, that has had the action plan and legal instrument in the form of local regulation to prevent the trafficking. Cianjur regency as a district in West Java that send the highest amount of labor who are often victims of violence and trafficking. On that basis, the district government of Cianjur seek a variety of efforts in the preventive action by issuing several regulations related to trafficking in persons. Cianjur District has established a task force as mandated by law no. 21 of 2007, and has successfully established the regional regulation no. 3 of 2010 on combating trafficking, and regulation no. 1 of 2012 on the placement and protection of Indonesian workers abroad (Novirianti, 2010).

The main purpose made bylaw no. 1 of 2012 is to provide protection for Indonesian workers originated from Cianjur district who work abroad. This regulation is more focused on the migrants working abroad. The law also has criteria that every Indonesian workers who will work abroad should have an clear destination and the competitive ability according to the type of employment and occupation, and implemented with the principles of equality, democracy, social justice, gender equality, without discrimination and anti human trafficking. In addition, this law also regulates the rights and obligations for Indonesian worker candidates, duty of private manpower services, protection to prospective Indonesian labor starting from the pre-placement, time placement, after placement, conflict settlement, training, integrated services, administrative sanctions, and the rules of criminal investigation.

The preventive actions of illegal migrant workers shipments that occurred in several regions in Indonesia have diverse and complex obstacles. Among the most significant constraints are there are many members of people living below the poverty line, the lack of educational and training quality for prospective migrant workers going abroad, the lack of the means hiring local labor, debt bondage that is still rampant in recruitment, repatriation of labor, thereby potentially trafficking in persons, the lack of supporting activities in the area of origin for trafficking victims, so that the victim was discharged susceptible to being re-trafficked, there are tourist facility utilizations to open the prostitution, legal instruments which may prove difficult to present evidence, weak community involvement in deterrence of offenders, the weakness of legal assistance for victims, especially victims who are working abroad, there is still a lack of accurate data on trafficking victims, there are still obstacles in the bureaucratic process in the handling of victims, there are still obstacles in the handling of rehabilitation centers for victims of trafficking in persons, not optimal allocation of budget from the government on the handling of victims, especially repatriation for victims who are working abroad, the weakness of the legal basis for state representative of Indonesia abroad, in the handling of migrant workers in the destination country (The work program and activities of task force, 2009).

It is therefore necessary to anticipate an effort in the prevention and mitigation. In the case of disclosure of the delivery of migrant workers is not as easy as the disclosure of other crimes, because the delivery of migrant workers generally involves a network, whether organized or unorganized, both cross border and within the country. In addition, complaints of cases of delivery of illegal migrant workers are emerging and lodged by the victim when the perceived loss of material and immaterial.

7. Conclusion

This study attempts to descriptively analyse the economic reasons behind illegal migrant worker trafficking, especially in Indonesia, that allows the government to regulate more preventive and protective actions to solve this humanistic problem.

The background mode of trafficking of persons is very complex, involving the aspects of economic, social and educational beings. Thus, to prevent the trafficking fundamentally should be made to eradicate the root of the most fundamental issues, in terms of providing more opportunity in economic factors and public education.

To be able to carry out efforts to prevent crime of migrant worker trafficking must be adapted to the legal development plan capable of preventing illegal trafficking as well as of punishing the perpetrators. Therefore, the government should continually oversee on the flow of labor migration by the private employment agents, as well as develop more access to employment opportunities, especially for local workers, improve coordination and cooperation at the local, regional and international level.

References:

- Andrevski, H. and Lyneham, S. 2014. Experiences of exploitation and human trafficking among a sample of Indonesian migrant domestic workers. *Trends and Issues in Crime and Criminal Justice*, (471), 1.
- Bryan, A.G. 2009. *Blacks Law Dictionary*. West Group St Paul.
- Constable, N. 2007. *Maid to order in Hong Kong: Stories of migrant workers*. Cornell University Press.
- De Haan, A. and Rogaly, B. 2002. Introduction: Migrant workers and their role in rural change. *Journal of Development Studies*, 38(5), 1-14.
- Ford, M. and Lyons, L. 2011. *Travelling the aspal route: Grey labour migration through an Indonesian border town*. KITLV Press.
- Jones, S. 1999. *Making money off migrants: The Indonesian exodus to Malaysia*, 1.
- Kapiszewski, A. 2006. Arab versus Asian migrant workers in the GCC countries. *South Asian migration to Gulf countries: History, policies, development*, 46-70.
- Killias, O. 2010. Illegal' migration as resistance: Legality, morality and coercion in Indonesian domestic worker migration to Malaysia. *Asian Journal of Social Science*, 38(6), 897-914.
- Lapian, L.M.G. and Geru, H.A. 2006. *Trafiking perempuan dan anak: penanggulangan komprehensif: Studi kasus Sulawesi Utara*. Yayasan Obor Indonesia.
- Larsen, J.J. 2010. Migration and people trafficking in southeast Asia. *Trends and issues in crime and criminal justice*, (401), 1.
- Loveband, A. 2004. Positioning the product: Indonesian migrant women workers in Taiwan. *Journal of Contemporary Asia*, 34(3), 336-348.
- Murray, A. 1998. *Debt-bondage and trafficking: Don't believe the hype*. New York, Routledge.
- Novirianti, D. 2010. District Legislation and Access to Justice: A Case Study of Female Migrant Workers in Cianjur'. *Law, Social Justice & Global Development Journal (LGD)*.
- Nuraeny, H. 2006. *Tindak Pidana Perdagangan Orang Dalam Perspektif Hak Asasi Manusia*. Jakarta, Raja Grafindo.
- Nuraeny, H. 2013. *Tindak pidana perdagangan orang: kebijakan hukum pidana dan pencegahannya*. Sinar Grafika.
- Piper, N. 2003. Feminization of labor migration as violence against women: International, regional, and local nongovernmental organization responses in Asia. *Violence Against Women*, 9(6), 723-745.

- Piper, N. and Uhlin, A. 2002. Transnational advocacy networks, female labor migration and trafficking in East and Southeast Asia: A gendered analysis of opportunities and obstacles. *Asian and Pacific Migration Journal*, 11(2), 171-195.
- Setyawati, D. 2013. Assets or commodities? Comparing regulations of placement and protection of migrant workers in Indonesia and the Philippines. *Austrian Journal of South-East Asian Studies*, 6(2).
- Silvey, R. 2004. Transnational domestication: State power and Indonesian migrant women in Saudi Arabia. *Political Geography*, 23(3), 245-264.
- Silvey, R. 2006. Consuming the transnational family: Indonesian migrant domestic workers to Saudi Arabia. *Global networks*, 6(1), 23-40.
- Wickramasekara, P. 2002. *Asian labour migration: Issues and challenges in an era of globalization*. Geneva: International Migration Programme, International Labour Office.
- Yeoh, B.S., Huang, S. and Gonzalez I.J. 1999. Migrant female domestic workers: debating the economic, social and political impacts in Singapore. *International Migration Review*, 114-136.