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# VICTIM PROTECTION AND THE DYNAMIC SITUATION OF HUMAN TRAFFICKING: INDONESIA EXPERIENCE

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## Abstract

*Human trafficking is a global issue that can occur within national and transnational contexts, and it is subject to regulation by national and transnational criminal law mechanisms. However, it is often associated with other related crimes, such as drug trafficking. In Indonesia, laws have been implemented to provide mandatory protection for victims of human trafficking, while those found guilty of drug trafficking are subject to the death penalty. Due to investigative and prosecutorial failures, there is a risk of convicting trafficked victims coerced into drug dealing for organized crime activities. The enforcement of drug laws will only apply when the offender's actions fulfil the elements of a crime under narcotic law. This study aims to explore the intersection between victimology and Indonesian laws, which have not been properly applied in recent cases before Indonesian courts, resulting in insufficient protection for trafficked victims who are forced into drug trafficking. The dynamic situation within Indonesian legislation reflects the emerging norm of non-prosecution of victims in international legal discourse. In conclusion, this study proposes a new approach to statutory interpretation and effective mechanisms enabling Indonesia to lead a new approach to victim protection.*

**Keywords:** human trafficking, law enforcement, victim protection.

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## I. INTRODUCTION

Human trafficking, also known as trafficking in persons or trafficking in human beings, is a social phenomenon that has been on the rise in recent years.<sup>1</sup> Several sources report that around 1.083 people were victims of human trafficking in 2017, with the majority being women (1.078) and the remainder of children.<sup>2</sup> The Head of the Witness and

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<sup>1</sup> Tom Obokata, *Trafficking of Human Beings from a human Rights Perspective: Towards Holistic Approach, International Studies in Human Rights*, volume 89 (Leiden: Martinus Nijhoff Publishers, 2006), 58. See also Gallagher and Anne T, *The International Law of Human Trafficking* (New York: Cambridge, 2011), 98. Nathalina Naibaho, "Human Trafficking in Indonesia: Law Enforcement Problems," *Indonesia Law Review* 1, no. 1 (2011): 85.

<sup>2</sup> Davit Setyawan, "Ada 32 Kasus Trafficking dan Eksploitasi Anak di Indonesia pada

Victim Protection Institute (LPSK), Semendawai, stated that Indonesian workers (TKI) are particularly vulnerable to becoming victims of human trafficking, especially when recruitment and transfers are carried out in violation of regulations. In some cases, these victims are persuaded and threatened through violence. Adeline Semendawai cited Sau's case, an Indonesian worker in the Village of Abi in the Regency of Central Timor, West Nusa Tenggara (NTT) Province. Sau was found in a disheveled state in Malaysia on 10 February 2018 and was later pronounced dead after a medical examination. The Central Timor Policy Authorities and the Regional NTT Police, under the supervision of the Criminal and Research Division, concluded that Sau's death resulted from human trafficking and the fraudulent use of documents. Police authorities have identified four suspects involved in the human trafficking and falsification of Adeline Sau's identity.<sup>3</sup>

The case of Mary Jane Veloso garnered significant public attention, including from the international community. Veloso, a national of the Philippines, was arrested at the Yogyakarta airport for smuggling 2,6 kilograms of drugs to Indonesia and was subsequently sentenced to capital punishment in 2010.<sup>4</sup> However, the Indonesian government delayed her execution because the Filipino government required MJV as a witness in a separate case involving Maria Kristina Sergio, who had turned herself in to the Filipino police before Veloso's execution.<sup>5</sup> During the examination of the case, it was discovered that Veloso was a victim

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Awal 2018 [[There are 32 cases of child trafficking and exploitation in Indonesia](#)].” KPAI (*Indonesian Child Protection Commission*, 3 April 2018, accessed 6 March 2019, <http://www.kpai.go.id/berita/kpai-ada-32-kasus-trafficking-dan-eksploitasi-anak-di-indonesia-pada-awal-2018>).

<sup>3</sup> “TKI Masih Rentan Jadi Korban [Indonesian Migrant Workers Still Vulnerable to Becoming Victims],” Lembaga Perlindungan Saksi dan Korban (LPSK)/ Indonesia Witness and Victim Protection Agency, 10 March 2019, accessed 22 August 2022, <https://lpsk.go.id/berita/detailpersrelease/2797>.

<sup>4</sup> “Mary Jane Veloso has her life spared in Indonesia,” *Herald Sun*, 29 May 2015, accessed 15 August 2022, <https://www.heraldsun.com.au/news/mary-jane-veloso-has-her-life-spared-in-indonesia/video/1bad973b3ae0e2375743a6e62b3b06ff>.

