



Legal protection against human trafficking with the mode of Indonesian migrant workers

Johandi M¹, Akhyar^{2*}, Anhar Nasution², Dollar²

¹ Department of Law, Abulyatama University, Aceh, Indonesia

² Lecturer, Department of Law, Abulyatama University, Aceh, Indonesia

Abstract

Human trafficking is a criminal practice that is quite rampant in Indonesia and can threaten life in society. With the development of the era, the Crime of Human Trafficking has also developed through the mode of Indonesian migrant workers abroad by providing promises of job placement with high salaries, but in reality they do not get anything as promised. The problem discussed in this study is about legal protection against human trafficking with the mode of Indonesian migrant workers with the aim of the study to determine the legal protection against human trafficking with the mode of Indonesian migrant workers. The method used in this study is the normative approach method. Data collection techniques carried out by the author by analyzing laws and regulations and literature studies. The results of the study of legal protection against human trafficking with the mode of Indonesian migrant workers are not yet effective in accordance with existing provisions and have not received the rights of justice provided by the constitution and victims of human trafficking are still harmed both in terms of body and soul and property by human trafficking brokers. It is recommended that the Indonesian Government review the existing regulations on legal protection against human trafficking using the modus operandi of Indonesian migrant workers so that victims can be protected by law and perpetrators receive sanctions according to the actions they have committed and are not free from the clutches of the law.

Keywords: Legal protection, human trafficking, Indonesian migrant workers

Introduction

Nowadays in Indonesia, criminal acts often occur against Indonesian workers, especially Indonesian workers who are abroad, commonly known as migrant workers or Indonesian migrant workers, one of which is being made the object of human trafficking with the mode of placing migrant workers abroad, including slavery and forced labor, victims of violence, arbitrariness, crimes against human dignity, and other treatments that violate human rights.

Limited economic resources in a region result in the movement (migration) of people outside the region of origin with the aim of improving the economic level. This situation is often abused by parties who want to reap huge profits by seeking jobs and providing promises and hopes to improve economic life, namely through the opportunity to work outside the region (by means of migration), so that prospective workers become interested in becoming migrant workers.^[1]

Indonesia established a government-sponsored overseas labor migration program in the 1970s under Suharto's New Order regime as a way to reduce domestic unemployment and attract foreign exchange. Outside of the Philippines, Indonesia now sends more workers abroad than any other country in Southeast Asia, with about half a million workers officially leaving each year. As of May 2012, about 2.4 million Indonesian workers were officially recorded as working abroad as migrant workers, while an unknown number may be working illegally.^[2]

The conditions of migrant workers from Indonesia are different from those of migrant workers from other countries. Indonesian migrant workers often have problems both individually for themselves and in general for the Indonesian. The biggest problem is that Indonesian migrant workers are often victims of the placement of migrant

workers which ultimately leads to the crime of human trafficking.

Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking Article 1 number 1 states the definition of human trafficking as follows: Human trafficking is the act of recruiting, harboring, sending, transferring, or receiving a person with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt trapping or giving payment or benefits, so as to obtain the consent of the person who has control over the other person, whether carried out within the country or between countries, for the purpose of exploitation or causing people to be exploited. Meanwhile, the crime of human trafficking is stated in Article 1 number 2 of the Eradication Of The Crime Of Human Trafficking Law, namely: "Any action or series of actions that meet the elements of a crime as determined in this Law.

Article 69 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers states that there is a prohibition on individuals being prohibited from placing Indonesian migrant workers. This is stated firmly with the existence of sanctions for individuals who place Indonesian migrant workers abroad. It is stated in Article 81 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers that: "An individual who places Indonesian migrant workers as referred to in Article 69 shall be punished with imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp. 15,000,000,000.00 (fifteen billion rupiah)."

The individuals referred to in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers are: "Individuals in this provision include brokers or individuals who do not have the authority to place Indonesian migrant workers."

According to Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, it is stated in Article 49 that the implementers of the placement of Indonesian migrant workers abroad consist of agencies, and companies that place Indonesian migrant workers, or companies that place Indonesian migrant workers for the benefit of their own companies. Referring to the explanation above, it can be said that those who are authorized to carry out the placement of Indonesian migrant workers abroad in accordance with the provisions of Article 49 of Law Number 18 of 2017 are agencies that are carried out on the basis of a written agreement between the government and the government of the country of employment of Indonesian migrant workers or employers who are legal entities in the destination country of placement, and companies that place Indonesian migrant workers who have obtained written permission in the form of a Company Permit for Placement of Indonesian Migrant Workers from the Minister, or companies that place Indonesian migrant workers for the benefit of their own companies.

The practice occurred problems related to the placement of Indonesian migrant workers abroad by individuals carried out by the defendant Sunata together with Lim Taekyun (South Korean citizens) in 2016 in Cileungsi, Bogor Regency. It started with a letter from the Indonesian Embassy in Seoul Number: R-00050/SEOUL/160215, dated February 15, 2016 which informed that there was a case of human trafficking experienced by 26 (twenty-six) Indonesian citizens (WNI) in the city of Jeju, South Korea who were recruited and sent by the defendant. The 26 victim witnesses came from NTB, Lampung, East Java, West Java and Central Java, where the victim witnesses explained that they had been promised to be sent to South Korea by the defendant to be employed as Ship Crew (ABK) / fishermen with a salary of around Rp. 18,000,000,- per month (rupiah exchange rate), but upon arrival in South Korea the victim witnesses were accommodated by Lim Taekyun and some of the victims were employed on the plantation (harvesting turnips) and some were employed as construction workers with a daily salary of around 100,000 won (Rp. 1,282,500,-) deducted by 20,000 won (Rp. 256,500,-) so that they only received 80,000 won (Rp. 1,026,000,-), where they were employed not in accordance with what the defendant promised. In addition, there were also several victims who had not found work.

