

INDONESIAN COUNTRY REPORT:

HUMAN TRAFICKING

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Chapter I

Introductory

*No one shall be held in slavery or servitude:
Slavery and the slave trade shall be prohibited
In all their forms
[Universal Declaration of Human Rights]*

Introduction

The news about human trafficking has been increasing lately, both in terms locally and internationally. People start to concern about human trafficking problems especially in terms of woman and sexual industry through mass media in these following years. This condition certainly could not be inferred that this phenomenon has never happened before. It's probable that human trafficking has happened in small scale, or in a well-organized activity, that made the news about human trafficking not so attractive to mass media few years before.

Human trafficking is indeed not a new invention in the history of universe; in fact many countries that are considered as well advanced countries initially owed substantially to the people in "least developed" countries whom are brought in force to work in plantation or factories. Slavery has been a dark mark to the history, which has also been recorded in the holy bible. History has noted several wars that caused by slavery issues, such as the one that trigger the civil war many centuries ago.

Is it true that the more civilized world will erase the slavery? It is indeed true viewing from formal juridical, because there is not a single country in this world that agree and tolerate the slavery. But it does not imply that this phenomenon has entirely disappeared from the universe. International community often discovers similar activity in a more modern format that is so called contemporary forms of slavery. This issue is so serious that the UN issued a Fact Sheet no. 14 entitled *Contemporary Forms of Slavery* through the Office of The High Commissioner of Human Rights. The forms include:

- a. Children Trafficking
- b. Underage Prostitution
- c. Children Pornography
- d. Exploitation of minor age worker
- e. Sexual mutilation to young girl
- f. Involving children in a gun conflict
- g. Servitude
- h. Human trafficking
- i. Human's organs trade
- j. Exploitation for prostitution, and
- k. Several activities under the apartheid regime and feudalism.¹

Global Survivor network, within a thorough study for two years, published *Crime & Servitude: An Expose in the Traffic in Women for Prostitution from the Newly Independent States*, which exclusively reveals women trafficking in ex-soviet union. It also produced two documentary films: (i) *Sex Trade "An Investigative Documentary,"* a 28 minutes film duration, which is presented to the United Nations Committee of Human Right, (ii) "*Bought and Sold,*" a film about the issues discussed in *Crime & Servitude*. Several significant facts that were founded in the research are:

- Criminal syndicate gain profit about \$7 billion a year from women trafficking for selling 4 million women in the world;
- The most profitable business is sex trade;

¹ United Nations (1996). United Nations Human Rights Fact Sheet No. 14: Contemporary Forms of Slavery, Lund, Sweden: Raoul Wallenberg Institute.

- Every day thousands women and young girls were trapped from transition territories with promising dreams of having a better life and attractive jobs abroad;
- They were sent legally and illegally to Germany, Switzerland, Japan, Macao, and the United States using various transportation means;
- Women trafficking continue to develop due to reluctant from the government, official, and community to reveal it so that cause an impunity;
- Even the official data mentioned that only 50.000 women have left the Russia forever, the exact fact is actually doubled the numbers.²

These issues were also discussed in various international communities that held by the UN, and generally linked to the organized crime's activities. The major concerned about human trafficking has made the countries in the world agreed to sign a U.N. convention against *Transnational Organized Crime's Protocol*, and *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, A/55/383, two years ago and were authorized by General Board on November 2, 2000.

Based on the information published by the U.S. Department of Justice and the U.N. publication, the rough data found concerning human trafficking were:³

- 700 thousand to 4 million people were traded in the world (bought, sold, sent, and were forced to work out of their willing);
- Most of the people that were being traded come from the developing countries which have a lower economy growth, to be brought to the well developed countries;
- Most of the victims were women and children;
- the victims were lured by the promising dreams of a better life, a better paid job offered by the trader;

² Crime & Servitude: An Expose in the Traffic in Women for Prostitution from the Newly Independent States (1997). Washington: Global Survival Network.

³ Christopher II. Smith (2002). Modern Slavery. The Washington Times, June 18, 2002; Global Survivor Network (1997, Crime and Servitude: An Expose in the Traffic in Women for Prostitution from the Newly Independent States, Washington; GSN.

- generally they were forced to work as a prostitute, worker, servant, even beggar;
- They were usually put under violence or threat to control them;
- More than 2,3 million women work in sex industry out of their willing, and it was estimated that 40% among them were children.

Being a developing country, Indonesia is having a hard time to be excluded from this phenomenon, which is as “a sender countries” or “a source country.”

The U.S. Department of Justice exclusively put Indonesia in Tier 3, which is a country that in their view is

*“...do not fully comply with the minimum standards and are not making significant efforts to bring themselves into compliance. Some of these governments refuse to acknowledge the trafficking problem within their territory. On a more positive note, several other governments in this category are beginning to take concrete steps to combat trafficking. While these steps do not yet reach the appropriate level of significance, many of these governments are on the path to placement on **Tier 2**...”⁴*

That agency reported data as follows:

- a. Indonesia is a source country in trafficking in persons, especially women and children;
- b. Most of the victims were being traded for sexual exploitation and worker;
- c. The target countries include Hong Kong, Singapore, Taipei, Malaysia, Brunei Darussalam, and Persian Gulf countries, Australia, South Korea and Japan.
- d. The government has not totally committed to prevent the human trafficking, even the issue now has been getting more attention than before.⁵

Similar to the human trafficking condition in the world, to Indonesia, the information taken both from mass media and studies held by the universities and NGOs showed that most of the victims of human trafficking were women and children. Various researches discovered that unfair treatment to women and children is a continuous

⁴ U.S. Department of Justice (2002). Trafficking in Persons Report. Washington, June 2002. p.10

⁵ *ibid*, p.61.

threat to the women in the world, especially in the developing countries. The issue is now getting more serious due to the women and children trafficking happening in the whole world. Basically, there are two major issue concerning the human trafficking – especially women and children trafficking, they are social construction of women and children and economic problems (e.g. the low level of social economic state) especially in the developing countries.

Behavior towards women and children basically bound to the issue in social construction in the local community regarding the women and children. In a wider range, various events recently has proved that the discrimination towards women is not only happened in the novel or once upon a time story tell, but also happening in Indonesia.

It is wide acknowledged that Indonesia is a patriarchal community, likewise to the most countries in the world. A patriarchal is a community structure where men take control, in perception as a structure that derogate women, which can be seen vividly both in the government policy or community behavior. Take a simple example, formula about a wife role in marriage law, tendency to pay women wages below the men wages, and tendency to think that boys should get more education than girls, they are reflected the women were put as a subordinate of men.

Anywhere in the world, including in Indonesia, subordinate role for women to men has brought a numbers of consequences that lower their role in the community. When they are still under the care of the parent(s), girls are properties of their fathers; so all the decisions are in the father's hand. When they grow older, their brothers replace father position. When they are entering a marriage level, the dowry is viewed as a *pamoli* or a means to buy the woman and take her into her husband's family; therefore she is considered as husband's property. Putting a girl's role lower than a boy's role in the family has caused infanticide towards newly born girl babies, as reported from various sources.

In a condition that builds by this social politic construction, human trafficking phenomenon has formed a victimize scene experienced by the women (and children).

The latter issue related to the economic condition in Indonesia as one of developing countries. Majority population within low level of education, has put walls to well paid jobs. In the countryside, the farm has to give ways to factories has made the farmers out of job, similar to the fishermen due to the imbalance size of boat and trawls in the ocean, has left the fishermen out of sight. In a weak economic condition, public construction in the end has also put women in a disadvantage position to men.

Lack of job field due to minimum economic growth in rural areas has increased the number of urban life, one of the factor that trigger a high number of urbanization is the perception of city as a place where there are many jobs available there. Consequently, many efforts have been done to recruit women (especially young women and girls) from the countryside to the city. Even initially the effort was indeed offered legal jobs to them, but the sex industry, which was lately mushrooming the cities and other places in the country, increased the supply of women, especially to prostitution places.

The condition is not occur only in the city and village level, but also has reached transnational level. This bitter condition experienced by women working as domestic workers abroad, which was revealed by mass media, only a little part of their suffering due to their condition of being a woman. It is deepen the concern when it was found out that they were sent to abroad to be sex commercial worker without their acknowledgement when they applied for the job.

The latter is what is so called a human trafficking activity. Unfortunately, there is no comprehensive and accurate data about this activity in Indonesia, especially due to difficulty to detect this phenomenon which absolutely done in disguise.

Women trafficking as one of the forms of violence activity towards women

Women trafficking become more solid in a following year, happened in a conflict and peace condition. When a country is having a conflict, the study discovered that the women trafficking in ex-Russian countries gives a horrible description about the

matter. But it will be more tragic if it happens in a normal situation without a gun war conflict appears in the same time. The latter describes the situation in Indonesia.

Dispersion about human trafficking data, especially women and children, is one of factors that hinder the strategic arrangement to abolish it. There is no information whatsoever about the role of legal instrument to fulfill the duty in preventing and addressing the human trafficking until now.

Problems Identification

Refer to the objective above, the researcher's team were formed to study the issue with problem identification as follows:

1. How is the factual condition of trafficking in persons, especially woman and children trafficking, within the past five years;
2. What is the trend found in trafficking in persons' cases, specifically regarding the victim, operational mode and the objective places?
3. How is the legal construction in Indonesia, especially criminal law, subject to the behavior of trafficking in persons?
4. How is the reaction of legal institution towards the trafficking in persons' cases?

Trafficking in persons: A matter of Definition

Trafficking in persons in *Fact Sheet No. 14* issued by the Office of the High Commissioner of Human Rights is formulated as:

“...The recruitment, clandestine transport and exploitation of women as prostitutes, and the organized prostitution of children of both sexes....”⁶

And in Article 3 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, A/55/383 is formulated as follows:

⁶ United Nation Fact Sheet No. 14, p.218

“...[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.....”

Formula used by the Interpol for example, clearly define the following as:

All act and attempted acts involved in the recruitment:

- 1. Transportation within or across borders Purchase, sale*
- 2. Transfer, receipt or harboring of a person*
- 3. Involving the use of deception*
- 4. Coercion (including the use or threat of force of abuse of authority)*
- 5. Or debt bondage for the purpose of placing or holding such person*
- 6. Whether for pay or not*
- 7. In voluntary servitude (domestic, sexual or reproductive)*
- 8. In forced or bonded labor, or in slavery-like conditions*
- 9. In a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage⁷*

The law for human trafficking in Indonesia basically was already formatted in Criminal Law that come into force in 1918. It showed that even in feudalism era human trafficking (especially slavery) has been regarded as an inhuman activity and therefore deserve punishment. Restriction to human trafficking has also found in various laws in Indonesia other than Criminal Law. Law no. 39/1999 regarding Human Rights become an umbrella act towards Human Right issue for every citizen in Indonesia, especially Article 3 which emphasize that every human being were born

⁷ Interpol

free with equal dignity, and every person has a right to exercise his right and to be free, without any discrimination.

From the criminal law perspective, it is considered illegal to trade women and boys, refer to Article 297 KUHP, which mentioned that: To trade women and boys, will be granted punishment maximum six years imprisoned.⁸ KUHP book I about General Provision does not give any explanation to the meaning of “trade.” To this article R. Soesilo assumed that:

“...’trading or to trade women’ means that try to attempt actions of giving women to prostitution. Including the act of sending young women abroad which has no other purpose than to work as prostitutes...”

Soesilo’s explanation seems going along with the rules in the Human Rights instruments, which basically consider that ‘women trafficking and children’ as an act to merely supply the needs of sex industry. But if it is linked with the current condition nowadays, there are possibilities that women and children trafficking is not merely for sexual exploitation. Article 297 inferred that there is no limitation in the purpose of women and boys trafficking, therefore this article can be used to charge anyone who committed the crime, regardless the purpose. This article is closely linked to a numbers of other provisions in KUHP.

Other provisions in Criminal Law clearly emphasized that women and children trafficking cases can have a legal process. But up until now only a few – if it cannot be mentioned none – that women trafficking that can be brought into trial. This condition is obviously not because of the lack of the rules of law. It is probable that the difficulty to find the proof hinder the process, since this activity is generally done in a well-organized form. Criminal Law Plan has also formulated the articles that elaborate the article 297 Criminal Law, as follows:

1. Article 433 paragraph (1) Criminal Law Plan

Every man who run, bring, place or give an underage child (below 18 years old) to other person for the purpose of an obscene, prostitution, or other

⁸ Quoted from KUHP translated by R. Soesilo, 1996 ed. Bogor, Politeia.

immoral acts, will be sentenced for maximum seven years imprisoned or fined as offset in Category V.

2. Article 433 paragraph (2)

If the crime mentioned in paragraph (1) done by promising such woman a job but it turned out that such woman is given to other person for the purpose of an obscene, prostitution, or other immoral acts, will be sentenced maximum nine years imprisoned.

Explanation of article 433:

It is consider a crime sending an underage boy or girl to other region or country for the purpose of prostitution or other misdemeanor acts.

The above articles, as other articles will be amended later, has been much in the news since they become as a parameter to judge government commitment to address human trafficking issues. Compare to other provision in KUHP, the provision in the plan above has weaknesses that can be fatal to the legal process, since it clearly mentioned that the restriction for human trafficking is only **for the purpose of an obscene, prostitution and other immoral acts**. Therefore if it is proved that a woman or a girl were being trade merely to work for other business than sex industry, the person can not be brought into trial, since the activity does not meet the category of crime offset in that article.

RKUHP has clearly formed the law for human trafficking other than the two articles above that is article 460 RKUHP:

Every person whether self funded or financed by other party to run a business to trade human, or participate in the business will be sentenced maximum 12 years imprisoned.

The article that amended article 324 KUHP seems to be neglected when people are discussing about human trafficking issues. It is understandable since article 297 has been the focus of attention. The placing of the article in different chapter with article 433 RKUHP has left it untouched from the attention, even though both are talking about human trafficking.

Research Method

The study is a documentary research, which data were taken from various news about the practice of human trafficking in mass media within the last five years. The research is also taking the data from other researches of the same topic and court verdicts in human trafficking cases.

International instruments and national law that related to human trafficking issues are also used in this study.

CHAPTER II

Law perspective and human rights regarding human trafficking

A. International Instrument

Human trafficking recently has been attracting the public's attention, both in terms local or international. Various efforts were done to prevent the practice of human trafficking. The law has been formed to prevent and address human trafficking. But it continues to develop, especially women and children trafficking.

According to Helge Konrad, human trafficking is a complex matter, and many factors have contributed to the causes. He mentioned:⁹

The causes of trafficking are complex. While there are numerous contributing factors, which have to be analyzed and taken into account in political decision making – the unequal economic development of different countries, mass unemployment in many countries of origin, but also inequality, discrimination and gender-based violence in our

⁹ Helga Konrad. Trafficking In Human Beings – The Ugly Face of Europe, European Conference on Preventing and Combating Trafficking In Human Beings Global Challenge for the 21st Century, Brussels, Belgium, September 2002, p.5.

societies, the prevailing market mechanisms; the patriarchal structures in the source and destination countries; the demand side including the promotion of sex tourism in many countries of the world, the mindsets of men, etc, - the primary root cause is poverty, most particularly among women.

Human trafficking issues are worsened by the behavior from the victims who have no knowledge whatsoever about the problems. They are willing to pay people to be able to enter and leave a certain country to work as a prostitute. Having worked a while they can go back to their home country with a handsome of money that can be used to support their family.

Recognizing the data about human trafficking is not an easy task. Several sources could not explain clearly the exact numbers of human trafficking cases. But as an illustration it can be revealed that in March 2001, European Commission has reported that every year, 120.000 women and children were being traded to Western European.¹⁰ Similar to it, as reported in UNICEF/OHCHR/OSCE/ODHR June 2002; 90% teenager (18 –29 years old) in Moldova has left Moldova to work abroad. Around 60% of children in Albania work in European countries as sex workers. International Organization for Migration (IOM) estimated that around 170,000 people are being sold to Balkan.¹¹

Human trafficking especially concerned to women, has been the top three businesses right after drug trafficking and trafficking in weapons. Human trafficking is a profitable business, due to the factors of its low risk, expendable, reusable and resellable¹². The target of human trafficking are the region in conflict, since the place is an area where the civil is not stable and law enforcement is weak. These places give way to criminal activities from a well-organized crime.¹³

¹⁰ Frank Laczko, Anmanda Klekowski von Koppenfels and Jana Barthel, Trafficking in Women from Central and Eastern Europe: A Review of Statistical Data, European Conference On Preventing and Combating Trafficking in Human Beings: Global Challenge for the 21st Century, September 2002, Brussels, Belgium, p.4.

¹¹ helga Konrad, loc.cit.

¹² ibid., p.7.

