



Research Article

© 2020 Joko Priyono and Achmad Purbo Sudiro.
This is an open access article licensed under the Creative Commons
Attribution-NonCommercial 4.0 International License
(<https://creativecommons.org/licenses/by-nc/4.0/>)

Intergovernmental Cooperation Mechanisms in Combating Transnational Human Trafficking within ASEAN

FX. Joko Priyono

Achmad Purbo Sudiro

Diponegoro University, Indonesia

Doi: 10.36941/ajis-2020-0029

Abstract

The problem of human trafficking that occurs on the borders of Indonesia and the Johor region of Malaysia basically comes from the problem of poverty and the difficulty of job opportunities which consequently are utilized by people or organizations that are not responsible for the sake of obtaining the maximum profit. This study was conducted by considerations that there are no satisfactory explanation of expressing perpetrators of human trafficking both in Indonesia and Johor Malaysia. By using focus group discussion (FGD), the results show that the rights of victims of trafficking have been normatively protected which is strictly regulated in the legislation in Malaysia. This seriousness was also shown by the existence of a special court for human trafficking crime. Data shows that the trend of human trafficking victims is decreasing. The obstacle in the implementation of the protection of victims of human trafficking was the reluctance of the victims of human trafficking to provide testimonials for the purposes of the trial in Johor Malaysia with the intention of avoiding the extension of the judicial process.

Keywords: Protection, Victims, human trafficking, Malaysia, Indonesia

1. Introduction

Human trafficking is nowadays specifically driven by aspects of economic globalization that created the driving factors and pullers of migration (Sassen, 2000). From the aspect of driving factors, trade liberalization and structural adjustment policies have limited employment opportunities and social services in poor countries. From the aspect of attracting factors, the continued demand of destination countries for the needs of cheap migrant workers coupled with increasingly easy access through information technology has given hope for poor and unskilled job seekers to work abroad to be increasing (Kaye, 2003). With this increase, the opportunities for legally migrating have experienced restrictions in preferred destination countries due to tightening in the boundaries of the destination country. Bids from third parties that provide ease of immigration make them more determined to migrate. From these conditions, the traffickers of this person took advantage of it (Gallagher, 2008).

This condition is not much different from what happened to human trafficking, especially in destination countries, namely Malaysia. There are several cities in Malaysia which are the destinations of traffickers to supply Indonesian citizens as migrant workers, including in the cities of Kuala Lumpur, Penang and Johor. Usually, migrants become victims when their passports are taken by their employers or forced into a 'debt bond' with them through an intermediary fee to bring them to the country. International law that regulates human trafficking, which only regulates the six

sectors of trafficking in persons, has proven unable to overcome the problem of trafficking in persons, especially the trade in men, women and children who are not in the non-sex (Chuang, 2009). Many governments of a country including Indonesia and Malaysia have issued a number of product regulations that criminalize all forms of trafficking in persons, in collaboration with civil society and survivors of trafficking in order to strengthen victims' protection and take precautions and raise public awareness about the dangers of trafficking. However, this progress does not parallel the reality with the continued exploitation of millions of victims of forced labor and slavery. The multi-million dollar industry has damaged families and communities, weakened the rule of law, and strengthened networks of criminal human trafficking and undermined the concept of universal dignity and human dignity (Department of State USA, 2017). This study aims to examine the implementation of the protection of the rights of victims of trafficking in Johor Malaysia specifically with regard to housing protection carried out by Malaysia and Indonesian Government policies in preventing the practice of trafficking and taking preventive measures and raising public awareness about trafficking in persons.

2. Research Method

This research is socio-legal research, which is an interdisciplinary research method that links law and society. Law is considered as a behavior variable for compliance with applicable regulations. The truth is the truth of correspondence especially with regard to the implementation of the protection of the rights of victims of trafficking in Johor Malaysia. Data collection techniques are carried out through observation and interviews and documents (triangulation). Primary data is obtained based on inductive facts, namely through interviews with victims of trafficking in Malaysian Johor as well as officials at the Indonesian Consulate as the party responsible for protecting Indonesian citizens. While secondary data is obtained through laws and regulations and other legal materials. For primary data, the analysis is through the Focus Group Discussion method where the participants are Consul General and Consul General staff as well as victims of human trafficking, while for secondary data the analytical method uses interpretive methods (interpretative) against the laws of legislation.