The defendant received twenty-six victim witnesses with the requirement that the victim witnesses submit an administration fee ranging up to Rp. 110,000,000, - by installments, either cash payments or transfers via BRI Bank Account Number 1152-01-000208-30-1 in the name of PT. Sunata Jaya Motor and BCA Bank Kedoya Baru branch, West Jakarta with account number 03091334681 in the name of Sunata. In addition, several victim witnesses made payments through the recruitment agents Rubai, Ramli Shalli, and Abdul Wahab.

During the recruitment and sending of the twenty-six victim witnesses to South Korea, the defendant did not have permission and did not have any official cooperation with the Korean company (job order) and the defendant did not sign any work agreement/contract with the victim witnesses, did not undergo a medical check-up, was not given work training, was not given work insurance, did not have Overseas Worker Card. The victim witness was sent to South Korea as a student (Korean Language Training) on

January 26, 2016 guaranteed by PT. Sunata Jaya Motor based on the Letter of Guarantee addressed to the Immigration Office for departures. In another case, the West Java Indonesian Migrant Workers Service Center together with the South Jakarta Metro Police uncovered a case of human trafficking at the Kalibata City Apartment with the mode of illegally sending Indonesian Migrant Workers to Saudi Arabia, who will depart on February 4, 2024.

Deputy Head of the Criminal Investigation Unit of the South Jakarta Metro Police, Commissioner Henrikus Yossi, said that the disclosure of the Crime of Human Trafficking case at the Kalibata City Apartment began with a report from a resident from Garut to officers from the West Java Indonesian Migrant Workers Protection Service Center, because his wife with the initials IF was going to be sent to Saudi Arabia.

Yossi stated that the disclosure on February 4, 2024 at the Kalibata City Apartment was the third disclosure in the last 2 years at the apartment. When the joint team conducted a check, not only IF was in the apartment, but there were seven other people who were placed and would be sent to Saudi Arabia. Also there was the person in charge or broker with the initials DA from Bandung, who has been named a suspect. In carrying out his activities, DA did not run the human trafficking business alone. However, he was also assisted by several people in the West Java area, to get prospective Indonesian Migrant Workers and a host in Riyadh, Saudi Arabia.

For the actions of the suspect DA, he is suspected of Article 81 of Law Number 18 of 2017 concerning the Protection of Migrant Workers with a criminal threat of 10 years. And also Article 2 of Law Number 2021 of 2007 concerning the Criminal Act of Eradicating Human Trafficking with a maximum criminal threat of 15 years in prison.

Head of Indonesian Migrant Workers Protection Service Center West Java Kombes. Pol. Mulia Nugraha, appealed to the public to be careful with the lure of working abroad quickly and easily because departure to the Middle East for the informal sector is still a moratorium. The public must work with complete requirements and documents. Based on Permenaker Number 206 of 2015 concerning the termination and prohibition of the placement of Migrant Workers for individual use in countries in the Middle East region. And there are 19 countries, one of which is Abu Dhabi - United Arab Emirates.

Apart from that, starting from information about job vacancies in Cambodia with fantastic salaries obtained from the social media Facebook, Reza (26), a man from Banda Aceh, tried to change his fate in the country of Angkor Wat, but this experience led to him becoming a victim of human trafficking.

Reza was not employed according to the job vacancy information that promised a job as an operator with the lure of a salary of Rp 10 to Rp 15 million in an online game company. Instead, he was forced to work as a scammer or fraudster. "When we started work the next day, our passports were taken and on the same day they gave us information that it was a fraudulent company,".

Reza said that he and his colleagues in the fraudulent company were forced to pretend to be career women using fake accounts to prey on Indonesian workers working abroad to invest fraudulently with an initial capital of 200 US dollars. In fact, some were successfully deceived up to Rp 100 million or the equivalent of 1,000 US dollars, I saw

myself many Indonesian workers who became victims of tens and hundreds of millions of money disappeared by the way they carried out scams and fraud.

Reza refused but was powerless against those people. He always received threats and punishments from their boss while there. Moreover, if they failed to achieve their daily targets, the migrant workers would be given physical punishment and threatened to be sold. Worse still, if we do not meet the company's qualifications, then we will be sold to another company, well this is where our lives will be threatened or even lost.

Based on the description above, the author is interested in studying it in the form of a thesis entitled "Legal Protection Against Human Trafficking with the Mode of Indonesian Migrant Workers. In writing this thesis, the problems that will be studied and discussed are as follows:

1. What are the legal regulations against human trafficking with the mode of Migrant Workers in Indonesia?
2. What are the factors that cause human trafficking with the mode of migrant workers in Indonesia?
3. How is the law enforcement against human trafficking with the mode of migrant workers in Indonesia?