¹³ ibid. see also Frank Laczko, op. cit., p.15

I. International Instrument

There are several international instruments linked to the human trafficking issues. They are:

- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Rights of the Child and its relevant Optional Protocol;
- Convention Concerning the Prohibition and Immediate Action for the Elimination of All forms of Discrimination against Women;
- United Nations Protocol to Suppress, Prevent and Punish Trafficking in Persons especially Women and Children supplementing the Convention against Transnational Organized Crime;
- SAARC Convention on Combating Trafficking in Women and Children for Prostitution.

Article 4 Universal Declaration of Human Rights (UDHR) mentioned that *“no shall be held in slavery or servitude: slave trade shall be prohibited in all their forms”*. Other provision in article 4 clearly prohibited slavery and trade slave. Restriction to slavery can also be found in The International Covenant on Civil and Political Rights (ICCPR). Within different word but similar in meaning to article 4 (UDHR), Article 8 (ICCPR) clearly mentioned that *“no one shall held in Slavery: Slavery and the slave-trade in all their forms shall be prohibited”*. Therefore it is clear that slavery is prohibited.

UDHR and ICCPR did not explain the word *“slavery”*. *“Slavery”* in *Convention of Slavery* is *“the status or condition of a person over whom any or all of the powers attaching to the rights of ownership are exercised”*. The word means buying, selling,

and transporting people, directly or indirectly, for the purpose of exploitation to obtain material benefit.

International Humanitarian Law, are against and prohibit all forms of “slavery”. The issues that related to “slavery” are being qualified as an international crime, along with war crime and crimes against humanity. Therefore, the issue has become a major issue for every country to set up their national law to combat and prevent it, even in war situation or conflict.

International growth has brought slavery to be international issue. Slavery has become jus cogens.¹⁴ International Criminal Tribunal for The Former Yugoslavia (ICTY) has decided that enslavement is classified as “crimes against humanity”.

Similar to International Criminal Court (ICC) Statute, enslavement and sexual slavery are considered as criminal activities. ICC translate the word enslavement as the exercise of any or all of the powers attaching to the right of ownership over a person”.¹⁵ This include the exercise of such power in the course of trafficking persons, in particular women and children.¹⁶

As for sexual slavery, ICC limit the word as follows¹⁷:

1. The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as purchasing, selling, landing, or bartering such a person or by imposing on them a similar deprivation of liberty.
2. The perpetrator caused such person or persons to engage in or more acts of sexual nature.

Aside the issue related to slavery, there are several international instruments that protect women and children. Convention on the Elimination of All Forms of

¹⁴ Meaning a norm accepted and recognized by the international community as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character” Article 53 Vienna Convention.

¹⁵ Article 7 (2) © International Criminal Court.

¹⁶ Consideration of the Issue of Trafficking, Background Paper, 11 – 12 November 2002, New Delhi, India.

¹⁷ Ibid.

Discrimination against Women (CEDAW) is a convention to protect women against all forms of violence, which might be experienced by a woman. In article 6, it is clearly stated that States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. The provision set in article 6 is a call for countries to pay more attention to human trafficking issues, in particular women.

The provision in article 6 CEDAW indicates that traffic in woman and prostitution of woman is against humanity and very dangerous to such persons, family and community. Consequently, the countries participated in CEDAW has to give criminal sanction to perpetrator exercised: (1) seeking, transporting, or asking other person or persons, in order to engage in prostitution activities, even under the consent of the person or persons; (2) exploitation other person or persons in prostitution, even under the consent of the person or persons.

CEDAW has limited the job that can be done by women. In article 11, it clearly stated that:

1. States Parties shall take appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
 - (a) The right to work as an inalienable right of all human beings;
 - (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
 - (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeship, advanced vocational training and recurrent training;
 - (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
 - (e) The right to social security, invalidity in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

ILO Convention No. 29/1930 put the meaning of force or compulsory labor as all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily. More than 25 years later, ILO has agreed to add another instrument, which is called as Abolition of Forced Labor Convention No. 157 (1957). That convention explained clearly that suppression of forced labor means political coercion, labor discipline, or racial, national or religious discrimination; as a method of mobilizing and using labor for purposes of economic development; an as punishment for having participated in strikes”.¹⁸

Issues related to children is also caught the concern from international attention. Issues related to children labor force, children trafficking, and children pornography are the issues that need to be addressed immediately. In short, all kinds of children exploitation need to get top priority from all over the world.

Convention on the Rights of the Child (CRC) is one of conventions that control things related to child protection. Article 1 of this convention mention that “child” means “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. Due to this provision, subsequently every country should pay attention to any forms of violence to children. It is clearly explained in Article 19:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any person who has the care of the child.

¹⁸ Force Labor, Child Labor and Human Trafficking In Europe; An ILO Perspective, Technical Paper for the UE.IOM STOP “European Conference on Preventing and Combating Trafficking in Human Beings”, 18 – 20 September 2002, Brussels, Belgium.

There is a big tendency that violence treatment towards children is likely to happen. Exploitative use of children in pornographic performance is addressed in article 34:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performance and materials.

As to children trafficking is also getting attention in Article 35, which mentioned that “States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any aspects of the child’s welfare”.

Judging from the provision in CRC it showed that CRC does not a complete rule regarding children protection. A child should be protected from all kinds of economic exploitation, sexual exploitation, or all forms of “sexual abuse”.¹⁹ All the weaknesses found in CRC then were added with the Optional Protocol to the Convention on the Rights of the Child. The Protocol expands the interpretation related to “sale of child”, “child prostitution”, and “child pornography”.

Restrictions for “trafficking” and children exploitation are getting attention in ILO Convention on the Worst Form of Child Labor. Related to child labor, ILO has agreed an instrument regarding Minimum Age Convention No. 138. Along with the growth of child labor, therefore Worst Forms of Child Labor Convention No. 182 was formed in 1999. Worst Forms of Child Labor in interpreted as all forms of slavery or practices similar to slavery, such as the sale and trafficking in children, debt bondage and selfdom and forced or compulsory labor, including forced or compulsory recruitment of children for armed conflict”.

International law has also given protection to individuals, as migrant or migrant workers. International instrument related to it is Convention on the Protection of the

¹⁹ *Ibid.*, p.39.

Rights of All Migrant Workers and Members of Their Families. This convention stated “The right to life of migrant workers and members of their families shall be protected by law”. Law protection shall not come from the recipient countries but also from migrant workers’ country of origin. Protection to the migrant workers is an expansion of human rights that need to get law protection. The major issue now is illegal migrant worker, as proposed by Leonard M. Hammer that “the situation of illegal migrant workers is especially problematic, “exemplify[ing] the jurisdictional struggle between state sovereignty and its control over immigration versus obligation on the State to uphold the human rights of all individuals found within a State’s territory.”²⁰

Those rights clearly stated in Article 8, as follows:

Migrant workers and members of their families shall be free to leave any State, including their state of origin. This right shall no be subject to any restriction except those that are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.

Apart from the right to be protected by law, migrant workers need to pay attention to several items in order receive protection. Those are:

1. No migrant worker or member of his or her family shall be held in slavery or servitude.
2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labor.

The Convention meant that all migrant workers are free from all forms of slavery and forces. States have to sentence a person or a group of persons who exercised violence to migrant workers.

Having reviewed all of explanation above, it is obvious that human trafficking issues are needed to be addressed together. Therefore, international organizations address the issue into international instrument.

²⁰ Leonard M. Hammer, Migrant Workers in Israel: Towards proposing a Framework of Eforceable Customary International Human Rights, Netherland Quaterly of Human Rights, 1999, p. 5.

In article 3 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime, “trafficking” is being interpreted as follows:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Interpretation of “trafficking in persons” is differ to what so called “smuggling” which means:

“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident.

From the above explanations we can see that there is a sharp difference between the interpretation of “trafficking in persons” and “smuggling”. “Smuggling” is emphasizing more to the procurement of transporting illegal person(s) from one state into the other, which will benefit the “smuggler”. In “smuggling” there is no indication of exploitation to such person(s). It is possible that there will be victims from the procurement of transporting such person(s), but it is not the main issue. The main issue of “smuggling” is transporting the person(s) illegally from one state to another. While “trafficking” aimed a specific target, which is the person(s) is the object of exploitation. Therefore, it involved the wish to exploit such person(s) from

the beginning of the act. The elements of “deception” and “coercion” are essential to the issue of “trafficking in persons”²¹

Another major instrument that needs to get attention is South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.²² SAARC is aimed to prevent and combat women trafficking and children for prostitution. It is well aware that South Asia the number of women trafficking and children for prostitution is very high, done by well-organized syndicates. Subsequently, the State Parties in SAARC commit to combat and prevent such activities, by classified them into criminal acts.

B. Local Instrument

The world seems to agree to interpret human trafficking as a criminal act. Every civilized country is demanded to give an extra attention towards this activities, both in terms local or international. This is inferred from the classification from all countries in the effort to address the human trafficking issues. Based on the Human trafficking report made by the U.S. Department of Justice in June 2002, Indonesia is among those in Tier 3. This predicate is entitled to Indonesia due to the perception that the government has not fully committed to address this human trafficking issues. It is strictly stated in the report that,*Indonesia does not have a law against all forms of trafficking in persons*²³. In a civilized country, the existence of a law to prevent and address an immoral and disadvantages acts is unconditional.

Indonesia is indeed does not have a specific law to address human trafficking. Apart from the perception regarding government commitment to address human trafficking issues²⁴, there are plenty of laws regarding human trafficking in Indonesia. Some of

²¹ Franck Laczko, Amanda Klekowski von Koppenfels and Jana Barthel, Trafficking in Women from Central and Eastern Europe: A Review of Statistical Data, European Conference on Preventing and Combating Trafficking in Human Beings: Global Challenge for 21st Century, Brussels, Belgium, September 2002, p.2.

²² SAARC was adopted in January 2002, among the state parties: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.

²³ U.S. Department of Justice (2002). Trafficking in Persons Report. Washington, June 2000, pp.61.

²⁴ Indonesian government is being criticized not serious towards the human trafficking issues, as reported in *Republika* (Indonesian newspaper) on November 15, 2001 in its article entitled “RI Tak Serius Awasi Perdagangan Perempuan (Indonesia is not seriously pay attention to Women

those laws strictly restricted and severely punished to imprison the acts classified as human trafficking, some others are merely mention human trafficking issues, some others are inferred related to human trafficking. This study will only focus on the first two mentioned earlier, within consideration that the focus of this study is the procurement of human trafficking subject to limitation set off in this study. Therefore there is a fundamental issue that has to be exposed before we jump to the provision to which laws that related to human trafficking issues. The issue is the definition of human trafficking. Discussions and arguments in regard to human trafficking seems has not reach a comprehensive conclusion about the definition of human trafficking.²⁵

Definition that is much in reference nowadays is the one in Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, A/55/383. Additional protocol of Convention Against Transnational Organized Crime define human trafficking in Article 2, as follows:

(a).....[T]he recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal organs;

The definition was then expanded towards underage child (under 18 or less), that:

(C) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a)

Trafficking)”. And also in Kompas newspaper on 13 December 2001 with an article entitled “Penegakan Hukum Lemah Melawan Eksploitasi Seksual Anak (Weak law enforcement against child sexual exploitation).”

²⁵ U.N. Special Reporter concerning Violence Against Women reported that Human Trafficking is a dynamic concept, which parameter is subject to change to address the changes in economic, social and political situation. Nevertheless there is one important point regarding human trafficking issue, which is out of the victims’ consent and for the purpose of exploitation.

One important factor to set the range of human trafficking definition according to the protocol is:

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

Based on the above definition, along with its extension and exclusion, we can conclude that element in human trafficking are:

1. Procurement of recruitment, transportation, transfer, harboring or receipt.
2. Means to control the victims are threat, use of force, all forms of coercion, abduction, fraud, deception, abuse of power or vulnerability or giving or receiving payment or benefits to achieve the consent of a person having control over another person.
3. The purpose is exploitation, at the minimum is prostitution or other forms of sexual exploitation, forced labor or services, slavery, servitude, organ removals

From the above elements, we need to pay close attention to the element of purpose, since it will narrow the scope of cases in public that actually can be classified as human trafficking. Even though the Protocol is no longer limited the means for children trafficking cases, but the purpose is still exploitation. This requirement left a question to the cases that happen in the community, which is regard to babies that being traded without the purpose of exploitation. Is illegal practice of selling babies to be adopted can be excluded from human trafficking scope?

The other issue that often arises while discussing human trafficking issues is regarding the requirement of movement or transfer of victims. It is raising arguments whether the movement has to be transnational, across islands, cities or from village to city, village to other village, or even in one area but different environment. To this matter the U.N. Special Reporter stated that even the crossing geographic borders or politic can be classified as human trafficking, nevertheless it is not a prerequisite. So

human trafficking can be charged even in one territory of a country and transnational.²⁶

Even though there are still many question left unsaid and new problems arising, but Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children should be a reference to address human trafficking issues since the government has signed it. Apart from international instruments, we still need to elaborate national law, this study will use rules and regulation that often used to discuss human trafficking issues, especially women and children, which is article 297 KUHP. Even admitted until now to be incomplete, article 297 is considered by many parties as the law that can be used to charge and sentence the perpetrator of human trafficking in Indonesia.²⁷

Based on the two instrument above, we will identify the Indonesian law regarding – both that address and mention – human trafficking issues.

Law No. 39/1999 on Human Rights

Human trafficking is a matter of human rights; therefore we need to refer firstly the Law No. 39/1999 on Human Rights. The umbrella act on protection to human rights for citizen of Indonesia give a number of important foundations on protection to human rights against human trafficking, which are:

1. Article 3 Law No. 39/1999, which emphasize that every human being was born freely, with equal rights and dignity, and every human beings entitled to protection and freedom towards human rights without any discrimination.

²⁶ U.N. special Rapporteur concerning Violence towards women, women trafficking, women migration, causes and effects (Jakarta: KOMNAS HAM 2000), pp.10.

²⁷ Keynote Speakers in various seminars, studies and news in mass media often said that article 297 KUHP is a positive law that strictly rule and mention restriction against women and boys trafficking, e.g. Nursyahbani Katjasungkana in her paper “Pemahaman dan Kritik terhadap Peraturan-Peraturan Hukum tentang Perdagangan Perempuan (Interpretation and critics towards the laws regarding women trafficking)” and Dian Kartika Sari in her paper “Perdagangan Manusia, khususnya perempuan dan anak dalam tinjauan Hukum (Human Trafficking, especially women and children being viewed from law perspective)” in a Seminar and Workshop Women’s Trafficking dalam Perspektif Agama dan Budaya (Seminar and Workshop Women’s Trafficking being viewed from religion and cultural perspective) on August 8, 2002, Study report of ICMC on “Tinjauan Perundang-undangan Nasional Indonesia yang berhubungan dengan Penanggulangan Trafficking (Review of Indonesian law regarding the combat of trafficking) in September 2002, article in newspaper Suara Pembaruan entitled “Komisi VII DPR Kunjungi Korban Perdagangan Wanita: Belum ada UU yang bisa Menangani Tuntas (Committee VII Legislative visits victims of Woman Trafficking: There is not yet a Law to handle the matter) published on September 28 2001.

2. Article 4 Law No. 39/1999, which point out the right to live, the right to be free from torture, the right of personal freedom,....., the right to be free from enslavement is considered unconditional to human rights.
3. Article 20 Law No. 39/1999, which stated that no human beings can be enslaved or do servitude. Therefore enslavement or servitude, slave-trade, women trafficking and all forms of similar purpose are prohibited.
4. Article 65 Law No. 39/1999 which stated that every child is entitled to be protected from any exploitative activities and sexual abuse, abduction, children trafficking and other forms of drug abuse and other addictive substance.

Criminal Law and Criminal Law Plan (Kitab Undang-Undang Hukum Pidana (KUHP) R-KUHP)

Even the law on human rights that become an umbrella act to give protection on human rights in Indonesia has just enter to force in 1999, it does not infer that there is no specific laws that gives protection on human rights before that, especially to human trafficking. In KUHP that enter to force in 1918²⁸ we can find a numerous articles that indicate even in feudalism era human trafficking is considered inhuman and should be punished.

1. Article 297 Criminal Law As mentioned above, article 297 Criminal Law strictly prohibited and sentence imprisoned the procurement of women trafficking and boys. The complete verse is:

To trade women and boys will be sentenced maximum six years imprisoned.

To understand this article it is important to know the meaning of “to trade.” Criminal Law Book I on General Provision does not give any explanation about the word. R. Soesilo in his explanation to the article stated that:²⁹

“....’trading or to trade women’ means that try to attempt actions of giving women to prostitution. Including the act of sending young women abroad which has no other purpose than to work as prostitutes...”

