

# TRAINING MODULE ON LEGAL ASSISTANCE FOR VICTIMS OF TRAFFICKING FOR PARALEGALS





# **TRAINING MODULE ON LEGAL ASSISTANCE FOR VICTIMS OF TRAFFICKING FOR PARALEGALS**

## DRAFTING TEAM

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# Foreword

Trafficking in Persons (TIP) is a serious crime and a gross violation of human rights. From 2005 to 2022, IOM Indonesia had helped more than 9,600 victims of TIP, of which 67 percent are women. The assistance provided by IOM includes identification, medical rehabilitation, basic hygiene kits, temporary shelter, voluntary return and reintegration, as well as legal assistance. Poverty as one of the main driving factors for TIP affects women and men, although women and children are more likely to face challenges to get out of poverty and they have additional risks of being trafficked due to inequality, lack of access to education and other essential or basic resources. TIP victims are trafficked for various purposes, including sexual exploitation, forced labor, slavery-like practices, debt bondage and organ transplanting.

Taking into account its complexity, the eradication of TIP does not only require action from the government as a legislative body and law enforcement agency, but also need participatory action of Non-Governmental Organizations (NGOs) and civil society that may provide support for victims. Through direct involvement of IOM and witnesses and/or victims of TIP, as well as through close coordination with members of the Task Force for the Prevention and Handling of Trafficking in Persons (GT PP TIP), IOM has received input on limited access to justice. Stigmatization and discriminatory treatment experienced by the victims has caused them to hesitate to report or proceed with their cases. Victims and service providers normally do not have adequate awareness of their legal rights, which prevents victims from seeking appropriate assistance according to their needs. Consequently, they often prefer mediation with the recruiter or employer rather than taking formal legal proceedings, especially if they decide to settle their case by adopting customary methods or local social norms. There has been increasing awareness and understanding among the public or community to become paralegals. To help victims to access justice, Paralegals acquire knowledge about national law and make them familiar with the legal proceedings from the time a TIP case is reported to the police until the court hearing stage. They can identify institutions or organizations that can help victims and know the legal rights of the victims. Therefore, paralegals can assist victims during the legal proceedings and participate in awareness-raising activities, as well as provide legal consultation and advocacy.

Basically, there is correlation between legal empowerment and legal aid. Fulfillment of individual human rights can be guaranteed through the support of legal practitioners. Unfortunately, not all community groups have equal access to legal aid. Less fortunate communities who lack access to socio-economic and cultural sources as well as more vulnerable groups of community, such as migrant workers who do not have legal documents and people with less resources, often experience difficulties in accessing legal assistance, especially with respect to TIP cases.

To overcome these challenges and restrictions, more community members should have access to legal empowerment. Paralegals who work with universities, legal aid organizations, and voluntarily should be able to bridge the gap in providing legal assistance, identifying the occurrence of TIP, assessing victims' needs, and facilitating access to justice for witnesses and/or victims of TIP. Legal empowerment is measures to equip any individual with legal understanding and use the same to achieve or guarantee the fulfillment of individual's fundamental rights.

This module was developed to increase awareness, understanding, and measures of paralegals to provide victims with support for accessing available legal assistance. Increasing knowledge about TIP and paralegal capacity in assisting victim of trafficking cases in Indonesia is an integral part of measures to combat and eradicate TIP. Paralegals play an important role in providing legal assistance as they are at the forefront in the community or area where victims return from their workplace.

In addition to provide basic understanding of TIP, this training module aims to train paralegals in assisting TIP victims, ranging from conducting identification, providing first aid, to helping victims to take legal measures to achieve justice and withdraw their rights. This module also provides comprehensive description of legal and judicial framework in Indonesia.

This training module was designed on the initiative of IOM Indonesia and was developed by two consultants, namely Justitia Avila Veda and Ricky Raymon, in coordination with Eny Rofiatul Ngazizah, Ayu Hannah Zaimah, and Asila Kamilia, with funding assistance of Office to Monitor and Combat Trafficking in Persons, U.S. Department of State under the project “*Advancing Measures to Prosecute TIP and Protect VOTs: Improving Efforts to Prosecute Criminal Acts of Trafficking in Persons and Protection of Victims of Trafficking in Persons (AMPUH)*.” This module was also developed through extensive contributions and support from academics, legal aid organizations, Legal Aid Consultation Institutions (LKBH) existing in universities, as well as Non-Governmental Organizations and service providers dealing with labor migration issues and combating TIP in Indonesia. We hope this training module can help those who are at the forefront in assisting and providing restitution to victims of TIP and eradicating these extraordinary crimes against humanity.



**Louis Hoffmann**

Chief of Mission

IOM Indonesia

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# INTRODUCTION



## **Aims of Training Module**

The aim of this training module is to empower and equip paralegals from universities, as the first point of contact, with the appropriate knowledge and skills in handling victims and cases of TIP, before involving other parties, such as NGOs, government agencies and legal professionals.

This training module provides basic information about the criminal and civil judicial system in Indonesia which is closely related to TIP. In addition, this module is equipped with several examples of practical cases that are intended to increase paralegals' knowledge and understanding of TIP. The module also provides paralegals with TIP-related practical skills which are needed to identify, handle, and refer to the TIP cases appropriately and in a timely manner.

## **Use of Training Module**

This training module consists of six modules. The training facilitator delivers all the training material in two days, namely three modules per day with a total training duration of no more than 4 hours per day, including discussion of case studies and other related exercises. For each training session, the training module encompasses information as follows:

- Overview of the session, including the purpose of the session and the proposed duration.
- Facilitator notes providing detailed instructions on how to deliver each part of the session, including suggested methods, exercises and activities.
- PowerPoint slides and handout.
- Case Study if relevant.

## **Participants**

The training organizer must explain the criteria for participants, among others their profile, scientific background, gender, education, language, knowledge and experience with issues and handling of TIP cases. The participants must at least meet the following criteria:

1. Participants are at least third year students of the Faculty of Law who have passed courses in criminal law, criminal procedural law, civil law, and civil procedural law;
2. Participants are members of the legal consulting and aid institute of the Faculty of Law and will still become members a year after the training;
3. Participants have a commitment to carry out the functions and code of ethics of a paralegal;
4. Participants have a diversity of gender, ethnicity, religion, and/or race.

The ideal number of participants in this paralegal training is 20 (twenty) people and may not be more than 25 (twenty-five) people. The number of participants must be adjusted to adequate training facilities and equipment.

## **Facilitators**

Facilitators in this training must understand and have experience in applying the principles of training for adults. The facilitators must also have an understanding of the TIP issue. At least the facilitator must meet the following criteria:

1. Having experience and knowledge about facilitation, law, TIP, and empowerment of community legal resources;
2. Being able to build trust between participants;
3. Knowing the latest issues regarding the TIP problem;
4. Willing to take participatory role;
5. Humble and willing to listen;
6. Communicative;
7. Able to build the required training atmosphere.

## **Training Method**

This paralegal training adopts the adult learning method (andragogy) which emphasizes the participatory learning of participants. To be able to realize the training, each participant must be given the same opportunity to express his/her opinion. The facilitator must invite each participant to be active and willing to share their knowledge and experiences.

This module is designed for online training, so it is different from conventional paralegal training which is conducted offline.

However, it is hoped that the materials contained in this module can be developed for offline training if time and facilities permit.

For materials that need in-depth explanation, resource persons who are experts in their relevant fields can be invited to deliver the materials. These resource persons must also have experience in delivering materials in a participatory manner, although later in the interactive sessions the facilitator will assist them.

## **Resource Persons**

As previously mentioned, the resource persons consist of experts in their relevant fields and have experience in participatory-approach teaching. More specifically, informants must meet the following criteria:

1. Having competence and expertise in the materials to be delivered;
2. Having orientation to andragogy teaching methods focusing on active participatory learning;
3. Committed to adjusting and fulfilling the training requirements set out in this module;
4. If possible, having experience in training and/or working with paralegals.

The resource persons invited to fill in the material must obtain a clear frame of reference regarding the material to be submitted, the purposes of delivery, duration, methods of delivery, and participant profiles. The materials prepared by the resource person must be communicated with the training organizers and facilitators.

## Training Venue

Since the training will be conducted online, the venue of the training will depend on the location of the participants, facilitators and resource persons. All people involved in the training should be in a place that has a stable internet signal, good lighting, away from crowds so as to create a conducive, calm, safe and comfortable learning environment.

## Training Kits

The hardware required for the training is of course a laptop, computer, or notebook (tablets can be used but try not to use cellphones) with a functioning microphone and camera, internet router, and adapter for gadgets.

The software required for the training includes applications for conferences such as Zoom Meeting, Google Meeting, or Jitsi that has screen-share feature facility.

Preference will be given to applications that have a breakout room feature where participants can enter a separate room to discuss a particular case or subject matter. It is important for the organizer to ensure that all the necessary training tools have been prepared.

## Training Evaluation

In the Annex section, the facilitator will find the Pre-Training and Post-Training Tests and the Training Evaluation Form. This form and test will help the facilitator to measure the extent to which participants understand the training materials that have been delivered and also to receive suggestions and input on how to improve future or subsequent training. For this purpose, the training facilitator must first allocate time to distribute the Pre-Training test sheets before the training begins and the post-Training test and Evaluation sheets right after the training ends.

## Training Schedule

For the effective paralegal training, we have prepared a training schedule that can be adjusted with the situation and needs of the participants.

### Training Schedule

Time	Agenda	Description
<b>Day I</b>		
<b>08.00 - 08.15</b>	Registration of participants, pre-test	
<b>08.15 - 08.30</b>	Welcome speech	
<b>08.30 - 10.00</b>	Module 1: What is Trafficking in Persons	Resource Person and Facilitator
<b>10.00 - 12.00</b>	Module 2: Gender-Sensitive Approach in Assisting Victims of TIP	Resource Person and Facilitator
<b>12.00 - 13.00</b>	Lunch Break	
<b>13.00 - 14.00</b>	Module 3: Code of Ethics and Roles of Paralegals in Providing Assistance for Victims of TIP in accordance with the Legal Instruments	Resource Person and Facilitator

Time	Agenda	Description
<b>Day I</b>		
<b>14.30 - 14.50</b>	Discussion: Question and Answer with Facilitator	
<b>14.50 - 15.00</b>	Conclusion and Closing Remarks by Facilitator	
<b>Day II</b>		
<b>08.00 - 08.15</b>	Summary of Materials and Review of Day I Training	Facilitator
<b>08.15 - 09.45</b>	Module 4: Basic Counseling for Victims of TIP	Resource Person and Facilitator
<b>09.45 - 10.45</b>	Module 5: How to Identify TIP Cases	Resource Person and Facilitator
<b>10.45 - 12.15</b>	Modules 6 & 7: Criminal and Civil Remedies in TIP Cases	Resource Person and Facilitator
<b>12.15 - 12.45</b>	Discussion: Question and Answer	Facilitator
<b>12.45 - 13.00</b>	Conclusion and Closing Remarks	Facilitator
<b>Day III</b>		
<b>08.00 - 08.15</b>	Summary of Materials and Review of Day I and Day II Trainings	Facilitator
<b>08.15 - 09.15</b>	Exercise: Case Study	
<b>09.15 - 09.45</b>	Discussion: Question and Answer	
<b>09.45 - 10.45</b>	Formulating Follow-Up Plan (Rencana Tindak Lanjut/RTL)	
<b>10.45 - 11.00</b>	Conclusion, Post-Test, and Closing	



# 1

## UNDERSTANDING TIP AND ROLES OF PARALEGALS IN PROVIDING ASSISTANCE FOR VICTIMS OF TIP



<b>Purposes</b>	<ol style="list-style-type: none"> <li>1. Participants understand the definitions and indicators of Trafficking in Persons (TIP) in accordance with available international and national legal instruments.</li> <li>2. Participants understand the modus of TIP.</li> <li>3. Participants understand the types of exploitation in TIP.</li> <li>4. Participants understand the roles and scope of work of paralegals in assisting TIP victims.</li> <li>5. Participants understand the significance of collaboration in assisting victims.</li> </ol>
<b>Main Points</b>	<ol style="list-style-type: none"> <li>1. Concept, indicators, and legal instruments of TIP.</li> <li>2. Modus of TIP Cases in Indonesia.</li> <li>3. Types of exploitation in the TIP in Indonesia.</li> <li>4. The roles of paralegals in accordance with the legal instruments.</li> <li>5. Collaboration scheme in assisting victims.</li> </ol>
<b>Methods</b>	<ol style="list-style-type: none"> <li>1. Explanation.</li> <li>2. Group Discussion.</li> </ol>
<b>Tools</b>	<ol style="list-style-type: none"> <li>1. Laptop</li> </ol>
<b>Duration</b>	<ol style="list-style-type: none"> <li>1. (170) minutes</li> </ol>
<b>Steps</b>	<ol style="list-style-type: none"> <li>1. The facilitator begins the session by introducing herself/himself and shares the objectives of the session. (5')</li> <li>2. The facilitator asks participants to introduce themselves to one another (15'): <ul style="list-style-type: none"> <li>- Full name, institution, and expectation of the training session.</li> </ul> </li> <li>3. The facilitator begins the session by asking participants to name TIPS cases they may know. (15')</li> <li>4. The facilitator introduces the speaker who will deliver his/her presentation materials. (3')</li> <li>5. The speaker explains his/her materials on definitions, modus, types of exploitation, and characteristics of Law Number 21 of 2007 on the Eradication of Criminal Act of Trafficking in Persons (TIP) ("Law <b>21/2007</b>"). (40')</li> <li>6. Question and answer session on the materials presented (maximum 3 questions from participants appointed by the facilitator). (10')</li> <li>7. Participants are grouped into 4 (identified by number) and each group then enters a breakout room with 1 case study. Each group is asked to discuss and decide whether their case is a TIP case or not. If yes, the discussion is continued with identification of elements, modus and types of exploitation. Participants are asked to estimate the loss incurred by the victim in the relevant case. (15')</li> <li>8. Each group then returns to the main meeting room to deliver their presentation on the group's findings. When group 1 is delivering their presentation, group 2 must give their responses, and so on, until group 4 delivers their presentation and group 1 gives their responses. The presentation and response session takes place for 5 minutes. The facilitator serves as a timer as well. Once the discussion session finishes, the facilitator asks the speaker to continue his/her explanation or session. (20')</li> <li>9. The speaker delivers his/her materials on the role of paralegals and concept of collaboration in supporting victims. (20')</li> <li>10. Facilitator begins a question and answer/discussion session. (30')</li> </ol>

## Materials

1. Main reading materials:
  - a. Guidelines on Protection for Victims of Trafficking in Persons, Jakarta: IOM Indonesia, National Police of the Republic of Indonesia, Public Prosecutor's Office of the Republic of Indonesia, Supreme Court of the Republic of Indonesia, 2017.
  - b. Attached speaker's presentation materials.
  - c. Attached Handout.
2. Additional reading materials:
  - a. Law Number 21 of 2007 on Eradication of Criminal Act of Trafficking in Persons.
  - b. Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2021 on Paralegals in the Provision of Legal Assistance.
3. Attached Case Studies.

## Handout

### 1. International Legal Instruments on Trafficking in Persons

There are two main international legal instruments that regulate directly trafficking in persons, namely:

- *Protocol to Prevent, Suppress, and Punish Trafficking in Persons especially Women and Children 2000* (Palermo Protocol), and;
- *United Nations Convention against Transnational Organized Crime* (UNTOC).

The Palermo Protocol is the most important and influential international instrument on trafficking in persons. This protocol stipulates the state members to criminalize human trafficking as defined in the Protocol. UNTOC is the main international instrument in the eradication of transnational organized criminal acts. Countries must become parties to the UNTOC before they can become the state parties to the Palermo Protocol.

### 2. Palermo Protocol

The Palermo Protocol is the first global legally binding instrument with an agreed definition on trafficking in persons. The definition was adopted by the General Assembly of the UN in 2000 and entered into force on 25 December 2003. The protocol is intended to improve cross-border international cooperation (in handling the international criminal acts) and to encourage the formulation of national law that can sufficiently fight against the crimes. The adoption of Palermo Protocol was followed by lengthy debates on definition of trafficking in persons. There were confuse of some fundamental concepts such as follows:

- Relationship between trafficking in persons and prostitution;
- Victim's consent;
- Relationship between trafficking in persons and people smuggling;
- Extended definition of trafficking in persons to cover other objectives excluding sexual exploitation (prostitution);
- Extended definition of trafficking in persons to cover adult male and boy victims.

Progress on the ratification of the Palermo Protocol has been slow. In 2016, there were 170 Member States to the Protocol and 117 States had ratified it.<sup>1</sup> Indonesia has ratified and adopted the Protocol by Law Number 14 of 2009 on Ratification of *Protocol to Prevent, Suppress, and Punish Trafficking in Persons especially Women and Children 2000*.

## 2.1 Definition of Trafficking in Persons

Article 3a of the Palermo Protocol defines trafficking in persons as follows:

***“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 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 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;***

This definition contains three main elements, namely:

<b>Process</b>	The act of recruiting, transporting, transferring, harboring or receiving a person.
<b>Method</b>	Threat or force, coercion, abduction, fraud, deception, abuse of power or position of vulnerability or giving or receiving of payments or benefits in order to obtain the consent of a person who controls over another person.
<b>Purpose</b>	Exploitation

### Concept of Consent

Article 3(b) of the Protocol states that the consent of a victim (an adult) of trafficking in persons to the intended exploitation shall be irrelevant when deceptive, coercive or other improper means have been used. Accordingly, once the elements of TIP including the means thereof (coercive, deceptive means, etc.) have been proven, any defense stating that the ‘victim has given his/her consent’ becomes irrelevant. This is because the ‘consent’ has been obtained through improper means, is not given freely, is only given partially or even is withdrawn later by the victim.