The objectives of this study are as follows: 1) To find out the legal regulations against human trafficking under the guise of Migrant Workers in Indonesia. 2) To find out the factors that cause human trafficking under the guise of migrant workers in Indonesia. 3) To find out the law enforcement against human trafficking under the guise of migrant workers in Indonesia.

Theoretical Concept

Legal Protection

Licensing law is part of administrative law. What is meant by licensing is a one-sided state administrative law act that applies regulations in concrete matters based on requirements and procedures as stipulated by the provisions of laws and regulations.^[3]

In Indonesia, Building Permits are granted by the Regional Government for special function buildings by the Regional Government to building owners to build new, change, expand, reduce, and/or maintain buildings in accordance with applicable administrative and technical requirements. This has been regulated through Article 1 Number 1 of the Regulation of the Minister of Public Works No. 24/PRT/M/2007 concerning Technical Guidelines for Building Permits.^[4]

Asep Warlan Yusuf said that permits as a government instrument that is preventive in nature, which is used as a means of administrative law to control community behavior. Building permits, hereinafter referred to as building permits, are permits granted by the district/city government to building owners to build new, change, expand, reduce and/or maintain buildings in accordance with applicable administrative and technical requirements.

During the licensing process, the local government records and registers the building in the building database. The activity of regulating building structures is intended for administrative order in the construction and utilization of buildings, as well as the building information system in the local government. Article 3 of Law of the Republic of Indonesia Number 28 of 2002 concerning Buildings states that the regulation of building structures aims to:

- a) Creating functional buildings that comply with building plans that are harmonious and in harmony with their environment.;
- b) Realizing orderly building construction management that guarantees the technical reliability of the building in terms of safety, health, comfort and convenience.;
- c) Realizing legal certainty in the implementation of building construction.

Criminalization

National development aims to create a just and prosperous society that is evenly distributed materially and spiritually based on Pancasila and the 1945 Constitution. Development is not separate from building construction, along with buildings that are directly part of the building (house) within the limits of one ownership, as seen from its very important function as a place for humans to carry out their activities to achieve various targets that support the realization of national development goals.^[5]

Criminal Liability

In the Regulation of the Ministry of Home Affairs Number 32 of 2010 concerning guidelines for granting building permits, the principles and benefits of granting building permits are explained, namely:^[6]

- a. Granting of Building Permits which is carried out based on the principles:
 - 1) Simple, easy and applicable procedure
 - 2) Fast, affordable and timely service
 - 3) Openness of information for the community and business world; and
 - 4) Spatial planning aspects, certainty of land legal status.
 - 5) Safety and security, as well as comfort.
- b. The Regent/Mayor utilizes the granting of a Building Permit for:
 - 1) Supervision, control and regulation of buildings
 - 2) Realizing orderly building management that guarantees building reliability in terms of safety, health, comfort and convenience.
 - 3) Create a functional building that is in accordance with the building layout and in harmony with its environment.
 - 4) Requirements for issuing other certifications for building functions. Owners of building permits receive benefits for:
 - a) Submission of a certificate of building function suitability guarantee
 - b) Obtain public utility services such as installation or addition of electricity networks, drinking water, hydrants, telephones and gas.

Legal accountability for human trafficking in Indonesia

The buildings that are built are not wild, irregular buildings. The buildings that are built also aim to create a safe, orderly and healthy community life, through the realization of harmonious land use. The construction of buildings is also adjusted to the needs and capabilities of the environmental carrying capacity, and regional development in order to realize environmental sustainability. Building permits are not only needed to build new buildings, but are also needed to dismantle, renovate, add, change, or repair that changes the shape or structure of the building and can be used as a bank credit application. Building Permits are given to buildings that have met the administrative and technical requirements.

Indonesian Migrant Workers

The meaning of "control" and "controlling" can be used in a physical sense, also in a legal sense, also in a civil and public aspect. Control in the legal sense is control based on rights, which is protected by law in general giving authority to the rights holder to physically control the land that is being claimed, there is legal control which even though it gives authority to physically control land rights, but in reality the physical control is carried out by another party.^[7]

Research methods

Types and Approaches of Research

This type of research is normative legal research, namely the process of finding legal rules, legal principles, and legal doctrines in order to answer the legal issues faced.⁸

Meanwhile, the approach method used in this study is a normative legal approach. The normative legal approach (doctrinal) is an approach using literature or document studies and expert opinions related to Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers and Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking against victims of human trafficking. Researchers will use library data as secondary data.

Data Collection Sources and Techniques

Data sources consist of two types, primary data sources and secondary data sources. Primary data is a data source obtained directly from the original source (not through intermediary media). Primary data can be in the form of opinions of subjects (people) individually or in groups, results of observations of an object (physical), events or activities, and test results. While secondary data is a source of research data obtained by researchers indirectly through intermediary media (obtained and recorded by other parties). Secondary data is generally in the form of evidence, records or historical reports that have been compiled in archives (documentary data) that are published and unpublished.^[8]

In this study, the author does not use primary data sources but only uses secondary data sources, because in general in normative research the data used is secondary data.¹¹ This secondary data is divided into primary legal materials and secondary legal materials. Primary legal materials are legal materials that are authoritative, meaning they have authority, consisting of legislation, official records, or minutes in the making of legislation and judges' decisions. While secondary legal materials are in the form of all publications on law that are not official documents. Publications on law include textbooks, legal dictionaries, legal journals, and comments on court decisions. In this study the author uses these two legal materials.