²⁸ KUHP initially was so called Wetboek van Strafrecht voor Nederlandsch Indie (Staatsblad 1915 No. 732), which is declared to enter into force on January 1, 1918.

²⁹ R. Soesilo, KUHP and full explanations on articles, (Bogor: Politea, 1995), pp. 217

If we use Soesilo's explanation to interpret Article 297 Criminal Law, subsequently it will narrow the scope of the article, since it will only range the women trafficking for the purpose of prostitution. But Soesilo's explanation is supported by Noyon-Langemeyer (2nd edition pp. 542) as quoted by Wirjono Prodjodikoro, which strictly stated that:³⁰

“Women trafficking shall means every attempts for the purpose to put a woman under other person's control, who wants to control over such woman to be asked to do obscene acts with a third party (prostitution)

To Noyon-Langemeyer's explanation, Wirjono concluded that the explanation does not include the general cases of slave-trade.³¹

With those explanations above, it is clear that article 297 Criminal Law basically limited to women trafficking (and underage boys) for the purpose of prostitution. This conclusion will be stronger if we examine the placing of Article 297 Criminal Law in the chapter of Crimes against morality and was placed after Article 296 Criminal Law on procures.

Within this condition, it will arise a question due to the events in community whether women trafficking without the purpose of prostitution can be charge with this article. The next question that will arise is whether an application of a certain article can only be applied subject to the purpose of the article, even public condition has changed and demanded more.

Another problems arising in this article concerning the limit of age for boys that being trade. The Criminal Law does not mention explicitly the limit of underage and mature classification. In the articles on underage victims, the articles just only stated that the victim must be underage, but it does not exclusively stake a certain age of 12 years, 15 years, 17 years. Therefore there is not a criterion available to this element. If we adopt the criterion on BW regarding the age of maturity, then 21 years below or single person is considered immature or underage. But if we adopt the provision in

³⁰ Wirjono Prodjodikoro, *Tindak Pidana Tertentu di Indonesia* (Jakarta – Bandung: PT Eresco, 1980) pp. 128

³¹ *Ibid.*, pp. 129

Marriage Law (Law No. 1/1974), then limit of underage person is under 18 years or single.³² Regarding this matter there should be one strict provision about age, since the exist provision set a different limit subject to the issue and its purpose.

2. Article 301 Criminal Law

This Article prohibited and charged imprisoned at maximum 4 years, one that allow or give away a child under 12 years old under his care, and he is aware that the child will be used or brought to do dangerous act or work that will deteriorate health.

This article is focusing clearly to the victims under 12 years old, and the perpetrator is a man who legally owns the custody of the child, such as parents or guardian. If we relate this article with Article 297, then this article limited the subject to the person who owns the custody of the child; age limit to the victim is clear which is under 12 years old; and the purpose of transferring the control over the child is wider, not merely for prostitution.

3. Article 324 Criminal Law: prohibited trade-slave, sentenced imprisoned at the maximum 12 years.

According to Soesilo, enslavement in Indonesia was legally eliminated since January 1, 1860 (subject to article 169 Indische Staatsregeling). Even though the object of restriction Article 324 was legally abolished, but the article on trade-slave is not yet abolished. This is due to the practice of trade-slave continues to grow, both in feudalism era and after.

The term trade in this article does not necessarily mean buying and reselling. The procurement of selling or buying alone is already categorized trade. And the perpetrator's role, directly or indirectly even participated will be charged the same punishment. The word participate in this article is meant as set forth in Chapter V Criminal Law Book 1, which can come in form of asking, provocation, co operating, or help doing. To those will be charge to sentence imprisoned at the same number with the perpetrator.³³

³² See Article 47 Law No. I/1974, which stated that a child below 18 years old or single is under the care of his or her parents before it is taken by the court.

³³

So the scope of this article is very wide, and the next three article afterward which are article 325, 326, 327 Criminal Law have address the perpetrator involved in crime set forth in article 324.

4. Article 325 Criminal Law: prohibit the captain from using his boat as the means to transport slaves, sentenced imprisoned at maximum of 12 years; and if the slave died in his boat he will be sentenced to prison at maximum 15 years.

This article applied exclusively for the captain of the boat who involved in trade-slave. The activities that prohibited according to this article are (1) carrying the duties as the captain while he is well informed that the boat practice the slave-trade activities; or (2) using the boat to practice slave-trade.

If we analyze the acts that are prohibited in this article and relate them with all forms of participation that are set forth in Chapter V Criminal Law, then we can conclude that for the first act the captain of the boat acts as a person who help to commit the crime set forth in article 324 Criminal Law. While if the second acts committed, then the captain of the boat is the perpetrator or one of the perpetrator. One thing that needs to be underlined is the movement of crime in involving. Unlike the rule set forth in article 57 Criminal Law, the captain of the boat who involves in helping the trade-slave gets the same charge as the perpetrator. The captain of the boat get will be charged even more – that will not be charge even to the perpetrator in article 324 Criminal Law – sentence at maximum 15 years if the slave died in his boat.

5. Article 326 Criminal Law: threaten to sentence at maximum 9 years to those who work in the boat that is used for trafficking persons

The article that only apply to sailor³⁴ restrict the activities (1) working as sailor while he notice that the boat is practicing the trade-slave; (2) with his consent keep his job as sailor after he notice that the boat practice the trade-slave. If we linked it with the concept of participation, then sailor's participation is as the person who gives help to perpetrate a crime said in article 324 Criminal Law. Like the captain of the boat, the sentence for sailor who gives help to perpetrate a crime seems was set specifically unlike the

³⁴ According to Article 93 (3) Criminal Law, Soldier are all of the person on the boat who work as seamen.

accomplice principle where the sentence is 1/3 of that of the perpetrator. But if it compare to the captain of the boat or the accomplice principle the sentence for sailor is lighter.

One thing that cannot be forgotten is the concept of joint of crimes that has to be used to settle the criminal behavior of the sailor. On that time there are two possible provisions applicable, which are Article 324 Criminal Law and Article 326 Criminal law for each of the criminal behavior done. To decide the sentence we need to pay extra attention whether we should use article 324 Criminal Law or article 326 Criminal law.³⁵ If we refer to the provision set forth in article 63(1) Criminal Law then we apply the sentence for 12 years. Nevertheless, considering the nature of general provision (article 324 Criminal Law) and special provision (article 326 Criminal Law), then the sentence will be 9 years suit to article 63 (2) Criminal Law.

6. Article 327 Criminal Law: restrict a person under his own expense or other person's expense, directly or indirectly, interfere to rent, load or cover an insurance for a boat practice trade-slave; we shall give the sanctions at maximum 8 years.

Similar to 2 previous articles, this article threatens to jail a person's intervention in a trade-slave by participating in (1) renting, (2) loading or (3) covering boat insurance that practice trade-slave. Compare to 2 previous articles, article 325 and 326, the sentence is the lightest, 8 years imprisoned, similar to provision for accomplice principle, 1/3 of sentence set forth in article 324. Similar to problem set forth in article 326 if it is compared to article 324, then the one that should apply is article 327 if the thing that rented, loaded, and covered the insurance is a boat. If it is other than boat, then it will apply article 324.

7. Article 328 Criminal Law: to kidnap or abduct a person; the sanction in imprisoned at maximum 12 years.

³⁵ The cases is also found when we use article 325 Criminal Law. But due to the punishment, either article 324 Criminal Law or article 326 Criminal Law is 12 years then it would not create a problem. Nevertheless, in that case it still article 325 that should be the base of the sentence decision, suit to article 63(2) Criminal Law.

This article is not an article that regulates directly human trafficking, but it has close relation to trafficking in persons, because kidnapping is one way to bring the victim to be trafficked. The restricted action in this article is to abduct or kidnap a person. While he kidnap or abduct the person, the perpetrator should intend to bring the person out of his consent or over another person or to abandon the person. Since to kidnap or abduct a person is one of a ways to bring the victims into human trafficking, the perpetrator will be charged by provision joint crime (article 65 Criminal Law).

8. Article 329 Criminal Law sentence at maximum 7 years imprisoned for a person who intentionally taking over someone's control to a place other than he has promised.

This article is meant to handle the "deception" while looking for a job. If it is connected to human trafficking issues, then the important element that needs to be proven is the deception since initially there must be an agreement from the victim to be brought to a place. This should be given extra attention, since basically human trafficking case is without the consent of the victim.

9. Article 330 Criminal Law restrict to abduct an underage person out of his legal care, with sanction at maximum 7 years imprisoned, and if it use by means of deception, or the use of force or threat, or the victim is under 12 years old, the sanction is added to 12 years.

This article is similar to article 328, which is one of the ways to bring the victim into human trafficking. The element that differ them is underage and without the intention to having control over another person or to abandon the person.

One important element that has to be proven is the perpetrator who abduct the victim; and not the victim that escape on his/her own willing.

10. Article 331 Criminal Law threaten with sanction at maximum 4 years or 7 years imprisoned, if the child is under 12 years old, a person who intentionally hide a person that is still under someone else's care.

The restricted action in this article is to hide the victim out of the care of the person that entitle to him. Even the victim does it with his own willing or by

the perpetrator or someone who helps the perpetrator. Even though the act was perpetrated without preceded by the ways that limitative in the definition of human trafficking in the protocol, as long the hiding is meant to exploitation then it will be classified as human trafficking.³⁶

11. Article 332 Criminal Law: threatens at maximum 7 years imprisoned, a person who abduct an underage girl without the consent of her parents or her guardian, but with the consent of the girl with the purpose to own her with or without marriage. The sentence becomes 9 years if it is perpetrated by the means of deception, use of force or threat.

The restricted act in the article is to abduct a girl. Similar to provision set forth in article 331, if the girl is a minor even though it is under her own consent, the action is classified as women trafficking if the purpose of abduction is exploitation.

If the abduction is perpetrated with the consent of the girl by the means of deception, the use of force, or threat, it can be classified as human trafficking provided that the purpose is exploitation. This provision is in line with the exception in the protocol's provision that said the consent of victim to be exploited should regard as non exist, if it is achieved by the means of deception, the use of force, the abuse of power.

While using the three articles above, the limit age for the victim should be underlined. R. Soesilo in his translation for Criminal law always stated that "a minor is under 21 years or not yet married."³⁷ Having discussed above Marriage Law stated under 18 years old or not yet married is the limit age of a minor. Protocol II defined a child as a person who is under 18 years of age. Different limit on age with different criteria will create problems in law enforcement.

12. Article 333 Criminal Law will sentence to prison at maximum 8 years for the perpetrator who take away other person's freedom, and give place to lock such person.

³⁶ Should bear in mind that definition of human trafficking set forth in protocol II exclude the use means that set forth limitative, as long the victim is under 18 years old and the purpose is exploitation.

³⁷ See R. Soesilo explaining article 330 and article 332 Criminal Law, Law and his explanation per article.

Prohibited activity set in this article are intentionally (1) take away somebody's freedom (lock up) or (2) continue to lock up such person or (3) give place to lock a person, against their willing.

The act of taking somebody's freedom or continue hiding a human being considered activities involved in human trafficking, for the purpose of exploitation and of threat, violence, forces, deception, fraud, abuse of power or vulnerability. While the act of giving place to keep hiding a person, categorizes as helping to human trafficking, for he or she contributed a means to the crime. The act will be punished at the same treatment with the perpetrator, that is maximum 8 years. Meaning that the crime was committed by helping.

The Criminal Law Plan (RKUHP) has also formulated several articles related to human trafficking. The underlying matter of those articles are the articles from Criminal Law that enter force nowadays, as reported above. Only several were having changes in element or sentence; even not few of them that do not have any changes in the slightest with articles in Criminal Law. The articles are:

1. Article 433 (1) Criminal Law Plan: sentence to prison at maximum 7 year or fined at maximum set forth in category V, for every man who initiate, carry, put or give away boys under 18 years old or girl to other person to do an obscene act, prostitution or other immoral acts.

This article is a replacement for article 297 Criminal Law. Compare to the article it replaced for, this article has a clearer scope, because it not only mention the act but also define the elements in details. The unclear matters in article 297 Criminal Law is replaced by this article, whether the age limitation and the scope matter related to the purpose of the perpetration (whether sexual exploitation or more than that) is explained clearer in this article. The sentence will be 7 years; even the judge might give a fine sentence as an alternative. Judging from the element, this matter clearly restricted human trafficking, especially girls and boys under 18 years of age.

2. Article 433 (2) Criminal Law Plan: If the crime set fort paragraph (1) committed by promising such woman a job but the fact that she was given to

other person to do obscene acts, prostitution, or other immoral acts, he will be punished to prison at maximum 9 years.

Provision in this article is a new thing that was not regulated in present Criminal Law. This article is made to answer or solve the problems in the communities, which is “to deceive” women to do immoral jobs; yet it was promised different earlier. The thing that should get an extra attention is this article is only applied if the victim is a woman. If we relate it to the provision in paragraph (1), then the criminal behavior in this article is the focus, provided the element of deception as a way to bring or put the woman in her immoral job.

3. Article 438 Criminal Law Plan: a person who give or hand over to other person a child under 12 years old of his care to other person will be sentenced imprisoned maximum 1 year or fine at maximum as set forth in category III, while he is aware that such child will be used to be beggars or to do such dangerous job or hazard to his health.

The comparison to this article is article 301 Criminal Law, but the present provision threatens heavier sentence to the perpetrator, which is maximum 4 years imprisoned. Aside that the restricted act in this article is limited only to give or give away the victim, exclude the act leaving the victim with the person who will exploit her or him. So, if the victim is already in the hand of the person who will exploited her/him without the consent of the care of the child, but the parents or the guardian let the condition still the parents or the guardian cannot be charged with this article.

4. Article 460 Criminal Law Plan: every person who committed or participated in human trafficking cases whether funded by himself or funded by other people, he will be punished maximum 12 years.

Viewing from the formula, the article replaced article 324 Criminal Law, but in the wider scope than merely for slave but for people in general, without has to fulfill the purpose. Therefore, this Criminal Law Plan has a specific rule for human trafficking, even it is still discussed together with article of abduction and kidnapping.

If we relate this to article 433 (1) Criminal Law Plan then we can conclude that article 460 is a general provision about human trafficking. While article 433 (1)

Criminal Law Plan is a specific provision, which is if the victim is a girl and a boy under 18 years of age and the purpose is sexual exploitation. Based upon the sentence threatened to both matters, we can see that it does not see the purpose of sexual exploitation as a special element that can put pressure to the perpetration of human trafficking, even imprisoned sentence in article 433 (1) only 7 years, while article 460 Criminal Law Plan the sentence maximum 12 years.

5. Article 461 (1) Criminal Law Plan: Everyone who works or the captain of the boat or use the boat with his consent in any transaction dealt with human trafficking, will be sentenced imprisoned maximum 10 years.
6. Article 461 (2) Criminal Law Plan: if the crime set forth in paragraph (1) that cause the death of a person in transaction that meant to make a person as a trade commodity, sentenced at maximum 15 years imprisoned.
7. Article 462 Criminal Law: sentence imprisoned at maximum 7 years or fined at maximum as set forth in category V, for everyone who work on the boat that used to practice or has a purpose of human trafficking, or if the person still work in that boat willingly on his acknowledgement that the boat practice the human trafficking activities.
8. Article 463 Criminal Law Plan: Everyone with his consent who co-operate directly or indirectly to rent, transport or insurance the boat that practice the human trafficking activities, will be sentenced imprisoned at maximum 10 years.

The articles above regulate the threat punishment for the persons who involved in human trafficking activities, both as perpetrator or accomplice. As mention in Criminal Law, punishment in Criminal Law Plan to the persons involved is exclusively regulated, do not follow the provision participation in General Provision. Compare to Criminal Law, the punishment in Criminal Law Plan to other parties in human trafficking activities is relatively lighter (see Article 461 (1) and Article 462 Criminal Law Plan compare to article 325 (1) and article 326 Criminal Law), except article 463 Criminal Law Plan (compare to article 327 Criminal Law).

9. Article 464 Criminal Law Plan: Anyone who takes away a person from his/her residence with the purpose to put the person under his control or somebody

else or to put the person controlled, imprisoned for abduction, maximum 12 years or minimum 3 years.