In practice, the issue of consent is quite challenging. Some issues must be taken into account when considering the victim’s consent:

- The ability to make decisions without coercion allows **a person to withhold consent**, or refuse to perform, or allow certain actions to occur.
- The victim’s consent must be given **by considering all aspects of an act**. Consent can only be recognized legally when the person concerned has understood all aspects of the situation. He must also have the freedom to give consent. For example, a migrant worker agrees to undergo psychological and medical tests. However, he was not informed that when he passed the test, he

<sup>1</sup>Detailed status of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons especially Women and Children 2000, [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en).

was in debt to the recruiting agency, and he could not refuse to be sent overseas without paying the test fee. In this case, it can be said that there is no agreement.

### Child Victims of Trafficking in Persons

#### **Consent is considered irrelevant when the victim is a child under the age of 18 years.**

Article 3(c) of the Palermo Protocol states that the use of coercive or deceptive means does not need to be taken into consideration in concluding the presence of a criminal act of trafficking in persons.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation, regardless of the child consent, and with or without the use of the coercive/deceptive means shall be considered as trafficking in persons.

#### **An Act Under Coercion**

One of the purposes of the Palermo Protocol is outlined in Article 2 (b), namely to “protect and assist the victims of trafficking in persons with full respect for their human rights.” The importance of protection of victims of trafficking in persons and their rights is the warranty that the state will not prosecute or punish the victims due to the violation committed when they are trafficked, such as bringing fake passport or working without a work permit, even if they have given consent. The state must otherwise treat them as persons requiring protection.

### 3. Regulations on Trafficking in Persons in Indonesia

Law No. 21 of 2007 on Eradication of Trafficking in Persons defines TIP in Article 1 point (1) as follows:

- (1) *Trafficking in Persons shall be 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 confinements of fraud, of deception, of the abuse of power or of position of vulnerability, debt bond or of the giving of payments or benefits to achieve the consent of a person having control over another person, either committed within a state or between states for the purpose of exploitation or resulting in the exploitation of persons.***

In addition, Law No. 21/2007 describes the relevance between this Law and the Palermo Protocol as follows:

*“The ratification of this Law serves also as the manifestation of Indonesia’s commitment to adopt the 2000 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) that has been signed by the Government of Indonesia.” (Elucidation of Law No. 21/2007).*

Definition of TIP as set forth in Article 1 point 1 is described in detail in Article 2 paragraph (1) of Law No. 21/2007 as follows:

*“Anyone who **recruits, transports, harbors, sends, transfers, or receives a person through the threat of force, use of force, abduction, incarceration, fraud, deception, abuse of authority or position of vulnerability, debt bondage or the giving of payment or benefit despite the giving of consent by another individual having charge over the person,** for the **purpose of exploiting** the person within the territory of the Republic of Indonesia, shall be subject to a minimum criminal sanction of imprisonment of 3 (three) years and a*

### Act/Activity

- ✓ Recruitment
- ✓ Transportation
- ✓ Shelter
- ✓ Harboring
- ✓ Transfer
- ✓ Receipt of persons

### Method

- ✓ Threat
- ✓ Use of force
- ✓ Abduction
- ✓ Confinement
- ✓ Deception
- ✓ Fraud
- ✓ Abuse of Power
- ✓ Vulnerable position
- ✓ Debt bondage
- ✓ Giving payments or benefits

### Purpose

Exploitation, including but not limited to:

- ✓ Prostitution
- ✓ Forced labour or services
- ✓ Slavery or practices similar to slavery
- ✓ Oppression
- ✓ Extortion
- ✓ Physical abuse
- ✓ Sexual abuse
- ✓ Reproductive organ abuse
- ✓ Removing or transplanting organs and/or body tissues
- ✓ Use of one's labor or skills by another party to gain material or immaterial benefits

*maximum of 15 (fifteen) years and a minimum fine of Rp120.000.000,00 (one hundred and twenty million rupiah) and a maximum of Rp600.000.000,00 (six hundred million rupiah)."*

The article covers TIP committed both within the territory of Indonesia and outside the territory of Indonesia. The article gives the components of TIP as follows:

## Key terminologies of Law No. 21 of 2007

### Exploitation

Article 1 point (7) defines exploitation as:

"Acts with or without the victim's consent which include but are not limited to prostitution; forced labor or services; slavery or practices similar to slavery; oppression; extortion; physical, sexual or reproductive organ abuse; or unlawfully removing or transplanting organs and/or body tissues; or use of one's labor or skills by another party to gain material or immaterial benefits."

### Sexual Exploitation

Article 1 point (8) defines sexual exploitation as follows:

"All forms of abuse of victim's sexual organs or other organs for profit, including but not limited to all prostitution and fornication activities."

## Recruitment

Recruitment shall mean actions that include inviting, gathering, bringing, or separating someone from their family or community (Article 1 point 9). It must be understood that the definition set forth by Law No. 21/2007 refers to recruitment for exploitation purposes.

## Debt Bondage

Debt Bondage shall mean the act of positioning people in the status or condition of pledging or being forced to guarantee themselves or their families or those who are their responsibility, or their personal services as a form of debt repayment (Article 1 point 15). Debt bondage often occurs in trafficking cases which involve sending workers abroad. The agent or recruiter may withhold salary to cover shipping costs, including travel and training costs. The victim may not get any payments, and as a result, it is assumed that the debts will never be paid. This method is often used by traffickers to exploit the victims.

## General Explanation of Law No. 21/2007

### Consent

Law No. 21 of 2007 states that the consent of a victim is irrelevant in determining whether or not a TIP has occurred and shall not eliminate the prosecution of the offender of such crime. (Article 26).

### EXAMPLE

A woman agreed to be hired as a domestic worker in Malaysia for a salary of 450 Ringgit. If the woman then does not receive the promised salary, or is subjected to physical or sexual abuse, the victim's prior consent to work in Malaysia cannot be used as an excuse for the trafficker to deny the allegations of trafficking in persons because the victim was tricked into being exploited. This means that the crime can be prosecuted based on the provisions of Law 21/2007 concerning Trafficking in Persons. It should always be remembered that no man will give his consent to be exploited.

### For the Purpose of Exploitation

Law No. 21/2007 states that the intention to exploit is sufficient to prove the component of 'purpose'. As provided for in Article 2 paragraph (1) of Law No. 21/2007, exploitation does not necessarily prove that a TIP case is occurring, if the perpetrator has been aware that his/her action results in other persons being exploited. When the exploitation has not occurred and there is only intention to exploit, the perpetrator's action has been considered to have met **the formal offence of TIP**. On the other hand, when exploitation has occurred, the case is categorized as **a material offence of TIP**.

### An Act is Under Coercion

Article 18 of Law No. 21/2007 states that A victim who commits a crime under coercion by an offender of the criminal act of trafficking in persons shall not be liable to criminal charges. The term "coercion" in the context of this article means a condition whereby the victim is forced to commit an act which is in contradictory to his/her intention. If a person is arrested for a crime committed under coercion or force, he/she **shall not be subject to prosecution**.

## EXAMPLE

A woman agreed to be hired as a domestic worker in Malaysia for a salary of 450 Ringgit. If the woman then does not receive the promised salary, or is subjected to physical or sexual abuse, the victim's prior consent to work in Malaysia cannot be used as an excuse for the trafficker to deny the allegations of trafficking in persons because the victim was tricked into being exploited. This means that the crime can be prosecuted based on the provisions of Law 21/2007 concerning Trafficking in Persons. It should always be remembered that no man will give his consent to be exploited.

## Indicators of TIP

Some indicators that can be used as references to identify the occurrence of TIP in terms of activity in the place of origin and transit area:

### Indicators of the Occurrence of TIP

Some indicators that that can be used as references to identify the occurrence of TIP based on the activities in the place of origin and transit area:

	Place of Origin	Transit Area
<b>Recruitment</b>	<ul style="list-style-type: none"><li>• Deception in the form of job offers and promises of wealth.</li><li>• Sudden departure from hometown.</li><li>• The presence of injuries due to violation, abnormalities in the body, or threat.</li><li>• The victim has been missing for quite a long period of time.</li><li>• Promise to be married with the mail-order bride modus operandi.</li></ul>	None.
<b>Advertisement</b>	<ul style="list-style-type: none"><li>• Offer to migrate, especially with the lure of free of charge or fees that can be paid when the victim is already working.</li><li>• Using social media to recruit prospective employees.</li><li>• Offer gender-specific and youth only jobs.</li><li>• Victims are recruited through telemarketing or personal approach to the victims.</li><li>• Giving gifts to children or teenagers for no apparent reasons.</li><li>• Agent offers job without agreement.</li><li>• Agent will bear all costs before the victim works.</li></ul>	None.

<b>Residence/ Accommodation</b>	<ul style="list-style-type: none"> <li>• Victims reside in a crowded place of prostitution that is full of migrants.</li> <li>• Approach to children in orphanages, schools and other places where children stay together.</li> <li>• People offer jobs where migrants usually get together, such as at bus terminals.</li> <li>• Recruitment of workers in foreign area.</li> <li>• Condition of temporary accommodation, which is unsafe, not suitable for living, with poor sanitation and tends to be closed.</li> </ul>	<ul style="list-style-type: none"> <li>• Group accommodation is paid for by one person. This can be a sign that none of the members in the group have access to money and financing.</li> <li>• Being in accommodation or residential area which is famous for its criminal activities.</li> </ul>
<b>Transportation</b>	<ul style="list-style-type: none"> <li>• Evidence that the victim's movements are monitored.</li> <li>• Child victims travel without being accompanied by family members or relatives.</li> <li>• Group of children traveling with one adult.</li> <li>• Use of detoured transportation routes to avoid security checks.</li> </ul>	<ul style="list-style-type: none"> <li>• A group of people in one group where there is one person who controls all the documents.</li> <li>• Group traveling together but not speaking the same language.</li> <li>• Route taken is associated with human trafficking.</li> <li>• Children travel without being accompanied by parents or relatives or by one adult.</li> <li>• Purchase of tickets close to departure, especially airline tickets.</li> <li>• Stop near the checkpoint at the border area to change means of transportation.</li> <li>• There is one person speaking on behalf of the group.</li> </ul>
<b>Communication</b>	<ul style="list-style-type: none"> <li>• Intense communication between trafficker and victim including victim's relatives during recruitment phase.</li> <li>• Letters, telephones, emails, etc. are sent back to the sender's location indicating the victim does not have freedom of movement or other rights at the destination.</li> </ul>	<ul style="list-style-type: none"> <li>• Frequent international calls to the destination.</li> <li>• The identity of the person called is unknown, only the number.</li> </ul>
<b>Finance</b>	<ul style="list-style-type: none"> <li>• Money paid to parents or guardians to take children as workers or other similar modes.</li> <li>• The victim's families or relatives try to pay off the debt bond not long after the victim leaves his hometown.</li> <li>• Trafficker sends remittances to the victim's family in order to restrain the victim from escaping. Remittance controlled by a third person is a strong indication of TIP.</li> </ul>	<ul style="list-style-type: none"> <li>• Among all members of a traveling group, only one person is holding money.</li> <li>• For TIP that occurs across countries, it can be identified that there is only one person holding the currency of the destination country.</li> <li>• The money found is not commensurate with the victim's type of work.</li> </ul>

Some indicators that that can be used as references to identify the occurrence of TIP based on the types of exploitation of TIP:

		Types of Exploitation			
General Indicators	Children	Sexual Exploitation	Labor Exploitation	Domestic Slavery	Forbidden Activities
<ul style="list-style-type: none"> <li>• Unable to negotiate working conditions.</li> <li>• Unable to stop working.</li> <li>• Expression of fear and anxiety.</li> <li>• Restrictions on communication and social interactions.</li> <li>• Not familiar with the local language.</li> <li>• Distrust of government due to fear of being arrested and/or deported.</li> <li>• Very little or almost no salary.</li> <li>• Working very long hours.</li> <li>• Injuries caused by violence.</li> <li>• Poor living conditions.</li> <li>• Tend to be loyal to the perpetrator because of the fear and trauma of the perpetrator (comply with the trafficker's request, cover up the trafficker's crime).</li> <li>• Lack of trust in other people</li> <li>• Loss of memory.</li> <li>• Forced marriage to control the victim.</li> </ul>	<ul style="list-style-type: none"> <li>• Separate accommodation from other family members.</li> <li>• Work clothing/ costumes of child sex workers.</li> <li>• Traveling without accompanied by an adult.</li> <li>• Traveling with a group of people who do not affiliate with the victim.</li> <li>• Do not have access to education.</li> <li>• Do not have friends of the same age outside the work premises.</li> <li>• Facial expression of intimidation and behavior that is not appropriate for the age of the child victim.</li> <li>• The child victim spends most of his time in poor places for development, such as in brothels.</li> <li>• Separate accommodation from other family members.</li> <li>• Work clothing/ costumes of child sex workers.</li> <li>• Traveling without accompanied by an adult.</li> </ul>	<ul style="list-style-type: none"> <li>• Age tends to be young.</li> <li>• Signs that the victim is 'controlled' by the trafficker are in the form of fear to communicate and tends to be introvert.</li> <li>• Women are always be supervised when leaving or coming home from work, or to other places.</li> <li>• Sexually provocative clothing's.</li> <li>• No ID Card (document is controlled by trafficker).</li> <li>• If they have ID or work-related documents, they are usually fake.</li> <li>• Limited vocabulary in the local language.</li> <li>• Very long working hours.</li> <li>• There is an obligation to meet certain revenue targets.</li> <li>• Earn a very small wage when compared to the workload.</li> <li>• The brothel manager sends part of the payment to another trafficker.</li> <li>• Moving around to different places to work.</li> </ul>	<ul style="list-style-type: none"> <li>• No employment documents (work visa or ID).</li> <li>• If they have ID or work documents, they are usually fake.</li> <li>• No payroll advice.</li> <li>• Very lacking or non-existent security equipment.</li> <li>• No work contracts.</li> <li>• Tight security measures to prevent the victim from escaping.</li> <li>• Very long working hours</li> <li>• Forced restriction of movement and inadequate accommodation.</li> <li>• The dependence of workers on employers for various aspects of life (transportation, accommodation, work).</li> <li>• Lack of basic training, certification, or work permits.</li> </ul>	<ul style="list-style-type: none"> <li>• Living with the employer's family.</li> <li>• Do not eat together with the employer's family.</li> <li>• No personal space.</li> <li>• Rarely or never leaves the house for social reasons.</li> <li>• Always be accompanied by the employer.</li> <li>• Do not have identification or travel documents (controlled by perpetrator or employer).</li> <li>• If they have ID or work documents, they are usually fake.</li> <li>• Is a victim of humiliation, harassment, threats, or violence.</li> </ul>	<ul style="list-style-type: none"> <li>• Begging in public.</li> <li>• One adult becomes the supervisor of many children.</li> <li>• Children live with adults who are not their parents.</li> <li>• Vulnerable individuals traveling in groups or traveling with a number of adults.</li> <li>• Physical disability or signs of violence and abuse.</li> <li>• Signs indicating the victim is "controlled" by the trafficker in the form of fear to communicate and tend to be introvert.</li> </ul>

		Types of Exploitation			
General Indicators	Children	Sexual Exploitation	Labor Exploitation	Domestic Slavery	Forbidden Activities
<ul style="list-style-type: none"> <li>• Same person as recipient/contact person.</li> <li>• Victims are not familiar with their surroundings.</li> </ul>	<ul style="list-style-type: none"> <li>• Traveling with a group of people who do not affiliate with the victim.</li> <li>• Do not have access to education.</li> <li>• Do not have friends of the same age outside the work premises.</li> <li>• Facial expression of intimidation and behavior that is not appropriate for the age of the child victim.</li> <li>• The child victim spends most of his time in poor places for development, such as in brothels.</li> </ul>				

In addition to the two categories of indicators above, attention must be given to indicators of means of trafficking, among others:

- Violence, namely threat or use of force to victims and/or the victim's families.
- Coercion:
  1. Psychological abuse, referring to the victim's relationship with other people, threats of rejection by groups or families, anger or expressions of dislike by partners, extortion.
  2. Economic abuse, namely forcing to pay for a huge amount of money, large salary cuts, debt bondage.
- Abduction.
- Fraud, which includes 5 (five) elements:
  - 1) misrepresentation;
  - 2) the trafficker knows that the statement is wrong;
  - 3) the intent and intention of the trafficker to deceive the victim;
  - 4) the victim's belief in the trafficker's statement;
  - 5) resulting in losses suffered by the victim.
- Abuse of power or abuse of position of vulnerability, namely a situation where victims do not have any other choice but to accept the condition imposed by the trafficker.
- Payment to the trafficker's network or other third party that arranges the transfer of the victim.

## **Modus operandi and form of exploitation of TIP**

Various modus operandi and forms of exploitation related to TIP can be found. There are at least 4 (four) types of exploitation frequently found in terms of trafficking in persons:

### **Sexual Exploitation**

Article 1 point 8 of Law No. 21/2007 defines sexual exploitation as any form of the use of sexual organs or other organs of the victim for the purpose of obtaining profit, including but not limited to all acts of prostitution and sexually indecent acts. The sexual exploitation encompasses the production and distribution of pornographic materials containing the victim alone or with other people. The modes found in sexual exploitation include, among others:

- a. Female pimps who seduce the victims.
- b. Personal approach to victims through social media.
- c. Romantic relationship.
- d. Marriage.
- e. Promise to work in tourism sector.
- f. Promise to work as *waitress* at café or restaurant.
- g. Promise of student exchange program.