3. Migrant Workers Problem in Indonesia-Malaysia Border

The city of Johor is located along the Straits of Johor to the south of peninsular Malaysia (Wolanski, 2006), which has an area of 18,985 km² with a population of 3,459,378 (Data on the Consulate General of the Republic of Indonesia in Johor Malaysia, 2019). Johor is one of the fastest growing cities in Malaysia after Kuala Lumpur and is also the center of trade among the growth of three countries, namely Indonesia, Malaysia and Singapore. Johor is also a center for financial services, trade and retail, hotels, tourism, manufacturers of plastics, electronics and electrical equipment and food processing. Therefore, it is not surprising that Johor is an attractive city for Indonesian migrant workers to try their luck in the city in official and informal ways.

The problems of Indonesian citizens working in Johor Malaysia are mostly related to some causes. The first is over stay if Indonesian citizens/migrant workers have lived in Malaysian territory past the date of their residence permit. Second, non-procedural causes, if Indonesian citizens/Indonesian migrant workers have entered Malaysian territory not through official/legal procedures. Third, undocumented, if Indonesian citizens/migrant workers have entered or lived on Malaysian territory without official/legal documents, and 4. Legal violations namely if Indonesian citizens/migrant workers have committed illegal acts in Malaysian territory (FGD at the Indonesian Consul General's office in Johor Bahru Malaysia on March 25, 2019).

Data shows that the impact of these problems raises cases that are a burden not only to the Malaysian Government but also the Indonesian Government, especially the Indonesian Consul General in Johor Malaysia. The following are cases handled by the Indonesian Consul General since 2017 and 2018. The data also shows a decrease in the number of cases. In fact, special cases relating to human trafficking have dropped dramatically from 38 to 7.

Table 1. Case Of Indonesian Citizens In Johor Malaysia 2017-2018

Cases	Total	
	2017	2018
Unpaid Salary	39	29
Displaced	94	71
Fraud	19	31
Not strong work	56	52
Persecution	5	6
Trafficking	38	7
Rape	0	5
Sick	37	52
Immigration Violations	64	6
Violation of Employment Contract	9	6
Other	45	83
Total	406	384

Source: Indonesian Consulate General in Johor 2019.

Malaysia is indeed a major destination, in addition to Saudi Arabia, for migrant workers both those who are legal (legal) and undocumented (illegal) who are trafficked for slavery, commercial sex exploitation, and forced labor. In Indonesia, companies that recruit workers are called PJTKI (Indonesian Manpower Services Companies, abbreviate: PJTKI) which sometimes carry out the practice of human trafficking both male and female workers caught in the debt trap. They often intend to migrate by entering a situation such as human trafficking to be able to work abroad through legal and non-legal recruitment agencies. The recruiters collected a substantial commission fee of up to \$ 3,000 (IDR 42,000,000) which was not regulated in Indonesian regulations and made it a debt payable by workers which in some instances had made it a debt bondage. PJTKIs are also often reported to have detained documents of migrant workers and limit their movement to remain under their supervision for a period of months. Some PJTKIs also do not hesitate to use the threat of violence so that they can always control migrant workers. Recruitment agencies are even used to faking birth data, including children, to be able to obtain passport documents and migrant worker documents.

The Indonesian government does not fully comply with the minimum standards for the elimination of human trafficking even though efforts have been made to fulfill them. Although the Indonesian government has shown significant progress by bringing the perpetrators to justice using regulations on anti-trafficking in persons, the weaknesses are seen in their failure to prevent the practice of trafficking on a large scale. Although data shows in Johor Malaysia the practice of trafficking has decreased from 2017 - 2018 but until now there has been no data that reveals the practice of trafficking outside of this data. The data only shows those who report to the Indonesian Consul General in Johor Malaysia. What is clear is that the practice of trafficking always happens by smuggling them through various modes. Actually, conceptually the handling can be done easily through tightening the border, but it is not as easy as it can be implemented considering that the vast territory of Indonesia surrounded by vast land and sea leaves many rat pits at the border that border officials have not been able to cover. In fact, it is said that human trafficking is a big business but in many regions of the world such as Southeast Asia, human trafficking involves most organizations that are disorganized crime, namely individuals or small groups whose network base is temporarily existed. There is no profile of standard traffickers. They could be truck drivers and village aunts who are labor brokers and police officers. The traffickers of this person are very diverse. Although some of the victims of trafficking are literally said to have been kidnapped, most of them left their homes voluntarily and then traded on their trips (Feingold, 2005).