<sup>5</sup> Wijaya Kusuma, “Duta Besar Filipina Kunjungi Terpidana Mati Narkotika Mary Jane [Philippine ambassador visits death row narcotics convict Mary Jane],” *Kompas*, 23 October 2018, accessed 15 August 2022, <https://regional.kompas.com/read/2018/10/23/18545921/duta-besar-filipina-kunjungi-terpidana-mati-narkotika-mary-jane>.

of human trafficking. It was understood that Veloso had been promised work in Malaysia and was given a piece of luggage in Indonesia that contained narcotics. This case highlighted the need for a new approach to the law on human trafficking, particularly in cases where individuals supposedly involved in criminal actions are themselves victims of trafficking.

In addition to transnational issues, there are also instances of human trafficking within a country's borders.<sup>6</sup> For instance, cases of suspected human trafficking were reported in Bekasi, with the destination being Papua. Human trafficking is not limited to isolated areas or borders, and it is also prevalent in larger cities like Jakarta. As the country's metropolitan city, Jakarta is a destination for workers seeking better economic opportunities, which results in a high population density. It is also ranked second highest in the country for human trafficking. Recently, the city's entertainment area was exposed as a hub for prostitution and sexual exploitation in the context of human trafficking.<sup>7</sup> Additionally, Jakarta serves as a transit point for women being trafficked outside the country

According to data from the Indonesian law enforcement system, there were 123 investigations into cases of human trafficking in 2017, an increase from the 110 cases reported in 2016. In the same year, the Indonesian Police received 51 case files from the Attorney General's Office of the Republic of Indonesia. The Supreme Court has implemented a comprehensive prosecution documentation system, but the statistics are based on independent and informal institutions that have not yet been fully developed. In 2017, the Supreme Court reported 407 prosecution sheets of human trafficking cases, an increase from the 263 cases reported the previous year. Additionally, there were 324 decisions made, which is higher than the 190 decisions made the previous year,

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<sup>6</sup> "Indonesia Factsheet 2020," International Organization for Migration, accessed 15 August 2022, <https://indonesia.iom.int/sites/default/files/Factsheet%20-%20Counter-Trafficking%20-%20IND.pdf>

<sup>7</sup> Joko Panji Sasongko, "Yohana Minta Anies Usut Dugaan Perdagangan Orang di Alexis [Yohana asks Anies to investigate allegations of human trafficking at Alexis]," *CNN Indonesia*, 2 November 2017, accessed 15 August 2022, <https://www.cnnindonesia.com/nasional/20171102175212-20-253073/yohana-minta-anies-usut-dugaan-perdagangan-orang-di-alexis>.

with the sentencing period ranging from two and a half to seven years.<sup>8</sup> These statistics reflect the development of law enforcement in human trafficking, which can be likened to the phenomenon of an iceberg, where what is visible is only the tip.

Indonesia was categorized under tier-2 (watch list) of the Trafficking in Persons Report in 2020 and 2022<sup>9</sup> due to several cases of human trafficking, particularly women and children, for economic exploitation and sexual purposes. The report suggests that the Indonesian government has not met the minimum victim protection and legal enforcement standards, highlighting their incompetence. Despite these challenges, there have been significant efforts to combat human trafficking.<sup>10</sup>

Human trafficking is a grave concern that impacts numerous individuals. The available facts and data can serve as an indicator for conducting evaluations, especially since Indonesia remains ranked second in this regard. It is expected that Indonesia will continue to strengthen its efforts to enforce laws against human trafficking on a national, regional, and international level. The international community has been focusing on the issue of human trafficking within ASEAN, and in 2015, ASEAN member states convened in Malaysia to establish a joint action plan to combat this problem in the region.<sup>11</sup>

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<sup>8</sup> “2020 Trafficking in Person Report,” U.S. Embassy & Consulates in Indonesia, accessed 15 August 2022, <https://id.usembassy.gov/our-relationship/official-reports/2020-trafficking-in-persons-report/>.

<sup>9</sup> “2022 Trafficking in Person Report,” U.S. Embassy & Consulates in Indonesia, accessed on 21 April 2023, <https://www.state.gov/reports/2022-trafficking-in-persons-report/indonesia/> and <https://id.usembassy.gov/id/our-relationship-id/official-reports-id/laporan-tahunan-perdagangan-orang-2022/>.

<sup>10</sup> List of countries whose governments do not fully meet the TVPA’s minimum standards, available at <https://www.state.gov/j/tip/rls/tiprpt/2011/164236.htm>; Trafficking Victims Protection Act of 2000, Div. A of Pub. L. No. 106-386, § 108, as amended.), but are making significant efforts to bring themselves into compliance with those standards; <https://www.state.gov/j/tip/rls/tiprpt/2018/282584.htm>; and can also be accessed through: <https://id.usembassy.gov/id/laporan-tahunan-perdagangan-orang-2017/>. Accessed on 7 March 2019.