### **Mail-Order Bride**

One of the forms of exploitation is mail-order bride. Usually, a young woman from an economically disadvantaged family is offered to marry foreigner with the promise of a stabilized life. The husband is asked to provide costs of hundreds of millions of rupiah, which is mostly taken by the broker. The victim and her family were given very low money. In the husband's country of origin, the victim becomes an object of sexual exploitation and labor. To carry out this trafficking series, the modus operandi often used include as follows:

- a. Promise that the victim would have a good life.
- b. Getting married and living with a foreign citizen.
- c. The marriage can be conducted officially or unofficially in the husband's country of origin.
- d. Brokers may approach the families to support the victim's decision.
- e. Identity documents and immigration documents of the victim is falsified and controlled by the husband.
- f. If the victim would like to return to her hometown, she is asked to pay compensation to her husband.

### **Labor Exploitation in Fishery Sector**

Nowadays, exploitation of seafarers and crew of fishing vessels is commonly found. Seafarers on fishing vessels are recruited to work on foreign vessels with very poor working conditions and very low income. They also often experience persecution. The modus operandi of labor exploitation in the fisheries sector includes:

- a. Does not require a higher education diploma, only elementary (SD) and junior high school (SMP) diploma.
- b. The salary offered is very high.
- c. No special skills required.
- d. Forgery of training documents.
- e. Recruitment and placement fees are deducted from the salary earned.
- f. Huge pay cut.
- g. Work accidents are not handled by the employer.
- h. Experiencing physical and verbal abuse at work.

### **Child Exploitation**

Child exploitation is frequently occurred in the form of sending female migrant workers, sending domestic workers, sexual exploitation, slavery, mail-order brides, child labor, organ removal, child adoption, and servitude. The modus operandi frequently used is as follows:

- a. Recruiter builds psychological closeness by inviting peers.
- b. Recruiter approaches victim using social media.
- c. The recruiter approaches the victim's family members and persuades the family to allow the victim to work or marry.
- d. Recruiter agrees on a sum of money with the victim's family, but the payment is not made in full.
- e. The victim gets a fairly luxurious facility which then becomes a debt.
- f. Victim is offered a lucrative scholarship or skills training program.
- g. The victim is offered a job with a very high salary and easy conditions.

### **Exploitation of Indonesian Migrant Workers**

Exploitation committed by Eksploitasi Pekerja Migran Indonesia (PMI) against adult victims has been quite common in Indonesia. Modus operandi used by traffickers are as follows:

- a. Recruiting company PMI does not have a valid operating license (does not have legal entity status and is not registered with the local manpower office).
- b. Individuals carry out recruitment on behalf of PMI for placement through informal channels to any destination areas, which is more difficult to oversee by the Ministry of Manpower.
- c. Victims do not receive proper job preparation and training.
- d. Victims do not go through proper medical tests (instead, recruiters tend to falsify their medical test results).
- e. Indicated forgery of identity and travel documents.
- f. The victims have very long working hours without rest.
- g. The victims receive workplace violence from the employer/supervisor.

- h. The victims do not receive wages as promised.
- i. If the victims want to return to their hometown, the victims are forced to pay compensation.

### **Slavery or practices similar to slavery**

Elucidation of Law 21/2007 defines slavery as a condition where a person is under the ownership of another person. Practices similar to slavery are actions which place a person under the control of another person causing the former to be unable to refuse an unlawful profession ordered by the latter, despite the former is unwilling to perform such work. Modus operandi used by the perpetrators is as follows:

- a. Taking over power over a person by means of payment, threats or coercion.
- b. Employing a person for various types of work that violates the law.
- c. Placing the victim under the condition where he cannot escape by means of debt bondage, threats, and so on.
- d. The victim is not given a salary or even no explanation is given that he would receive any proceeds in any form whatsoever for the work he is doing.
- e. The victim lives together/lives under the full auspices of the trafficker.
- f. The victim does not have the power to make any decisions/actions.

### **Definition of Paralegal**

Paralegal means everyone who belongs to the grass root community, provides legal aids, have undergone paralegal trainings, does not have the profession as advocate and do not represent clients in court settings (Article 1 point 5 of Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2021 on Paralegal in the Provision of Legal Aid).

In the context of this module, the Legal Aid Provider is allowed to recruit Law School Students (Article 9-point a of Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 3 of 2021 on Paralegal in the Provision of Legal Aid). For example, a campus-based Legal Aid Agency can recruit its students to provide legal assistance as paralegals.

Article 60 of Law No. 21 of 2007 on Criminal Act of Trafficking in Persons states that the community shall participate in assisting in the prevention [of trafficking in persons] and the handling [of the treatment] of its victims. Community participation is not only required in the prevention of TIP but also in the handling of trafficking victims. Pursuant to the above law, paralegals as a part of the community have responsibility for supporting efforts for the prevention and handling of the TIP victims.

Paralegals have a critical position in the assistance of the trafficking victims. This is not only due to the fact that paralegals have knowledge regarding the applicable legal system, but also because of the characteristics of paralegals as an integral part of the community. Efforts made by victims of TIP to recover their rights (based on the principle of justice) cannot be achieved without the assistance of legal professionals. However, the reality shows that not all groups of people have access to legal aid provided by the legal professionals, especially people who are economically and non-economically disadvantaged, such as those who are living in remote areas and people with high vulnerability. Victims of trafficking generally come from groups of people who do not have access to legal aid, due to either economic or non-economic reasons. That is why paralegals play a pivotal role in handling TIP cases, including the provision of assistance to victims of trafficking.

## The Role of a Paralegal in the Handling of TIP

As previously explained, paralegals play a vital role in the efforts for the eradication of TIP and the handling of trafficking victims. The primary roles of paralegals in providing assistance for TIP victims are as follows:

- Identifying and providing legal assistance for victims of TIP who wish to initiate a legal proceeding in order to obtain justice and restitution or compensation. For this purpose, paralegals must be familiar with legal procedures applicable in Indonesia (both criminal and civil procedural) to help victims obtain legal justice and restitution of victims' rights that have been lost due to trafficking.
- Collaborating with investigative agencies and other professional legal aid service agencies such as lawyers, legal aid agencies, or campus legal aid and consulting services to support the process of prosecuting perpetrators and recovering the victims' rights, through the administrative assistance or documentation filing, evidence collection, writing/documentation of Case Records<sup>2</sup>, and by ensuring that the TIP case handling is conducted based on the confidentiality and sensitivity principles (such as gender-sensitive principles).

However, the paralegal's role is basically not only limited to the process of prosecuting perpetrators or to the recovery of restitution for victims of TIP. Paralegals are also needed in the cases of:

- Providing or obtaining access to first/basic medical facilities for victims of TIP who are also victims of physical or sexual assaults. Given the high sensitivity of TIP cases which are accompanied by physical or sexual assaults, it is strongly recommended that the handling of TIP victims does not involve too many parties (to avoid unclear handling).
- It is therefore expected that Paralegals have access to basic medical assistance/facility for victims of TIP, such as medical assistance in emergency condition or medical assistance related to testing and treatment for sexually transmitted infections.
- Providing or obtaining access to accommodation for victims of TIP who urgently need temporary housing, for example in the case of trafficking victims who have run away and need shelter to live.
- In this case paralegals play an important role in assisting victims of TIP in finding temporary housing for victims of TIP who have escaped from acute exploitation which is accompanied by physical or sexual assaults.
- Providing basic counseling. Paralegals are not only needed in providing legal assistance but also in providing emotional assistance, especially for victims of TIP having trauma from physical and sexual assaults. Attention should not only be given to the victim's physical health but also to their mental and emotional health, which is needed in the course of the legal proceedings undertaken by victims of trafficking. Considering that not all paralegals have professional expertise in the field of psychology, the counseling service provided is a basic counseling service in the event that professional counseling service is inaccessible.
- Arranging interpretation services (especially for foreign victims). Professionally trained interpreter must be secured to overcome language barriers. Furthermore, extra consideration should be given to the ethnicity and gender of the victim in selecting the interpreter.

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<sup>2</sup> In TIP cases which involve both physical and sexual assaults, paralegals must be able to promptly conduct identification, collect evidence and interview victims to have Case Record to prevent victims from sharing their traumatic experience over and over to various parties in the course of the legal proceedings which may disturb mental and emotional stability of the victims. If he/she has to, paralegal must accompany victim and convince the victim to give statements again for investigation purpose.

# Case Study

## 1. Case 1

Willy as the director of PT. Ikan Laut through its agents successfully recruited Ship Crew (*Anak Buah Kapal-ABK*) and sent 55 Ship Crews from Indonesia to work at PT. Kajen Taiwan. The Ship Crews who were dispatched did not have experience like the Ship Crew and did not have any basic safety training certificate. In order to fulfill the requirements for a seafarer book, the defendant contacted his friend namely Sunjai to falsify the seafarer book.

The defendant prepared KTP (Residential ID card), 2 pieces of 5 x 5 color photographs and a medical check and submitted to Sunjai as the requirement for making the fake seafarer book.

Furthermore, Sunjai prepared the seafarer book that he purchased by himself, wrote and signed the book.

Meanwhile, to get the seafarer code, Sunjai filled it out and saw it from a copy of the certificate, the Basic Safety Training (BSC) belonging to other applicants whose numbers were sometimes changed by 1 or 2 digits so that they were not exactly the same as those of other applicants. Before departing/flying overseas, Willy along with the Crew first signed a Sea Working Agreement (PKL) at PT. Ikan Laut. The agreement contains, among others:

1. For the arrangement of documents and departure that were funded by the Crew, their salary is deducted by USD 630 with details on the first month with deduction of USD 10, the second month with deduction of USD 80 and on the ninth month of salary deduction of USD 60.
2. Monthly salary in the amount of USD 180.
3. Working period for 24 (twenty-four) months.
4. Salary will be paid by PT. Kajen Taiwan when the ship is anchored or lands on the sea.

Apparently, the Ship Crews were employed not only on one ship but more than two or even three fishing vessels. After 18 (eighteen) months of working, by a reason that PT. Kajen Taiwan experienced bankruptcy, their salaries during working on the ship were not paid and the Ship Crews were finally returned to Indonesia. After arriving in Indonesia, the Ship Crews demanded their salary that were not paid by PT. Kajen Taiwan to Willy.

## 2. Case 2

Yudha initially created website [www.registerjadimodel.com](http://www.registerjadimodel.com) in the purpose of offering a sexual worker service to male customers who need them by sending photos along with rate of the women who are employed. After having a conversation between a customer who will use women's service, Yudha provided an email account [happyprivateservice@yahoo.com](mailto:happyprivateservice@yahoo.com).

For a short time, rate, Yudha procured IDR 1,000,000.00 while for one night, Yudha procured 25% of total rate that women workers procured. One of the sex workers employed by Yudha was Ika, 23 years old. She worked as an adult magazine model. Ika stated that at first, it was Yudha who offered her a job and chose a client. When a customer ordered her, Ika could not refuse, even though she was in the middle of a photo session. If Ika refused, Yudha would force her to

return a down payment which was already paid by the client 5 folded times. The payment for the sex services was made by transferring the amount agreed by Yudha and the customer to a bank account under Yudha's name. The customers had to pay a deposit in advance and the payment was made at a location or place where the service was provided. Besides Yudha, Erwin his partner also sold the sex services with children under age of approximately 5 people at the rate of IDR 3,500,000 (three million five hundred thousand rupiah) to IDR 6,000,000 (six million rupiah). The children were recruited from social media with an offering to become a model. They were also promised to get the latest model of gadgets. At first, Erwin would give the gadgets and could be paid in installment from the result of the children's work.

### 3. Case 3

Riansyah together with Jamilah owned a company engaged in sending Indonesian Migrant Worker (PMI) named PT. Mahkota. Riansyah submitted an application letter for a deployment permit to the Ministry of Manpower and Transmigration. Based on this request, a letter from the director of foreign worker placement was issued by the Ministry of Manpower and Transmigration. Riansyah assisted by Jamilah through her agent successfully recruited 162 PMI candidates who would be employed as a domestic helper abroad. Among them, there were 10 (ten) people who were still children while 152 (one hundred and fifty-two) people were over 18 years old but less than 21 years old. In order to depart these PMI candidates, KTP (Residential ID Card), KK (Family Card), diploma and passport were made. Before departing, the PMI candidates were placed at the company's shelter.

While at the shelter, PMI candidates were not given a protection insurance, but they were treated inhumanely (kept in a captivity, prohibited from communicating with outside world, and if they wanted to go home or cancelled their departure, they were required to pay Rp. 20,000,000. - (twenty million rupiah). Finally, one of the PMI candidates managed to escape from the shelter and reported it to the police. The next day, the police carried out a raid where the remaining PMIs were temporarily rescued while Jamilah who was checking the shelter, was also arrested.

### 4. Case 4

Dedi came to Jaya and told him that he had sold his kidney. Furthermore, because the witness Jaya was in need of money to pay off his parent's debt of Rp. 28,000,000, - (twenty-eight million rupiah). He asked Dedi to sell his kidney. Dedi told a risk not to work too hard even though he could still live a normal life if Jaya sold his kidney. Jaya was willing to sell his kidney for Rp. 90,000,000, - (ninety million rupiah). Furthermore, Jaya underwent an examination to check whether his body was in good health to undergo an operation. Having obtained a good result, Dedi took Jaya to Cipto Mangunkusumo Hospital (RSCM) and introduced him to dr. Huey and Dr. Kwik then asked Jaya to sign the ID Card in his own name in which date of birth, religion and address were changed. Changes in the ID Card were carried out by Dedi and dr. Kwik so that the result of the test included: blood, kidney, heart and lung test as well as Jaya's oral and written interview was declared good so that a kidney transplant could be carried out. Apparently, Dr. Kwik and Dedi sold Jaya's kidney to Andri in the amount of Rp. 300,000,000. - (three hundred million rupiah). Furthermore, on April 13, 2015 the kidney transplant was carried out led by dr. Indro. Jaya then received Rp. 90,000,000, - (ninety million rupiah) from Dedi.



# 2

## GENDER-SENSITIVE APPROACH IN ASSISTING VICTIMS OF TIP



<b>Purposes</b>	<ol style="list-style-type: none"> <li>1. Participants understand gender-sensitive context in the case of TIP.</li> <li>2. Participants understand gender-sensitive and equality concept in the assistance of TIP victims.</li> </ol>
<b>Main Points</b>	<ol style="list-style-type: none"> <li>1. Gender-sensitive concept.</li> <li>2. Gender Inequality Analysis.</li> </ol>
<b>Methods</b>	<ol style="list-style-type: none"> <li>1. Discussion.</li> <li>2. Video play.</li> </ol>
<b>Tools</b>	<ol style="list-style-type: none"> <li>1. Laptop.</li> </ol>
<b>Duration</b>	<ol style="list-style-type: none"> <li>1. 90 minutes.</li> </ol>
<b>Steps</b>	<ol style="list-style-type: none"> <li>1. The facilitator begins the session by introducing herself/himself and shares the objectives of the session. (5')</li> <li>2. The facilitator introduces speaker who will deliver his/her presentation materials in this session. (5')</li> <li>3. The speaker delivers his/her materials on Gender-sensitive concept and Gender Inequality Analysis. The speaker invites participants to play the role with the aim of explaining the differences between the term gender and sex, and how gender inequality occurs. (50')</li> <li>4. The facilitator plays a short video giving examples of the roles of gender. (10')</li> <li>5. Question and Answer session and short discussion on the materials. (10')</li> <li>6. The facilitator distributes post-training tests and evaluation sheets. (10')</li> </ol>
<b>Materials</b>	<ol style="list-style-type: none"> <li>1. Power point.</li> <li>2. Handout.</li> </ol>

## Handout

### Introduction

It is important for paralegals to understand the gender concept in order to appreciate the social roles and responsibilities of men and women in personal, family, society and even national life. There is different vulnerability level between women and men, which is also the important information to understand in assisting victims of trafficking. Gender analysis is a very important part in identifying situations where gender inequality exists. Paralegals must understand the concept and be able to analyze such situations. The gender analysis will also open participants' insights in identifying gender inequality and analyzing social conditions by mapping the victim's feelings and experience based on events leading them to exploitative situations. For example, for victims of trafficking who were recruited by PMI and sent abroad, mapping could be made from the gender inequality that led them out of their homes, met with PMI, went to the airport for the departure process, arrived in the Indonesian Embassy/Consulate and the workplace.

## **Gender-Sensitive and Gender-Equality in the Assistance of TIP Victims**

Many trafficking victims, especially those related to physical violence and sexual assaults and/or exploitation are women and girls. Given the sensitivity of this issue for many women, the handling, assistance, and provision of aid to women victims of TIP must be conducted by focusing on high sensitivity, such as assigning women paralegals to handle the case with female victims of sexual assaults/exploitation.

However, close attention to the principle of gender equality must also be paid, where men can also become victims of sexual assaults/exploitation. In this case, paralegals must take this issue into account with the same urgency and priority in the handling of TIP cases based on the victim's sex.

The below mentioned issues must be considered by paralegals when handling sensitive cases involving sexual violence victims:

- Do not judge or blame the victim.
- Do not preach to the victim.
- Do not ask the victim to tell his/her experience over and over.
- Do not test the victim's statement.
- Place the victim in safe and comfortable accommodation, which is not crowded and overfilled with people.
- Do not place the victim in the same room with other parties, where the victim feels uncomfortable.
- Regularly ask the victim regarding his/her wishes/consent.
- Do not make a gender- or sexuality-based joke.
- Do not underestimate statements or explanations from victim, especially if the victim of sexual violence is a man.