10. Article 465 Criminal Law Plan: anyone who keeps a person by using the force of threat to put the person under his control or over the control of someone else or to put him controllable, charge for hostage, with the maximum sentence 12 years or minimum 3 years imprisoned
11. Article 466 Criminal Law Plan : everyone who violates law transporting other person to work to other region different to the initial agreement, will be charged with sentence at maximum 7 years imprisoned or fine maximum set forth in category V.
12. Article 467 (1) Criminal Law Plan: everyone who takes away a minor person out of the care of the person who has the right against him, will be charged with sentence maximum 7 years imprisoned or fine maximum as set forth in category V.
13. Article 467 (2) Criminal Law Plan: if the crime said in paragraph (1) was perpetrated by the means of deception, use of force or threat, or perpetrated to a child under 12 years, charge sentence maximum 9 years.
14. Article 468 (1) Criminal Law Plan: a person who hide a person under 18 years of age that out of the care of the legal guardian , or out of the investigation of the authorized officials, will be sentence imprisoned at maximum 7 years or fine maximum as set forth in category V.
15. Article 468 (2) Criminal Law Plan: if the crime set in paragraph (1) perpetrated to a child under 12 years old, the perpetrator will be sentence imprisoned at maximum 9 years.
16. Article 469 (1) Criminal Law Plan: everyone who takes away a girl under 18 years of age and not yet married, out of the consent of the girl's parents or guardian, but with the consent of the girl, with the purpose to have control over the girl, with marriage or without marriage, will be sentence imprisoned at maximum 5 years or fine maximum as set forth in category IV.
17. Article 469 (2) Criminal Law Plan: every one who takes away a woman by the means of deception, use of force or threats, with the purpose to take control over the woman, through marriage or throughout marriage, will be sentenced imprisoned maximum 7 years or fine maximum as set forth in category V.

18. Article 470 (1) Criminal Law Plan: everyone who violates the law by taking a person's freedom or handing over the act, will be sentenced imprisoned at maximum 9 years and minimum 2 years.
19. Article 470 (2) Criminal Law Plan: if the crime set forth in paragraph (1) causes great damage, then the perpetrator will be sentenced imprisoned at maximum 12 years and minimum 2 years.
20. Article 470 (3) Criminal Law Plan: if the crime set forth in paragraph (1) causes the death of a person, the perpetrator will be sentenced imprisoned at maximum 15 years and minimum 5 years.

The articles above regulate punishment about human's freedom, which is one of the ways to take the victims into human trafficking. Basically the provisions in Criminal Law Plan are no different than Criminal Law, especially about the elements of punishment. Only Criminal Law Plan stated clearly about the age limitation, so that it will be easier to apply. Another difference with Criminal Law is the threat criminal minimum for certain matter as in article 470 Criminal Law Plan.

Another Provision

- **Law No. 26/2000 about Human Right Court**

Article 9 Law about Human Right Court stated that the criminal against humanity is one of the perpetration that done as a part of a whole or systemic attack which is widely know that the attack is aimed to the civilian in the form of:

- a.....
- b.....
- c.Slavery
- d.Eviction or moving the people by using the means of force
- e.Seizure of freedom or another physical freedom that violates the international principles
- f.....
- g....., sexual slavery, forced prostitution, forced pregnancy,

In the explanation of article 9 (c) said that the slavery in this article conclude the human trafficking, especially women and children.

Only still a debate to apply the provision in article 9 due to lack of definition that wide and systemic that limit the use of the article.

- **Law No. 23/1992 about Health**

Article 80 (3) and article 81 (1) a, restrict and threatens to punish the perpetration organ removal or body tissue with commercial purpose of perpetrate without proper skills or authority.

- **Law No. 15/2000 about Money Laundering Crime**

Article 2 stated that the crime of trade – slave, women and children as a predicate crime to money laundering crime.

- **Law No. 1/2000 about ILO Legalization for Convention No. 182 concerning The Prohibition and Immediate Action For The Elimination of The Worst Forms of Child Labor and Law No. 23/2002 about Children Protection**

Law No. 1/2000 about ILO Legalization for Convention No. 182 concerning The Prohibition and Immediate Action For The Elimination of The Worst Forms of Child Labor and Law No. 23/2002 about Children Protection give limitation about “child” that is a person who is under 18 years of age. It is also stated in Law No.20/1999 about ILO Legalization for Convention no. 138 concerning minimum age for admission to employment. In article 3 it is stated that the minimum age to employment for every kind of job, due to the nature or job environment that may hazard to the health, safety, or moral, is not less than 18 years.

The provision in article 3 of the convention can be exclude, that is for a child above 16 years , with the condition that the health, safety, and moral are secured and has got special training about the activities.³⁸

According to Law No. 1/2000, the worst forms of child labor are:

³⁸ see article 3 (3) Law No. 20/1999 about ILO legalization on convention concerning minimum age fro admission to employment.

1. All forms of slavery or practices similar to slavery, such as children trade or children trafficking, debt bondage, and servitude and forced service, including children conscription by the use of force, including children conscription in gun war conflict;
2. The use or offer child to prostitution, for pornographic production, or for pornographic shows;
3. The use, supplying, or offering the children to forbidden activities, especially for production and trade of drugs as regulated in relevant international arrangement;
4. Job that the nature or environment carry out in the place that can endanger the health, safety, or moral of the children.

If we see the two laws that legalize the two conventions, there is a must for every nation that ratified the convention to apply them in the law or national rules.³⁹ As a realization, Indonesia has legislated Law No. 23/2002 about children protection, which was legislated on October 22, 2002.

Observing the provision in the law, it seems that the law for children protection has tried to give legal protection to children even though it still needs further details.

Children protection - according to article 1 (2) Law about Children Protection – is all activities to secure and protect a child and his right to live, grow, develop, and optionally participate according to human rights and dignity, and get protection against violence and discrimination. The act is a protection against: (a) discrimination; (b) exploitation, economically or sexually; (c) abandoning; (d) abuse, violence, and force; (e) injustice; and (f) another form of mistreatment. Mistreatment means, the perpetration of harassment or another indecent treatment to a child.⁴⁰ While other protections are against: (a) misuse of children in political activities; (b) involvement in gun war conflict; (c) involvement in social riots; (d) involvement in the event that contains force elements; and (e) involvement in the war.

³⁹ see article 2 (2) Law No. 20/1999 and article 4 Law No. 1/2000

⁴⁰ see explanation article 13 (f) Law No. 23/2002 about Children Protection.

In article 1 Law Children Protection, stated that a child is a person under 18 years of age, including the babies in their mother womb. Therefore, this law gives protection to the child since he is still in his mother's womb. The protection given goes in line with the basic principle in Convention about Children's Right, which are:⁴¹

1. Principle of the best interest for children, that all the acts concerning the child that perpetrated by government, legislative body, judicative body, the best interest should be the major consideration;
2. Right to live, living continuation, and development are the basic right to a child that is protected by the state, government, public, family and parents;
3. Principle of appreciation to a child opinion is an appreciation to children right to participate and state an opinion to take decision especially when concerning the things that affect his life;

Article 59 gives special protection to a child. They are:

Government and other institution obliged and responsible to give special protection to a child in a emergency situation, child deal with the law, child from the minority and isolated group, child exploited economically and or sexually, child who is traded, child victimize of abuse of drugs, alcohol, and other addictive substance, child of abduction, invalid child, child victim of physical and mental abuse, abandoned child.

The concern to a child not only affected the sanction to them who involved but also the them who let or do not give help to a child in need, regulated in article 78.

Everyone who are aware and intentionally let a child in emergency situation as set forth in article 60, child deal with the law, child from the minority and isolated group, child exploited economically and or sexually, child who is traded, child victimize of abuse of drugs, alcohol, and other addictive substance, child of abduction, invalid child, child victim of physical and mental abuse as set forth in article 59, will be sentenced imprisoned maximum 5 years and fine maximum a hundred million rupiah.

⁴¹ See explanation article 2 Law No. 23/2002 about Children Protection.

Sanction to every act related to a child for the purpose of sexual, stated in article 81 as follows:

- (1) Everyone who intentionally force or threat to force a child to have intercourse will be sentenced imprisoned maximum 15 years and minimum 3 years and fine maximum Rp 300,000,000,00 minimum Rp 60,000,000,00
- (2) The sentence set forth in paragraph (1) also applies for everyone who perpetrates deception, seduction to have an intercourse.

Article 82:

Everyone who intentionally perpetrate violence of threat of violence, force, deceived, or seduce a child to perform indecent activity, will be sentenced imprisoned maximum 15 years and minimum 3 years and fine maximum Rp 300,000,000,00 minimum Rp 60,000,000,00

Article 83 threatens the perpetration of trading children, as follows:

Everyone who trade, sell, or kidnap a child for himself or for the purpose of commercial, will be sentenced imprisoned maximum 15 years and minimum 3 years and fine maximum Rp 300,000,000,00 minimum Rp 60,000,000,00

Article 87, gives sanction to everyone who use a child in a gun war conflict, social riot, or events that has element of violence, as follows:

Everyone who violates the law by recruiting or manipulating a child for a military interest as set forth in article 63 or abuse of political activity or involvement in a gun war conflict, or involvement in a event that has element of violence, will be sentenced imprisoned maximum 5 years and fine maximum Rp 100,000,000,00

As for children exploitation economically or sexually stated in article 88 as follows:

Everyone who economically or sexually exploited a child with the purpose for his own benefit will be sentenced imprisoned maximum 10 years and/ or fined maximum Rp 200,000,000,00

In article 89, stated sanction to person who involved a child in production or distribution of drugs, alcohol, and other addictive substance:

- (1) Everyone who intentionally place, put, involve, or ask a child in a abuse of production and distribution of drugs and/or other hallucinogenic drugs sentenced to life or imprisoned maximum 20 years and minimum 5 years and fined maximum Rp 500,000,000,00 minimum Rp 50,000,000,00
- (2) Everyone who intentionally place, let, involve a child in a abuse of production and distribution of alcohol and other addictive substance will be sentenced imprisoned maximum 10 years and minimum 2 years and fined maximum Rp 200,000,000,00 and minimum Rp 20,000,000,00

Based upon above explanation, the law has given sanction to anyone who “abuses” a child for activities that restricted by law. Based upon provisions above the sanction are given to perpetration of:

1. Let a child in an emergency situation, when the child need the help and must get help;;
2. Intentionally perpetrate violence or threat of violence, force a child to have an intercourse;
3. Intentionally perpetrate violence or threat of violence, deception, seduction to a child to perform indecent act;
4. Trade, sell, or kidnap a child for his own benefit or commercial;
5. Recruit or manipulate a child for a military interest, abuse in a political activity or involvement in a gun war conflict or other event of violence;
6. Economic or sexual exploitation to a child for his own benefit or others;
7. Let, involve a child in a abuse production or distribution of drugs and/or hallucinogenic drugs, alcohol and other addictive substance.

- **Law About Guidance and Protection to Manpower**

Other than Children protection, we need to pay attention to Guidance and Protection to Manpower that supposes to pay attention to child labor. In the Law Plan about

Guidance and Protection to children, we can see several articles that gives legal protection to a child, in its relation to job that involved a child.

In article 67 it is clearly stated that an entrepreneur prohibited employing a child. This can be excluded to a child between 13 years old to 15 years old to carry a minor work provided the job will not affected the growth and health of the child, physically, mentally and socially (article 68)

An entrepreneur who employs a child should meet the following criteria as set forth in Article 68 (2) as follows:

- a. Permission in written from the parents or guardian;
- b. Working arrangement between the entrepreneur and the parents or guardian;
- c. Maximum working time is 3 hours;
- d. Practice at noon and do not affected the school's activities;
- e. Safety and healthy work;
- f. There is a clear working relationship; and
- g. Employ a wages system according to present regulation.

Another exception regulated in the Law, can be seen in article 70, which stated that a child could carry a job to develop his talents and interests. This could be done with condition:

- a. Under the direct supervision from the parents or guardian;
- b. The longest working hours is 3 hours a day; and
- c. The working condition and environment will not affect his mental, physical, social condition of the child, and do not affect the school activities.

The worst form of a child labor, stated clearly in article 73, that an entrepreneur is prohibited to employ and involve a child in the worst form of job, which are:

- a. All kinds of work in the form of slavery and its kind;
- b. All kinds of job that take an advantage of, supply, or offer a child to prostitution, pornographic production, pornographic shows or gambling;

- c. All kinds of work that take advantage, supply, or involve a child to the production and trading of liquor, drugs, hallucinogenic substance, and other addictive substance;
- d. All kinds of work that endanger the health, safety, or moral of the child.

Aside from the legal protection given by the law to a child in a certain age, the law is also giving sanction to imprison anyone who violates the provision set forth in the law, as seen below:

Article 186:

An entrepreneur who employs a child between 13 years to 15 years old without fulfilling the requirement set forth in Article 68 (2) will be imprisoned minimum 1 month and maximum 4 years and or fined minimum Rp 10,000,000,00 and maximum Rp 400,000,000,00

Article 187:

An entrepreneur who employs a child to develop his talents and interests without fulfilling the provision set forth in Article 70 will be sentenced to be imprisoned minimum 1 year and maximum 4 years and or fined minimum Rp 100,000,000,00 and maximum Rp 400,000,000,00.

Article 188:

An entrepreneur who employs a child under 18 years of age for the worst forms of the jobs set forth in Article 73 will be sentenced to be imprisoned minimum 2 years and maximum 5 years and or fined minimum Rp 200,000,000,00 and maximum Rp 500,000,000,00.

CHAPTER III

HUMAN TRAFFICKING IN INDONESIA

A. INTRODUCTORY

Indonesia is categorized by the U.S. as a country that has not met a standard requirement to combat a well-organized crime as an effort to abolish human trafficking seriously, it is even difficult to get an accurate data for this case. This condition appears due to several matters. *Firstly*: definition of human trafficking in criminal law is limited on “women and children trafficking,” and there is no further elaboration on trafficking definition. *Secondly*: different institutions are handling all activities that classified as human trafficking. E.g.; cases of sending illegal migrant workers are taken care by Department of Manpower, while children trafficking in order to turn them to be street children and beggars are handled by social service and other institutions. *Thirdly*: Indonesia has a very vast and open territory that enables the practice of human trafficking in various areas and very difficult to observe them.

Human trafficking is an iceberg phenomenon. It is difficult to estimate the exact number of human trafficking that ever happened due to lack of co-ordination to combat human trafficking due to problematic situations in several departments involved.

Human trafficking in Indonesia is not limited on the criteria of age or sex. Based upon several cases that found successfully, potential victims on human trafficking are babies while they are still in their mother wombs, children regardless their ages, women and men. Even though the data on grown up men who become victims in human trafficking cases are not as much as women and children.

Based upon the condition above then the data on human trafficking in Indonesia have to be based on its criteria or forms. Several forms of human trafficking linked to definition of human trafficking that was explained in Chapter II of this study and various researches in Indonesia showed as follows:

1. Women and children trafficking with the purpose of making them as domestic workers⁴²
2. Women and children trafficking to work in amusement clubs or other places⁴³

⁴² Republika, August 7, 2000 (orphan children trafficking Poso refugees, Media Indonesia, July 16, 2000) (teenager trafficking); Sinar, October 4, 1993 – Report of M. Farid – Siman’s research – (women trafficking with the mode of transnationals marriage).

3. Women and children trafficking to work as prostitutes⁴⁴
4. Women and children trafficking with the purpose of pornographic industry with the excuse become a model, artist or singer⁴⁵
5. Human exploitation to be hired as drugs dealers, the victims were seduced to be addicts before⁴⁶
6. Migrant workers⁴⁷
7. Women that were sign contract for the purpose of having offspring⁴⁸
8. Babies in trafficking⁴⁹

Babies in trafficking basically is one of the form of human trafficking that were practiced in several forms, as follows:

- a) Baby abduction
- b) The abduction of pregnant women
- c) Loaned the parents abundance of money that they would not be able to settle so that they are forced to give away their babies
- d) Practice of women clinic in disguise

⁴³ Berita Kota, May 23, 2000 (teenager trafficking to be waitresses in Japanese restaurants); Berita Kota, November 11, 2000 (teenager trafficking)

⁴⁴ Copy of the verdict PN Jakarta Selatan No. 378/Pid/S/1994 (a husband that sell his wife to be a prostitute); Gatra, October 7, 1995; Jawa Pos – Report of M.Farid’s studies, July 12, 1994; Forum Keadilan, November 4, 1996 (children that are forced to be prostitutes by WNA); Report from The Foundation against Trafficking in Women – committed by syndicate; Gatra, October 10, 1998; Majalah Kalingga, February 2000 (characteristic of trafficking in children in North Sumatra); Media Indonesia, October 7, 2000 (was promised some vacant in Malaysia); Republika, July 22, 2000; Media Indonesia, July 16, 2000; Media Indonesia, October 18, 2000 (children abduction with the purpose of prostitution);Berita Kota, October 11, 2000 (victims were sold with the purpose of prostitution); Media Indonesia, July 6, 2000 (was forced by her father to be a prostitute); Republika, May 21, 2000 (husban sold his wife for the purpose of prostitution); Sijori Post, February 24,2000; Majalah Semai February 2001 edition;Media Indonesia, October 27, 2001 (women in trafficking syndicate in Malaysia); Media Indonesia, May 21, 2001, Media Indonesia, October 1, 2001 (children prostitution); Kompas, October 1, 2001 (child prostitute); Kompas, August 29, 2002 (children prostitution); Pikiran Rakyat, July 23, 2002(prostitution disguised in art mission); Pikiran Rakyat, July 19, 2002; Kompas, May 28, 2002; Republika, May 28, 2002 (prostitutes); Medan Pos, April 16, 2002; Radio Netherland, October 16, 2002; Media Indonesia, July 6, 2000 (Indonesian prostitutes in Middle East); Republika, May 1, 2000; Media Indonesia, July 3, 2000; Radio Elshinta, February 3, 2003(was promised to be migrant workers sent to Kinabalu, Malaysia); Suara Pembaruan, January 30, 2003 (husband and wife free from hang sentence: due to anger for his wife sent as a prostitute to Saudi Arabia, a husband murdered a women in trafficking perpetrator; SCTV, Derap Hukum, January 2003.