4. Human Trafficking and Immigration Issues

The issue of trafficking is often used to encourage immigration restriction policies (Väyrynen, 2005; Loftus, 2011). In fact, the recent tightening of the administration of asylum has increased human trafficking by forcing people who are desperate to return to being smugglers (Mountz, 2010). In Eastern Europe, for example, a GTZ study found that tight border controls had increased human trafficking where they asked third parties to smuggle them out of their countries (see also, Surtees, 2008; Futo et al., 2005). Similarly, other legal measures to protect women from trafficking have had adverse consequences that make them more vulnerable to exploitation. Moreover, they were then given by the facilitators a debt loan to be able to cross into the territory of the destination country which was increasingly increasingly vulnerable because they had to repay the debt. It is undeniable that this also happened to Indonesians who were victims of trafficking in Johor Malaysia.

Human trafficking on the Indonesia-Malaysia border is a never-ending problem that even threatens national security which causes economic losses and damages the reputation of a country's human rights. Even this crime has provided millions of dollars in profits for the perpetrators. The legal facts explain that criminal acts of human trafficking occurred in the working area of the Indonesian Consul General in Johor (FGD results with victims of trafficking at the Indonesian Consulate General in Johor Bahru Malaysia on March 25, 2019.) has fulfilled the elements of Article 3 of the Palermo Protocol of 2000, namely through legal acts of recruitment, transfer, or reception of persons with threats or use of violence or other forms of coercion, kidnapping, fraud, lying or obtaining profits in order to obtain approval of someone who has power over another person for the purpose of exploitation. Briefly, the elements of the crime of human trafficking can be divided into three aspects, that are the act, means, and purpose. First, this act is conducted through recruitment, transportation, transfer, concealment, acceptance. Second, the crime uses some means like threats, violence, coercion, kidnapping, counterfeiting, fraud, abuse of power, receiving/paying. Third, this crime has some purposes such as prostitution, sexual exploitation, forced labor, slavery, slavery-like practices, servitude, human organ selling (see also, Kempadoo et al., 2015; Di Nicola et al., 2009).

However, when the crime occurred in the Johor region the responsibility was with the Malaysian Government (in the State of Johor). The Malaysian government, based on the Palermo Protocol, is obliged to protect the rights of victims of trafficking even though they are Indonesian citizens (for Palermo Protocol, see, Shoaps, 2013; Brusca, 2011). These obligations are realized through the provision of shelter. The data below shows the handling of the state of Johor Malaysia through an Interim Protection Order for alleged trafficking which was then investigated until a clear number was obtained of how many victims of human trafficking were indeed protected or in protection order. In 2016 the alleged trafficking victims who needed temporary protection were 67 (men) but the final results showed that those who really needed protection were 66 people, while women from 102 actually increased to 143 people. In 2017, the number of cases decreased, with as many as 64 men indicated to be in cases of trafficking, but only 49 actually needed protection, while women from 46 cases indicated 25 for those who actually needed protection (Table 2).

Table 2. Number of Indonesian Citizens at Home for Protection and Allegedly Victims of Human Trafficking

No.	Year	House of Protection		House of Protection	
		Male (in Melaka)		Women (in Kempas)	
		Indicated cases	proven case	Indicated cases	proven case
1.	2016	67	66	102	143
2.	2017	64	49	46	25
3.	2018	6	0	59	5

Source: Indonesian Consul General Johor Malaysia 2019.