The technique used in data collection for this study is by collecting secondary data consisting of primary legal materials and secondary legal materials that are related to the main problem of the study, namely the crime of human trafficking. The model for collecting legal materials used is the library research model or literature study. This study takes place in a library or other places where various sources of legal data materials that are needed can be obtained.¹³

This data collection was carried out by examining existing documents, namely by collecting legal materials in the form of laws and regulations, books of interpretation of legal

verses on the crime of human trafficking, books of legal hadith commentary on human trafficking, books of Islamic jurisprudence on human trafficking, books on the crime of human trafficking in the Criminal Code and Islamic criminal law, scientific papers, journals, seminar papers, and various information related to the author's research theme that can be obtained through the internet media.

The author collected the data using the following stages, namely: determining secondary data sources, identifying the data needed, inventorying data relevant to the problem formulation, and finally reviewing the data to determine its relevance to the needs and problem formulation.

Data Analysis

In analyzing the data of Criminal Law and Islamic law, the author uses the hermeneutic method. Namely a science and art in interpreting a text, holy book, or a philosophical thought of Human Rights.^[9]

In addition to using the hermeneutic method, the author also uses the content analysis method. Content analysis is an in-depth discussion of the focus of a study. Using this method, the author analyzes the main problem being studied. In this thesis research, the main problem is the concept of the crime of human trafficking in the Indonesian Criminal Code and the concept of the sharia of human trafficking in Islamic jurisprudence as formulated in the research focus and research questions.

Research result

Legal Protection

Legal regulations for victims of human trafficking under the guise of Migrant Workers

In the Opening of the 1945 Constitution of the Republic of Indonesia, one of the goals of the state is to protect all Indonesian people. This clearly provides a mandate for the state to provide protection for the entire nation from all threats, especially for Indonesian Migrant Workers who are victims of human trafficking crimes abroad.

Based on the provisions of Article 1 number 5 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. Indonesian migrant workers are all efforts to protect the interests of prospective Indonesian migrant workers and/or Indonesian migrant workers and their families to ensure the fulfillment of their rights in all activities before working, during working, and after working in legal, economic and social aspects.

With the lure of a large salary, people from the lower middle class are easily tempted by the offers from the perpetrators. This is an irony for prospective Indonesian Migrant Workers who want to work abroad with the expectation of getting a high salary but instead experience things that are not in accordance with their goals.

Slavery, exploitation and any form related to human trafficking for the purpose of exploitation, all of that has clearly violated human rights. Whereas we have known that human rights are rights that cannot be violated because they are rights that are inherent naturally since humans were born and are also a gift from God that must be maintained between fellow human beings. Starting from the principle of respect for human rights, the nature of the existence and basis of human rights is solely to protect their interests, so that every individual can enjoy their basic rights and at the same time their human dignity can be respected.

Specifics regarding legal protection for victims of human trafficking crimes are increasingly gaining ground with the enactment of Law Number 21 of 2007 concerning the Eradication of Human Trafficking Crimes. Specifically in Articles 43 to 53. Article 43 of Law Number 21 of 2007 regulates "provisions concerning the protection of witnesses and victims in human trafficking crimes are implemented based on Law Number 31 of 2014 Amendment to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims unless otherwise specified in this law."

In addition to the protection referred to in Law Number 21 of 2007, this Law also provides rights to victims of human trafficking crimes in the form of:

1. During the investigation, prosecution and examination process in court, witnesses and/or victims have the right to be accompanied by an advocate and/or other companion as needed;
2. During the investigation, prosecution and examination process before the court, the victim has the right to receive information about the development of the case involving him/her;
3. Witnesses and/or victims have the right to ask the chief judge to provide information in court without the presence of the accused;
4. Witnesses and/or victims of human trafficking have the right to obtain confidentiality of identity. This right is also granted to the family of witnesses and/or victims up to the second degree, if the family of witnesses and/or victims receive physical or psychological threats from other people that are not related to the testimony of witnesses and/or victims.;
5. Every victim of human trafficking or their heirs has the right to receive restitution, which is payment of compensation imposed on the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or their heirs. This restitution is compensation given for loss of wealth or income, suffering, costs for medical and/or psychological care and/or other losses suffered by the victim as a result of human trafficking.
6. Victims have the right to receive health rehabilitation, social rehabilitation, repatriation and social reintegration from the government if the person concerned experiences physical or psychological suffering due to the crime of human trafficking.
7. Witnesses and/or victims of human trafficking crimes also have the right to receive rights and protection in accordance with the provisions of other laws and regulations.

Law enforcement for perpetrators through sanctions applied is still too light and firm. Law enforcement officers have a very important role in implementing law enforcement, namely from the level of investigation, prosecution to trial. Law enforcement officers have a position and role.

In Article 1 number 4 of Law Number 21 of 2007, the perpetrator is any individual or corporation that commits the crime of human trafficking. In Articles 2 to 18, this law explicitly formulates sanctions against perpetrators of human trafficking. Based on these articles, several perpetrators of human trafficking can be categorized, namely:

First, labor recruitment agencies (legal or illegal) who pay agents/brokers to find workers in villages, manage shelters,

take care of identity and ID cards and travel documents, provide training and medical examinations and place their workers in the destination country.