# 3

## CODE OF ETHICS OF PARALEGALS IN PROVIDING TIP VICTIMS WITH ASSISTANCE



<b>Purposes</b>	<ol style="list-style-type: none"> <li>1. Participants understand the context and conditions of the TIP victims.</li> <li>2. Participants understand the Code of Ethics of Paralegals in providing TIP victims with assistance.</li> <li>3. Participants understand the rights of TIP victims.</li> <li>4. Participants are aware of the purpose of assistance and principles of assistance.</li> </ol>
<b>Main Points</b>	<ol style="list-style-type: none"> <li>1. Code of Ethics of Paralegals in Providing TIP Victims with Assistance</li> <li>2. Rights of TIP Victims</li> <li>3. Purposes and Principles Assistance for TIP Victims</li> <li>4. Understanding the conditions of victims of TIP that involves serious cases</li> </ol>
<b>Methods</b>	<ol style="list-style-type: none"> <li>3. Explanation.</li> <li>4. Short video play.</li> <li>5. Group Discussion.</li> </ol>
<b>Tools</b>	<ol style="list-style-type: none"> <li>1. Laptop.</li> </ol>
<b>Duration</b>	<ol style="list-style-type: none"> <li>1. 90 minutes.</li> </ol>
<b>Steps</b>	<ol style="list-style-type: none"> <li>1. The facilitator begins the session by introducing herself/himself and sharing the objectives of the session. (5')</li> <li>2. The facilitator distributes a pre-training test sheet and asks participants to fill the pre-training test sheet. (10')</li> <li>3. The facilitator introduces the speaker who will deliver his/her presentation materials. (5')</li> <li>4. The speaker delivers his/her materials on the Code of Ethics of Paralegals. (40')</li> <li>5. The facilitator plays a short video on TIP case involving physical and sexual violence (i.e. video Erwina Sulistyaningsih) (10')</li> <li>6. Question and answer session and short discussion on the materials. (10')</li> <li>7. The facilitator distributes post-training test and evaluation sheet (10')</li> </ol>
<b>Materials</b>	<ol style="list-style-type: none"> <li>1. Main reading materials: <i>The IOM Handbook on Direct Assistance for Victims of Trafficking</i>.</li> <li>2. Handout.</li> </ol>

## Handout

### Introduction

In some TIP cases, the victims may have experienced various forms of ill-treatment, such as being deceived, coerced or even abused by other people, including by the authorities. Therefore, victims of trafficking at first tend to be reluctant and do not trust those who offered assistance, including paralegals. Reactions that often arise from victims of trafficking include: sadness, fear, fatigue, self-denial, apathy, anger and aggression, suspicion of almost all people.

Victims of trafficking often demonstrate reactions to people who try to approach or help them, including:

- Fears or hostile behavior.
- Unwilling or feel able.
- Do not want to revive their traumatic events.
- Loss of memory.
- Fear of consequences/potential retaliation.

Therefore, the effective and appropriate handling of Trafficking victims must be conducted by adopting a victim-center approach, namely:

- Focus on the situation, rights and needs of the TIP victims;
- Treat the victims with autonomy and respect; and
- Empower the victims so that they can make their own decision and never judge them and what they are decided.

### **Code of Ethics of Paralegals in Providing TIP Victims with Assistance**

In providing assistance to victims and handling TIP cases, attention must be given to the following:

1. Basic understanding of the purpose of providing aid or assistance to victims of TIP.
2. The basic rights of victims of TIP in the assistance and handling of TIP cases.
3. Principles/Code of Ethics of Assistance and matters that may not be conducted by paralegals.

### **1. Aim of Assistance Provided to Victims of TIP**

Based on Law No. 16 on Legal Aid Article 1 point (1), Legal Aid is defined as “any legal services provided by the Legal Assistance Provider to the Legal Assistance Beneficiary at no charge”. The law also stipulates the first objective of the provision of legal assistance is to “guarantee and fulfil the rights of the Legal Assistance Beneficiaries to obtain access to justice” (Article 3 point [a]). In addition, the law states five (5) principles that must be complied with in the provision of assistance, namely (Article 2 points (a-f): (1) justice; (2) equality before the law; (3) transparency; (4) efficiency; (5) effectiveness; and (6) accountability.

In general, the assistance to victims of TIP cases can be defined as a series of activities and services for the victims for the purpose of as follows:

- Helping victims of TIP to obtain justice;
- Helping victims of TIP to rebuild their overall physical, psychological, mental and social well-being; and,
- Helping victims in their recovery and empowerment process.

Based on the above explanation, the assistance provided to victims of TIP is not solely aimed at punishing the traffickers. Assistance must be given by taking the recovery and empowerment aspects into account so that they can make social reintegration and redeveloping relations with their environment.

### **2. Rights of Victims of TIP**

Paralegals need to identify the rights held by the victims of TIP in the handling of TIP cases, among others:<sup>3</sup>

1. Respect for their dignity and self-esteem.
2. Security and protection from physical threats.
3. Protection for their privacy and identity.
4. Safe and decent accommodation and housing.
5. Physical and Psychological health treatment and support.

<sup>3</sup> Not all these rights can be fulfilled instantly, but this is the standard for efforts for advocacy the fulfillment of TIP victims' rights in a medium and long-term (particularly the last point).

6. Legal aid.
7. Legislative protection.
8. Access to representative office and diplomatic and counsellor service office (for foreign citizen in Indonesia).
9. Education, training, and job.

The rights of witnesses and victims is described in detail in Module 5.

### **3. Principles of Assistance of TIP Victims (Dos & Don'ts)**

Paralegals must pay attention to the following principles when assisting victims and handling the TIP cases:

- A. Ensure safety, security and comfort of TIP victims during the assistance program. When performing their roles, paralegals should not jeopardize the safety of TIP victims (such as, having conversations, interviews/counseling that can endanger or pose a security risk to TIP victims).  
The paralegals must also frequently and regularly (on a daily basis) inquire about the physical and mental/psychological health conditions of the victims.
- B. Respect Victim's Privacy. Do not share the victim's data and identity carelessly, including in the Case Record to avoid the victim's data leakage. Trafficked persons must be assured that their story, especially those related to sexual violence, will not be re-told to parties that are not directly involved in the TIP case handling.
- C. Being fully Informed (Do not Promise). The way to build and gain trust is to provide correct information to victims, including information regarding paralegals and the services available for victims of TIP. Every victim must be able to freely and voluntarily make informed decision. Accurate information will also help the victim to make sound decisions. Encouraging victims to make their own decision can help them and speed up their recovery as well as improve the victim's confidence.
- D. Do not promise. In addition to being fully informed, paralegals may not make promises (that cannot be fulfilled), either with or without compensation/payment, to victims of TIP or their families. For example, giving a promise to TIP victim that his salary which is still retained by the employer can be dealt with by paying a particular amount of money.
- E. Communicate in a sensitive and sensible manner. Do not underestimate (or blame) victims of TIP. Even if they are victims, paralegals must not think that they are powerless, and they really need paralegals. This mindset may prevent the trafficking victims from recovering.  
Good communication will also help to increase trust and reduce the risk of miscommunication that may hurt the relationship between the victim (as a client) and the paralegal and will greatly disrupt the ongoing legal process.
- F. Understanding gender-sensitive and equality principles
- G. Stay Professional. Do not become a case broker and take material or non-material benefits from vulnerable situation of the victim or prevent the trafficking victim from obtaining access to other types of assistance just because of their personal (subjective) problem with the paralegal. For example, victims of TIP are not suggested or even are prevented from obtaining other assistance due to like or dislike in their personal relationship.
- H. Be aware of your surroundings. Threats to personal safety and security are not only given to TIP victims but also to paralegals assisting the TIP victims. Therefore, when keeping and securing the safety of trafficking victims, paralegals must also be aware of their surroundings. The safety and security of paralegals can be threatened when giving assistance to victims in collecting corroborating evidence for seeking legal measures. Thus, paralegals SHOULD NOT make great efforts, but be aware of their surroundings.

# 4

## BASIC COUNSELING FOR VICTIMS OF TIP



<b>Purposes</b>	<ol style="list-style-type: none"> <li>1. Participants understand the approach adopted in counseling.</li> <li>2. Participants understand relations between TIP and counseling and the importance of counseling for TIP victims.</li> <li>3. Participants understand the difference between interview and counseling.</li> <li>4. Participants understand technical implementation and basic counseling phases.</li> </ol>
<b>Main Points</b>	<ol style="list-style-type: none"> <li>1. Definition of Counseling.</li> <li>2. The Importance of Counseling.</li> <li>3. Aims of Counseling.</li> <li>4. Difference between Interview and Counseling.</li> <li>5. Delivery of Basic Counseling.</li> </ol>
<b>Methods</b>	<ol style="list-style-type: none"> <li>1. Explanation.</li> <li>2. Short video play.</li> <li>3. Simulation of Counseling.</li> </ol>
<b>Tools</b>	<ol style="list-style-type: none"> <li>1. Laptop.</li> </ol>
<b>Duration</b>	<ol style="list-style-type: none"> <li>1. 100 minutes.</li> </ol>
<b>Steps</b>	<ol style="list-style-type: none"> <li>1. The facilitator begins the session by introducing speaker and share the objectives of the session. (5').</li> <li>2. The facilitator distributes pre-training test and asks participants to fill in the pre-training test sheet. (10').</li> <li>3. The speaker delivers his/her material of counseling. (40').</li> <li>4. The facilitator plays short videos on TIP cases involving both physical and sexual violence (i.e. video Erwina Sulistyaningsih). (10').</li> <li>5. Question and Answer session and simulation of counseling. (20').</li> <li>6. The facilitator distributes post-training test and evaluation sheets. (10').</li> </ol>
<b>Materials</b>	<ol style="list-style-type: none"> <li>1. Main reading materials: <i>IOM Handbook on Direct Assistance for Victims of Trafficking</i> dan <i>Introduction to Basic Counselling dan Communication Skills IOM Training Manuals for Migrant Community Leaders and Community Workers</i>.</li> <li>2. Handout.</li> </ol>

## Handout

### How would you define Counselling?

Counselling is an approach for assisting people to reduce initial distress resulting from a difficult situation, and to encourage a person's short and long-term adaptive functioning (positive coping). This involves helping the individual to understand their emotions and feelings and to help them make positive choices and decisions.

## **Why is Counseling Important and what is the Relationship between Counseling and TIP?**

Counseling helps someone who has experienced or gone through some unpleasant or even terrible experiences to better cope with the situation they are facing. Victims of TIP often experience or go through unpleasant experiences in the form of verbal, physical and even sexual violence, which of course has different impact on the psychological aspects of TIP victims from one to another. Basic counseling can be a first aid effort for victims of TIP in their self-recovery process.

### **Aims of Counselling**

- To assist victims in exploring their problems and guide them to solutions.
- To have clients become aware of the consequences of the experiences and situations they have been/are going through so that they can accept themselves.
- To reduce worry, anxiety or any other negative emotions.
- To guide victims in their recovery from, and adaptation to, difficult circumstances.

### **Counselling vs Interview?**

As opposed to counselling, interview is an activity of collecting information for a specific use.

Counselling involves assisting clients to understand their emotions and reactions to a situation. Some principles that must be taken into account in counselling (*Dos*):

- Establishing a trusting relationship;
- Helping the victims tell their story;
- Listening carefully;
- Respecting the victims;
- Being non-judgmental;
- Providing confidentiality;
- Providing correct information;
- Helping the individual make informed decisions;
- Helping the victims to recognize and build on their strengths;
- Helping the victims develop a positive attitude; and,
- Maintaining a professional relationship.

It is also important to identify that counselling conducted by paralegals does not include and may not involve (*Don'ts*) the following:

1. Making decisions for the victims;
2. Judging, interrogating, blaming, preaching, lecturing, or arguing with victims;
3. Making promises that you cannot keep;
4. Allowing victims to become dependent on you.

## **Six (6) Basic Counselling Skills**

In providing assistance for the TIP victims, paralegal can provide the victims with basic counselling by following the six basic counselling steps process below:

1. Establishing a Connection with victims. In this step, paralegal is expected to make first contact with the victims, communicate appropriately, and establish trust and confidentiality with victims;
2. Giving Reassurance. Paralegal must give calming influence, minimize feelings of insecurity and anxiety, provide accurate information and refer to appropriate services for the victims;
3. Stabilizing. Paralegal helps victims understand their own reaction, recognize the signs of severe distress and refer to specialists if necessary;
4. Addressing the concerns and needs of the victims. In this phase, Paralegal gathers accurate information, clarifies the victims' concerns, formulate possible solutions to victims' problems, and provide practical assistance to meet the needs of the victims;
5. Providing support. Paralegal helps rebuild social network, encourage victims to seek external supports, and assist in overcoming 'support obstacles'; and
6. Facilitating coping. Paralegal helps victims to raise awareness of positive coping skills, enables victims to identify negative coping, and helps victims to manage their anger and emotion.

# 5

## VICTIM IDENTIFICATION TECHNIQUES



<b>Purposes</b>	<ol style="list-style-type: none"> <li>1. Participants understand the purposes and significance of identification of TIP cases.</li> <li>2. Participants understand the basic indicators of TIP victims.</li> <li>3. Participants understand the code of ethics and basic technique for implementing the identification of TIP cases.</li> <li>4. Participants understand the basic technique for evidence collection and storage.</li> <li>5. Participants understand good and correct case record writing technique.</li> </ol>
<b>Main Points</b>	<ol style="list-style-type: none"> <li>1. Definition, Purposes, and Significance of Case Identification.</li> <li>2. Indicators of TIP Case Victims.</li> <li>3. Code of Ethics and Basic Identification Technique.</li> <li>4. Evidence Collection and Storage Technique.</li> <li>5. Case Record Writing Technique.</li> </ol>
<b>Methods</b>	<ol style="list-style-type: none"> <li>1. Explanation.</li> <li>2. Case Study/Discussion.</li> </ol>
<b>Tools</b>	I. Laptop.
<b>Duration</b>	I. 120 minutes.
<b>Steps</b>	<ol style="list-style-type: none"> <li>1. The facilitator begins the session by introducing herself/himself and speaker and sharing the objectives of the session. (5')</li> <li>2. The facilitator distributes a pre-training test sheet and asks participants to fill the pre-training test sheet. (5')</li> <li>3. The speaker explains the materials of counseling. (35')</li> <li>4. Question and answer session. (10')</li> <li>5. Case Study/Discussion Session. (30') <ol style="list-style-type: none"> <li>a. Simulation of Case Identification. (10')</li> <li>b. Simulation of Evidence Collection and Storage Technique. (10')</li> <li>c. Simulation of Case Writing Technique. (10')</li> </ol> </li> <li>6. The Facilitator distributes a post-training test and evaluation sheet. (5')</li> </ol>
<b>Materials</b>	<ol style="list-style-type: none"> <li>1. Main reading materials: <i>IOM Handbook on Direct Assistance for Victims of Trafficking</i> dan <i>Introduction to Basic Counselling dan Communication Skills IOM Training Manuals for Migrant Community Leaders and Community Workers</i></li> <li>2. Additional reading materials: attached <i>handout</i></li> </ol>

## Handout

### What is Case Identification?

Case identification is an activity or measure to identify whether a case/event occurred is related to TIP crime. Based on the explanation, it is very clear that case identification is an activity and process conducted at the starting point and is inseparable from the major efforts to eradicate TIP. The identification process uses several methods and indicators to ensure that an event or incident can be categorized as a TIP case. In practice, not all incoming reports on an incident experienced by a person can be categorized as TIP. The use of a comprehensive TIP identification method, in the form of in-depth interviews, for any incoming case report may lead to ineffectiveness and inefficient work of paralegals, and especially can also cause losses (time, energy and emotional) for clients/victims of the incident.

Based on the abovementioned issues, paralegals shall carry out early identification (screening) before carrying out in-depth identification of potential victims of TIP<sup>4</sup> by taking into account a number of basic indicators comprehensively or in an integrated manner, that have a close relationship with TIP. To be able to make an initial identification, paralegals consider that victims of TIP usually meet or have a number of these indicators. The basic indicators are among others:

- a. Age. Age can be an early indicator of TIP even though older individuals are also trafficked. Generally, trafficking for sexual exploitation and forced labor (slavery) will normally center on younger victims, as this activity and physical labor demand stronger and fitter individuals.

In the trafficking for organ extraction, the traffickers will also select younger victims considering that their body organ is still fit and young so that the price is higher and more attractive for potential buyers.

In addition, there are indications that younger people may be more easily deceived,<sup>5</sup> coerced, and controlled by traffickers, making them easier as the target of exploitations other than the forced labor, sexual exploitation, organ donation, namely for the purpose of criminal act, military services, and other illegal action (street begging).

- b. Sex. In addition to their age, the victims' sex can be the initial indicator of trafficking. A certain sex, such as female sex has its own vulnerability to be the target of TIP for sexual exploitation purpose. While trafficking of male is normally conducted for the labor exploitation, such as in the fields of mines, plantation and fishing vessels. However, male trafficking for the purpose of sexual exploitation is also increasing nowadays.
- c. Nationality and Ethnicity. Personal identity of a person, such as nationality and ethnicity, can also become a potential indicator of trafficking. Individuals from a certain community group or location having less fortune socio-economic conditions would normally be more vulnerable to trafficking compared to those from the community group having more fortunate socio-economic condition or a wealthy country.
- d. Existence of Personal Documentation and Identify. The lack of victim's identity document can be early indicator of TIP practices. This can be a strong indicator of trafficking if the victims do not come from the area where they are found/identified.