<sup>11</sup> ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) established in Kuala Lumpur, Malaysia, 21 November 2015); <https://asean.org/asean-convention-against-trafficking-in-persons-especially-women-and-children/>; “ASEAN & ACTIP: Using a Regional Legal Framework to Fight a Global

In September 2016, the ACTIP meeting was held in Jakarta to discuss the implementation of the ASEAN Convention against Trafficking in Persons, especially Women and Children Agreement to Continued Cross-border. An agenda was set for consultation between the ASEAN Law Enforcement and the ASEAN Intergovernmental Commission on Human Rights (AICHR) to promote cross-border cooperation and a human rights-based approach to combat trafficking in persons. The consultation involved the Senior Officials' Meeting on Transnational Crime (SOMTC) and focused on implementing the ASEAN Convention and Action Plan against Trafficking in Persons, especially Women and Children (ACTIP & APA). It aimed to improve the investigation and prosecution of trafficking in person cases and assist victims in their safe return, rehabilitation, and reintegration into society. After the consultation, each party will provide tailored support to individual ASEAN member-states to help them ratify and strengthen the implementation of ACTIP. Indonesia is currently in the process of ratifying the Convention.

Additionally, there is a recommendation to develop effective public security measures to facilitate the integration of Asia while maintaining a balance between facilitation and security. This requires a concerted effort to consider and plan the integration and security agenda. It is essential to enhance the foundational knowledge of frontline officers who protect the borders regarding the threats and risks of cross-border movements. There is also a need to increase networking among key agencies, both domestically and regionally, thereby supporting cross-border networks that integrate responses to crime threats. This study utilized library research to explore a new approach to statutory interpretation, including an effective mechanism for Indonesia to apply and justify the “non-punishment or non-prosecution” provision to promote victim protection

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Crime,” Global Initiative, <https://globalinitiative.net/asean-actip-using-a-regional-legal-framework-to-fight-a-global-crime/>: “The need to enhance capabilities of frontline officers for early detection and prevention of movements of victims of trafficking from countries of origin, through transit countries, to countries of destination; The proper identification of victims and provision of suitable protection to them; The need to improve investigation and prosecution of traffickers, especially relating to complex trafficking in persons cases; The lack of effective regional legal and other mechanisms to further international cooperation in combatting trafficking in persons.”

in human trafficking cases. Data were collected from secondary sources through legal documents sourced from libraries.

## **II. VICTIM PROTECTION AND THE ROLE OF DRUG OFFENDERS TO COMBAT TRAFFICKING IN PERSONS**

The reality of human trafficking in Indonesia presents an emerging problem that raises questions about the current dynamics of the issue. Human trafficking victims are often placed in the hands of perpetrators through falsified documents, false work permits, and connections to serious crimes like drug trafficking.<sup>12</sup> It is also important to understand how government officials and law enforcement officers respond to this problem and what challenges and opportunities exist to reduce such cases and ensure justice for the victims. A literature review can provide insights into victim protection, a critical aspect of the issue. The negative attitudes towards victims often result in inadequate attention and social protection. The prevention mechanisms of human trafficking pose significant challenges in Indonesia, but overcoming them can help the country take a better position in the international community and effectively combat this problem.

### **A. THE ROLE OF THE VICTIM AND DRUG OFFENDER IN HUMAN TRAFFICKING CASE**

The Indonesian government has taken steps to combat human trafficking by ratifying the ASEAN Convention against Trafficking in Persons (ACTIP) with a focus on women and children, and this has been ratified through the Law No.12 Year 2017 in the Republic of Indonesia. The government has developed laws that allow them to prosecute individuals suspected of illegal recruitment and work with other ASEAN countries. The Convention aims to prevent and combat trafficking in persons, protect and assist victims, and promote cooperation among parties to achieve these objectives. Indonesia has created a four-year

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<sup>12</sup> Fellicity Gerry QC, Thomas Harre, Nathalina Naibaho, Julia Muraszkievicz, Neil Boister. "Is The Law An Ass When It Comes To Mules? How Indonesia Can Lead A New Global Approach To Treating Drug Traffickers As Human Trafficked Victims," *Asian Journal of International Law* 8, no. 1 (2018): 168.

national action plan to tackle human trafficking, which started in 2015 and ended in 2019, in response to the cases occurring and in line with the ACTIP meeting in Malaysia. As a country that has received much attention on cases of human trafficking, this is a crucial step towards combating this issue.<sup>13</sup>

Victimology is a vital component in addressing the problem at hand, which is the victimization of individuals. It is an area of study that supports subjects and has gained attention from criminal law with regard to the treatment of victims within the court system. In the context of human trafficking, victimology is particularly significant because victims are often neglected and overlooked. Furthermore, in some cases, victims have even been wrongfully portrayed as perpetrators of human trafficking, which is a grave injustice. This is unacceptable because victims should not be subjected to further harm and disadvantage nor expected to seek retribution against their oppressors. It is important to acknowledge that they should not bear the burden of judgement or punishment, and it is not their responsibility to seek justice for