Second, agents/brokers (possibly foreigners) who come to a village, neighbors, friends, even village heads, community leaders, traditional leaders, or religious leaders. Agents can work simultaneously for registered/unregistered Manpower Services Companies, in order to get paid for each worker they recruit.

Third, employers who force workers to work in exploitative conditions, do not pay wages, confine workers in the workplace, commit sexual or physical violence against workers.

Fourth, the government is involved in document falsification, ignoring violations in labor recruitment or facilitating illegal border crossings (including neglect by police/immigration officers).

Fifth, owners/managers who force people to work beyond their will and ability, do not pay salaries or recruit and employ children who are not yet 18 years old.

In the case of human trafficking, with the mode of Indonesian migrant workers abroad. These perpetrators are charged under Article 4 of Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking "Any person who takes an Indonesian citizen outside the territory of the Republic of Indonesia with the intention of exploiting him/her outside the territory of the Republic of Indonesia shall be punished with imprisonment of at least 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah)".

Basically, the defendant of the crime of human trafficking with the mode of Indonesian migrant workers abroad fulfills the elements of Article 4 of Law Number 21 of 2007, because the defendant has promised to work, take care of the requirements and take care of the departure of the victims outside the territory of the Republic of Indonesia with the intention of being exploited outside the territory of the Republic of Indonesia because it is clear that the defendant knows that the victims are not equipped with skills; do not have work agreement documents, are not insured as a basis for protection and do not have a permit to send workers, so the elements with this intention have been fulfilled in the defendant's actions.

Forms of Human Trafficking Crimes committed through the misuse of information technology are also increasingly common and various types of such crimes continue to increase. On the other hand, efforts to catch perpetrators of crimes using information technology still have a low success rate. Of course, this is an important concern for the community because the impact of losses from this type of crime is very large. Currently, the trend of crime is growing, including the development of computer technology which actually encourages an increase in crime rather than reducing it. The crimes that occur are becoming more complex and neat, much more complicated than we usually imagine. The presence of cyberspace, as a new phenomenon in the journey of human history, is increasingly complicating law enforcement efforts in Indonesia.^[10]

Human trafficking violates human rights and constitutes human slavery in the modern era, because humans are equated with traded goods so that the right to life and the right to freedom are taken away.

Deprivation of liberty including all forms of slavery are not in accordance with and contrary to the human aspect, in addition to human trafficking against social aspects, the right to freedom, freedom of citizenship, the right to receive protection or social security, the right to a healthy life. "The social aspect is the whole aspect of human rights which according to the law are essentially legal interests to be protected. Therefore, in the concept of Human Rights, humans cannot be objects of trade (the-object of law). Humans are only worthy as legal subjects who have rights and obligations. Thus, Human Trafficking is a serious violation of Human Rights which includes human crimes which are transnational and organized crimes, so it is called an extra ordinary crime and has a wide reach that has an impact both nationally and internationally.

For human trafficking syndicates, this is a big business that can generate billions of dollars in profits in a short time. The business seems Human rightspir unrecognizable even though it is packaged very well and uses the latest methods. For less competent investigators, it is difficult to investigate this case.

Human trafficking is an organized crime. There are several forms of human trafficking crimes that commonly occur in Indonesia, including:

1. Forced labor

Forced labor, also known as labor trafficking, encompasses a range of activities involved when a person uses force, fraud or coercion to exploit the labor or services of another person.

2. Housework / Domestic Services

Domestic Work is a form of forced labor in which traffickers require victims to perform work in a private residence. Such circumstances create unique vulnerabilities. Domestic workers are often isolated and may work alone in their homes. Their employers often control their access to food, transportation, and housing. What happens in private residences is hidden from the world, including from law enforcement and labor inspectors, resulting in human rights barriers in identifying victims. Foreign domestic workers are particularly vulnerable to abuse due to language and cultural barriers, as well as lack of community ties. Some traffickers use these conditions as part of their coercive schemes to force domestic workers to work with little risk of detection.

3. Forced Child Labor

The term "forced child labor" describes forced labor schemes in which traffickers force children to work. Traffickers often target children because they are more vulnerable.

4. Sexual Exploitation

Sexual exploitation can be divided into two areas. The first is commercial sexual exploitation for prostitution. For example, poor village women, or newly married or school dropouts and are going through a divorce, are invited to work in entertainment venues and then employed as sex workers or massage parlors. The victim works under a pimp (prostitute intermediary) with exploitative rules, such as unlimited working hours, to get an unspecified amount of money. The victim has no right to refuse when serving the pimp who will get his services and if the victim refuses, he will be tortured by the pimp, guarded by special

bodyguards. The sacrifice is like a bitter fruit, because the chance of escape is very difficult. If the victim protests, a certain amount of money must be paid as compensation for the victim's livelihood.

5. Child Sex Trafficking

In cases where an individual engages in one of the specified "acts" with a child (under the age of 18), the means element is irrelevant regardless of whether there is evidence of force, fraud, or coercion. The use of children in commercial sex is prohibited by law in Indonesia and most countries in the world.