⁴⁵ Sinar, October 19, 1996 (case of a non citizen who persuaded Balinese girls to be adopted but in the end become sexual objects and pornography); Jogiakarta, Report of M. Farid – Siman’s studies; Semai February 2001 edition.

⁴⁶ The forms of Children in trafficking (Report of Study case), Irwanto, 2001.

⁴⁷ Kompas, September 5, 2002; Report of Women Solidarity; Gatra, October 10, 1998; Radio Netherland, October 16, 2002 (was promised well-paid jobs).

⁴⁸ Sinar, October 4, 1993, Report of M. Farid – Siman’s Studies, Jogja.

⁴⁹ Berita Kota, October 11, 2000; Berita Kota, April 30, 2000 (helped a women delivering baby that will be sold later on); Kompas, September 28, 2002; Media Indonesia, March 7, 2002, (hire pregnant women with the purpose to take their babies); Berita Kota, March 1, 2002 (help a mother who unable to settle her hospital bills by giving them loans that they couldn’t afford to settle)

9. Children in trafficking with the purpose to be hired in Germany⁵⁰
10. Children exploitation to be street beggars.⁵¹

The increase of human trafficking cases in Indonesia creates a major concern to all of us. Various human trafficking cases that arose in Indonesia lately (revealed by news in mass media and electronics and some research reports that done by several researchers) showed that human trafficking cases indeed needs a more proper serious handling.

Based upon various reports from many institutions and studies we can gather the data about human trafficking in Indonesia as follows:

- a) Most of the victims are women;
- b) From report of Indonesian Police Department 2000, it was noted that there were 1,683 cases of women and children in trafficking practiced illegally,⁵²
- c) 1,094 cases were piled up to court from 8 big cities in Indonesia⁵³
- d) In 1999 1,712 cases were revealed and addressed and were brought into trial for 1,390 cases⁵⁴

Data gathered based on the location where women trafficking cases were revealed are as follows:⁵⁵

CITIES	1999	2000
Surabaya	313	309
Medan	286	282
Menado	179	175
Bandung	161	157
Ujung Pandang	155	151

⁵⁰ Children in trafficking forms, (Irwanto's report 2001: those children do not have documents to prove that they are still a minor).

⁵¹ Pikiran Rakyat, July 19, 2002 (ironically children exploitation to turn them into beggars are practiced by their parents, close relatives and involving local communities officials); Nusa Tenggara, July 1998 (the trafficker come to poor villages in Bali, promised children jobs but finally they are forced to be beggars).

⁵² Irma Alamsyah D. Putra, Normative law aspect to Abolishment of Women and Children in trafficking, the paper was presented in activities to arrange and set plan of Law to abolish women and children in trafficking, Deputy of Bidang Pengembangan dan Informasi Kementerian Pemberdayaan perempuan, Jakarta: September 30, 2000

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Data was quoted from "Sketches of Violence experienced by Indonesian women", Komnas Perempuan, October 2002, pp. 140

Padang	151	147
Bali	133	129
Jakarta	130	126

Komnas Perempuan reported that the purpose of women trafficking above are among all⁵⁶:

- a. Domestic workers: the women were promised great jobs but in the end they are hired as domestic workers are phenomenon that has been going on for quite some times. The studies held in Jakarta showed that victims are children and grown ups, even sometimes found some men but most of the victims were women.
- b. Beggars : in Jakarta, Batam, Ujung Pandang dan many other cities in Indonesia, we can notice there are many children were brought up by adults to beg around traffic lights or other public areas. The exact numbers of those children is unknown but it is estimated that there are thousands of them.
- c. Drug dealers : one of horrible form of exploitation is using children and women to be drug dealers. Facts that were found in Bali revealed that the victims were trapped into this type of trade and smuggling range very wide from one years old to 18 years old children.
- d. Prostitutes : studies regarding the amount of prostitutes in Indonesia showed that 30% of them were 8 years of age.
- e. Pedophiles consumption : girls exploitation by the pedophiles in most of the news were victims from close by people such as: neighbors, teachers, or other parties. But the girls trafficking to pedophiles involved some certain syndicate, which composed from non citizens or international syndicate.
- f. Wives who signed contracts for transnational marriage: a phenomenon that were revealed lately is a form of transnational marriage that has become a profitable business for the parties involved in it. according to thesis written by Andy Yentryani of FISIP UI (July 2000) entitled Women

⁵⁶ Ibid

in trafficking: logical consequences from system of the world capitalism, A study case: transnational marriage of Indonesian – Taipei (1992 – 1999), who wrote that many parents in Kalimantan marry their daughters with men from Taipei in regards to lift up their quality of life and enlighten their burden. The marriages are arranged by a broker. Most of those Taipei men are having low economic income or physically handicapped.

The reason for them choosing the girls from Chinese descendant are because of their physical appearance and culture that are the same with them and also because they have to give a very expensive dowries to Taipei girls, so that they turned to girls from other countries. Many of them end up tragic, being exploited by their husband physically and sexually in Taipei, they do not have anyone to turn to since they are parted from their relatives and family. Even though, transnational marriages are not always end up tragically to women, there are also some transnational marriages that resulted in a happy ending. Nevertheless, no bargaining power to women no question that women will be easily become the object of exploitation and violence.

Those data are regrettably different to what is found in other departments. Minister of Women, Sri Redjeki Sumarjono revealed that around 150,000 women were become victims from trafficking in Indonesia.⁵⁷ Referring to other sources of data, Vice Governor of East Java, Imam Supardi mentioned that the number of women and children trafficking in East Java is 309,000 in the year 2000.⁵⁸ It is not clear what could be the underlying facts to those two officials comments.

UNICEF reported in 1998 estimated that around 30% of prostitutes in Indonesia is known to be children under 18 years old (+_21,000 children).⁵⁹ While the International Office of Migration estimated that there are 250,000 people become victims of human trafficking each year.⁶⁰ Consortium to Protect Indonesian Migrant Workers (KOPBUMI) estimated that 1 – 1,5 million out of 5 millions Indonesian migrant workers were victims of human trafficking. Central Statistics Bureau (BPS) reported in 1998 around 1,6 millions children become labor with a great risk to be

⁵⁷ NakertransNet., How much is the number of human trafficking in Indonesia, www.nakertrans/10/16/02

⁵⁸ Ibid

⁵⁹ <http://www.icme.net/does/en/programs/indonesiaprpg5>, 10/16/02

⁶⁰ Ibid.

victims of human trafficking.⁶¹ This report are also given without clear cases examples.

Statistics of Department of MenPower showed an increase in the number of Indonesian migrant workers. It is shown on the table below:⁶²

Period	Year	Women	Men	Total
Pelita I	1969-1974	No data are available	No data are available	5,624
Pelita II	1974-1979	3,817	12,135	17,042
Pelita III	1979-1984	55,000	41,410	96,410
Pelita IV	1984-1989	198,735	93,527	292,262
Pelita V	1989-1994	442,310	208,962	652,272
Pelita VI	1994-1999	699,946	349,681	1,049,627

B. Condition Regarding Human Trafficking in Indonesia

1. Children vs Adults as Victims of Human Trafficking

from various sources (data of cases are attached) found that the victims of human trafficking is not only adults but also children. Victims consists of all sexes; male and female; even thought the data showed that the number of adult men becoming victims was less than the number of women and children. The next detailed explanation will reveal all cases related to victim criteria based on their sexes and ages.

a. Men cases in human trafficking

human trafficking cases where men become victims has a characteristic that the victims were seeking for job that were deceived by agents. Malaysia is the target country for human trafficking practices where the victims of human trafficking were then hired with a very low wages that below the life standard and the promises from their agents. The life standard in Malaysia are 25 ringgit, but they are paid for 8 ringgit since their wages were cut for unexplainable administrative charges.

The story was told by the victim's wife, Nur Zakiah (28 years old), migrant worker from Malang. This young mother of two children enter Malaysia since June 1997. With a loan for 1,2 millions she went there together with her husband. As a brick

⁶¹ Ibid.

⁶² Op. Cit, pp. 122

layer he was promised will be paid 25 ringgit per day. But his supervisor cut their wages so that they only received 2 ringgit per day. The supervisor said that the reduction will be paid when their contract is over.

A case where a migrant worker was stranded in Netherlands is an interesting case since the victims were generally highly educated. Han Harlan got a story about an Indonesian who was educated but become a victim of human trafficking in the Netherlands.⁶³ According to the victim, he was sent by an agent that promised a job in America and Europe with high salary and life standard. He has to pay Rp 40 millions for departing cost. The fact afterward was the victim was having a condition that was far from cry having decent jobs and become stress and even went into mental institution in the Netherlands.⁶⁴

b. Women that become victims of human trafficking

From the cases that were found, women trafficking is not only limited to forced prostitution or sex-trade, but also some forms of exploitation, forced services and slavery practices in some informal territory, including domestic and wife for hire.⁶⁵ Most of the cases that found in Indonesia were the form of human trafficking with the purpose of enforced prostitution or sex-trade with sexual violence. Economy become the main reason in the women trafficking that are said by most of victims on how they were trapped in the practice of human trafficking are in order to find job. Most of them were migrant workers both legally or illegally.

To those who were legal workers, they become victims due to the bad intention of their agents, nevertheless their documents were kept by their agents. On condition where they have no document on their hands they got the job as labor, domestic workers or prostitutes same as they who came illegally. That they do not have their documents with them enable the employer to exploit them, such as working without time limitation, below standard wages, or even no wages at all, and were treated badly by the employers.

⁶³ <http://www.rnw.nl/ranesi/html/korban> perdagangan manusia.html

⁶⁴ Radio Netherland, October 16, 2002, Korban Trafficking by Han Harland.

⁶⁵ Women Solidarity (Lembaga Advokasi Buruh Migran Indonesia). HAM in Practice: Guidance to combat Women and Children Trafficking. Pp. 5. Bangkok: GAATW. 1999

The victims said that even before they were sent abroad they already experienced terrible condition on the camp. On the camp, they were not taught some skills, but they were already exploited by working without being paid on indecent living condition.⁶⁶

One of the cases was Laila (22 years old) along with other 16 girls, victims of women trafficking that was successfully saved by the police in an operation catching the women trafficking syndicate in Penjaringan, North Jakarta. Laila explained it was started when she wanted to go home to Cirebon. In the Senen Station she was talking to a man who offered her a job as a domestic worker, Laila refused his offer but she was forced to get into a cab heading to Yayasan Karya Setiawan. On the day after that Laila was brought to Bar Cempaka, she was bought for Rp 300.000 and was forced to be a prostitute ever since. She demanded to be released to go home to her hometown, but they refused to set her free with regards that she has to pay for the money that they had paid to buy her and the clothes that were given to her. She was forced to sign a contract to be a prostitute, Laila has to accompany the guests who come and her tariff was Rp 50,000/person. Half of the tariff was given to the employer, and the rest would be given to her once in two months. Laila could stand the situation she was having and managed to escape. She claimed that she suffered from a disease and she was several times having vaginal bleeding before from the torture if she refused to accompany guests.⁶⁷

According to Johana Debora Imelda⁶⁸ factors that encouraged women trafficking were among else: low educational level (therefore they were easily mistrust people and unable to fight back due to information), and youth marriages. Most of the victims come from underdeveloped villages, especially in Java, and migrated to Jakarta to have a better life.⁶⁹

c. Children were victims of human trafficking

Children that become victims of human trafficking basically classified into 3 types:

⁶⁶ Gatra, October 10, 1998, Romusha-like Women Migrant Workers to Malaysia; Republika, June 10, 1999 (89 migrant workers from Lombok case was revealed); Kompas, June 29, 1999 (Hundreds of migrant workers-to be were deceived, they were angry); Pos Kota, December 20, 1999 (23 migrant workers from West Sumatra were stranded in Bogor); Republika, October 31, 1997 (women migrant workers were kidnapped in Medan).

⁶⁷ Media Indonesia, October 1, 2001. Laila's witnesses and the saved of some teenagers.

⁶⁸ Lecturer and Researcher of FISIP UI

⁶⁹ the Jakarta Post, September 28, 2001. women-perdagangan manusia rampant, Law Enforcement weak.

1). Babies were victims

Babies in trafficking are one of the rising issues that were discussed related to human trafficking practices in Indonesia. Various purposes were involved such as adoption, organ removals, slavery etc. The age of the babies were ranging and the practice were held in various operation modes. Those babies were taken by kidnapping, loaning the money to their parents so that they could not afford to settle, recruiting pregnant women who were having problem from economical problems to unwanted pregnancy and out of wedlock pregnancy.

The latter was one operational mode that was found in West Kalimantan in June 2002⁷⁰. The case that was handled by Lembaga Bantuan Hukum Perempuan Indonesia untuk Keadilan (YLBH APIK) West Kalimantan found that 3 women become victim who were initially promised to be hired. Those 3 women were kidnapped in the jungle in Kalimantan until they are due to deliver their babies and they found out that their babies and themselves will be sold.

Law enforcement to those cases was weak due to difficulties that the police were having in returning the babies to their parents since it was difficult to trace their track and no one claimed the babies.

2). Children (boys and girls)

Children trafficking was classified into a category apart from others due to the fact that boys and girls are potential to be victims of human trafficking. Those children are ranging from the age of 3 to 20 years old and were forced to work in plantation as labor without wages, domestic workers and other kind of jobs. These children become primadona since it was easier to control them over the adults and their expenses are considered lower (e.g. they eat no as much as adults).

The cases were found and potential to become victim from human trafficking are orphans in refugees camps in Poso. Without parents, limited help for them and unclear status has created an opportunity to the trafficker to trade them. Started from a noble purpose such as adoption to be hired as slave in plantations.⁷¹

3). Teenagers (teenagers ranging from junior or senior high school students)

⁷⁰ New model of baby trafficking: Pregnant women are on target, Kompas June 2, 2002

⁷¹ Republika August 7, 2000

Young women trafficking for the purpose of sexual exploitation become the main target of human trafficking which victimize teenagers. Young girls ranging from 13 to 18 years of age become the target from women trafficking. Similar to the criterion above, operational model to trap the victims were many. Ranging from human trafficking that were done by their parents or relatives due to economic condition as some cases reported in East Java, abduction, or promises from the agents. These agents are among them young mothers that operate in malls, where many teenagers spend some of their times.

Many tragic stories were found from the victims. They were exploited, and some of them turned out to liking the profession. It was found in the cases of domestic trafficking. But it was different to victims of human trafficking outside Indonesia. Some were trapped of unsettled loans, kidnapped in Tawau and Sarawak's hotels where they were kept to serve guests every night. To escape is very risky since it was alleged that the employer were co-operated with the officials.

There were some obstacles that hindered the law enforcement to this matter. Age become a major factor. The law only limited the age up until 18 years old while many cases that were revealed showed the victims of 18-20 years of age that were considered as adults according to Criminal Law.

The condition make the law enforcement was weak to combat the teenager trafficking due to lack of legal knowledge of public and the police regarding rules for women trafficking. Even though there are not yet a definition for human trafficking and legal formula regarding the matter, but it was not an excuse for the police to let the case of women trafficking untouched, since the act is considered a crime. E.g. as set forth in article 297 Criminal Law the acts of trading girls and boys shall be sentenced at maximum 6 years can be used as a means to charge the acts.

2. Trend of Human Trafficking in Indonesia

from all of the cases found in 1998 to 2003, the trend of human trafficking in Indonesia based on the above criterion does not show a certain pattern. Human trafficking for all of the above criterion (men, women and children) keeps appearing in news in all of the mass media.