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<sup>13</sup> “Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang (GT- TPPO) [Prevention and Handling of Human Trafficking Crimes],” Kementerian Pemberdayaan Perempuan dan Perlindungan Anak (Ministry of Women Empowerment and Child Protection), accessed 15 August 2022, <https://www.kemenpppa.go.id/lib/uploads/list/9586d-januari-rakor-tpppo-2016.pdf>. Actions that need to be focus on: The prevention mechanisms and participation of children, which has the goal to take strategic steps to prevent children from becoming victims of human trafficking and the responsibility of such actions should be the Ministry of Culture and Education; The Rehabilitation of Health, as a way to optimize the physical condition of the victim that has experiences negative circumstances that has impacted the individuals, which should be the responsibility of the Ministry of Health; Social Rehabilitation, this includes the social reintegration and opportunity to bring the victims home, and this forms as a response towards the social conditions of the victim who have been bothered by the events that have been experienced and in which the Ministry of Social Affairs must take responsibility; The development of legal norms in the form of enforcement and legal protection, in consideration to the human rights of the victims, especially the right to education and socialization as a legal instrument which is present by stakeholders, to which the responsibility belongs to the Ministry of Law and Human Rights; Legal enforcement as a way to process the law for perpetrators that is wrongly convicted as way to bring accountability towards the Police, and Coordination and Partnership, is a form of action that needs to occur in a manner that is coordinated and can occur simultaneously to fight human trafficking, which is this case must be under the Ministry of Manpower obligation.



themselves. Rather, it is the responsibility of the criminal justice system to provide adequate protection and support for victims and ensure that they are treated fairly and with compassion.

## B. VICTIMOLOGY PERSPECTIVE IN HUMAN TRAFFICKING CASE

Victimology is a term consisting of two parts, the Latin word “victime,” meaning victim, and the Greek word “logos,” referring to a system of knowledge. Based on this, victimology can be defined as a theoretical framework for understanding victims.<sup>14</sup> Victimology has developed as a field of knowledge that supports criminal law, alongside the broader field of criminology. It typically analyzes three components, including the perpetrator, the crime, and the societal response to the crime. This framework recognizes victimology as a critical component for understanding and supporting victims. Protection and assistance for victims within the criminal justice system are based on analyzing the victim, the crime, and societal reactions to the crime. This is the conventional understanding of victimology and its ongoing development.

According to modern victimology in Indonesia, which focuses on researching unconventional crimes not covered by the criminal code, victims are not only affected by the crime but by all related factors in a holistic manner. Several references define victimology as the scientific study of victims of criminal acts, exploring the victim’s relationship with the offender and their experience with the criminal justice system from the victim’s perspective. While criminology aims to understand the underlying causes of crime and prevent it, victimology focuses on helping victims recover from the trauma of the crime.<sup>15</sup> This article highlights the potential for victimology analysis to address challenges and problems within the criminal justice system, including prevention, with a particular emphasis on factual assessments and findings in cases of human trafficking.

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<sup>14</sup> Gerd Ferdinand Kirchoff, *What is Victimology?* Monograph Series No. 1 (Japan: Tokiwa International Victimology Institute, 2002), 42.

<sup>15</sup> William G Doerner dan Steven P Lab. *Victimology*, Sixth Edition. Burlington: Elsevier, 2012. See also Indah, Maya S. *Perlindungan Korban: Suatu Perspektif Viktimologi dan Kriminologi [Victim Protection: A Victimology and Criminology Perspective]*. Jakarta: Kencana Prenadamedia Group, 2014, 52.

### C. VICTIM PROTECTION AND VICTIM PARTICIPATION

The definition and rules that apply to human trafficking in Indonesia need to be communicated comprehensively and succinctly to provide a better understanding of the actions that fall under this category. This will also aid in identifying the protections available to victims.<sup>16</sup> The Indonesian 2007 Trafficking in Persons Law defines human trafficking in a manner consistent with the UN Protocol. Article 1(1) of the Law No. 21 Year 2007 stipulated that:

“Trafficking is defined as an act that involves the recruitment, transportation, sheltering, sending, transfer, or receipt of persons through the use of violence, threat of violence, abduction, confinement, fraud, forgery, abuse of power, abuse of a position of vulnerability, debt bondage, or by providing payments or benefits to a person in control of another person. This act can be committed both within a country or between countries and is done for the purpose of exploitation or results in people being exploited.”