A valid identity document must be owned by every individual and is a requirement for many activities, such as for applying for a job and for traveling outside the place of origin of the victims,

<sup>4</sup> To assist the screening process, paralegals can use the IOM's Screening Form that can be obtained from the IOM Handbook on Direct Assistance for Victims of Trafficking Attachment II.

<sup>5</sup> This group is considered unable to give consent for an action because they are deemed immature and unable to make decision correctly.

especially when traveling overseas. The lack of identity documents in the victim's possession may definitely increase potential practice of trafficking. This is related to restrictions on mobile access and communication as well, which is the modus operandi of traffickers in controlling the victims.

For foreign citizens in Indonesia, the lack of valid identify in their possession (including other-related mobile license) can be an initial indicator of trafficking or another immigration-related criminal act.

- e. Last Location. The last location where an individual was found can be a clue and initial indicator for trafficking practice. For example, a girl found at a prostitution will be an initial indicator of TIP.
- f. Context of victim discovery. The context or chronology which leads to the referral of a potential victim to a paralegal for identification will serve as an initial indicator and clue for the trafficking practices. For instance, the arrest of any individual in a documentation raid or illegal labor raid can be an indicator of trafficking practices.
- g. Signs of Abuse (i.e. physical injury). Signs of violence, such as the presence of physical injuries, can assist paralegals to identify potential practices of TIP.
- h. Referring agency. Paralegals can also use the potential referrals for victims as an indicator to see if the incident has a close connection with TIP. For instance, victim referrals to immigration can be an indicator of potential occurrence of trafficking.

Victim referrals to organizations or agencies, both locally and internationally, having credibility in trafficking-related issues such as IOM can also serve as basic indicator in the identification of TIP cases.

## **Who is TIP Victim?**

Trafficking is a very complex criminal issue. Men, women and children from various parts of the world can be the victim of human trafficking to various other places. This is why the identification process is uneasy. To accurately identify trafficking victims, reference must be made to the definitions and indicators set forth in the Palermo Protocol (UN Protocol on Trafficking in Persons).

## **Why is it necessary to identify the TIP Victim?**

The identification process involves effort to determine whether or not an individual can be considered as a TIP victim, so that appropriate assistance can be provided to the trafficking victims in accordance with their needs.

The aims of identification are as follows:

1. To provide victims with assistance and protection:
  - a. Rescuing victims from dangerous, exploitative and inhumane situations.
  - b. Providing protection to victims.
  - c. Providing victims with material, health, legal, and counseling assistance.

2. For investigation and legal prosecution purposes:
  - a. Mapping the TIP crime network where the clients are victims.
  - b. Helping eradicate the TIP.
  - c. Helping to achieve justice and restitution of victims' rights.

### **General Characteristics of TIP Victims**

Normally, victims of TIP rarely identify themselves as trafficking victims due to a number of factors, among others:

- They commonly think the status of TIP victim as a reprehensible and disgracing for themselves and the family. The stigma associated with trafficking victims provokes negative self-perception as stupid, careless or easily deceived person.
- They do not realize their rights and do not understand the TIP concept so that they are not aware that they have been trafficked.
- They do not know the assistance provided for victims of TIP and where to look for help.
- They are blamed and feel ashamed for the exploitative assault perpetrated against them.
- They are fearful of revenge against them/their family.
- They are fearful of imprisonment, deportation and fines.
- They are dependent on the perpetrator ("Stockholm Syndrome").
- They consider that their current situation is "better" than previously (unemployed, live in extreme poverty, with violence, and in conflict area).

### **In-Depth Identification of TIP Cases**

To determine whether a person is a victim of TIP, a basic understanding of the definition of TIP is needed as included in Law No. 21 of 2007 and the Palermo Protocol. The first step to take is determining if the person is an adult or a child (under the age of 18). For a child (or under 18 years old) awareness of their actions (consent) is irrelevant considering that the minors remain incompetent to make decisions for themselves, so that the element of "means" in the definition of TIP is automatically fulfilled.

In-depth identification can be carried out through in-depth interviews to determine whether the TIP elements are met.

For adult victims, it is necessary to identify whether there is a PROCESS (e.g. recruitment or transportation) and MEANS (e.g. deception, coercion, or fraud), for the PURPOSE of exploitation. Most of victims of TIP will experience violence and physical and psychological trauma; therefore, when interviewing potential victims of TIP, it is important to be sensitive and patient to the victims to avoid sadness, emotional stress, and anxiety response (see the module on basic counseling for more information). This is necessary to build trust and increase the victim's self-confidence, that will help the victim's recovery process and

facilitate interviews. As much as possible, avoid actions that may trigger their memory of negative experiences which can cause individuals to feel stigmatized, traumatized, ashamed, disempowered, or hopeless.

A more detailed description regarding the elements of TIP, as included in Law No. 21 of 2007 and the Palermo Protocol can be seen in the previous module.

## **Direct Indicators of TIP**

There are direct indicators that can be the main key in determining if TIP exists in a particular case. The main indicator is the conditions of life of potential victims. This indicator is related to two elements, namely the existence of Means of Control and the occurrence of Exploitation practices.

1. Means of Control in the form of:
  - a. Confiscation of travel/identity documents or employment contracts
  - b. Injuries caused by actions/attacks, such as physical injuries, and disabilities
  - c. Limited communication with family or outsiders
  - d. Mobility restrictions
  - e. Tight supervision by the controller, that can be employers, agents, security units, and so on
2. Exploitation in the form of:
  - a. *Debt Bondage*.
  - b. Deducted salaries, below the standard wages, or even unpaid salaries.
  - c. Fake, duplicate, or even no employment contracts
  - d. Different working conditions than what was promised in terms of workplace, form of work, and work location (e.g. previously worked as a domestic worker in a household, but then worked in a reflexology place).
  - e. Working in a dangerous place without proper safety equipment or training related to work safety.
  - f. Working without rest hours or rest days
  - g. Excessive working hours
  - h. Lack of access to health services.
  - i. Do not get safe and comfortable accommodation (e.g. full and crowded).

More detailed indicators are presented in Module 5

## **TIP Identification Technique (In-Depth Interview)**

Before carrying out further identification of potential victims of TIP, paralegals need to pay attention and be familiar with the general conditions and reactions from potential victims of TIP, especially potential victims of TIP who have experienced physical, psychological, or sexual violence, namely:

1. Confused and dazed look;
2. Inability to respond and answer to questions or directions;
3. Disoriented;
4. Inappropriate emotional responses such as uncontrollable crying, silence or immature behavior depending on the age of the victim;
5. Abnormal physical reactions such as shaking and trembling; and often self-harm

To respond to the reactions during in-depth interview, paralegals can do the following:

1. Assist members of the community in comforting and reassuring the victim;
2. Take the victim to a more isolated/private area with less activity and noise (if necessary);
3. Addressing the victim's immediate problems or concerns;
4. Giving information and assistance that addresses the victim's specific needs;
5. Seeking professional assistance to help the treatment of the victim and to meet his specific needs (i.e. in the case of underage victims, expert assistance who work for this community group is also needed)
6. Orienting the victim to his new surroundings;
7. Remaining calm and available; and
8. Alerting members of the community to look out for family members who may show signs of extreme/unusual distress/grief.

Once becoming aware of potential reactions to the identification of TIP cases and how to overcome it, paralegals must also pay attention to the main principles (code of ethics) in the process of identifying TIP cases:

1. Do not put Victim in danger. The identification process must not harm or pose a threat (both physical and non-physical) to potential victims of TIP. In this case the paralegal is strongly advised to:
  - a. Not conducting interviews (or counseling) if it endangers the client's lives, such as conducting identification in open spaces, by telephone, and so on.
  - b. Making sure that no unexpected/interested person watches or listens to the identification process.
2. Ensuring the safety and comfort of potential victims during the identification process. The following things can be done:
  - a. Ask how things are and feel before starting the identification.
  - b. Asking if the potential victim is in painful or discomfort situation during identification.
  - c. Asking the potential victim whether the victim needs medical care (doctor or nurse) before starting identification.
  - d. Offering refreshments to potential victims.

3. Guaranteeing the victim's privacy by:
  - a. Ensuring that the conversation (interviews) takes place in a closed private space where others cannot overhear, see, or interrupt;
  - b. Placing a "Do Not Disturb" sign on the door to prevent interruptions.
4. Maintaining and Guaranteeing the Confidentiality of Victim Information. For mutual security and confidentiality, paralegals should ask questions that are only related or needed for the handling of TIP cases.
5. Providing correct information. The correct information provided is the key to gaining and building the victim's trust, which is also important to enable individuals to make informed decisions. Provision of correct information can be done by:
  - a. Introducing yourself (Paralegal).
  - b. Providing a list of services available to victims of TIP.
6. Always requesting informed consent in every action that the paralegal wants to take for the victim by:
  - a. Making sure victims understand the purpose of the interview and their right not to participate or end the interview at any time.
  - b. Never share the information related to the victim (identity or chronology of the victim's case) without the consent of the victim.
7. Asking questions in a sensitive and sensible manner, including:
  - a. Avoiding asking questions over and over again.
  - b. Sorting questions. Asking the least sensitive questions first.
  - c. Paying attention to tone of voice when asking questions.
8. Actively and responsively listening to victims' answers. In this case the paralegal must:
  - a. Stop talking when the victim is talking (do not interrupt, let the victim finish his explanation/answer first).
  - b. Ask questions and clarify anything that is unclear or not clear.
  - c. Give the victim time to respond.
  - d. Focus your attention on the victim (i.e. look the victim in the eye while he is talking). Do not do anything else while the victim is talking.
  - e. Be responsive.
  - f. Acknowledge what the person said. Do not argue.
  - g. Watch for signs that the victim needs to rest for a while.
9. Trust the victim's statement/answer. Paralegals may not test the veracity of the victim's statement being interviewed and judge the victim based on his statement. The relationships between paralegal and victim are very much based on trust.

10. Maintain Professionalism. Treat the victim with respect, dignity, compassion, and comforting.
11. Telling the victim that she should not be blamed or be responsible for what occurred.

### **Things that may and may not be done in identifying TIP cases**

Things that must be done when identifying TIP cases (Dos), namely:

- Listen to the person's own description of their experienced situation. Be prepared to ask questions from different points of view.
- Ask straight forward, concise, and brief question.
- Ask "yes/no" questions.
- Refer to the indicators of trafficking to further guide interview questions.
- Be flexible in your interview.
- Be sensitive to the information provided by victims, the exploitation that they have experienced/suffered, and the assistance they required.
- Prioritize the victim's right to self-determination.
- Dedicate adequate time and do not rush so you can listen to the victim's response fully and thoroughly.
- It is essential to keep the information realistic, therefore give possible assistance to the individuals.

The following things should not be conducted in the identification of TIP cases (Don'ts):

- Ask anything that may cause stress, aggravate their situation, or re-traumatize the victim.
- Ask presumptuous or leading questions, for example:
  - Question which places victim under pressure, such as are you sure the story is true?
  - Are you being victimized?
- Ask the same questions over and over again, which may pressurize the person and make the interview feel like an interrogation.
- Make promises that you are unsure you can deliver or are out of your control to keep it.

At the end of the interview/identification, the paralegal needs to inform potential victims of TIP regarding:

- Victim status (whether in the category of TIP or not).
- What will happen next (what next process will happen after the interview and determination of victim status).
- How, as a paralegal, you will further assist the victim.
- If he/she is not a victim of TIP, what is the recovery mechanism for the violations experienced by the victim and where to seek help.

## Basic Evidence Collection Techniques

Collecting evidence is the duty of the police as investigator and prosecutor who institute legal proceedings. However, in reporting cases, the police will ask for initial evidence as their reference to carry out further investigations. The Indonesian Criminal Procedure Law (KUHAP) sets forth that sufficient preliminary evidence must be at least 2 (two) evidence as provided for in Article 184 of the Criminal Procedure Law, namely:

- a. Witness' statement;
- b. Expert's statement;
- c. Clue;
- d. Letter;
- e. Defendant's statement.

At the same time, the law also acknowledges instrument of evidence as set out in the provisions of Article 39 paragraph (1) of the Criminal Procedure Code as follows:

- a. objects or claims of the suspect or defendant which are wholly or partially alleged to have been obtained from a criminal act or as the result of a criminal act;
- b. objects that have been used directly to commit a crime or to prepare a crime;
- c. objects used to obstruct the investigation of criminal acts;
- d. objects specially made or intended to commit a criminal act;
- e. other objects that have a direct relationship with the crime committed.

In terms of the TIP cases, the requirements include 2 (two) adequate initial evidence with the statements of the witness-victim and one evidence - can be in the form of anything as previously mentioned.

In addition to the KUHAP, Article 29 of Law No. 21/2007 provides for the evidence as follows: Provisions of Article 29 of Law 21/2007 of Criminal Procedure Law stipulates that evidence shall also include:

- a. the information spoken, sent, received, or stored electronically with optical devices or something similar thereto; and
- b. data, recordings, or information that can be seen, read, and/or heard, which can be extracted with or without the help of some means, whether written on paper, any physical object other than paper, or those recorded electronically, including but not limited to:
  - writing, sound, or image;
  - maps, plans, photographs, or the like; or
  - letters, signs, numbers, symbols or perforations that have meaning or can be understood by people who are able to read or understand them.

According to Judge Sudharmawatiningsih, electronic information and/or electronic documents and/or printouts are an extension of the evidence provided for in the procedural law as stipulated in Article 5 paragraph (1) and paragraph (2) as well as Article 44 letter b of Law Number 11 of 2008 concerning Electronic Information and Transactions as amended by Law Number 19 of 2016 (UU ITE).

When conducting interviews with the victims, be sure to ask about the chronology of the case from the beginning to the end. It is necessary to at least identify 5W + 1H comprising:

- *What*: What happened.
- *When*: When did the event happen.
- *Where*: Where did the event happen.
- *Why*: Why did the event happen.
- *Who*: Who are the parties to the event.
- *How*: How can the event happen, from the beginning (process component), how (how-to component), and whether or not exploitation occurs (objective component).

Once the chronological information is obtained, the evidence and instrument of evidence collected from the reporting party can be mapped. The following table can be used as a reference to identify the evidence and instrument of evidence that can be used for police reporting.

Components of TIP	Form	Evidence/Instrument of Evidence
<b>Process</b>	<ul style="list-style-type: none"> <li>• Recruitment</li> <li>• Transportation</li> <li>• Shelter</li> <li>• Harboring</li> <li>• Transfer</li> <li>• Receipt of Persons</li> </ul>	<ul style="list-style-type: none"> <li>• Screenshot of social media sites offering a specific opportunity.</li> <li>• Screenshot of conversation between the trafficker and the reporting party/victim or other witnesses.</li> <li>• Witnesses who knew the trafficker offers, brings, accommodates, or accepts victims for exploitation.</li> <li>• Employment contract (if any, but often unavailable).</li> <li>• Items given by the trafficker to lure the victim (money, cell phones, clothes, and so on).</li> <li>• The parents, siblings or relatives of the victim who were approached by the trafficker.</li> </ul>

Components of TIP	Form	Evidence/Instrument of Evidence
<b>Methods</b>	<ul style="list-style-type: none"> <li>• Threat or use of force</li> <li>• Coercion</li> <li>• Abduction</li> <li>• Confinement</li> <li>• Fraud</li> <li>• Deception</li> <li>• Abuse of power</li> <li>• Vulnerability</li> <li>• Debt bondage</li> <li>• Payments or benefits</li> </ul>	<ul style="list-style-type: none"> <li>• Screenshot, recordings, or witnesses who knew about threats made by the trafficker if the victim failed to comply.</li> <li>• Photo of scars on the body, whether caused directly (abuse) or indirectly (victim self-harm due to stress) by the crime.</li> <li>• Forged administrative documents (birth certificate deed, graduation certificate, ID card, passport, etc.)</li> <li>• Salary that was not fully received by the victim for reasons of paying off the victim's debt to the trafficker.</li> <li>• Parents, siblings or relatives who made an agreement with the perpetrator so that the victim is employed by the perpetrator</li> </ul>
<b>Purposes</b>	<ul style="list-style-type: none"> <li>• Exploitation.</li> </ul>	<ul style="list-style-type: none"> <li>• Poor physical condition due to work fatigue.</li> <li>• Physical injuries resulting from abuse and/or accidents at workplace.</li> <li>• Psychic shock of the victims.</li> <li>• Inappropriate or worn clothing of the victims.</li> <li>• Proof of profitable transactions earned by the traffickers as they exploit the victims.</li> <li>• Foreign currency money.</li> </ul>

The above instrument of evidence and evidence can be collected from identifiable victims and witnesses. The evidence must be inventoried and verified with the elements to be proven by the evidence. Please note that collection of evidence is the main responsibility of the police office.

However, to continue the examination, the reporting party/victim must be able to provide preliminary evidence as mentioned above.

## Case Recording Technique

Case recording is basically documentation of all events that occurred and the tools or instrument of evidence that was collected. The case recording basically consists of:

### 1. Chronological description

Paralegals are expected to record the events chronologically. This chronology must contain at least 5W+1H elements, namely What, Who, When, Where, Why, and How. This chronology should be organized point by point, not in a long description. To maintain the confidentiality of identity, it is necessary to make 2 (two) versions of the chronology: the first may include the names of victims and witnesses, addresses (if any) and other sensitive information. This chronology can also include a fairly detailed description of the case, if needed

At the same time, the second version of the chronology does not include the identity of witnesses and/or victims, nor does it include sensitive information. An overly detailed description of events can be avoided in the second chronology.