Factors that cause human trafficking using the method of Indonesian migrant workers

Human trafficking does not happen by itself, but there are factors that encourage the occurrence of this trade. The factors that encourage the occurrence of human trafficking using the Indonesian migrant worker method include:

1. Poverty

The large amount of poverty that occurs in our country cannot be separated from the economic crisis, where Marx's theory states that crime is only a product of a bad economic system, especially the capitalist economic system.

2. Low Education

Low levels of education can result in someone not having the skills that can support their life in the future and can also result in someone having a short-sighted mindset, which only thinks about material things without caring about anything else.

3. Free association

As we know, nowadays young people's social life is very free. They no longer pay attention to the norms that exist in society and the weakening of faith in young people today, even though faith or religion is the main fortress for humans in living a better life.

Other opinions also explain that the factors that are obstacles to legal protection for victims of human trafficking are as follows:

1. Non-judicial factors

a. Economic factors

Economic factors are one of the causes of crime, as an illustration, for example in the development of the economy in the modern age, when free competition grows between one company and another, and to stimulate consumer interest, each company competes by placing advertisements and so on.

b. Poverty factors

The strongest poverty as a driver of crime is poverty that has reached a structural level (structural poverty). Structural poverty is poverty that has affected certain groups in society who are unable to improve their standard of living properly because the social structure of society cannot use the sources of income that this group actually has, they do not have adequate skills, abilities and do not have capital for business.

c. Social and cultural factors

This factor also encourages someone to commit a crime, where now there are shifts or changes in a society. Where this has a negative impact on society, for example: there is a

social gap between the rich and the poor, which results in social jealousy. Because this is what encourages people to commit crimes in order to have a good social position, and also in a person has grown an attitude of wanting to achieve a goal or desire with the smallest sacrifice, and also little regard for the social norms of the surrounding community.

d. Low education

Education is a process to shape someone to be good, because with knowledge someone has intelligence or good thinking power. However, if someone has low education that causes society to live in ignorance. Because of this ignorance, many people do not understand human rights and know about the law and there is no legal awareness in a society. This is what makes society very vulnerable to committing a crime.

2. Legal Factors

Law enforcement for perpetrators through sanctions applied is still too light and firm. Law enforcement officers have a very important role in implementing law enforcement, namely from the level of investigation, prosecution to trial. Therefore, professional officers are needed who understand the law, but unfortunately there are still many who do not understand clearly about the existing laws and regulations. So that in handling a case of human trafficking, law enforcement officers have not implemented Law Number 21 of 2007 to the maximum, such as it is known that the victims of human trafficking crimes are mostly Indonesian migrant workers who are vulnerable to crime. So that Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers is used more often than Law Number 21 of 2007.

Law enforcement officers have positions and roles. Position (social) is a certain position in the social structure, which is higher, moderate or low. The position is actually a container that contains certain rights and obligations. The rights and obligations are the roles.

In addition to these roles and positions, law enforcement officers are also role models for the community, who should have certain abilities, in accordance with the aspirations of the community. They must be able to communicate and gain understanding from the target group, in addition to being able to carry out or carry out roles that are acceptable to them. However, a law enforcer, as with other members of society, usually has several positions and roles at once. Thus, it is not impossible that conflicts arise between various positions and roles. If in reality there is a gap between the role that should be and the role that is actually carried out or the actual role, then a role gap occurs.

Law enforcement of human trafficking using the *modus operandi* of Indonesian migrant workers

Law enforcement is essentially an effort to realize the ideas of justice, legal certainty, and social benefits. In a context that focuses more on the performance of law enforcers. Paul SinlaEloE argues that law enforcement in the Human Rights Law is a series of activities in the framework of implementing legal provisions, both in the nature of action and prevention, which include all activities, both technical and administrative, carried out by law enforcement officers so that the basic values of the law, namely justice, benefits and certainty can be realized.^[10]

Facts in human trafficking cases generally begin with the mode of administrative assistance and work requirements, although in the end it is debt trapping. In the case of migrant workers, the mode includes: withholding wages, only being given partially or even not being given at all. Debts are deducted directly by the employer from wages without the consent/control of the victim. After returning to their home area, victims are often asked for money as a reward for assistance in sending them to work. Workers are not allowed to change jobs/without permission/knowledge from brokers/sponsors/distributors.

Not all human trafficking crimes always violate the rule of law (criminal law) alone, but can also violate more than one rule/law. Therefore, in applying legal sanctions to perpetrators, it is appropriate to receive criminal sanctions in the form of imprisonment (penal) and other administrative sanctions (non-penal), in order to create a deterrent effect for traffickers.^[11]

There is a fundamental difference in the resolution of human trafficking cases Eradication of the Crime of Human Trafficking with other criminal cases is the treatment of victims. This is in accordance with the mandate of Article 28 of the Law on the Eradication of the Crime of Human Trafficking, that: The trial process starting from investigation, prosecution and examination in court, related to law enforcement against a criminal act of human trafficking, is guided by criminal procedural law unless otherwise specified in the Law on the Eradication of the Crime of Human Trafficking.