The offense of trafficking in persons, as defined by the United Nations Protocol, requires the presence of three elements, including an act, means, and purpose. The act elements are ‘recruitment,’ ‘transport,’ ‘shelter,’ ‘sending,’ ‘transfer,’ or ‘receipt.’ The Act further defines some of these terms in Articles 1(19) and 1(10). According to Article 1(9) ‘recruitment’ means ‘inviting,’ ‘collecting,’ ‘bringing about,’ or ‘separating a person from their family or community.’ Article 1(10) defined ‘delivery’ as ‘dispatching’ or ‘harbouring’ a person from one place to another. The means elements consist of ‘violence,’ ‘abduction,’ ‘confinement,’ ‘forgery,’ ‘fraud,’ ‘abuse of power or of a position of vulnerability,’ ‘debt bondage,’ and ‘giving payments to achieve the consent of a person having control over another.’ The purpose element of trafficking is exploitation, which is defined in Article 1(7) as “the act with or without consent<sup>17</sup> victims, which include but are not limited

<sup>16</sup> Indonesia, *Undang-Undang Pemberantasan Tindak Pidana Perdagangan Orang*, UU No. 21 Tahun 2007. (*Law on Eradication of Human Trafficking*. Law No. 21 Year 2007).

<sup>17</sup> The issue of “consent” according to The UN Protocol, stipulates that the victim’s consent shall be irrelevant where any of the means listed in the definition is used. The victim’s consent must have been given with respect to all relevant circumstances of an act. Real consent is only possible and legally recognizable when all relevant factors are known, and a person is free to consent. As for minors (persons below the age of 18),

to prostitution, forced labour, slavery, oppression, extortion, physical utilization, sexual, organ trafficking, etc. In connection with victims' rights, the UN protocol required several provisions, among others:

1. Assistance, identification and protection of victims, including their privacy (Art.6.1).
2. Information on relevant court and administrative proceedings (Art. 6.2a).
3. Assistance to enable the victim's views and concerns to be represented and considered during criminal proceedings (Art. 6.2b).
4. Measures to be provided by the state for the physical, psychological, and social recovery of victims, including adequate housing, counselling and information, medical, psychological, and material assistance, employment, educational and training opportunities (Art. 6.3). This is in accordance with the age, gender, and special needs of victims, in particular the special needs of children, including appropriate housing, education, and care (Art. 6.4).
5. The protection of the sense of safety of victims, the possibility to obtain compensation for damage suffered (Art. 6.5).
6. The possibility of temporary or permanent residence permits (Art. 7).

The UN Protocol emphasizes the safety of victims during their voluntary repatriation and the need to consider their well-being. Updates on legal proceedings relating to the victim's case must be provided regularly, and the entire process must be based on the victim's consent without any coercion. Article 14 of the Protocol includes a non-discrimination clause, which requires that the provisions be applied without discrimination based on origin, ethnicity, nationality, gender, or religion, particularly with respect to trafficking victims. This

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consent is irrelevant as the UN Protocol stipulates that in the case of children, none of the coercive or deceptive means needs to be used for the act to qualify as trafficking. Any recruitment, transportation, harbouring, receipt, or transfer of children for exploitation, with or without the child's consent and with or without the use of coercive or deceptive means, is trafficking.

ensures that all trafficking victims are entitled to legal protection and assistance, consistent with internationally recognized principles of non-discrimination. In other words, the legal protection provided under the UN Protocol must cover persons who are victims of trafficking in persons, regardless of their origin, ethnic background, nationality, gender, or religion/faith.

The UNODC report emphasizes the importance of addressing key issues and implications related to transnational organized crime, such as improving victim identification systems to provide protection and support, investing in appropriate training for law enforcement, and promoting a collaborative, inter-agency approach.<sup>18</sup> These efforts require standardized mechanisms, data collection, and properly trained specialists. Moreover, it requires shifting attitudes away from traditional views of individuals as “illegal immigrants” or “drug traffickers,” and toward distinguishing between traffickers and victims. To ensure an effective referral mechanism, it is essential to obtain credible evidence of a person’s status as a victim of human trafficking during the investigation stage, which can potentially divert them from prosecution to support. When an investigation is not conducted properly, or further evidence is presented during the trial, it is still necessary to make decisions to prevent inappropriate prosecutions or, depending on the nature of the allegation, to impose a reduced sentence.<sup>19</sup>

The current data available on the number of human trafficking cases and the procedures for handling them is insufficient and may lead to misinformation.<sup>20</sup> Therefore, to address this issue, a comprehensive and integrated national database on human trafficking must be developed and managed. The basis of such data is to help investigate cases and identify the type of exploitation, as well as the age, gender, and identity of the victim and perpetrator involved. This information would be crucial in combating human trafficking and effectively supporting victims.