## 2. List of instruments of evidence and evidence

It is necessary to include the evidence and instrument of evidence collected from the victim/reporting party's report. Definitions and examples of evidence and instrument evidence can be seen in the module on resolving TIP through criminal remedies. In addition to preparing a list, the evidence and instrument of evidence must be kept in a safe condition. Access to the evidence and instrument of evidence can only be given to a limited number of people. The evidence and instrument of evidence in the form of files, must be saved in a secure storage medium. Priority is given to storage media on internet networks such as cloud, because physical storage media can easily be damaged/lost/stolen.

## 3. Notes on case progress

Notes on case progress contains descriptions of the steps, progress, and challenges faced in the case handling. The notes on case progress are documents that must be updated in line with the ongoing legal proceedings.



# 6

## TIP HANDLING IN CRIMINAL PROCEEDINGS



<b>Purposes</b>	<ol style="list-style-type: none"> <li>1. Participants understand how to report suspected TIP to the police.</li> <li>2. Participants understand how to assist victims in reporting TIP to the police.</li> <li>3. Participants understand how to communicate the need for restitution for victims to the police.</li> <li>4. Participants understand how to coordinate with the police and prosecutors to ensure follow-up of cases.</li> </ol>
<b>Main Points</b>	<ol style="list-style-type: none"> <li>1. Mechanism for reporting crimes to the police.</li> <li>2. Rights of victims and witnesses of criminal acts.</li> <li>3. Restitution application.</li> <li>4. Coordination with law enforcement officials.</li> </ol>
<b>Methods</b>	<ol style="list-style-type: none"> <li>1. Explanation. Exposure.</li> <li>2. Group Discussion.</li> <li>3. Simulation.</li> </ol>
<b>Tools</b>	I. Laptop.
<b>Duration</b>	I. (120) minutes.
<b>Steps</b>	<ol style="list-style-type: none"> <li>1. The facilitator begins the session by introducing herself/himself and speaker and sharing the objectives of the session. (5')</li> <li>2. The facilitator distributes a pre-training test sheet and asks participants to fill the pre-training test sheet. (5')</li> <li>3. The speaker explains the materials of counseling. (35')</li> <li>4. Question and answer session. (10')</li> <li>5. The facilitator divides participants into 4 (four) groups and gives case study materials for each group. Each group joins the breakout room provided. (5')</li> <li>6. Each group is asked to discuss their respective case study materials. Each member of each group is given a role to play as follows: <ol style="list-style-type: none"> <li>a. One person as the victim. The victim's duty is to explain what happened to him (from the beginning to the end of the case), the losses he suffered (both material and immaterial losses), and to make a report to the police.</li> <li>b. One person as the witness. The witness has the duty to explain his comprehension of trafficking happened to the victim and provide the investigators with information.</li> <li>c. Two persons as paralegals Two paralegals have a duty to identify the TIP and accompany victims during the reporting process. The Paralegals are expected to ensure that the rights of witness and/or victim are fulfilled in the course of the examination process.</li> <li>d. One person as the investigator. One investigator is expected to play the role of an investigator who has not fully complied with the principles of protecting witness and/or victim. This is intended to provide training that will build the capacity of paralegals for preparing their real future.</li> </ol> </li> </ol>

<b>Steps</b>	<p>The following instructions are given for the case study:</p> <ol style="list-style-type: none"> <li>a. Determine whether the victim in this case is involved in a TIP. If so, mention the elements.</li> <li>b. Make a table of elements accompanied by witnesses and evidence as if you are going to report this case to the police.</li> <li>c. Can the victim apply for restitution claim? If so, how much can be claimed and what evidence must be included? (30')</li> </ol> <ol style="list-style-type: none"> <li>7. The participants return to the main meeting room and conduct reporting and inspection simulations at the investigation stage. Out of the 4 (four) groups, a lottery was drawn so that 2 (two) groups are selected to do the simulation. If time allows, then the whole group can do the activity. (10')</li> <li>8. The groups that do not do the simulation give comments for each simulation. (5')</li> <li>9. The facilitator begins the question and answer/discussion session. (30')</li> </ol>
<b>Materials</b>	<ol style="list-style-type: none"> <li>1. Main reading materials: <ol style="list-style-type: none"> <li>a. Handbook for the Protection of Victims of Trafficking in Persons, Jakarta: IOM Indonesia, Police of the Republic of Indonesia, Public Prosecutor's Office of the Republic of Indonesia, Supreme Court of the Republic of Indonesia, 2017.</li> <li>b. The speaker presentation material is attached.</li> <li>c. <i>Handout as attached.</i></li> </ol> </li> <li>2. Additional reading materials: <ol style="list-style-type: none"> <li>a. The Indonesian Criminal Procedure Law.</li> <li>b. Law Number 21 of 2007 on Eradication of Criminal Act of Trafficking in Persons.</li> <li>c. Law Number 13 of 2006 jo. Law Number 31 of 2014 on Protection of Witnesses and Victims.</li> <li>d. Law Number 23 of 2002 jo. Law Number 35 of 2014 on Child Protection.</li> </ol> </li> <li>3. Case Study as attached.</li> </ol>

## Handout

### Reporting to Police Station

#### 1. Expectations for police report

- The case is continued to give crime prevention effect of punishment to traffickers.
- To obtain protection from the Witness and Victim Protection Agency.
- To lodge a claim for compensation against the traffickers.

#### 2. Police Reporting Phase

## A. Reporting

1. Preparing a case resume that at least includes:
  - Perpetrator's identity.
  - Place and time of incident.
  - Chronology of events.
  - Losses incurred serving as the basis for a request for restitution.
2. Preparing table to verify elements to the acts committed by the perpetrators, to compile the necessary list of evidence and witnesses. Example:

Elements of Article	Incidents	Evidence	Witness
<b>Any person.</b>	One or more individuals.		
<b>Carry out recruitment, transportation, transfer, harboring or receipt of persons.</b>	Offering TIP victims for a job through social media.	<ul style="list-style-type: none"> <li>• Screenshot of conversation via social media or messaging services.</li> <li>• Telephone history.</li> <li>• Advertising poster or drawing of the job vacancy offered</li> </ul>	(If there were witnesses who knew that the victim had made communication with the perpetrator).
<b>Threat or use of force, coercion, abduction, confinement, fraud, deception, abuse of power or position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve consent of a person having control over another person.</b>	Giving items such as handphone and money with the promise that the victims will receive more later.	<ul style="list-style-type: none"> <li>• Items given by the perpetrator to the victim.</li> <li>• Screenshot of conversation on work promise.</li> </ul>	
<b>For the purpose of exploitation, the victims within the territory of the Republic of Indonesia.</b>	It was discovered that the perpetrator used to recruit other victims by offering them to work as sexual workers.	<ul style="list-style-type: none"> <li>• Information of local community members.</li> <li>• Communication between perpetrator and other perpetrators for the purpose of giving the victim work.</li> </ul>	

## Witnesses' testimonies:

A witness is any person who sees, hears, or experiences a crime takes place. Example of witness in the TIP:

- Any person who sees the perpetrator committing a crime, for example removing the victim from his hometown to another city.
- Any person who receives information distributed via social media regarding the recruitment by perpetrators.
- Any person who identifies the perpetrators organizing brothels as places to employ TIP victims.

## Description of Evidence

Evidence is divided into:

- Evidence comprising witness statements, expert statements, letters, instructions, or statements of the accused.
- Referring to provisions of Article 29 of Law 21/2007, evidence has been expanded from the provisions of the Indonesian Criminal Procedure Law so that it includes:
  - a. Information that is stated, transmitted, received, or stored electronically by an optical device or other similar devices; and
  - b. Data, recordings, or information that are visible, readable, and/or audible, which may be generated with or without the aid of an instrument, whether documented on paper, physical objects other than paper, or electronically recorded.
- Evidence consisting of objects used to commit a crime, made specifically for a crime, or has a direct relationship with a criminal act.

Examples of evidence in TIP:

- Screenshots of social media account that publishes information on job vacancies.
  - Screenshots of conversations on messenger related to criminal acts.
  - Photo or video.
  - Voice recording.
  - Incoming and outgoing money transactions in the perpetrator's account.
  - Items given by the perpetrator to persuade the victim.
3. Psychological preparation by ensuring there is psychological assistance (if needed) and other support systems (family, friends, support groups, and others). Conduct a risk assessment by discussing possible scenarios with legal counsel, including the risk of retaliation from the perpetrator. Formulate a mitigation plan for each of these scenarios. Again, this is the importance of having legal counsel in the reporting process.

## Police Reporting Phase

### 1. Reporting:

- Reporting is made at the police station where the incident occurred. For example, if an incident occurs in South Jakarta, a report shall be made to the South Jakarta Police.
- Report should always be made to the District Police (Polres) level, especially if the victims are women and/or children so that they can be handled by the Police Unit for Woman and Child.
- Bring the case resume and the victim's identity card to the Integrated Police Service Center (SPKT) unit and file a report.
- The police officer will conduct question and answer to complete the report and issue Proof of Report that must always be kept by the Reporter.

### 2. Preliminary Investigation and Investigation

- Witnesses and/or victims are prepared to undergo interviews by investigators.
- In the interview, the police not only gather information from the victim, but also are obligated to inform the victim of their rights to apply for restitution. The police must shortly coordinate with the Witness and Victim Protection Agency (LPSK) to calculate the losses incurred by the victim.
- If the police have obtained sufficient information, the Police will issue a Report on Investigation Progress (SP2HP).
- A preliminary hearing was then held with respect to the results of the investigation.
- If there is a strong alleged crime, the police will issue an Order to Commence Investigation (SPDP) and the case will be under the investigation stage. SPDP will be sent to the Victim or Reporting Party and the Perpetrator or Reported Party.
- The following activities can be conducted by the police during the investigation phase:
  - a. Carrying out strained remedies such as giving summons, arrest, detention, search, confiscation, and examination of letters.
  - b. Establish suspect status.
  - c. Conducting paperwork.
  - d. Working in coordination with the public prosecutor's office.
- The police can conduct asset tracing to identify assets that the suspect can use to pay restitution if the claim is granted.
- The police need to find an instrument of evidence and evidence to support the victim's claim for restitution. Claims, amount of restitution, supporting evidence, and other important information are set forth in the investigation file.
- Every progress of the case must be stated in a Report on the Investigation Progress (SP2HP) which is informed to the Victim or Whistleblower.
- Once the paperwork is complete, the case file is submitted to the Public Prosecutor's Office. If the file is considered complete, the suspect and evidence are then delivered.

- If the investigator considers that the case cannot proceed, the investigation is terminated by issuing an Investigation Termination Order (SP3).

## Strategy for Assisting Victims in the Preliminary Investigation and Investigation Phases

1. Comprehend the rights of witnesses and victims as specified in the Law on the Eradication of TIP, Law on Child Protection, Law on Protection of Witnesses and Victims, and other related laws.
2. Maintain documentation and make duplicate copies. Make sure documents are kept confidential.
3. Ask for the contact of the preliminary investigator and the investigator dealing with the case. Establish regular communication to follow up on case progress.
4. If the case terminated in the middle of its investigation, make coordination with the police and ask for the most recent Report on the Investigation Progress (SP2HP). The victim or whistleblower has the right to report.
5. SP2HP can also be checked online via <https://pusiknas.polri.go.id/sp2hp/sp2hponline/> by entering the LP number (can be checked on the Report Evidence), the whistleblower's full name, and the whistleblower's date of birth.
6. Work in coordination with the LPSK to request protection for witnesses and/or victims. This protection application can be filed online through [https://lpsk.go.id/permohonanperlindungan/0\\_reg](https://lpsk.go.id/permohonanperlindungan/0_reg) by attaching identity document.

## If Case Examination Is Terminated

1. If the investigation has not started yet.

The investigation has not started yet as indicated by non-issuance of an Investigation Commencement Order (SP2P). If the Victim or Whistleblower has made report but there is unclear status of the report, they can take several measures as follows:

- a. Ask for the results of preliminary investigation progress to find out what the police have done.
  - b. If preliminary investigation is not carried out and the police do not give a positive response, the Victim or Whistleblower can send a complaint to the supervisory agency, including:
    - The General Supervision Inspectorate (*Inspektorat Pengawasan Umum-Itwasum*) of the National Police by a letter containing complaints and descriptions of events, as well as attachments in the form of Report Receipt.
    - Central Ombudsman (if the Victim/Reporting Party is in Jakarta) or Representative Ombudsman in each area by coming in person, by mail, by telephone, or online.
2. If the investigation has started

If the investigation has started, the police can only terminate the investigation of the case by issuing an Investigation Termination Order (SP3). If the victim or whistleblower objects to this termination, a pretrial can be lodged.

Pretrial is a judicial proceeding to assess whether or not coercive measures are legal, whether or not the termination of an investigation is legal, and whether or not a request for compensation or rehabilitation by a suspect is legal. Pretrial is carried out by sending a written request to the Head of the District Court in the jurisdiction of the police who issued the SP3.

The application will be registered, and the Chief Justice will immediately appoint a single judge and court registrar. Within 3 days after the application is registered, the judge must determine the day of the hearing as well as submit summons to the parties. Within 7 days after the determination of the trial, the judge must render a decision. The decision will contain a statement whether the termination of the investigation is valid or not. If declared illegal, the police by law must continue the investigation.

## **Rights of Witnesses and Victims in accordance with the Indonesian Laws**

Law No. 21 of 2007 regulates various rights of witnesses and/or victims of TIP as follows:

### **a. *The Right to confidentiality of identity***

It is highly possible that the Victim and/or Witness in the TIP case receives threat from the traffickers.

At the same time, Law No. 21 of 2007 mandates the confidentiality of the identity of victims and their families as part of witness protection. These provisions are set forth in Article 44 paragraph (1) and paragraph (2) of Law Number 21 of 2007. Provision on confidentiality of the identity of witnesses, victims and their personal information (including their residential address) is applicable as well to the whistleblower who makes report on the TIP case whether in the investigation phase, prosecution phase, and examination before the court. The confidentiality of identity must be notified to the witnesses and other persons involved in the criminal act case prior to the examination by the competent authority as provided for in Article 33 No. 21/2007.

### **b. *Right to give statement from the distance***

UU No. 21/2007 allows a witness and or victim to give a statement from a distance and should not attend a court hearing. The provision is set forth in Article 34 of this law.

### **b. *Right to request from the chairperson of the presiding judges to be allowed to be statement before the court without the presence of the defendant.***

Article 37 UU No. 21/2007 states that a witness and/or victim shall be entitled to request from the chairperson of the presiding judges to be allowed to be statement before the court without the presence of the defendant.

### **c. *Right to be accompanied by a legal counsel /advocate***

In the course of investigation, prosecution, and examination in the court, witnesses and/or victims shall be entitled to be accompanied by a legal counsel and/or another escort as necessary. The provisions are set forth in Article 35 of Law No. 21/2007.

### **d. *The right to obtain information about the progress of the case.***

Article 36 sets forth that in the course of investigation, prosecution, and examination before the court, the victim is entitled to receive information regarding the progress of the case involving him/herself.

Information pertaining to the progress of the case may be in the form of a copy of the transcript of each phase of the examination or court decision excerpt. The information must be provided in the form of and in language which can be understood by the witness and/or victim.

**e. The right to receive special treatment**

Victims are entitled to special services such as use of a special examination room and to undergo examinations carried out by skilled or educated personnel in handling TIP.

**f. The right to get restitution**

Every victim of a criminal act of trafficking in persons or his/her beneficiary is entitled to receive restitution as set forth in Articles 48, 49, and 50 of Law No 21 Year 2007. The restitution constitutes compensation for: 1) loss of assets or income; 2) suffering; 3) cost of medical and/or psychological treatment; and /or 4) other losses suffered by the victim arising from the criminal act of trafficking in persons. Other losses as referred to above can be in the form of: loss of assets/property, basic transport charges, lawyer fees or other legal proceedings-related fees, or loss of anticipated income as promised by the perpetrator.

**g. The right to receive medical rehabilitation, social rehabilitation, return assistance and social reintegration**

Article 51 A states that victim is entitled to receive medical and social rehabilitation, return assistance, and social reintegration from the government if such victim suffers physical and psychological hardship as a result of the criminal act of trafficking in persons.

The rights can be filed by the victim or victim's family, victim's colleagues, the police, escorting volunteer, or social worker following the reporting of the case by the victim or any other person to the Indonesian National Police and other relevant agencies.

In addition to the rights above, if a witness and or victim of TIP is a child (under 18 years old), then the witness and or victim has special rights as follows:

**a. The right to attend a closed session of court hearing**

The court examination against a child witness and/or victim shall be conducted in a closed session as set forth in Article 39 (1) of Law No. 21/2007. The court examination against a child witness and/or victim shall be conducted in a closed session as set forth in Article 39 (1) of Law No. 21/2007.

**b. The right to get assistance from parents/guardians**

The child witness and/or victim must be accompanied by parents, a custodian, foster parents, legal counsel, or other escorts in the course of the court hearing as set forth in Article 39 (2).

**c. The right to have examination without the presence of the defendant**

Article 39 paragraph (3) of Law No. 21/2007 mandates that examination of child witness and/or victim shall be conducted without the presence of the defendant.

**d. The right to provide statement outside the courtroom**

Article 40 states that subject to the approval of the judges, the examination of a child witness and/or victim may be conducted outside the courtroom using a recording.