5. Intergovernmental Cooperation Mechanism Against Transnational Human Trafficking

For this problem, the Government of Indonesia has adopted several international agreements relating to human rights and trafficking such as Law No. 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, Law No. 39 of 1999 concerning Human Rights, Law No. 21 of 2007 concerning Eradication of Criminal Acts on Trafficking in Persons, Law No. 5 of 2009 concerning Ratification of the United Nation Convention on the Transnational Organized Crime, Law No. 14 of 2009 concerning Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the United Nations Convention on Transnational Organized Crime, Law No. 10 of 2012 concerning Ratification of the Optional Protocol to the Convention on the Child on the Sale of Children, Child Prostitution and Child Pornography, Government Regulation No. 9 of 2008 concerning Procedures and Integrated Service Mechanisms for Witnesses and/or Victims of Trafficking in Persons, Presidential Regulation No. 69 of 2008 concerning Task Force for the Prevention and Handling of Crime in Trafficking in Persons, 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 Eradicating the Crime of Human trafficking in 2015-2019 (see Natsir & Natsir, 2017; Arief, 2018). However, the Indonesian Government cannot fully meet the minimum standards for combating trafficking in persons, but the government is mobilizing significant efforts to make it happen. The government shows increased efforts compared to the previous reporting period; therefore, Indonesia remains at level 2. The government shows increased efforts by punishing more people traffickers, conducting training for government employees and law enforcement, and holding campaigns to raise public awareness by targeting people at greater risk of becoming victims of trafficking person (Annual Report on Trafficking in Persons 2018, US Embassies and Consulates in Indonesia). Thus, the efforts of the Indonesian and Malaysian governments in handling human trafficking are not much different and fall into the category of "tier 2 watch list".

The government also created a new mechanism to strengthen victim identification procedures in line with the promotion of the 2015-2019 National Action Plan for the Eradication of Trafficking. On the other hand, the government does not meet minimum standards in a number of human trafficking -prone areas. The lack of understanding of officers with indicators of trafficking and anti-trafficking laws has hampered efforts to proactively identify victims in vulnerable populations and law enforcement efforts. Inadequate data available, information dissemination, and weak coordination between government institutions have hampered the implementation of the national anti-trafficking strategy. Restrictions on the sending of workers to the regional region have led to an increase in the number of migrant workers migrated abroad through illegal channels and become vulnerable to trafficking crimes. Although long-term corruption among officers has hampered efforts to eradicate the practice of trafficking and provides opportunities for perpetrators to continue to carry out their operations without being punished.

The Indonesian government's efforts to handle human trafficking can actually be more effective with the existence of village assistance funds planned for 2019 in the amount of IDR 85 trillion. Thus, per village will get Rp 1.2 billion to Rp 1.3 billion per year. Therefore, as part of efforts to prevent human trafficking, the village government can allocate a portion of the funds as a commitment to implement the Republic of Indonesia Minister of Human Development and Culture Development Regulation No. 2 of 2016 concerning the National Action Plan for Eradicating the Crime of Human trafficking in 2015-2019. It should be noted that one of the rampant human trafficking is a matter of poverty in the region. The hope is that the village will become more prosperous and able to create jobs so that it will have a positive impact on reducing human trafficking.

Indeed, the Indonesian Government's policy has reflected the seriousness in carrying out prevention, prosecution and punishment of traffickers as stipulated in the Law of the Republic of Indonesia No. 21 of 2007. Regarding the Eradication of the Crime of Trafficking in Persons. His sentence is quite heavy up to 15 years in prison. In fact, the seriousness of the Supreme Court has also

been shown as a judicial institution by issuing new provisions that expand the authority of the court by allowing companies to engage in trafficking in persons. Reports from non-governmental organizations (NGOs) and government officials show that acts of corruption continue and often hinder the government's ability to increase prosecution of traffickers, including in the fight against leaders of trade syndicates.

At the regional level and as a form of commitment of the Indonesian government to be serious in the prevention, prosecution and punishment of trafficking in persons, the government has been seriously involved in regional human rights law instruments to eradicate the Trafficking that applies to ASEAN countries namely ACTIP (ASEAN Convention Against Human trafficking Especially Women and Children) in force in 2015. This legal instrument is complemented by more effective protection of victims of trafficking through stronger law enforcement processes. Because of the nature of cross-border human trafficking, ACTIP regulates the mechanism of cooperation and cooperation between ASEAN member countries. Indonesia is one of the countries that became the initiator of the formation and signing of ACTIP on November 21, 2015. In 2017, Indonesia finally ratified ACTIP. The Ministry of Foreign Affairs said that the goal to be achieved by the Convention was the realization of a comprehensive approach to the issue of human trafficking through the 4P concept, namely: Protection, Prevention, Prosecution and Partnership through cooperation among ASEAN members. Since 2015, the National Commission on Violence Against Women along with regional human rights mechanisms (AICHR and ACWC) has been involved in overseeing and encouraging the acceleration of ratification of ACTIP as a large scheme for handling anti-trafficking in ASEAN. The Indonesian representative in the regional human rights mechanism was tasked with leading and preparing the concept of handling trafficking. National Commission for Women gave input on building a conducive situation regarding the elimination of trafficking and explained new maps and patterns of trafficking in Indonesia and ASEAN, as well as initiatives that needed to be developed by regional mechanisms.