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<sup>18</sup> “Transnational Organised Crime in East Asia and the Pacific: A threat Assessment,” UNDOC Report, accessed 16 August 2022, [http://www.unodc.org/documents/data-and-analysis/Studies/TOCTA\\_EAP\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/Studies/TOCTA_EAP_web.pdf), 139.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

Mary Jane Veloso's story illustrates how poverty can render individuals susceptible to exploitation and trafficking. As a domestic worker who migrated for work in Dubai, she was forced to endure abuse after being attacked by her employer and hospitalized. After a month in the hospital and the perpetrator accused of rape, Veloso returned to the Philippines. Veloso's return to the Philippines did not allow her to support the children, and she was compelled to sell the belongings and incur debt to an informal agent who claimed to be her friend and facilitated another migration process. Despite being promised work in Malaysia, Veloso was instead sent to Indonesia with new clothes and a suitcase. Veloso was in no position to question the agent who made her migration possible but trusted them. Furthermore, Veloso could not speak the local language and needed to navigate the legal system despite inadequate understanding of the process. In reality, Veloso was the victim of trafficking as she was controlled and used as human cargo for the benefit of others. Veloso was arrested in Yogyakarta, Indonesia, in 2010 while carrying a suitcase containing 2.2kg of heroin. People stated that poverty made Veloso an easy target for traffickers, who lured her with the promise of a job as a maid but ultimately involved her in the drug trafficking case.<sup>21</sup>

However, the previous Philippine government worked to delay and eventually overturn Veloso's sentence, drawing international criticism of capital punishment. Veloso's reprieve was granted after Maria Kristina Sergio, who was accused of recruiting Veloso, turned herself in to police in Manila. The former Philippine president, Benigno Aquino, appealed to Indonesian President Joko Widodo on the basis that Veloso would be needed as a witness in the case against Sergio. Veloso was assigned a lawyer whom she only saw during the trial, and the interpreter was a student who studied English, despite Veloso speaking Tagalog. When

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<sup>21</sup> Kristine Joy Patag, "Veloso couple run to SC: Let Mary Jane tell her story," *Phil Star*, 3 September 2018, accessed 21 September 2019, <https://www.philstar.com/headlines/2018/09/03/1848338/veloso-couple-run-sc-let-mary-jane-tell-her-story>. Oliver Holmes, "Mary Jane Veloso: What happened to the woman who escaped execution in Indonesia?" *The Guardian*, 29 April 2019, accessed on 21 September 2019, <https://www.theguardian.com/world/2016/apr/28/mary-jane-veloso-indonesia-execution-reprieve>.

asked whether she regretted what had happened, Veloso said “No,” mistakenly thinking they were asking if she had committed a crime.

The General Attorney of Indonesia will review the verdict, which may serve as new evidence for appealing for clemency from the president. However, it is unlikely that Mary Jane Veloso will be entirely exempt from punishment.<sup>22</sup> The truth is that Veloso was caught smuggling drugs into Indonesia, a fate shared by millions of Filipino women who migrate for work due to their lack of power and financial resources, leaving them in vulnerable positions both physically and legally. Veloso’s case could be instrumental in bringing about change for those in similar circumstances and in addressing the challenges of the criminal justice process in the Philippines. This event reminds us that such conditions could also be the story of Indonesians, and as such, the Indonesian government should take steps towards implementing victim-centered law enforcement. In the criminal law process, there is a guideline for a prosecutor with a list of questions as follows:<sup>23</sup>

1. Is there a reason to believe that the person has been trafficked?
2. If there is clear evidence of a credible defense of duress, the case should be discontinued on evidential grounds, but
3. Even where there is no clear evidence of duress, but the offence may have been committed because of compulsion arising from trafficking, prosecutors should consider whether the public interest lies in proceeding to prosecute or –withdraw.

In some cases, victims may not be aware that they have been targeted by criminal acts, such as fraud or embezzlement, where perpetrators operate subtly to deceive them. In some instances, victims may also be perpetrators of crimes, commonly called victimless crimes, such as prostitution, drug use, abortion, and gambling. In cases of

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<sup>22</sup> Pia Gutierrez, “Mary Jane Veloso the only Pinay on Indonesia death row, embassy says,” *ABS-CBN News*, 10 October 2018, accessed on 1 August 2019, <https://news.abs-cbn.com/overseas/10/10/18/after-veloso-another-pinay-on-death-row-in-indonesia>.

<sup>23</sup> Fijian Office of the Director of Public Prosecutions, *The Prosecutor’s Handbook: An Introduction to Prosecutions* (2014), <http://www.pacii.org/fj/other/prosecutors-handbook.pdf>; and Department of Justice Hong Kong Special Administrative Region, *Prosecution Code* (2013), <https://www.doj.gov.hk/eng/public/pdf/2014/pdcode1314e.pdf>.

human trafficking related to other crimes, such as drug trafficking or falsification of documents, multiple victimizations may occur. Victims may experience a series of victimization or become victims through the criminal court system. Dual victimization can occur based on three factors, namely vulnerability, opportunity, and impunity.<sup>24</sup> Vulnerability arises when victims are part of a group vulnerable to crimes, such as those who are biologically immature or socially weak. In terms of the theory, there are three ways in which dual victimization can occur based on the factors of vulnerability, opportunity, and impunity. The first is vulnerability, the victims are included within a group that is vulnerable towards crimes, and this can be because they are still biologically immature or socially weak. The second is opportunity, sexual assault with its persistent occurrence due to perpetrators' potential to conduct their actions. Generally, the option is created when the perpetrators and the victim are alone at home, without the mother's victim or family member present. Impunity serves as access that is limited towards victims and law enforcement, where victims are vulnerable to multiple violations and criminal activities. Third is facilitation, whereby the government hopes to facilitate and bring forward accessibility towards the facility that caters towards victims of human trafficking.