## **Rights of Witnesses and/or Victims are regulated by other laws:**

### **1. Law Number 13 of 2006 on Protection of Witness and Victim jo. Law Number 31 of 2014.**

Article 5 of Law Number 13 of 2006 on Protection of Witnesses and Victims jo. Law Number 31 of 2014 states that a witness and victim shall have rights as follows:

- a. To obtain the protection of personal safety, family, and property, and free of threat with respect to the testimony to be, being, or has been given;
- b. To participate in the process of selecting and determining the form of protection and security support;
- c. To provide information without any pressure;
- d. To obtain an interpreter;
- e. To be free from a trap question;
- f. To obtain information about the progress of the case;
- g. To obtain information regarding to court decision;
- h. To identify if the convict is released;
- i. To get a new identity;
- j. To get a new residence;
- k. To obtain reimbursement of transportation costs in accordance with the requirements;
- l. To get legal advice and / or
- m. To get support for temporary living expenses until the protection expires.

Law enforcement apparatus must notify the victims of their aforementioned rights.

### **2. Indonesian Criminal Procedural Code (*Kitab Undang-Undang Hukum Acara Pidana/ KUHAP*)**

Rights granted by the KUHAP to the witnesses include as follows:

- a. Right of a witness to be examined without pressure from whomsoever and in any form of whatsoever (Article 117);
- b. Right of a witness to be examined without the presence of the defendant (Article 173)
- c. Right of a witness who does not understand the Indonesian language to be accompanied by an interpreter (Article 177 paragraph 1);
- d. Right of a witness who is unable to speak or hear and is unable to write to be accompanied by an interpreter (Article 178 paragraph 1);
- e. Right of a witness to receive prior notification at the latest 3 days before the date determined for the witness' presence (Article 227 paragraph 1);
- f. Right of a witness to get compensation for his/her expenses for his/her presence before the court of hearing (Article 229 paragraph 1).

### 3. Other Regulations

Provisions on the protection of witnesses and particular victims are also stipulated in several laws and regulations under the law including:

- a. Regulation of the state minister for Women's Empowerment and Child Protection of the Republic of Indonesia Number 22 of 2010 on the Integrated Standard Operating Procedures (SOP) for witnesses and/or victims of TIP;
- b. Regulation of the state minister for Women's Empowerment and Child Protection of the Republic of Indonesia Number 01 of 2010 on the Minimum Service Standards for the Integrated Services for Women and Children Victims of Violence.

#### 3.1 BEST PRACTICE PRINCIPLES FOR THE PROTECTION OF WITNESS AND VICTIMS

The State must protect victims as part of its international obligations under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Protocol to Trafficking in Persons) and other international instruments including international convention on Human Rights and regional commitment.

Trafficking victims need protection in three phases:

1. Early protection.
2. During the criminal justice process.
3. On an ongoing basis, including to facilitate reintegration/integration.

#### Early Protection

**OBJECTIVE:** To identify the needs and address the concerns of victims so that they can be persuaded to make decisions about their future and encourage them to participate in the criminal justice process.

**KEY ACTIONS:** If necessary, make sure that the victims:

- Get medical and psychological care as soon as possible.
- Handled by a nurse of the same sex.
- Have time to recover from trauma and to make decisions about their involvement in the criminal justice process.
- Have access to basic needs, such as food, clothing and safe accommodation.
- Have access to assistance and legal aid.
- Protection of their privacy and identity.
- Not be prosecuted for any illegal acts or other criminal acts they committed as a result of trafficking in persons.
- Obtain information about their rights, types of assistance to be provided, the responsibilities they have, and the next process of handling cases in a language they understand.

Victims must be protected regardless of their immigration status and their willingness to participate in the criminal justice process.

**CHILD VICTIMS:** If the victim is a child, it is important to seek assistance from child protection authorities. Always treat a victim suspected of being a child (under the age of 18) as a child victim

## Protection During the Criminal Justice Process

**OBJECTIVE:** To empower victims so that they can give optimal testimony by ensuring that they receive the protection and support they deserve.

**KEY ACTIONS:** If necessary, ensure that the victims:

- Always be informed about what is happening and how long the process will take place.
- Obtain support during the interrogation and hearing phases by utilizing all forms of protection available to victims and witnesses.
- Have access to assistance, legal assistance, and translation services.
- Obtain protection from any threat or intimidation against the victim or their family and friends.
- Not making unnecessary contact with the defendant, one of which is by ensuring that the victim is not in the same room as the defendant while waiting for a court hearing.

For most victims, attending a court hearing was a very difficult experience. Victims should be given as much support as possible during this process.

### CHILD VICTIMS

Court hearing with child victims must take the following issues into account:

- ✓ Judges and public prosecutors do not wear togas or uniforms.
- ✓ The court hearing was held in a closed manner.
- ✓ Child victims must be accompanied by parents, guardians, foster parents, advocates, or other companions

This section describes best practices that should be considered when providing victims and witnesses with protection in the three phases above. It is important to carry out a risk assessment at each phase to ensure that the protection provided to victims can be adapted to their needs. If the victims are children, they should receive more care and assistance.

## Long-term Sustainable Protection

**OBJECTIVE:** To ensure that the TIP victims assisted are able to accept their experience and are willing to participate in social lives.

If necessary, make sure that the victims:

- Obtain information regarding the results of the trial, including the sanctions imposed on the perpetrators of TIP and the possibility of filing an appeal.
- Are protected from any threats or intimidation against victims or their families and friends.
- Have access to long-term opportunities to overcome situations that initially made them vulnerable to TIP, for example education or job training.
- Are returned to the victim's country of origin (if possible) with due regard to their rights, safety and dignity.

Aid and assistance to victims must continue to be provided even though the criminal court proceedings have been completed. If necessary, you must work with the victim to ensure the victim's personal safety. You can also help victims access services that can help them overcome their vulnerability to trafficking, such as education, training and employment opportunities.

## Rehabilitation, Return, and Reintegration/Integration

Victims of TIP often have deep traumatic experiences. The psychological problems experienced by victims include anxiety, post-traumatic stress disorder, depression, and drug abuse. Victims may also suffer health problems such as dental problems, urinary tract infections, skin diseases, malnutrition, sexually transmitted diseases, and serious injuries, burns or other injuries due to physical violence. Therefore, it is important for the victims to receive appropriate assistance in the long-term period.

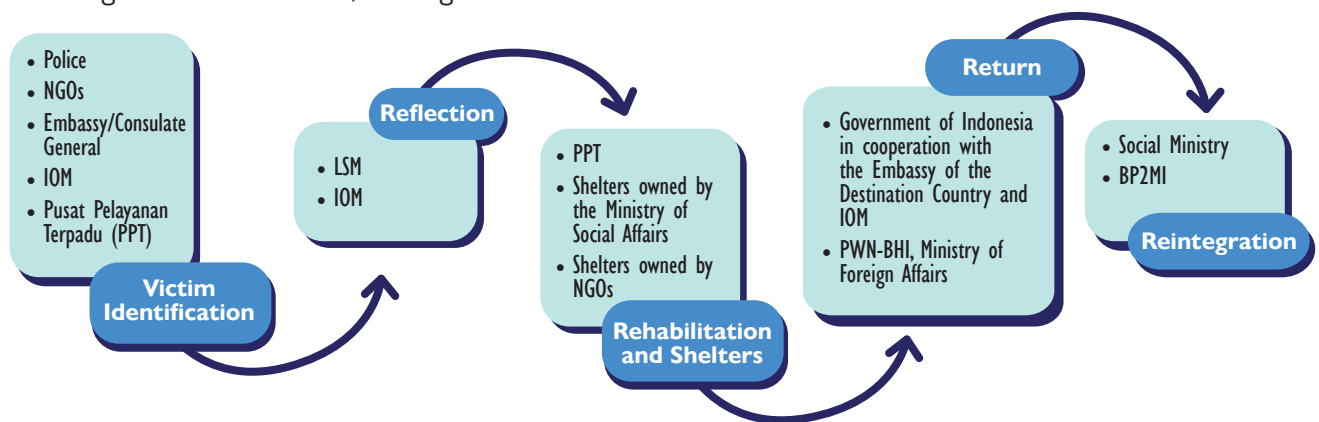
Law 21/2007 concerning the Eradication of TIP provides special protection for victims of TIP. Articles 51, 52, and 53 stipulate that victims of TIP are entitled to:

- Medical rehabilitation.
- Social rehabilitation, and
- Return assistance.

These rights must be granted no later than seven days from the date the request is filed by the victims and victims' families. The request for assistance must be filed with the minister or agency responsible for the medical and social rehabilitation services in the relevant area.

The minister or agency in charge of rehabilitation as referred to in Article 51 paragraph (1) is obliged to provide medical and social rehabilitation, return assistance, and social reintegration within no later than 7 (seven) days from the date of the claim. (2) For the purpose of providing medical and social rehabilitation, return assistance, and social reintegration as referred to in paragraph (1), the National and Provincial Government are required to establish shelter and trauma centers.

The stages of rehabilitation, reintegration and return can be seen as follows:



Alternative table:



Victim identification is carried out on victims who visited police stations, NGOs, Embassies/Consulate Generals, as well as IOM (with case referrals from other parties) and the Integrated Service Center (*Pusat Pelayanan Terpadu* - PPT). After the identification, the victim enters a reflection phase, in which the condition of victim of trafficking in persons is reviewed before decision is made in terms of aid and assistance needed by them. Once it is decided, the victim enters the rehabilitation, return, and reintegration phases.

## 6.1. Rehabilitation

Rehabilitation is an activity to recover witnesses and/or victims of trafficking in persons which can be in the form of health rehabilitation and/or social rehabilitation.

### **Integrated Service Center for Women's Empowerment and Child Protection (Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Perlindungan Anak - P2TP2A)**

- Intended for woman and child victim of violation.
- P2TP2A is set up at provincial, district, and/or city level.

### **Integrated Service Center (Pusat Pelayanan Terpadu - PPT) Based on Private/Government Hospitals**

- Providing medical rehabilitation for witnesses or victims.

### **Women and Children Service Unit (Unit Pelayanan Perempuan dan Anak - UPPA) of Police Office**

- Providing medical rehabilitation services for woman and child witnesses/victims.
- Carrying out case preliminary investigation and investigation.

### **Trauma Center (Rumah Perlindungan Trauma Center - RPTC)**

Providing medical and social rehabilitation services for witnesses and victims

### **Children's Social Protection Home (Rumah Perlindungan Sosial Anak - RPSA)**

Providing medical and social rehabilitation services for woman and child witnesses/victims

### **Women's Social Protection Home (Rumah Perlindungan Sosial Wanita - RPSW)**

Providing medical and social rehabilitation services for woman witnesses/victims

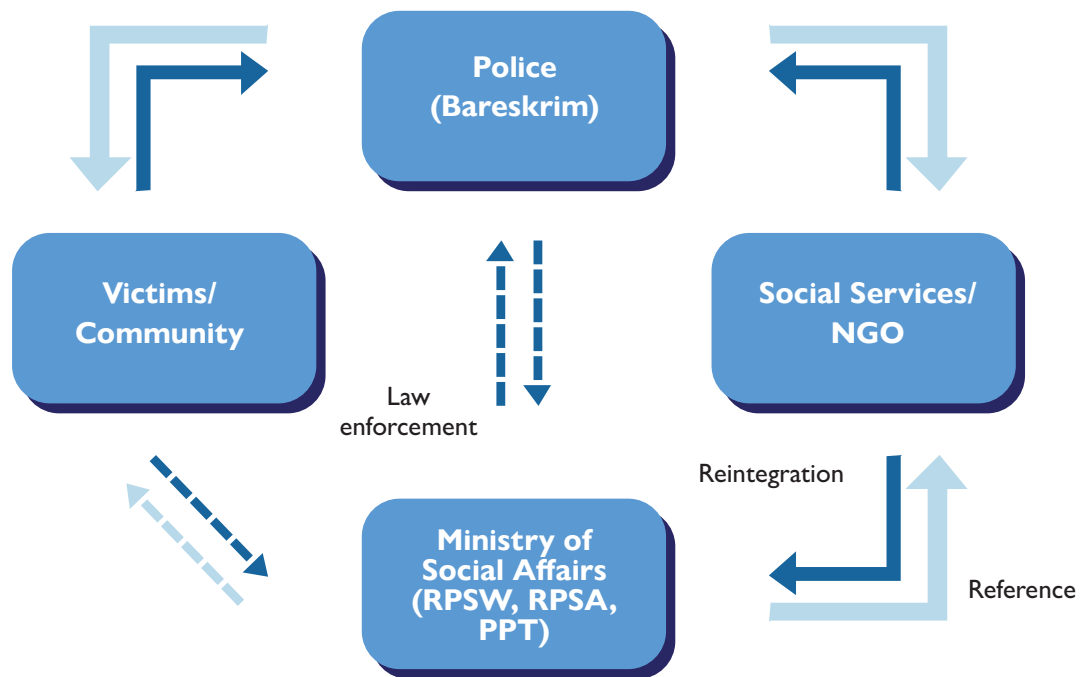
### **Social Protection Home Phala Martha**

Providing medical and social rehabilitation services for witnesses/victims who have HIV/AIDS

### **One-stop Service Center for Children with Disabilities (Pusat Layanan Terpadu Anak dengan Kecacatan - PLT-ADK)**

Providing medical and social rehabilitation services for witnesses/victims who have special needs

Case referral scheme for services of the aforementioned agencies:



**Figure 8: Case Referral Scheme for Accessing Services for Victims**

- Police (Bareskrim): If UPPA who can handle witnesses/victims is not found, the police must refer witnesses/victims to the Office of Social Affairs or NGOs that have health/social rehabilitation services.
- Social Services/NGOs: After receiving reports from the police, Social Services/NGOs will provide referrals to service agencies under the auspices of the Ministry of Social Affairs such as RPSA, RPSW, RPTC, and PPT.
- Victims/community members can access direct assistance from service providers and submit reports to the police/bareskrim simultaneously.

## 6.2 Return

In some cases, it is necessary to return the victim to their country of origin or to any third country. Return must be carried out by taking into account the rights, security and dignity of the victim. The return process is regulated by Government Regulation No. 9 of 2008. If the victim is an Indonesian citizen living overseas, the Government of Indonesia (Embassy of the Republic of Indonesia (KBRI) or Consulate General of the Republic of Indonesia (KJRI) is obligated to protect and return the victim to Indonesia, if necessary. For this purpose, coordination is needed with the Regional Government where the victim comes from, as the party that must take action to protect the victim. The cost of return will be borne by the Government of Indonesia.

In the event that the victim does not want to be returned to his/her country of origin, the victim has the right to choose another country as an alternative destination.

If the victim is a foreign national residing in Indonesia, it is important to return him/her in coordination with the embassy of the relevant country in Indonesia.

### **Tips:**

Make sure that victim who returns to his country of origin has access to safe transportation, clean clothes and toiletries, money for emergency needs while traveling, and assistance from NGOs or competent government authorities.

### **Tips:**

Risk assessment must be made prior to the return in order to identify:

- Perpetrator or Trafficker syndicate operating within the destination of the victim.
- Vulnerability of the victims and their families to future possible trap in a trafficking situation. This could happen due to unpaid debts or the family's expectation that the victim will return home with a lot of money.
- Community members who may give negative stigma to victims who have ever worked as prostitute.

Parties involved in the return:

- Protection of Indonesian Citizens and Indonesian Legal Entities (PWNI-BHI) The Ministry of Foreign Affairs is responsible for dealing with the repatriation of Indonesian victims of TIP from overseas to Jakarta. Simultaneously with the repatriation, PWNI-BHI will send repatriation files to members of the TIP Prevention and Handling Task Force as a notification.
- The Social Service will pick up victims of trafficking in persons together with the National Police Criminal Investigation Unit (Bareskrim POLRI). The Social Service will take care of rehabilitation services, while the police will follow up on the legal process of the case.

## **Case Study**

### **1. Case 1**

A child named Ipeh (16 years old) came from Makassar, South Sulawesi. On January 12, 2016, Ipeh met Asih. Asih said that she wanted to work in Fakfak as a karaoke companion with a salary around 5-9 million per two weeks.

Asih said if Ipeh was interested, then she could join. Furthermore, Asih also said that with that much money Ipeh could support her family. Ipeh was also interested.

On the same day, Asih introduced Ipeh to Aunt Firda who would help Ipeh get the same job. Firda then took Asih and Ipeh to the Gapura inn and introduced them to Jason. Firda explained to Jason that Ipeh also wanted to work as the karaoke companion. Shortly after, Jason gave Rp. 10,000,000.00 to Firda. Firda then gave Rp. 2,000,000.00 to Ipeh and asked her to get ready to go to Fakfak on the next day.

Ipeh was picked up by Jason's men at her house. Ipeh was first taken to a halfway house in Makassar. In the afternoon, Jason took Ipeh to the port. Before leaving, Ipeh was shown the ID Card in the name of Ipeh but her age and date of birth were changed. In the ID Card, Ipeh was 22 years old and born in Fakfak, on January 1, 1999. Jason also explained that he would withhold the ID Card for security reasons. At the port, Jason and Ipeh met Mamat who had purchased a ticket for Fakfak. Arriving at Fakfak, Ipeh was picked up by Obos who then took her to Café Enjoy.

Having arrived at the Café, Ipeh was asked to change into a very revealing outfit. Apparently, Ipeh was forced to drink alcohol drink and accept a request from guests who wanted commercial sexual services. If Ipeh refused, Mami (Jason's wife) would get angry, torture her and fine her

Rp. 15,000,000.00. Every day, on average, Ipeh served 3-8 guests. For one time service, a guest was charged IDR 3,000,000.00. However, the money was received entirely by Mami. Having finished the work, Ipeh was required to live in a mess measuring 5 x 3 meters and filled with 20 people who all of them were workers at Café Enjoy. Out of these 20 people, 6 of them were children including Ipeh.