Article 29 of the Law on the Eradication of Human Trafficking Crimes states that evidence other than as stipulated in the Criminal Procedure Code, may also be in the form of: First, information that is spoken, sent, received, or stored electronically with optical devices or similar; and Second, data, recordings, or information that can be seen, read, and/or heard that can be issued with or without the aid of a means, whether written on paper, any physical object other than paper, or recorded electronically, including but not limited to (1) Writing, sound, or images; (2) Maps, designs, photos, or the like or (3) letters, signs, numbers, symbols, or perforations that have meaning or can be understood by a person who is able to read or understand them.

As one of the valid pieces of evidence, the statement of a victim witness alone is sufficient to prove that the defendant is guilty, if accompanied by one other valid piece of evidence (Article 30 of the Law on the eradication of the crime of human trafficking). Based on sufficient initial evidence, Article 31 paragraph (1) of the Law on the eradication of the crime of human trafficking allows investigators to wiretap telephones or other communication devices suspected of being used to prepare, plan and carry out TPPO. The wiretapping action in question is only carried out with written permission from the head of the court for a maximum period of 1 year.

Article 32 of the Law on the Eradication of Human Trafficking Crimes provides investigators, public prosecutors, or judges with the authority to order financial service providers, such as financial service providers, including banks, securities companies, mutual funds, and foreign exchange trading, to block the assets of any person suspected or accused of committing human trafficking. In the process of investigation, prosecution, and examination in court, the reporter has the right to keep his/her name and

address confidential or other matters that make it possible for the reporter's identity to be known.

The reporter also has the right to ask for his/her name and address or other matters to be kept confidential. Therefore, the obligation to keep the identity confidential must be notified to witnesses and other people related to TPPO before the examination by an official authorized to conduct the examination.

For anyone who informs the identity of a witness or victim even though he/she has been informed that the identity of the witness or victim must be kept confidential, according to Article 24 of the Law on the eradication of the crime of human trafficking, shall be punished with imprisonment of at least 3 years and a maximum of 7 years and a fine of at least IDR 120,000,000 and a maximum of IDR 280,000,000. In the event that witnesses and/or victims cannot be present at the examination in court regarding TPPO cases, witness statements can be given remotely via audio-visual communication devices (Article 34 of the Eradication of The Crime of Human Trafficking Law). During the investigation, prosecution, and examination in court, witnesses and/or victims have the right: First, to be accompanied by an advocate and/or other necessary companions (Article 35 of the Eradication of The Crime of Human Trafficking Law). Second, to receive information about the development of the case involving them. Information about the development of the case can be in the form of providing a copy of the minutes of each stage of the examination (Article 36 paragraph (1) and paragraph (2) of the TPPO Law. Third, to request the presiding judge to provide a statement in front of the court without the presence of the defendant (Article 37 paragraph (3) of the eradication of the crime of human trafficking Law).

According to Article 37 paragraph (2) of the Law on the Eradication of Human Trafficking Crimes, if a witness and/or victim will provide information without the presence of the defendant, the presiding judge will order the defendant to leave the courtroom. The examination of the defendant can then be continued after the defendant has been informed of all the information provided by the witness and/or victim when the defendant was outside the courtroom.

In the process of investigation, prosecution, and examination in court of child witnesses and/or victims in TPPO cases, it must be carried out with attention to the best interests of the child by not wearing a toga or uniform (Article 38 of the Eradication Of The Crime Of Human Trafficking Law). Criminal Act Of Human Trafficking case trials to examine child witnesses and/or victims are carried out in closed sessions and must be accompanied by parents, guardians, foster parents, advocates, or other companions (Article 39 paragraph (1) and paragraph (2) of the Eradication Of The Crime Of Human Trafficking Law).

Examination of witnesses and/or child victims must also be carried out without the presence of the accused (Article 39 paragraph (3) of the eradication of the crime of human trafficking Law). Examination of witnesses and/or child victims, with the judge's approval, may be carried out outside the court session by recording (audio and/or audio-visual recording devices) and must be in the presence of an authorized official, in this case an investigator or public prosecutor (Article 40 paragraph (1) of the Eradication Of The Crime Of Human Trafficking Law).

In the trial process, if the defendant has been legally and properly summoned, but does not attend the court hearing without a valid reason, then according to Article 41 paragraph (1) of the Eradication Of The Crime Of Human Trafficking Law, the case can be examined and decided without the presence of the defendant (trial in absentia). If the defendant is present at the next trial before the verdict is rendered, then the defendant must be examined and all witness statements and letters read in the previous trial are considered as evidence provided with the presence of the defendant (Article 41 paragraph (2) of the Eradication Of The Crime Of Human Trafficking Law).

Human trafficking perpetrators who use the method of sending migrant workers can be charged with Article 4 and Article 10 of Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, and can also be charged with Article 81 and Article 86 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers.

Article 4 of Law Number 21 of 2007 (UU Eradication Of The Crime Of Human Trafficking) states that: "Any person who takes an Indonesian citizen outside the territory of the Republic of Indonesia with the intention of exploiting him/her outside the territory of the Republic of Indonesia shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000.00- (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00- (six hundred million rupiah)". While Article 10 states that: "Any person who assists or attempts to commit the crime of human trafficking shall be punished with the same punishment as referred to in Article 2, Article 3, Article 4, Article 5, and Article 6."