#### D. NON-PUNISHMENT PROVISION IN HUMAN TRAFFICKING CASE

The Palermo Protocol's Article 26 states that Parties must allow for the possibility of not penalizing victims for participating in unlawful activities assuming they were compelled to do so, in accordance with their legal system's principles.<sup>25</sup> This principle of non-punishment for victims of trafficking who commit crimes while being trafficked

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<sup>24</sup>Richard F. Sparks, "Multiple Victimization: Evidence, Theory, and Future Research," *Journal of Criminal Law and Criminology* 72, no. 2 (1981): 776. See also Zenny R. Dewantari and Noraida Endut, "States Responsibility to Eradicate Violence Against Women Through the Due Diligence Framework in Human Rights: A Review of Protection and Punishment in the case of Indonesia," *Indonesian Journal of International Law* 19, no. 4 (2022): 575.

<sup>25</sup> It means that a victim may have committed an offence, but the reality is that the trafficked person acts without real "autonomy" means no free will or consent. There is no free will could be an excuse for the trafficked person.

is considered an essential element of a human rights approach and is seen as a solution to the tension that arises from treating traumatized victims as criminals. Hoshi stated that the need to include principles of non-criminalization arises because of the traumatization of a victim when he/she is treated as a criminal.<sup>26</sup> This article critically examines the relationship between the principle of non-punishment of trafficking victims and human rights, including its justification, application in factual cases, and legal impacts. In addition to examining the justification of the non-punishment principle, this research also engages with questions concerning its application in the factual case. However, the lack of guidance in the anti-trafficking instruments regarding the type of offence, necessary conditions for application, and legal aspects of the non-punishment principle limits the role of human rights law in providing specific guidance on its practical operation to protect victims. The article concludes that while the non-punishment principle is an important instrument in victim protection, national legislation and criminal law, in particular, must provide specific guidance on its implementation.

#### E. CURRENT FACTUAL CHALLENGES

Several institutions have been involved in enforcing the law and protecting victims of human trafficking in recent times. These include the Women's Empowerment Integrated Service Center (P2TP2A), Special Police Units - Women and Children Services Unit (PPA), and Special Services Room (RPK), although their structures are not yet functioning effectively. Other units, rather than the PPA, are handling many cases of human trafficking due to limitations in their capacity. Due to budget constraints, victims often have to bear the cost of forensic medical examinations. Other institutions providing services to victims include the National Task Force to Prevent and Handle HT/TIP, the Recovery Center (Integrated Service - PPT) and shelters. Government Regulation No. 9/2008 mandates the LPSK to handle human trafficking cases,

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<sup>26</sup> Bijan Hoshi, "The Trafficking Defense: A Proposed Model for the Non-Criminalization of Trafficked Persons in International Law," *Groningen Journal of International Law* 1, no. 1 (2013): 54. See also Marija Jovanovic, "The Principle of Non-Punishment of Victims of Trafficking in Human Beings: A Quest for Rationale and Practical Guidance," *Journal of Trafficking and Human Exploitation* 1, no. 1 (2017): 45.



and the agency has provided legal assistance to 257 victims of human trafficking as of the latest count, compared to 165 victims in 2016. In August 2017, the Supreme Court issued a decision letter containing guidelines for handling cases involving women and the law. The guidelines specify that judges must protect female victims (both children and adults) during the case examination period, consider evidence to ensure gender equality, and take into account the psychological trauma resulting from human trafficking.

The decision has been made to follow guidelines for preventing using video recordings as evidence to protect victims. In 2017, the government compensated 54 victims, and the LPSK provided restitution for 55 people who are unfortunate to be associated with criminal activity, including 54 victims of human trafficking and 1 of domestic violence. The total amount of restitution supported was 1.082.535 Indonesian Rupiah which increased with an additional payment of 33.000 Indonesian Rupiah was given to a protected victim in Middle Lombok in January 2018.<sup>27</sup> Despite these efforts, there are still challenges related to ineffective law enforcement against trafficking in persons, including a low number of processed cases and minimal sanctions against perpetrators. Addressing these challenges is necessary to improve the situation. Factors which are deemed to correlate with a low attempt of law enforcement towards legal case on this case are as follows:

1. The lack of Government's commitment to fight against human trafficking and migrant smuggling acts, precisely trafficking in person related to drugs, such as that of Mary Jane Veloso and other related cases.