During 3 months of working, Ipeh never received the promised salary. She could only save a tip she earned when accompanying the guests to drink. Meanwhile, for the sexual services, she was disallowed from getting anything because all transactions had to be given directly to Mami. Unable to stand what occurred, Ipeh ran away from the mess and came to a legal aid institution managed by a local campus. She sought legal aid.

## 2. Case 2

In May 2013, Andi met a man named Muhlas. Muhlas offered a job as ship crew with monthly salary of USD 220. Andi was also interested in such an offer.

Muhlas then asked Andi to prepare 1 million rupiah as pre-departure administration fee (identity card, administration and fees (KTP, admin fee and airport tax). Muhlas picked Andi up and took Andi to PT. AMB located in Bekasi area. At this company, Andi took lessons in yoka rolling, fishing gear, underwent a physical test, took care of passport, and medical test. If there was no study schedule or paperwork, Andi was also employed as a construction worker. For his work as a construction worker, PT AMB only paid him for food and cigarettes.

All of Andi's personal documents such as ID Card were taken by the Company for security reasons. At the Company shelter, there were around 200 people like Andi. They slept huddled together and shared food what was available. In the evening, on June 12, the Company's manager called Andi and said that he had to fly to South Africa tomorrow morning. The Manager, Pak Burhan also asked Andi to sign a work contract declaring that Andi would work on a large cargo ship for 2 years with an automatic contract renewal every 3 months, a net salary of \$200 per month for the first year and \$220 per month for the second year was paid by rupiah exchange rate at the time of payment.

On June 13, 2013, Andi flew to South Africa via Soekarno Hatta airport and when he arrived there, an agent from the large Pacific Ocean ship 18 had picked him up. Andi did not know the name of the agent. The Agent took him to the Harbor. Having arrived at the port, he was put into the Pacific Ocean Ship. The next day, the ship sailed. After 2 months of sailing and while still in the waters, the captain of the ship asked him to move to a small fishing boat, namely Kapal Bahari Nusantara 26.

At Kapal Bahari, Andi worked as a fisherman. Andi worked for 20 hours/day and only got 4 hours of rest with very little rest. If BUI (signal receiver) lost, the ship's crew had to work 24 hours straight until the device was found. While working, Andi and the rest of the crew were always monitored by a captain and CCTV.

While working, Andi and the rest of the crew never received salary. When Andi asked to the Indonesia agent, the agent always said that the salary had been processed.

Andi was employed on this ship for almost a year. Until one day, the ship docked in Cape Town. When the ship docked in Cape Town, the Cape Town police arrived and searched for the content of the ship. The police found a violation of the ship, the police took the entire crew to the police station.

Andi was returned to Indonesia. Arriving in his hometown, he went to a legal aid institution managed by a campus to seek legal aid. Andi wanted his salary to be paid along with the cost he incurred to work on the Maritime Ship.

### 3. Case 3

In March 2014, Aini (17 years old) told Dinda that Aini had information on job vacancy in Singapore as a restaurant waitress. If Dinda was interested, Aini would connect Dinda to Desy (20 years old) who would also work as a restaurant worker there. Because of worry about the family's economic condition and also a bad relationship with her father (Dinda's father frequently blamed me for no clear reason and was very protective), finally Dinda decided to meet Desy at Aini's house. Dinda came from a poor family, her mother died when she gave birth to her youngest sister. Her father was just a farmer. Dinda and her family rented a very bad house in a suburb of Medan. Due to an erratic income, Dinda and her younger sibling could not go to school. To pay for daily meals, Dinda's father was assisted by Dinda's sister who worked as a domestic worker at a neighbor's house.

At Aini's house, Desy told Dinda that there was a job in Singapore as a waitress in a restaurant with additional information that if Dinda wanted to work in Singapore, I would get a salary of 10 million per month. I was also very interested in this offer. Without firstly discussing with my family, I immediately decided to go to Singapore with Desy. The next morning Dinda went to Desy's house with outfits without saying goodbye to her family.

A week later a man named Nizar (Desy's neighbor) picked up Dinda at Desy's residence. Nizar then took Ayu and Desy to the house of someone named Putri.

Nizar told Ayu and Desy that Putri was the one who would arrange and help them work in Singapore. Then Desy and Dinda were asked to stay at Putri's house for 2 weeks.

After two weeks of waiting, Putri came and brought 2 passports for Dinda and Desy. Apparently, in the passport, Dinda's name and date of birth were changed from January 3, 2001, to March 3, 1994. According to Putri, the changes had to be made so that Dinda could obtain a work permit. Dinda just nodded. On March 18, 2014, Putri took Dinda from Medan to Batam by using City Link airline. At Batam airport, someone named Mami was already waiting for them and took them to her house. Inside the house, Dinda and Desy were asked to try on some mini outfits and asked to dress up.

Dinda refused but Mami said that the restaurant was in the hotel and the hotel required her to wear these outfits.

The next day, Putri and Mami took Desy and Dinda to a pier area. Mami gave a boat ticket and introduced Dinda to a husband and wife named Mr. Ong. Mami then said that Dinda had to follow them. While Desy and Putri would leave after Dinda's boat departed. Having arrived at their destination in Singapore, Mr. Ong took Dinda to a restaurant. An hour later, Putri and Desy came. The couple then handed Dinda over to Putri. Next, Putri contacted a taxi driver to pick them up at the port area. After half an hour of waiting, the ordered taxi came and dropped them off at a small apartment.

The next morning, Putri took Dinda and Desy to a hotel in Kelang located at kilometer 24. At the hotel, Dinda was introduced to Pak Atijuan (the hotel owner). At this hotel, he showed many women from Vietnam, China and other countries. I worked from 11 am to 2 am. Apparently, Dinda was not employed at the restaurant but at a club in the hotel. Dinda refused and asked Putri to send her back to Indonesia but Putri actually became angry and said that Dinda had to follow the rules of this job. Putri ordered Dinda to serve guests at the club including a sexual service. At 2 am after work, Putri brought Dinda back to the apartment. In the apartment room, Putri locked all the exits and windows.

However, because she couldn't stand what was happening, Dinda ran away by climbing the building and ordered the fastest boat to return to Indonesia. Arriving in Indonesia, Dinda came to a legal aid institution managed by a local campus. She sought legal aid.

#### 4. Case 4

Tatang introduced Yanti (30 years old) to a man he knew named Wanto. Wanto was known as an agent for distributing migrant workers. Wanto then asked Yanti to pay 2 million rupiah for the cost of making passport. Because Yanti had no money and could not pay for the passport, Yanti was pessimistic and believed that she would lose an opportunity to work in China. But the broker said, "It's okay, you can pay me back after you work in China," which made Yanti very happy. Yanti was told that she would receive 4,000 Yuan every month but for the first 6 months, she would only receive 1,000 Yuan as the remaining 3,000 Yuan was a fee to be paid to the agent.

The broker also said that Yanti would use a tourist visa for the first 30 days but she didn't need to worry because the agent in Beijing would issue a work visa for her.

In March 2015, Yanti paid for her fare from Nganjuk to Jakarta. She spent one night at the Bambu Hotel (Jalan Daan Mogot, West Jakarta) with Tatang and his wife and two other women who were also leaving for Beijing. The following day, Yanti and two other women departed for Beijing by Malaysia Airlines. They were picked up by a local agent in Beijing and took directly to the agent's office. At the agent's office, there were 4 Chinese citizens and it was believed that they were a couple of husband and wife. The agent employees were very rude and they also withheld the passports of Yanti and her friends. The agent then sent Yanti to a house to wait for the work.

When Yanti's tourist visa validity period was almost over, Yanti informed the agent about it. The agent employees were even very angry and spoke harshly to Yanti. Yanti was afraid of asking again and forced to overstay. He was prevented from leaving the house and the agent said that the police would arrest her because of her immigration status. If Yanti wanted to return to Indonesia, she had to pay a fine of 10,000 Yuan to the police/immigration and she had to buy a plane ticket by herself.

Yanti was penniless and felt powerless so she decided to obey the agent.

After 3 months, she was hired by her first employer in Shandong. She had no work contract due to her illegal status and no day off. The agent reminded her that her salary would be deducted for 6 months. The agent also still withheld her passport and only provided a copy. She worked from 6 a.m. to 9 p.m. with the following tasks: cleaning a 4-level house, cooking and caring for a child. Yanti was given a room for herself and her salary was punctually paid. Twice a week, she was asked to work until 2 am when a guest came. She was also ordered to clean the other employer's house.

After a year, her employer moved to the United States and Yanti returned to the agent's branch office in Guangzhou. Yanti stayed in Guangzhou for two weeks until she was hired by a second employer in Fujian with a promised salary of 4,500 Yuan. Yanti went there alone by train and was picked up by her new employer at the station. Yanti was ordered to clean the house, cook and take care of a baby. She had to wake up at 5.30 am and stay up all night long to look after the baby. Her employer also frequently scolded her.

She couldn't stand such conditions and after only 3 weeks, she told her employer that she wanted to quit. Her employer only paid 1,300 Yuan for her service of 3 weeks. With the remaining money, she went by bus to Guangzhou at her own expense. She managed to return to Indonesia and when she arrived in her homeland, she sought for a legal aid from an institution managed by a local university.



# 7

## TIP HANDLING IN CIVIL PROCEEDINGS



<b>Purposes</b>	<ol style="list-style-type: none"> <li>1. Participants understand the basis of civil lawsuits.</li> <li>2. Participants understand how to file a civil lawsuit in TIP cases.</li> </ol>
<b>Main Points</b>	<ol style="list-style-type: none"> <li>1. Concept of civil lawsuit.</li> <li>2. Mechanisms for filing a civil lawsuit.</li> </ol>
<b>Methods</b>	<ol style="list-style-type: none"> <li>1. Explanation.</li> </ol>
<b>Tools</b>	<ol style="list-style-type: none"> <li>1. Laptop.</li> </ol>
<b>Duration</b>	<ol style="list-style-type: none"> <li>1. 85 minutes.</li> </ol>
<b>Steps</b>	<ol style="list-style-type: none"> <li>1. The facilitator begins the session by introducing herself/himself and sharing the objectives of the session. (5')</li> <li>2. The facilitator begins the session by asking a question to see if the participants can identify other justice-seeking mechanisms in addition to the civil remedies. (5')</li> <li>3. The facilitator introduces the speaker who will deliver his/her presentation materials in this session. (5')</li> <li>4. The speaker delivers his/her presentation as per attached slides comprising the following materials: <ol style="list-style-type: none"> <li>a. Concept of civil lawsuit</li> <li>b. Civil lawsuit filed for TIP victim compensation on the basis of Tort (PMH)</li> <li>c. Small-claim court (<i>Gugatan sederhana</i>)</li> <li>d. Procedures for civil lawsuit. (40')</li> </ol> </li> <li>5. Facilitator begins a question and answer/discussion session. (30')</li> </ol>
<b>Materials</b>	<ol style="list-style-type: none"> <li>1. Main reading materials: Indonesian Civil Code.</li> <li>2. Additional reading materials: Handout.</li> </ol>

## Handout

### Definition of Civil Lawsuit

**Civil lawsuit is a type of legal lawsuit filed on the basis of disputes between an individual (legal subject) and another individual (legal subject) with respect to the rights and obligations/orders and prohibitions in the civil law area. The characteristics of civil case are as follows:**

- a. It starts with dispute.
- b. It involves a legal dispute between two or more parties.
- c. The subject matter (*petitum*) of the lawsuit and the judge's verdict is *condemnatoir* in nature (sentence to a particular punishment).
- d. The judge's verdict is binding on both parties.

Legal basis of civil lawsuit can be in the form of as follows:

a. Default Lawsuit

A lawsuit filed based on the failure of one of the parties to fulfill an obligation stipulated to the other party in which they are bound by an agreement. To file this lawsuit, the party to whom money is owed (the creditor) shall basically declare that the party who owes a sum of money (the debtor) has been in default (Article 1238 jo. Article 1243 of the Indonesian Civil Code).

b. Tort Lawsuit

A lawsuit filed due to illegal act committed. The tort lawsuit is filed based on Article 1365 of the Indonesian Civil Code that basically states that, "A party who commits an illegal act which causes damage to another party shall be obliged to compensate therefor." With reference to the aforementioned definition, the elements of tort can be described as follows:

- An act, both active and passive act.
- Illegal can be in the form of contrary to the law, violation of other people's rights, contradictory to the defendant's obligations, against the moral and/or public interests.
- Wrongdoing, either intentionally or negligently.
- Damage, either material or immaterial.

### **Tort Lawsuit in the TIP Cases**

In the event that the criminal settlement does not work as expected, for example because the case investigation is terminated, the victim and/or their heirs can file a tort lawsuit (*Perbuatan Melawan Hukum/PMH*) against the perpetrators of TIP. This lawsuit is based on the premise that TIP is an act that is prohibited by law. In the context of filing a tort lawsuit, the victim and/or their heirs can claim compensation for the losses suffered by the victim, both immediate losses or potential losses in the future. The ultimate goal of claim for compensation is to punish the perpetrator to pay for the Plaintiff's losses, therefore it is important for the lawsuit to include the amount of the loss claimed, including the documentary evidence for the claim. In the course of the hearing, assessment will be conducted by the judge to look into whether or not the act alleged by the Plaintiff against the Defendant is unlawful and detrimental to the Plaintiff. The judge will also verify the claim for the loss based on the documentary evidence that is submitted by the parties.

In the context of TIP, unlawful conduct involves the trafficking crime itself. At the same time, the losses experienced by victims can be in the form of physical injuries, loss of money, psychological pressure, and future opportunities that cannot be achieved due to the TIP. Notwithstanding the failure to have criminal court settlement, the lawsuit can be a way to obtain full compensation payment.

### **Small-Claim Court (*Gugatan Sederhana*)**

A **small claim court** is procedures for a court examination of a civil lawsuit with a maximum material claim value of Rp 500 million which is settled with simple procedures and substantiation. In an ordinary lawsuit, there is an unlimited amount of material claim. At the same time, there is no clarity and precedent for the examination of immaterial claims in a small-claim court.

Article 4 Regulation of the Supreme Court Number 4 of 2019 on Amendments to Regulation of the Supreme Court Number 2 of 2015 on Procedures for Small-Claims Court Settlement provides for as follows:

- 1) *The parties in a Small Claim Court consist of a plaintiff and a defendant, each of which cannot be more than one, unless they have the same legal interest.*
- 2) *With respect to the defendant whose place of residence is unknown, a Small Claim Court cannot be filed.*
- 3) *The plaintiff and the defendant in a Small Claim Court shall be domiciled in the jurisdiction of the same court.*  
  
*(3a) In the event that the plaintiff is outside the jurisdiction of the defendant's residence or domicile, the plaintiff in filing the lawsuit shall appoint a proxy, an incidental attorney, or a representative having an address in the jurisdiction of domicile of the defendant with a power of attorney of the plaintiff's institution.*
- 4) *"The plaintiff and the defendant must attend each court of hearing directly with or without being accompanied by a proxy, an incidental attorney or a representative with a power of attorney of the plaintiff's institution."*

### **Civil Case Court Order**

- 1) The court hearing is declared opened and open to the public;
- 2) The parties (plaintiff and defendant) were ordered to enter the courtroom;
- 3) The identity of the parties (power of attorney) is checked and the license to practice issued by any advocate organization is verified;
- 4) If both parties are complete, they are given the opportunity to settle the case in an amicable manner;
  - Mediator from within the PN or from outside the PN is offered to settle the case (see PERMA RI No. 1 of 2008);
  - If consensus through an amicable manner is not achieved, the court hearing is continued with the reading of the letter of complaint by the plaintiff/his attorney;
  - If consensus through an amicable manner is achieved, the decision will be read out before the court in the form of Deed of Settlement entitled FOR THE SAKE JUSTICE UNDER THE ONE ALMIGHTY GOD;
- 5) If consensus through an amicable manner is not achieved, the court hearing will move on to the next phase, the response from the defendant; (answers containing exceptions, rebuttals, requests for provisional decisions, counterclaims);
- 6) If there is a counterclaim, the defendant also has a position as plaintiff-in-counterclaim;

- 7) Response of the plaintiff, if counterclaim is lodged, the plaintiff has a position as defendant-in-counterclaim;
- 8) During the question and answer, there possible lawsuit for intervention (voeging, vrijwaring, toesienkomst);
- 9) Prior to substantiation, there is possibility that an interlocutory decision (a provisional decision, a decision regarding the granting of an absolute exception, or a lawsuit for intervention) is granted;
- 10) Substantiation.
  - Initialed with the plaintiff in the form of letters of evidence and witnesses;
  - Followed by the defendant in the form of evidence and witnesses;
  - When it comes to land, a local inspection is carried out;
- 11) Conclusion;
- 12) Deliberation by the Panel of Judges (confidential);
- 13) Pronunciation of Verdict;
  - Content of the verdict: a. Lawsuit is granted, b. Lawsuit is rejected, c. Lawsuit is inadmissible;
  - With respect to this verdict, the parties were informed of their rights that they may accept, consider, or lodge an application for appeal against the verdict. Consideration shall be taken by either party within 14 days from the verdict;
  - If any party is not present, they will be notified in advance and within 14 days after the notification, they have the right to determine their stance. If within 14 days the parties fail to determine their stance, they are deemed to have accepted the verdict.