Article 81 of Law Number 18 of 2017 states: "Any individual who places Indonesian migrant workers as referred to in Article 69 shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of IDR 15,000,000,000.00 (fifteen billion rupiah)". While Article 86 states: "Any person who places Indonesian migrant workers as referred to in Article 69 shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of IDR 15,000,000,000.00 (fifteen billion rupiah) shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of IDR 15,000,000,000.00 (fifteen billion rupiah), any person who:

- a. Charge the placement cost components that have been borne by the prospective Employer to the Prospective Indonesian Migrant Worker as referred to in Article 72 letter a.;
- b. Placing Prospective Indonesian Migrant Workers in certain countries that are declared closed as referred to in Article 72 letter b.;
- c. Placing Indonesian Migrant Workers without SIP2MI as referred to in Article 72 letter c.;
- d. Placing Indonesian Migrant Workers in the destination country of placement as referred to in Article 72 letter d".

In addition, perpetrators of sending Indonesian migrant workers under the guise of human trafficking can also be charged with Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers and Law Number 39 of 1999 concerning Human Rights. They can even be charged with the Money Laundering Crime (TPPU) article.

With the TPPU trap, the perpetrator's assets can be confiscated because they come from the proceeds of crime.^[12]

Some cases of Criminal Act of Human Trafficking that occur do not always reach the court. There are some cases that are stopped at the investigation or prosecution level, for various reasons (lack of evidence, perpetrators whose addresses are not found, etc.), but there are also those that continue to the Appeal or Cassation level to the Supreme Court.

From the discussion above, law enforcement against human trafficking using Indonesian migrant workers as a method is carried out starting from the investigation stage by the police, prosecution by the prosecutor's office and examination at the court hearing. The trial process starting from investigation, prosecution and examination at the court hearing, related to law enforcement against a Criminal Act of Human Trafficking, is guided by criminal procedure law unless otherwise specified in the Eradication Of The Crime of Human Trafficking Law. There are TPPO perpetrators who have been successfully prosecuted, but there are also those who cannot be processed by law.

Legal outreach activities (socialization) to the community need to be increased so that cases of human trafficking using the migrant worker method do not happen again, in the form of socialization of the law on the eradication of criminal acts of human trafficking and the law on the protection of Indonesian migrant workers.

Conclusion

Based on the results of the research that has been conducted, the author draws the conclusion that:

1. Legal regulations regarding human trafficking using the Indonesian migrant worker method in accordance with existing provisions have not been implemented effectively and the services provided by related agencies are limited to the main task of disclosing cases until court decisions, so that victims of human trafficking in Indonesia feel pessimistic about the legal regulations.
2. Factors that cause human trafficking include poverty, low levels of education of the victim, promiscuity, so that this is exploited by the perpetrators by promising the victim a job with a large salary and when they have been influenced according to their interests, the perpetrators ask for a sum of money on the grounds of going abroad.
3. Law enforcement against human trafficking using Indonesian migrant workers as a method has not been implemented optimally according to existing regulations. Enforcement starts from the level of investigation and inquiry by the police, prosecution by the prosecutor's office and trial by the court. The trial process is guided by criminal procedure law unless otherwise specified in Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking. Law enforcement in trials, not all perpetrators can be charged with legal proceedings (some perpetrators can be released). This causes law enforcement to be incomplete so that victims of human trafficking continue to occur and even perpetrators are not afraid to do so.

References

1. Henny Nuraeny1, *Tindak Pidana Perdagangan Orang dalam Perspektif Hak Asasi Manusia*, Cetakan Pertama, Rajawali Pers, Jakarta, 2013.
2. Bassina Farbenblum dkk, *Akses Buruh Migran Terhadap Keadilan di Negara Asal: Studi Kasus Indonesia*, Open Society Foundations, New York, 2013.
3. *Hukumonline*, *Pengertian Perlindungan Hukum Dan Cara Memperolehnya*, diakses pada tanggal 16 Juli 2024.
4. Pratiwi, Tirami Anggi, *Perlindungan Hukum Bagi Tenaga Kerja Atas Perselisihan Penentuan Upah Minimum Kabupaten/Kota (UMK) Ditinjau Dari Sistem Hukum Tenaga Kerja Di Kota Batam*, Batam, 2016.
5. Carl Marx, dalam Abdulsyani, *Sosiologi Kriminalitas*, Remadja Karya, Bandung, 1987.
6. *Ibid.* Hal 87.
7. Lalu Husni, "Pengantar Hukum Ketenagakerjaan Indonesia", (Jakarta: Rajagrafindo Persada, 2014).
8. Amiruddin dan H Zainal Asikin. *Pengantar Metode Penelitian Hukum*. Jakarta: Raja Grafindo Persada, 2006.
9. Peter Mahmud Marzuki. *Penelitian Hukum*. Jakarta: Kencana Prenada Group, 2007.
10. Miskiah, S., & Aida, N. *Law Enforcement Toward Obscenity as Livelihoods Through Information Technology Media*, 2020.
11. Farhana, Mintarsih, M., Sumkamto, B., dan Miskiah, S. *Human trafficking as a crime against humanity*. Novateur Publications, 2020.
12. Susanti H, Syafrinaldi S, dan Hajri WA. *Perbandingan Aturan Hukum Tentang Tindak Pidana Perdagangan Orang di Indonesia dan Malaysia*. Kodifikasi, 2022.