6. Conclusion

Victims of Indonesian citizens from the results of human trafficking in Johor Malaysia have experienced a decline even though it is admitted that there are still victims of human trafficking outside the formal data that are not covered by human trafficking data in the Indonesian Consul General in Johor Malaysia. The human trafficking players cannot yet be revealed clearly considering that they are not persons or business entities that can be determined by standard. The culprit is many and difficult to identify which can be professional or non-professional. Even the perpetrators are carried out by unorganized organizations. The governments of Indonesia and Malaysia formally have demonstrated their seriousness in handling human trafficking both through ratification of international agreements and making regulations both general and specific relating to human trafficking including action plans. Even in Malaysia a special court has been established for human trafficking. The obstacle in the protection of victims of human trafficking in Johor Malaysia is the freedom of movement and the right to work for the victims, given that Malaysian authorities retain them in the shelter for the purposes of the judicial process until the term expires. While the obstacle for victims of human trafficking is not wanting to give testimonials for the benefit of the judiciary in order to avoid the extension of the judicial process.

References

- Arief, H. (2018). Domestic Violence and Victim Rights in Indonesian Law Concerning the Elimination of Domestic Violence. *Journal of Legal, Ethical and Regulatory Issues* 21(4).
- Brusca, C. S. (2011). Palermo Protocol: The First Ten Years after Adoption. *Global Security Studies*, 2(3).
- Chuang, J. A. (2009). Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy. *U. Pa. L. Rev.*, 158, 1655.

- Consulate General of the Republic of Indonesia in Johor Malaysia. (2019). Data on the human trafficking.
- Di Nicola, A., Cauduro, A., Lombardi, M., & Ruspini, P. (2009). Prostitution and human trafficking. Focus on clients, 254.
- Feingold, D. A. (2005). Human trafficking. *Foreign Policy*, 26-32.
- Futo, P., Jandl, M., & Karsakova, L. (2005). Illegal migration and human smuggling in Central and Eastern Europe. *Migracijske i etničke teme*, 21(1-2), 35-54.
- Gallagher, A. T. (2008). Human Rights and Human Trafficking: Quagmire or Firm Ground-A Response to James Hathaway. *Va. J. Int'l L.*, 49, 789.
- Kaye, M. (2003). The migration-trafficking nexus: Combating trafficking through the protection of migrants' human rights. London: Anti-Slavery International.
- Kempadoo, K., Sanghera, J., & Pattanaik, B. (2015). Trafficking and prostitution reconsidered: New perspectives on migration, sex work, and human rights. Routledge.
- Loftus, B. S. (2011). Coordinating US law on immigration and human trafficking: Lifting the lamp to victims. *Colum. Hum. Rts. L. Rev.*, 43, 143.
- Mountz, A. (2010). Seeking asylum: Human smuggling and bureaucracy at the border. U of Minnesota Press.
- Natsir, M., & Natsir, N. I. (2017). Legal Arrangement in the Criminal Act of Human Trafficking. *Journal of Legal, Ethical and Regulatory Issues*, 20(1), 1-9.
- Sassen, S. (2000). Women's Burden: Counter-geographies of Globalization and the Feminization of Survival. *Journal of international affairs*, 503-524.
- Shoaps, L. L. (2013). Room for improvement: Palermo protocol and the trafficking victims protection act. *Lewis & Clark L. Rev.*, 17, 931.
- Surtees, R. (2008). Traffickers and trafficking in Southern and Eastern Europe: Considering the other side of human trafficking. *European Journal of Criminology*, 5(1), 39-68.
- US Department of State. (2017). Human Trafficking Report.
- US Department of State. (2018). 2018 Human Trafficking Report.
- US Embassies and Consulates in Indonesia. (2018). Annual Report on human trafficking
- Väyrynen, R. (2005). Illegal immigration, human trafficking and organized crime. In *Poverty, international migration and asylum* (pp. 143-170). Palgrave Macmillan, London.
- Wolanski, E. (2006). The environment in Asia Pacific harbours. Springer.