Especially for children trafficking, statistics noted that the amount of children who work increased 2,3 million since economic crises compared to 10 years ago especially

during period 1007-1998.⁷² The awareness of the danger of HIV/AIDS are affected to children prostitution market. The demand for children prostitutes increased since they are considered clean, not used too often and free from sexual diseases.⁷³

3. Operational Mode of Human Trafficking

Operational Model of human trafficking in Indonesia comes in various ways. The recruitment that were found are as follows:

- Women trafficking with operational mode of transnational marriage⁷⁴
- Wives who were forced and threaten by their husbands to prostitute to fulfill the family need due to their husbands were out of jobs and refuse to work.⁷⁵
- Children who are persuaded by food/clothes and were asked to go to recreational places by foreigner⁷⁶
- Children who are deceived by false promises to be adopted by the foreigners⁷⁷
- Promises to the parents that their children will get good education and will be treated nicely⁷⁸
- Were promised jobs⁷⁹
- Were promised jobs as shopkeeper or waitresses with a starting salary amounting Rp 400,000/month and possibility of a raise to Rp. 500,000/month in one year. Recruitment was done in the villages by the perpetrator who dressed neatly wearing many and big jewelries.⁸⁰
- Were promised jobs (not clear)⁸¹
- Were promised to work as migrant workers (TKI/TKW)⁸²
- Were offered and promised to work in restaurants, karaoke, houses and hotels to children⁸³

⁷² BPS, Citizens Welfare Statistics 1998, report year 2000

⁷³ Irwanto et all, Children trafficking in Indonesia, Jakarta: ILO – FISIP UI, 2001, Pp. 31

⁷⁴ Sinar, October 4, 2002 (report of M. Farid – Siman’s studies)

⁷⁵ Ibid, copy of Putusan PN Jakarta Selatan No. 378/Pid/S/1994/PN Jak-Sel, Republika, May 1, 2000.

⁷⁶ Forum Keadilan, November 4, 1996

⁷⁷ Sinar, October 19, 1996 (based upon report M. Farid-Siman’s studies and Purwanti’s explanation, a criminology from Universitas Udayana).

⁷⁸ Ibid

⁷⁹ Sijori Pos, February 24, 2000; Media Indonesia, October 7, 2000; Republika, October 7, 2000; Media Indonesia, July 16, 2000; Berita Kota, October 11, 2000; Kompas, May 23, 2000; Republika, May 1, 2000; Media Indonesia, October 27, 2001; Media Indonesia, October 12, 2001; Kompas, October 1, 2002; Media Indonesia, October 1, 2001

⁸⁰ Kompas, August 28, 1997

⁸¹ Nusa Tenggara, July 1998

⁸² Women Solidarity

- The recruiter operated at malls/other recreational places, suburbs, information were spread from mouth to mouth⁸⁴
- Were promised instant jobs (without having to apply)⁸⁵
- Were promised jobs with high salary and interesting facilities⁸⁶
- The orphans refugees were promised jobs⁸⁷
- Abduction victims⁸⁸
- Helped women delivering their babies by giving them a loan to pay doctors and hospital⁸⁹
- Bought them from their parents or other parties⁹⁰
- Cheated their wives by offering jobs⁹¹
- Were forced by their fathers to work as prostitutes⁹²
- Promised their parents that their children will be adopted⁹³
- According to the perpetrators they got the babies from their servants who were unable to keep them⁹⁴
- Some midwives helped to deliver poor women or women who do not wish to keep their babies with argument that she will keep their babies and find nice parents who want to adopt them⁹⁵
- Looked for teenagers in the malls, hypnotized victims and took them to prostitution⁹⁶
- Smuggled babies by putting them in Styrofoam bags⁹⁷
- Made them means of payments for their parents' debts⁹⁸
- Were promised to work as the art ambassadors⁹⁹

⁸³ Majalah Kalingga, February 2002 (character of children trafficking for prostitution in North Sumatra)

⁸⁴ Ibid.

⁸⁵ Ibid

⁸⁶ Ibid.

⁸⁷ Republika, August 7, 2000

⁸⁸ Media Indonesia, October 18, 2000

⁸⁹ Berita Kota, April 30, 2000

⁹⁰ Kompas, September 28, 2002

⁹¹ Republika, July 2000

⁹² Media Indonesia, July 2000

⁹³ Sijori Pos, May 9, 2000

⁹⁴ Kompas, September 28, 2000

⁹⁵ Berita Kota, April 30, 2000

⁹⁶ Media Indonesia, October 7, 2000

⁹⁷ Media Indonesia, July 6, 2000

⁹⁸ Suara Pembaharuan, October 2, 2002

⁹⁹ Pikiran Rakyat, July 23, 2002

- Helped pregnant women to find jobs¹⁰⁰
- Helped women who could not afford the hospital expenses¹⁰¹
- Kidnapped babies and their mothers¹⁰²

Based upon the above recruitment models, we can notice that the major ways to recruit the victims are through deception and abduction. While other models are by giving debts to people who are having economical problems so that they have to give away their children to be traded.

From teenagers trafficking cases found in North Sumatra, there were 2 type of recruitment model:¹⁰³

Firstly, the syndicate came to villages and offered jobs to the parents that they were some vacant in restaurants or factories, while finally the girls were sold to prostitution.

Secondly, they did some personal approaches to teenagers who like to hang out at the malls, and finally they will be sold.

Every child or teenager that were brought to the camp were forced to pay their own expenses or it will be considered as a loan that were sometimes declared unable to be settled even after they had worked.

In Jakarta were found that generally recruitment model were using sympathetically and offered by trusted person. Victims were offered to work in restaurants, garment industry, factory or work as domestic workers.¹⁰⁴ In Bali the reason that they are going to be dancer, adopted by foreigners or to be educated abroad often lured the parents that their actions of giving away their children is the best thing that they can do for their children.¹⁰⁵

For babies trafficking there is one way of recruiting that is a new model of operation, where young women who carry babies and have financial difficulties were recruited and they were promised will be hired as waitresses etc. But actually they were kidnapped until the babies were born and they will separate the babies and the mother.

¹⁰⁰ Media Indonesia, July 6, 2000

¹⁰¹ Berita Kota, March 1, 2002

¹⁰² Kompas, May 23, 2002

¹⁰³ Komnas Perempuan, Peta Kekerasan Perempuan di Indonesia, pp. 142

¹⁰⁴ Ibid.

¹⁰⁵ Forum Keadilan, November 4, 1996; Sinar, October 19, 1996 and Report of M. Farid – Siman's Studies and Report of Komnas Perempuan, Ibid.

The babies were then sold separately, and the mothers were sold to pimps as illegal migrant workers.¹⁰⁶

In the babies and children trafficking, there is also one pattern, which is adoption. This one particular model needs a thorough check whether the adoption cases were following the right legal track. This would certainly not guarantee that the child will be taken care of the way it should be.

A research in North Sumatra has found many cases for the children refugees from Aceh. Many scalpers were looking for children in the refugees' camp with promises that they want to adopt children, while actually they wanted to sell the children to households that looking for domestic workers. Refugees' location which were in poorly condition and lack of police attention has made the parents willing to give away their children to be adopted.¹⁰⁷

Take children trafficking for example, some cases showed that recruitment were carried out by midwives that argue that they wanted to help the mothers who do not have enough money and to guarantee the safe delivery of the babies instead of had them aborted with many reasons. According to Purniati Mangunsong, taking care and looking after the babies from their mothers who could not afford to take care of their babies are noble, but if then the babies are given away to other parties and getting some money from the activities that could be considered a crime.¹⁰⁸ It is needs to be checked thoroughly by comparing them with some rules set in the Criminal Law.

Other cases, children refugees in Poso for example, showed that they were merely hired to work in plantation as low paid labors or domestic workers. Without health insurance, education, nor future for these children. The act of selling and buying was usually without the children's acknowledge. They only knew that they would be given a job in a better condition than to that in the refugees' camp where it is difficult enough to have food for daily need. They were generally priced for Rp. 100,000 – Rp. 200,000 each child. Our resource of information alleged that Pemda (provincial government) officials are well informed about this activity but they argued

¹⁰⁶ Media Indonesia, March 7, 2002 (New operational mode of babies trafficking)

¹⁰⁷ Komnas Perempuan, op cit. pp. 142

¹⁰⁸ Berita Kota, whatever the reason is, That is a crime, April 30, 2000

that the intention to help was much more dominant than business, the officials do nothing to address this matter.¹⁰⁹

Another model for recruitment were the one that carried out by foundations which recruit children to be hired as baby sitter, foster sister and nursing senior citizens, but actually they sell the children who applied for the job to be domestic workers.¹¹⁰

Having observed the recruitment models above and compared them with the definition set forth in Chapter II earlier, the next question appearing is whether these cases were represented in various definition regarding human trafficking in national law nor international law? And whether Indonesian Criminal Law has classified all types of the cases as criminal acts?

If we refer to explanation in Chapter II earlier the above matters create another dilemma, considering exploitation criterion is a major requirement. Purpose: **exploitation** to: prostitution or other forms of sexual exploitation, forced of services, slavery, organs removal. Poso's cases¹¹¹ above, where the Pemda's officials stated that there were more element dominance than exploitation have created a question to the researcher whether this could be classified as women trafficking or not. There is still need further proofs that the treatment towards those children is categorized as "helping" or exploitation.

3. National or Transnational

Referring the target location for human trafficking, it has to be linked to the definition of human trafficking. This is important considering that not all of cases found related to human trafficking committed national or transnational. It was noted that from all of the cases found, human trafficking were carried out national and transnational. Transnational human trafficking cases were found as follows:

¹⁰⁹ Republika, Orphans in Poso were on sale, August 7, 2000

¹¹⁰ Komnas Perempuan, op cit

¹¹¹ Republika, August 7, 2000

Region of origin	Region of transit	Target Location
<u>West Java</u> : Sukabumi, Tangerang, Inderamayu, Jakarta, Bandung, Karawang, Bogor, Cianjur, Ciroyom, Bekasi, Sawangan (Depok)	<u>Indonesia</u> : Jakarta, nunukan, Losari, Medan, Ternate, Serui (Papua), Belawan, Tanjung Balai Karimun, Batam, Bandung, Tanjung Pangkor.	<u>Transnational</u> <u>Middle East</u> : Beirut, Lebanon <u>Asia</u> : Taipei, Hong Kong, Malaysia, (Kinabalu, Sabah), Thailand <u>Europe</u> : Amsterdam (The Netherlands) Others
<u>Central Java</u> : Banyumas, Magelang, Purwokerto, Cilacap, Tanjung Balai Karimun	<u>Malaysia</u> : Kuching <u>Germany</u> : Frankfurt	<u>National</u> Bangka, Pangkal Pinang, Surabaya, Jakarta, Bukit Baraja (North Sumatra), Denpasar, Riau, Asahan, Batam, Makassar, Riau
<u>East Java</u> : Banyuwangi, Nganjuk, Madiun, Kediri, Surabaya, Blitar		
<u>Bali</u> : Denpasar, Trunyan		
<u>Sumatra</u> : Medan, Blitung, Palembang, Lampung		
<u>Kalimantan</u> : Pontianak, Landak		
<u>Sulawesi</u> : Menado, Sengkang, Watampone		
Nusa Tenggara Timur		

Separate sources revealed the region of origin and target location for human trafficking. Irawan's study for example, revealed data for human trafficking locations below for the pedophiles' prostitution in Bali¹¹²:

Region of origin	Karangasem, Kintamani and Bangli
Target location	Kuta, Ubud, Candi Dasa and Denpasar

Children trafficking in Medan showed as follows ¹¹³:

Region of origin	Tembung, Helvetia, Tanjung Gusta, Semarang, and Tangerang
Region of transit	Padang Bulan
Target location	Bandar Baru, Deli Serdang, Sicanang, Belawan, Warung Bebek, Firdaus, Rampah, Dumai, Tanjung Balai Karimun, Pekanbaru, Riau.

While broader children trafficking map revealed in the study as follows:¹¹⁴

Region of origin	Region of transit	Local destination	Destination abroad
Nganjuk, Jember, Semarang, Tegal, Pekalongan, Purwodadi, Grobogan, Jepara, Kuningan, Medan, Jakarta, Cirebon, Bogor, Samarinda, Bandung, Bekasi, Boyolali, Gresik, Palembang, Garut, Sukabumi, Johar Baru, Indramayu, Palembang, Solo,	Batam, Jakarta, Lampung, Riau, Denpasar, Medan, Jambi	Riau, Batam, Belawan, Tanjung Balai karimun, Dumai, Palembang, Solo, Bandar Baru, Sobolangit, Deli Serdang, Tanjung Baru, Surabaya, Jogjakarta, Denpasar	Malaysia (Kuala Lumpur and Sarawak), Brunei Darussalam's border, Hong Kong, Taipei and Australia

¹¹² Irawan et al, op cit, pp. 63

¹¹³ Ibid, pp. 64

¹¹⁴ Ibid, pp. 66

Ujung Pandang, Banten, Wonogori, Banjarnegara, Bali			
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As discussed in Chapter II earlier, requirement of human trafficking definition in Article 2 Protocol to Prevent, Suppress, and Punish Trafficking in persons, especially women and children A/55/383 is victims' movement in location. Whether the movement should be transnational, between islands, village to city, village-to-village or even in one region with different environment is still debatable. If referring to U.N. Rapporteur report, the victims' movement is required, which is from victim's resident to a new location and its main focus is transnational human trafficking.

Having observed cases reported in Indonesia, we can notice there are several variations of human trafficking based on region of origin and destination location as follows:

1. From Indonesia to Outside Indonesia
2. Inter island movement
3. Inter cities movement in one island in Indonesia
4. Inter location movement in one city in Indonesia

The first and second category does not create problems for movement requirement, even though the location movement is not transnational. But the third and fourth category needs a further check whether these cases belong to human trafficking cases due to the form of the movement. The related cases with third and fourth category are as follows:

Case 1

Fenti (not her real name) can't stand her father who has sold her several times, she then reported his father to Sukabumi Police Station on June 28, 2000. Based upon her report the police then caught AS and Nat who bought Fenti from her father. Police alleged that the mastermind of the teenager trafficking practice was Far and has been going quite sometimes. The arrest of the convict were revealed when they sold Fenti (18 years old) by AS in a hotel in Jakarta for Rp. 8 millions. The same activity was continued in a hotel in Sukabumi for Rp 100, 000. Finally, Fenti was again sold for Rp 3,5 millions.¹¹⁵

¹¹⁵ Media Indonesia, July 6, 2000

Related to the movement requirement, the case was take place in two cities nearby, which is Sukabumi and Jakarta suit to the third category.

Case 2

Sawangan Police Station had managed to discover syndicate women trafficking. The revealed of the women trafficking networking for sexual consumption was started when a victim was managed to escape from observation of syndicate member. At the time, victim Dsr (17 years old) ask permission to take some clothes form her house in **Cinere, Limo Depok**. Upon her arrival at home Dsr told her brother her experience when she was locked up in a camp in **Jl. Balikpapan, Harmoni, Central Jakarta**, for five days. She was promised a job as a waitress in a Japanese Restaurants with salary of Rp 12 millions. But actually she was taken to the disco to accompany some elites guests in Jakarta.¹¹⁶

Similar to the first case, this case only took place between two close by cities, Depok and Jakarta.

Case 3

Tri (not her real name) was raped by her boyfriend who a week later asked her to marry in his house. Anto, the “husband”, asked Tri to keep this game-like marriage as a secret. Afterwards, Tri was taken home to her brother’s house. A month later, Anto picked up Tri from school and asked her to go to Anto’s house for getting her naked pictures. At first Tri refused but she then was locked for five hours in Anto’s warehouse and was abused by Anto’s bodyguards, so that Tri had to agreed to Anto’s wish. Anto often picked Tri from her school ever since to ask her to accompany men or to take naked pictures upon threat if she refused then Anto will give the pictures to her school.¹¹⁷

For the third case, actually there is no movement since the victim always went home.

From all of the three cases above, even the requirement for exploitation is fulfilled, but the main requirement for movement in location or region is likely or was not met. The statement appears next is whether those three cases were concluded in definition of women trafficking.

¹¹⁶ Berita Kota, Teenager Trafficking Syndicate was discovered, May 23, 2000

¹¹⁷ Suara Apik, Trafficking in Girls phenomenon, 9th.edition 1999

4. Perpetrator

The perpetrator in human trafficking has been widely discussed in many studies. Among many studies that was carried out most of them point out to the perpetrator was human trafficking syndicate whose territories ranging all over the world and in the form of international organization. Referring to the definition used in this study, therefore we can conclude that there are three parties involved in human trafficking, which are the victims, the person who achieve the consent of person having control over another person and person who has been giving or receiving of payment or benefit.