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<sup>27</sup> Nabila Tashandra, "Sepanjang 2015, LPSK Terima 1.590 Permohonan Perlindungan Saksi dan Korban [Throughout 2015, LPSK Received 1.590 Requests for Witness and Victim Protection]," *Kompas*, 30 December 2015, accessed on 1 April 2019, <https://nasional.kompas.com/read/2015/12/30/13382921/Sepanjang.2015.LPSK.Terima.1.590.Permohonan.Perlindungan.Saksi.dan.Korban>. Eidi Krina Jason Sembiring, "LPSK: Restitusi dan Kompensasi Jadi Catatan Positif 2017 [LPSK: Restitution and Compensation as Positive Notes in 2017]," *Sindo News*, 10 January 2018, accessed on 1 April 2019, <https://nasional.sindonews.com/read/1272505/12/lpsk-restitusi-dan-kompensasi-jadi-catatan-positif-2017-1515571436>.

2. Lack of capacity or professionalism of law enforcement agencies and relevant parties in handling such situations. This is in addition to the lack of investigation techniques, which can be tackled by cooperating with an intelligent agency.
3. It is alleged that this criminal act is conducted by organized syndication to make it harder for the law enforcement agency to disclose the cases and convict the perpetrators, especially in cross-border areas, among ASEAN and other countries worldwide.
4. There is an indication of the involvement of some Government and Law Enforcement Agencies, thereby making this criminal activity challenging to fight. Therefore, coordination and cooperation between existing institutions are needed.

Despite the long road ahead in ensuring the rights of victims of human trafficking, there is hope for the law enforcement system. Specifically, there are cases of human trafficking involving Indonesian sailors on foreign vessels, where the conditions have been reported to be worsening. The sailors work with fishers from Taiwan, Thailand, Malaysia, and the Philippines in Indonesia, as well as in the waters of Thailand, Sri Lanka, Mauritius, and India. Recruiting agents from Myanmar, Indonesia, and Thailand give them false identities and work permits and force them to work for low wages or no pay at all, while subjecting them to physical assault. These sailors are unable to leave the ship or report the violence to authorities due to threats of arrest resulting from their false identifications and work permits. In 2013, LPSK handled 57 Indonesian workers who became ship assistants (ABK) in Africa and were suspected of being victims of human trafficking. These workers were given work and pay that did not correspond to their signed contracts, and some were subjected to forced labor, unpaid salaries, and possibly even murder. LPSK provided protection and support for these workers as witnesses in court and facilitated the allocation of restitution during the case's prosecution. The West Jakarta Court ruled that restitution should be paid in 1,2 billion Indonesian Rupiah to the 57 ABK who were victimized. This case represents a significant effort to

apply the non-prosecution provision in the law enforcement system for victims of human trafficking.<sup>28</sup>

### III. CONCLUSION

Based on the analysis above, it is clear that there are challenges in effectively enforcing laws against human trafficking, with recommendations to address the challenges. First, there needs to be greater socialization and education about handling human trafficking cases, particularly in isolated and poor areas, at borders, and for incoming individuals. This should be followed by concrete steps to enforce the law. Second, the law should be maximized to include realistic and fair steps that prioritize the protection of victims. For example, the non-punishment provision should be implemented, especially for victims of human trafficking who follow through with criminal cases and can prove that they were victims under the causality principle. Third, there needs to be an elevation in the quality of work, partnerships, and coordination between institutions to form a synergy for addressing the complex issue of human trafficking. This should involve the role of intelligence and a legal enforcement system centered around victims' perspectives to bring justice and fairness to the interested parties. In conclusion, addressing the challenges of human trafficking in this region requires a multi-pronged approach that prioritizes education, enforcement, and victim protection, as well as improved partnerships and coordination between institutions.

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<sup>28</sup> "Laporan Mengenai Perdagangan Orang, Pekerja Paksa, dan Kejahatan Perikanan Dalam Industri Perikanan di Indonesia [Report on Human Trafficking, Forced Labor, and Fisheries Crime in the Indonesian Fishing Industry]," International Organization for Migration and Ministry of Maritime Affairs and Fisheries, accessed 1 April 2019, [https://kkp.go.id/wp-content/uploads/2017/01/8-IOM\\_KKP\\_Conventry\\_INDO\\_hires-min.pdf](https://kkp.go.id/wp-content/uploads/2017/01/8-IOM_KKP_Conventry_INDO_hires-min.pdf). See also Robertus, Belarminus, "LPSK: TKI Paling Rentan Jadi Korban Perdagangan Orang [LPSK: Migrant Workers Most Vulnerable to Human Trafficking]," *Kompas*, 5 April 2018, accessed 1 April 2019, <https://nasional.kompas.com/read/2018/04/05/15255541/lpsk-tki-paling-rentan-jadi-korban-perdagangan-orang>.

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