Data of perpetrators in a glance taken from the cases of the study are:

1. Parents or relatives
2. Broker / intermediary
3. Foreign citizens
4. Well-organized syndicates
5. Sea/Water transportation companies
6. The Police
7. Agents
8. Local communities
9. Midwives
10. Real Estate residents
11. Owner of the agents' camps
12. Public figures / government's institution involvement

Referring to terms that are used in Criminal Law, the parties above can be classified into the form of participation as set forth in Article 55 and 56 Criminal Law. Article 55 includes the perpetrator, person who persuades or instructs upon pressure or forced. This criteria if referred to requirement above can be classified into person who achieve the consent of person having control over another person and person who has been giving or receiving of payment or benefit. In the cases, parents, broker/intermediary, syndicate and midwives performed this role. Specifically for parents, little scope of study was carried out in a village in West Jawa showed that parents who involved in trading their own children generally obtained support from market mechanism which involving the role of public figures both formally and

informally.¹¹⁸ While other forms as set forth in Article 56 Criminal Law which is person who help in a way or another to facilities, infrastructure, or information as found in cases where Carrier Services, Communities, Police and provincial officials. Specifically to Police and provincial officials, the aid meant was aid that was given directly or indirectly. Directly was carried out by helping victims made fake ids by falsifying age for example to children. While indirectly help was carried out by not doing anything to prevent human trafficking. Irwanto and friends' study revealed that some government institution found out human trafficking cases but with various reasons has taken unnecessary measures to address the problems.¹¹⁹ Opinion that children trafficking is a dilemmatic problem, were described as follows:¹²⁰

- Department of Man Power's opinion that the main reason for children trafficking is poverty. Therefore prohibited children to work is not a good solution.
- BATAM Provincial Government stated that there is indeed children prostitution in Batam and it occurred due to economic stress
- Batam's Provincial Department of Education realized that trafficking in students specifically drugs dealers did occurred in Batam due to modernization and globalization's effect. Nevertheless the handling program was only limited to preventive efforts to prevent students not to trapped in there.
- Provincial office for Department Social North Sumatra discerned that to combat children trafficking was a difficult effort especially when it is done voluntarily. They stated to not having legal instrument to combat children trafficking and the authority was laid in other institution.

In the same research was also found that law enforcement was having obstacles that hindered the efforts due to¹²¹:

1. opinion from court that human trafficking is not a legal issue. Due to law enforcement officers' comprehension regarding related to legal instrument'
2. law enforcement officers and military were not actively watching over and monitoring the perpetrator of human trafficking, especially the well-organized activity. The researchers point of view was income factor has a dominant role to make the institution has taken a passive action.

¹¹⁸ Irwanto et all, op cit. pp. 109 - 113

¹¹⁹ Ibid, pp. 33

¹²⁰ Ibid

¹²¹ Ibid

Even though in various written regarding human trafficking alleged that the crime was performed by international syndicate, but various supporting factors and involving many parties contributed to human trafficking practice. Economic pressure at home as experienced by underage prostitute in Surabaya become a reason for parents to give away their children. Dropped out of school, parents' ignorance, and the hope that the children are off the parents' burden are another factors that contributed to human trafficking practice.

The authority seems to hold a major role. Its involvement were performed directly or indirectly. Take Poso's case for example, where according to the provincial government's opinion that the scalpers had done a noble act, was a sign of green light to human trafficking practice. Good relationship between the perpetrator and officials in the region enabled them to falsify the age, so that the victims can get an ID, passport and visa to work abroad.

A victim in Tawau stated that she was afraid to flee because the officials found out that she was escaped they will return her to her "employer".

BAB IV

ANALYSIS

A. Indonesia as a Source Country

It was came as a shock to Indonesia when the U.S. Government noted in its report (year 2001) that "*.....Indonesia is a source country for domestic and internationally trafficked person, primarily young women and girls.*" And so that in its 2002 report which stated that "*.....Indonesia is a source country for trafficked persons, primarily young women and girls.*"¹²² They were trafficked to Hong Kong, Singapore, Taipei, Malaysia, Brunei, Australia, Korea and Japan. Lately there were rumor that they were trafficked to Europe (especially the Netherlands)¹²³ and the

¹²² U.S. Department of State, Victims of Trafficking and Violence Act of 2000 – Protection Trafficking in Person Report, Washington, July 2001. pp. 87. see also: U.S. Department of State, Victims of Trafficking and Violence Act of 2000 - Protection Trafficking in Person Report, Washington, June 2002. pp. 61.

¹²³ Radio The Netherlands, October 21, 2002

United States. The underlying opinion were facts found by Indonesians NGO's activists, some of them is Dian Kartikasari from Indonesian Women Coalition (Koalisi Perempuan Indonesia) who suspected that there were women trafficking practiced since 1999 in disguise of sending women migrant workers abroad.¹²⁴

Aside the above proofs, based upon library research (through books, newspapers, and magazines) the researchers team found data¹²⁵ that Indonesia is indeed one of source countries.¹²⁶

While the destination countries are Kinibalu¹²⁷ and Tawau¹²⁸, Taipei¹²⁹, Middle East¹³⁰, Japan¹³¹, etc. Strangely the first person wrote about one of the forms of women trafficking in Indonesia through transnational marriage Indonesia – Taipei was Hsio-chuan Hsia (1997) who wrote in his Ph. D. dissertation in University of Florida, U.S., instead of Indonesian government or Indonesian himself who discovered the phenomenon. Maybe we are aware, but we pretend not to care or not knowing, because we are afraid to report them or we even involved in the practice itself. Isn't it ironic?

We can not deny the economic crises that hit Indonesia since 1997 has played a great role to increase the numbers of women that being trafficked. Up to date at least there were 650,000 women were trapped in human trafficking practice, 30% of them were children. Official data from the government was only noted the number of 150,000 (1998) and 72,000 (1994). But the official numbers are usually less than the actual figures. Pressure of economic crises which still going on up until now even worsen the human trafficking issues especially women and children.¹³² Due to economic crises the numbers of unemployment is increasing especially in the village and the life is getting harder since many main staple prices are rising. Since the crises

¹²⁴ Kompas, 2000

¹²⁵ See explanation Chapter III (narration/analyses of cases in mass media).

¹²⁶ See attachment: Human trafficking Data in Indonesia (especially women and children) year 1993 - 2003

¹²⁷ Latest info from Radio Elshinta Jakarta (90,05 FM), February 2003. Indonesian Police discovered a number of women that will be trafficked to Malaysia found in a Hotel in Kinabalu, Malaysia.

¹²⁸ Gatra, Trading Sex to Neighboring country, No. 47 year VII (October 12, 2002).

¹²⁹ One of big cases transnational marriage Indonesia – Taipei, Sinar, October 4, 1993

¹³⁰ Women Solidarity report (1999), one of the victims were Sopiah (not the real name) from Karawang, East Java who died committed suicide in Beirut, Lebanon.

¹³¹ Pikiran Rakyat, July 22, 2002. Women trafficking in disguised of art mission/ambassador to Japan. Some were offered to be singers and dancers using tourist visas.

¹³² Sudirman HN. Devil's circle to Women Trafficking. Kompas, October 22, 2001, based on report/information from M. Farid to Reuters, July 26, 1998.

and riots in 1998, many factories (which definitely absorbed the biggest number of work force) were closed, due to uncondusive economic and political condition.

The big and strength of syndicate women trafficking in Indonesia can be seen from the amount money that it produced, approximately US\$1,2 to 3,3 millions per year, or nearly reached 0,8 to 2,4% GDP. A fantastic profit, especially in this time of crises.¹³³ Indonesian strategic territories situated in the Asia's trade track has many islands and border to Malaysia that can be reached through land, according to researchers is an appropriate access to traffic human illegally, even if it is legal, it resulted from collusion with related parties. No wonder if Indonesia is said as a Source Country that trafficking in human (even though not the Only country in the world). Nevertheless Indonesia is not merely a source country but also a destination country. Lately the news in mass media and electronics were reported some cases where the police raid some foreign women who practiced prostitution in several hotels in Jakarta. These women come from Uzbekhistan¹³⁴, China, Korea, Hong Kong and Malaysia¹³⁵

It has been discussed earlier that most of women trafficking practiced in Indonesia were using sending migrant workers abroad as a disguise. Even when Japanese were ruling the country we are well informed that the disguise for sending art ambassador and migrant workers to Japan that were finally worked as prostitutes, known as *Jugun Yanfu*, has shown that human trafficking for the purpose of prostitution had operated quite sometimes (around 1940s).

Sending migrant workers (TKI) abroad is so vulnerable to human trafficking.¹³⁶ Nowadays, Indonesia is one of the countries that sends important migrant workers in Asia due to its large number¹³⁷, low paid, and various social,

¹³³ *Ibid.* Based upon Dario Agnote's report, *Sex Trade, key Part of South East Asian Economies*, Kyodo News, August 18, 1998.

¹³⁴ Liputan 6 SCTV, January 2003 and Seputar Indonesia RCTI, January 2003.

¹³⁵ Gatra, *Cap Merah Gadis Cetiau*, October 12, 2002, pp. 35.

¹³⁶ HAM in Practice. *Panduan melawan Perdagangan Perempuan dan Anak (Guidance to combat Women and Children trafficking)*. [Translated by Women Solidarity]. Global Alliance Against Traffic in Women (GAATTW), Bangkok, 1999. pp. 138-139.

¹³⁷ *Ibid.* Based on data gathered from Man Power Dept March 1998, the number of Indonesian migrant workers abroad is 1,049,627: 66,7% (699,946 people) among them were women. The data was

economic, and political problems among them. Saudi Arabia is one of the countries that absorbed big numbers of Indonesian migrant workers in the last two decades while Indonesian migrant workers who migrated to Saudi Arabia– according to data from Man Power Dept – is a phenomenon that just appeared in the second half of 1970s, and the history of international labor migration from Indonesia (especially from Java) can be traced back during the colonial era, the Netherlands and Japanese colonial.

Historian Anthoni Reid argued that Java is the biggest slave exporter to Malaysia in order to fulfill the needs of labor force for Malaysian commercial cities.¹³⁸ During the Netherlands colonial (late 19 century, beginning of 20th. Century) big plantations owned by colonials entrepreneurs were also hired many labor (koeli) from Java. The destination country at that time was definitely not Saudi Arabia, but other countries ruled by the Netherlands such as Suriname and New Caledonian.¹³⁹ Around 5,000 labor (kuli) from Java was transported by agents between 1909 – 1929 to Vietnam which at the time were ruled by the French to be hired in the mining area.¹⁴⁰

Human work force in the colonial era – even though were wrapped by the concept of Ethical Politics which consist of Education, Irrigation, and Emigration – in practice was an effort to seek optimal profit from cheap and massive labor, in other side it contained a dimension of labor trade practiced by the agents. The history seems to repeat itself, nowadays one pattern of human trafficking that were practiced many times are through sending migrant workers with various purposes, prostitution, exploitation, etc.¹⁴¹

B. Correlative Factor in Human Trafficking in Indonesia

believed by many parties including the government to be less than the actual numbers, since many of them do not posses legal documents.

¹³⁸ HAM in Practice. *Op. Cit.* Based upon Anthoni Reid's book: *Asia Tenggara Dalam Kurun Niaga 1450-1680* (Southeast Asia within commercial years 1450-1680), 1992.

¹³⁹ *Ibid.* Parsudi Suparlan., *The Javanese in Suriname: Ethnicity in an Ethnically Plural Society*, Monograph series, Program for Southeast Asian Studies, Arizona State University, 1995.

¹⁴⁰ *Ibid.* Adam and Asmi Warman. *Pengiriman Buruh Migran Jawa ke Vietnam tahun 1900s (Sending Javanese migrant workers to Vietnam in 1900s)*, History No. 5, 1994, pp. 1-6.

¹⁴¹ See cases analysis on Chapter III related to attached data on human trafficking in Indonesia.

Human trafficking as mentioned in the chapter earlier is indeed an iceberg phenomenon which actual number is greater than the given data.

In this part the researches will try to explain some correlative factors of the increase of human trafficking in Indonesia especially children and women that were gathered from various essays and legal expert opinion during the study.

The width of women trafficking practiced nowadays due to several supporting factors that enable it to continue its expansion. A number of factors are :¹⁴²

1. Geographical situation that was wide open enables every person to enter and exit Indonesia through any entrance both legally and illegally. This situation is certainly favor the perpetrator to smuggle and send victims outside Indonesia. The data is vividly seen in the Police report in 2000 that 1,683 cases of illegal women and children trafficking were noted.
2. There is no option available due to poverty and unemployment which spread wide and fast. In the explanation earlier that Indonesia as a source country was concluded that the factor that created human trafficking is economic crisis which affected to the number of unemployment and increase poverty. U.N. Special Rappeteur stated the same thing: Poverty and unemployment added an opportunity to women trafficking.¹⁴³

Poverty is also a factor that created women trafficking through transnational marriage Indonesia - Taipei¹⁴⁴ . Poor women from Kalimantan who wanted to have a better life (or to pay her family's debts) were married to foreign citizens, while the men could not afford to marry Taipei girls due to the expensive dowries that set for them.

Johanna Debora Imelda (Lecture in FISIP UI) stated that: "...poverty, low levels of education and early marriage were identified as some of the major factors behind trafficking in women. Most victims usually came from poor villages

¹⁴² Sudirman HN, Op. Cit

¹⁴³ U.N. Special Rappeteur on Violence to woman, causes and effects. Komnas Perempuan, Jakarta, 2000.pp. 21

¹⁴⁴ Andy Yentriyani. No Money no honey: That's the reality (Trafficking in Women Lewat Perkawinan Transnational Indonesia – Taiwan Dalam Kerangka Sistem Dunia dalam Perempuan di Dunia Kerja. Pusat Studi Kajian Wanita, Universitas Indonesia, 2000, pp. 563

around the country, particularly in Java, and migrate to large urban areas like Jakarta in search of better life.”¹⁴⁵

In other side Dr. Gumelar R. Soemantri (Sociology Perkotaan Lulusan Universitas Bielefeld, Germany, argued that poverty is not the only reason that created the practice of women trafficking) in terms that villagers migrated to cities for a better life. In his opinion there is another cause which is life in the village amidst the globalization context which pressing the village, since the globalization has entered the villages through media. Many women in the villages enjoyed the glamorous life in the city through television, while the life in the village is completely different.

The media of selling the dreams that they are unable to reach for. They do not have the root, no access to reach a luxurious life; it was an imagination of an attempting hope. Therefore many women like to work in the city. Relatives' culture usually is their access to enter the city. They look for friends, colleagues, or relatives who live in town. They instrumentalized the poverty in the village by absorbing women wishes, wrapped in an attempting life in the city.¹⁴⁶

Based on the data revealed in trafficking in persons as migrant workers, the main reason that attracted them to follow and become the victims were promises of easy finding jobs, with big salaries. Economy became the main reason for women trafficking issues for the reason that were claimed by most of the victims so that they were trapped in human trafficking practice was in order to find a job. Most of them were migrant workers both legally and illegally.

Based upon the type of works that were offered, most of them do not need special skill since certain educational level is seldom afford by the victims.

In the case of babies trafficking for example, the recruitment of pregnant women that were having problems starting from economic problems.

In the case of children trafficking, one of the factors that encouraged the children to drop out of their school is when they are starting to work.¹⁴⁷

¹⁴⁵ The Jakarta Post, September 28, 2001, Women Trafficking Rampant, Law Enforcement Weak.

¹⁴⁶ Nezar, Patria, Akibat Ulah Kapitalisasi Industri (Effect of Industrilized Capitalism). Koran Tempo, September 28, 2001

¹⁴⁷ See RCTI Program Selamat Datang Pagi, edition February 12 2003 about the life of green clamp. Irwanto's study, op cit pp 23 stated that those kids should spend most of their times for work so that

In the recent 10 years the numbers of children workers aged 10-14 less every year, but the number is increasing during the crises. BPS data showed that the number of children who work since August 1998 is higher than the last 4 years.

Related to previous chapter's discussion, several things that encourage the children were trafficked are various operational model of:

- Loaned their parents with abundance of money that they would not be able to pay back
 - Adopted the children with the hope of better life for their children,
 - Promised to educate the children
3. Fourth, lower educational level for some of Indonesian which made them easily lured by the perpetrator of human trafficking.
 4. Women position which is weak in the view of cultural and structural of Indonesian people
 5. The condition of many refugees campsite in various places that were not in good shape that opened an opportunity for the perpetrator to look for victims.
This was exclusively related to trafficking in orphan children in Poso that were probable to occur in other conflict areas in the country.
 6. State commitment and policy that were weak in combating the women trafficking and prostitution. This weaknesses was not merely owned by Indonesia alone as a source country but also by destination countries such as Malaysia¹⁴⁸ Makdum Tahir, Indonesian consular in Tawau that saved 14 prostitutes from Indonesia that were trafficked to Malaysia, stated that one of the obstacles that hindered the acts to prohibit the prostitutes to enter Tawau is lack of Indonesian police to solve/proceed the process to the perpetrator from Indonesia.
The perpetrator were easily escaped (they even do not have any difficulties to apply for the passport so that they could have legal immigration document that will make them difficult to be deported) and Malaysian police were not responded to consulate's reports. Based upon the information from the victim (managed to escaped by jumping from the 3rd floor of Hotel Plaza, Tawau), Indonesian consular along with its staff started the salvage operation by themselves, freed the

they barely have time to study. Survey done by BPS and ILO/IPEC in 1993, 1995, 1997 in West Java, North Sumatra and North Sulawesi showed that children who work more than 3 hours a day are distracted their learning abilities.

¹⁴⁸ Gatra, Dagang Sex ke Negeri Jiran, October 12, 2002, pp. 31.

victims, give them places to stay and food from their own budget. Strangely, the victims were about to be put in jail for the purpose that they will be witnesses in supreme court, luckily the consulates managed to stop it.

7. Collusion practiced among the perpetrator, prostitution industry's owner and the authority, including the police (National Police).

In Tawau's case there is one party that confessed the police were co operated with the perpetrator¹⁴⁹. In the villages in Indramayu, West Java, the district officials were willing to falsify the girls' age so that they could be prostitutes. The collusion between the community with its officials gave benefits to them from the prostitution. A descriptive study in a village in West Java showed that there were some formal leader and traditional leader involved in the practice of trafficking children for prostitution.¹⁵⁰

Children prostitutes who operate in Jakarta explained that they sometimes have to service the police and soldier. They used to call them "cepak", due to their hairdo. Communities figures and the police often involved in recruiting and preparing the girls from the villages to work as prostitutes. Sympathy and mercy are rarely found, especially from the police as the organ of the pimps. They are often hit those girls if they tried to escape.¹⁵¹

It was alleged that the government officials facilitated the human trafficking by: Maintaining good relationship between the perpetrators with the provincial officials so that they could falsify victims' ages to have ID, passport and working permit abroad.

The provincial officials that judged the acts done by the perpetrator as noble actions and aid to the government policies

Those factors above played a big role to the increase of supply and demand to prostitution industry, with all the disadvantage effects it produces. The money and benefit got from the business, and many parties involved in it, has made the issues are difficult to combat sporadically.

C. Law Enforcement

¹⁴⁹ Op. cit. pp. 28

¹⁵⁰ Elly Burhaini Faizal, Perdagangan dan Pelacuran Anak (2): Prostitusi Suatu Produk Kebudayaan? Suara Pembaharuan, Thursday, September 5, 2002

¹⁵¹ Elly Burhaini Faizal, Perdagangan dan Pelacuran Anak (3) : Prostitusi Suatu Produk Kebudayaan? Suara Pembaharuan, Friday, September 6, 2002.

1. Obstacle in Law

There are 3 important factors to address the law enforcement, which are: 1. Substance, 2. Structure, and 3. Culture. Nevertheless, the order does not imply that one factor is more important than the others.

Similar to the issues of law enforcement to human trafficking, each of the factors contributes to it to address the issues that have been the history of the world, including in Indonesia. Along with the development through the year, human trafficking experienced development in the forms and operational model, even though the essence remained the same, which is exploitation over other person. In the line with recent complexity on human trafficking and technology development has made the issue become hard to be detected, since it is covered in a legal activities and over the countries borders

Considering the complexity and difficulty to detect human trafficking therefore we need rules that more suitable to the present condition.

Rules on human trafficking in Indonesian law, as discussed in previous chapter, were actually there but they were considered not adequate. Judging from the width definition on human trafficking, there is indeed no article that can be used to charge all acts that classified as human trafficking in that is recently goes in the international communities. Nevertheless there are 2 articles that can be used to charge some of the acts in human trafficking, which are article 297 Criminal Law about women and boys that were trafficked and article 324 Criminal Law about trade-slave.

Article 297 Criminal Law exclusively control the women and underage boys trafficking. Viewing from the victim side, almost all of the cases found by the researchers the victims were women and underage girls (including babies). Only small number of the cases where the victims were adult men that were not concluded in the article 297 Criminal Law. Due to the recent condition, where it was found some men victims than the rules are not limited the victims to women and underage boys only. The other weaknesses of article 297 Criminal Law is there limitation to the scope that is only to sexual exploitation, which means the article can be used to charge the human trafficking if only the victims were abused to acts of sexual exploitation. Even though in reality, the aim to sexual exploitation are the biggest part on human trafficking, especially women and children, but we can deny there are other forms in order to make the victims as work force, domestic workers, even the children (babies) in trafficking for the purpose of adoption.

Similar to article 324 Criminal Law. The article indeed prohibits the acts that are classified as human trafficking. No different with article 297, this article mentioned the object exclusively, which is slave. When the slavery is abolished from Indonesia, the next question is whether the article should be considered expired, due to the rules have been abolished. In reality, the article is no used in the discussion about human trafficking. Even though to charge the perpetrator, the article can be used. Although it will raise another argument, isn't classified labor as slave means doing the analogy interpretation or just to expand the meaning of the word suited to communities' development? If we want to avoid the theoretical debate on the never ending issue, there is another exit that can be done which is make the plan of Criminal Law enter to force soon therefore it can be used to human trafficking issues. But we still have to review the articles so that they are synchronized to the issues and do not create difficulties in law enforcement.

Other than the material law that is not adequate to conclude all the forms of human trafficking, the failure in law enforcement for human trafficking according to Chief of Committee VII in the legislative, Taufik Ruki, due to this Criminal Law do not touch the aspects in the crimes, especially to the victims. Therefore we need the Law that exclusively regulates the women and children trafficking.¹⁵²

2. Obstacle in the Court Process

Data related to human trafficking, as found in Police Resort Metro Jaya, within 2002, showed as follows:

- crime related to article 297: 3 cases;
- crime related to article 332: 4 cases;
- crime related to article 333: 2 cases;
- crime related to article 378: 3 cases;

Total	12 cases
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Based upon the data from Police Resort Metro Jaya we can see that those crimes are relatively few. As a data, this will raise a question, whether the data showed the real fact of crimes that occurred in the communities and whether the police successfully solved all of those cases. Too bad, those questions do not have the clear answers. Limitation on the scope and the study objective is not possible to

¹⁵² Suara Pembaharuan, "Komisi VII DPR Kunjungi Korban Perdagangan Wanita: Belum Ada UU yang bisa Menangani Tuntas, September 28, 2001

answer all of the questions. Therefore the data is merely an initial “description” about the crimes that related to human trafficking, that was solved by the police.

Human trafficking, is a crime that classified into crime against humanity and difficult to be exposed. Besides, the perpetrators are the people with skills, network, and access to many fields – such as law enforcement, politician elite, and the police – the victims are the people who unfamiliar with the law and economical interest, so that they are easily exploited.

In order to be able to precede the court process to human trafficking cases, the law enforcement cannot work alone, suit to its functions. The law enforcement really needs all the help from all of the parties – such as public’s reports – as information to reveal the cases. Therefore, there are some factors that contributed to reveal the human trafficking cases, which are:

1. Structure of crime court

skills and neatness that the perpetrators have while doing their activities has create difficulties to the police to reveal the cases related to human trafficking. Limited numbers on personnel and budget become one classic reason that the police used to address the cases of human trafficking. This limitation would add up it related to the ability of the investigator in revealing those cases reported from the communities.

In the investigative process, the police has to own special skill to handle the human trafficking cases. This special ability is necessary considering the traffickers are not stupid. They are generally prepared all of the possibilities, if they were involved in law. This “advantages” own by the perpetrators add up the to the exposing the case of human trafficking by the police.

From technical juridical aspect, the must to have adequate initial proofs to address criminal cases has created another obstacle to the police. Especially if the witnesses do not want to stand to testify in the court to reveal human trafficking cases. Reluctance from the witnesses’ side to testify in those cases due to several factors, which are (1) reluctance due to the court process which is difficult and takes long time; (2) there is no guarantee protection to the witness against all kinds of threat; (3) lack of concern to the witnesses from the police that makes them afraid or reluctant to deal with the

police; (4) time and cost, another obstacle for the witnesses to deal with the police.

The difficulties in the investigation part, has affected greatly to the continuation of the legal process. Therefore, human trafficking becomes a difficult to be exposed.

2. Trafficker

As discussed earlier, the trafficker has a wide network. Even though the accurate evidence is not yet found, it is probable that the trafficker a group of people who own media or often called as organized crimes.¹⁵³ By getting many people involved in the organization and wide networking, it is not impossible that the traffickers are hard to be detected, let alone pursue a legal process.

Hugh. D. Barlow has identified the crimes done by organized crime. According to Barlow, organized crime really like the prostitution business, since the activity gives much return in cash. For the business, the organized crime builds good relationship with the political and government official. Therefore, it is natural if it said that organized crime makes political corruption an integral part of its business.¹⁵⁴

Within the present condition, it is very difficult to expose the crime in the form of human trafficking. Even the police able to catch the trafficker, they are only the fieldsmen. As for the intellectual actor remains untouched and very difficult to trace. This means, crime of human trafficking will continue to grow and increase the number of the victim.

3. victims and communities

Exposing a crime cannot be done solely by the police. The victim and communities' role is necessary and – in some cases – has proven to be very effective to reveal the crime.

Victims and communities' role to help the police exposing the crime is also meant to suppress the dark number of crime. In a simple word dark

¹⁵³ Larry J. Siegle, stated that organized crime is conspiratorial activity, involving the coordination of numerous persons in the planning and execution of illegal acts or in the pursue of a legitimate objective by unlawful means. Larry J. Siegle, 3rd.Edt, West Publishing Company, St. Paul, 1989, pp. 337.

¹⁵⁴ Hugh. D. Barlow, Introduction to Crimology, Little Brown and Company, 1984, pp. 294

number of crime is crime that cannot be detected by the police so that they do not have the data that suit to reality.

There are several things that causes dark number of crime, which are¹⁵⁵:

1. The victim aware that he/she is a victim from a crime but do not want to report it due to:
 - (a) Think that the police is inefficient or will not pay attention to his/her report;
 - (b) Think that the event as the personal matter and will use extra juridical way to settle the matter or feel embarrassed and do not willing to testify to the police or in court.

There are many victim of criminal behavior who feel reluctant to report it to the police. The reluctance due to the experience that the victim who reported a crime will face the police who will make it difficult to him as a victim. The long procedures and there is no guarantee that the perpetrator will be arrested, is a condition that makes a victim feels reluctant to report to the police.

Beside that, the type of crime that she/he experienced also affects the reluctance. The crimes that related to immoral issues, or the crime that will reveal the real condition of the victim personality will be the crime that does not have to be reported, in order to avoid those rime to be exposed to others. Therefore, to avoid news, feeling of embarrassment, fear and to avoid difficulties that are likely to appear when the crime is reported, become the strong reasons to not report it to the police.

2. The victims do not aware that he/she is a victim from a crime. This is likely to happen in the deception cases or fraud that operational use the smooth way, so the victim will not feel that she/he become a victim.
3. Abstract victim. This type of victim often occurs in deceiving the consumer. Therefore it is difficult to detect who the real victim is.

¹⁵⁵ Steven Box, *Deviance, Reality and Society*, Second Edition, Holt, Rinehart and Winston, New York, 1982, pp. 58

4. The victim is also the perpetrator. This type of crime is often called as crime without victim as in drugs, abortions, and gambling.
5. Officially there is no victim due to discretion of the police to decide which and what event that classified as crime. Police discretion is linked to the policy and law enforcement issues.

Therefore it is obvious that the victim of human trafficking feel reluctant, lazy or ashamed to report that he/she has become a victim from a crime. Let alone the risk of humiliation when the case is exposed to the public. Refer to this condition, Steven Box wrote¹⁵⁶ :

Fear of embarrassment, or an unwillingness to risk exposing private matters to public gaze, may provide further reasons why some victims of criminal behavior fail to report an offence. Thus the victim of blackmail usually prefers to keep their dark secret hidden rather than jeopardize their present respectability.

Therefore, the investigation process to human trafficking crime will be even more difficult to expose.

3. Institutions authorized to solve the problems

We cannot deny that human trafficking issues emerge major concern from many parties. This national or even international scale issues has made many people give their utmost attention, especially the number of victims from this crime is countless. Indonesian government who supposed to give protection to its people was being criticized not seriously committed to address this matter. Even in some cases the government set a special team, but the settlement of those cases were often unclear. Setting up a special team to address the human trafficking issues was due to the awareness that the issue is a complex matter that relates to many aspects. We can only overcome the problem through a comprehensive handling. Take an example of the handling illegal migrant workers in Malaysia, the government set up a team (tim tujuh) lead by Deputy III State Ministry for Women's Empowerment Affairs, with people from Department of foreign Affairs, Department of Social Affairs, National Police Headquarters, Ministry for People's Welfares, and Directorate General Immigrations as members of the staff.

¹⁵⁶ Ibid.

Viewing from the team that was set up, the handling of the case really needs the aid from destination country. In the reality, the coordination and request for aid was not easy to do. Therefore, interregional arrangement is needed to help and coordinate in solving the case of human trafficking.

The handling of human trafficking cases on the court, will involve police, prosecutors, judges and country jail. Based upon the data gathered there were only a few of these cases that was brought up to court and punished the perpetrator. Difficulties found to expose the practice were caused due to its nature of the crime that is well organized. Therefore, the role of communities, such as non-governmental organizations that concern to this matter, would help the cases to be exposed and help the victims.

4. Lack of rules and Institution to Take Care of the Victims

As discussed earlier, Indonesia as a source country and destination country, has participated to ratify the Convention concerning human trafficking. The participation to ratify the convention was not followed by the ability to apply the law consistently. It can be said that Indonesia has not performed all the rules of law. In practice, the crime that related to human trafficking was processed through the rules found in Criminal Law or other laws.

Criminal Law and other type of law are indeed inadequate to handle the human trafficking cases. Therefore, we need more specific rules to be applied. Lack of these rules should be the major concern from the executive and legislative parties to cooperate and create an adequate law to combat the crime related to human trafficking.

The absence of inadequate law to catch the traffickers has given more space to them to perform their activities. The condition is worsen by the absence of institution that taking care of the victims.

The victims are the parties who suffered, physically or mentally, from the criminal behavior. Victim of a criminal behavior can give testimony to pursue police investigation, press charges and court. Through victims' testimony, a criminal behavior can be exposed. In criminal cases, a victim is one important element to reveal a case.

It is no longer a secret that a victim – all these days – lack of adequate concern. Protection – in all kind of forms – and security guarantee are very

important. The absence of these two elements has made the victim feel reluctant to report his/her case. This means the crime will not be able to be revealed.

There are several protection to the victims that need to be noticed, they are:

- (1) Protection that related to personal identification. This type of protection related to victim's personal identification, during the process of the court. The objective of the protection is to prevent the victim getting threats from the perpetrator, which are likely to happen, during the judicature process;
- (2) Medical and psychological aid. The aid is necessary for victims who suffered from physical abuse and had psychological pressure. The victims from human trafficking cases are vulnerable to physical and psychological abuse. Therefore this type of aid is really necessary;
- (3) Other than those previous protections, victims need legal aid. Legal aid is really necessary in order to get legal process. Human trafficking victims are usually the people who unfamiliar with the law. Therefore, legal aid is a must in order to achieve justice;
- (4) Compensation and restitution. Victims are entitled to compensation and restitution. Victims' suffering is the responsibility of the perpetrator and state.

CHAPTER V

Conclusion and Recommendation

A set of efforts that can be done to suppress and combat the growth of women trafficking is:

- Changes to several provision related to human trafficking, especially women and children, found in the Criminal Law
- Increase the police performance to detect and process the women and children trafficking;

- Empowerment the law that gives special protection to women who became victims, at the minimum contains:
 - a. The right of getting protection from the police, against the behavior that might be done by the perpetrator. The protection guarantee is very important to secure that the victims are treated with sympathy and cautiously by the police, guarantee their safety, so that they will give the testimony that useful to punish the perpetrator;
 - b. The right to get medical, physical, legal and social aid, especially to return his/her self confident and to return the victim to his/her family and community;
 - c. Compensation right both from the perpetrator and government for causing great suffering experience to the victims;
- National scale of one institution that taking care the women and children who were trafficked. The need to establish the institution is urgent, considering that victimization in Indonesia within latest years is very disappointing. It is essential to set up coordination among the police, Department of Men Power and the institution so that the police can immediately asking for the institution when they are having the report of a human trafficking case. The institution needs the support from the social workers, psychologists, legal experts and doctors.
- Trainee to the law enforcement regarding the women and children in trafficking;
- Public education to alert the public about the possibility and effect of women and children in trafficking;
- Full use of organizations that set up by the government and the community to concern more to these cases.

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