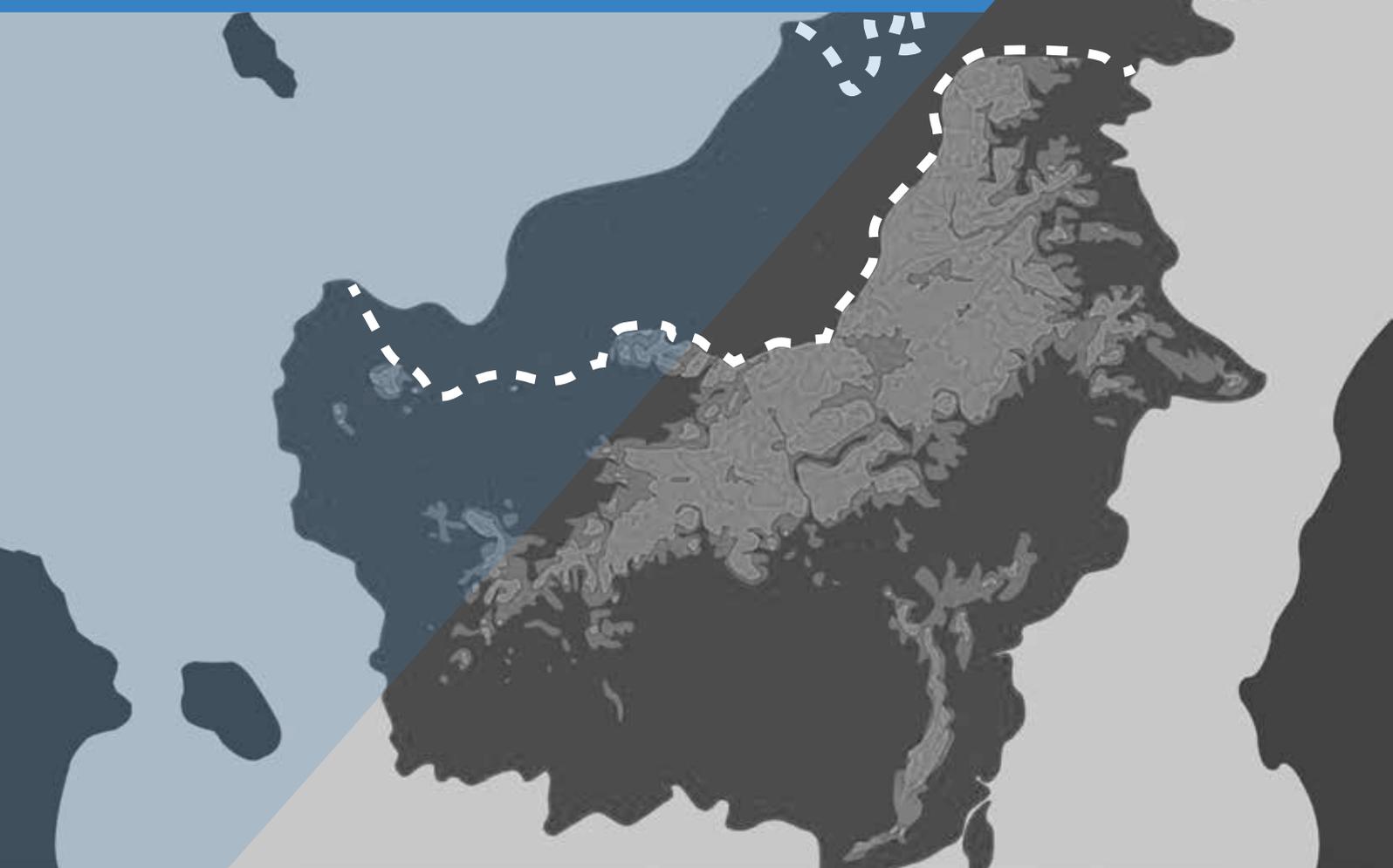


RESEARCH REPORT

THE PROFILE OF TRAFFICKING IN PERSONS IN THE BORDER AREA OF KALIMANTAN

*STUDIES OF THE DISTRICTS OF SANGGAU, SAMBAS,
KAPUAS HULU, AND NUNUKAN*



DRAFTING TEAM

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PRODUCTION

The International Organization for Migration (IOM) Indonesia is committed to implementing orderly and humane migration principles that benefit migrants and the public. As an intergovernmental organization, IOM Indonesia collaborated with the Government of Indonesia through Ministry of Women Empowerment and Child Protection, Board for the Protection of Indonesian Migrant Workers (BP2MI) and Anti-Trafficking Task Force at the national and sub-national levels produced a publication with the title of “The Profile of Trafficking in Persons in the Border Area of Kalimantan: Studies of the Districts of Sanggau, Sambas, Kapuas Hulu and Nunukan”. The production is under the a program of “Promoting an Integrated Governance Response to Combat Trafficking in Persons and other Related Crimes at Border Regions (Border-TIP)” supported by the Bureau of International Narcotics and Law Enforcement Affairs (INL-US Department of States), the Government of the United States.

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*STUDIES OF THE DISTRICTS OF SANGGAU, SAMBAS,
KAPUAS HULU, AND NUNUKAN*

INTERNATIONAL ORGANIZATION FOR MIGRATION

2020

FOREWORD

International Organization for Migration (IOM) in Indonesia

The Trafficking in Persons (TIP) Report issued by the U.S. State Department's Office in 2018 explained that Indonesia was the country of origin of trafficking victims, where most victims were trafficked abroad. In the same year, the annual report of the Indonesian Anti-Trafficking Task Force, also noted that the majority of Indonesian migrant workers were employed and exploited abroad, with the most cases occurring in the Middle East and Malaysia.

The high number of trafficking cases of Indonesians in Malaysia is motivated by geographical and cultural factors, as well as the intense flow of population mobility from Indonesia to Malaysia and vice versa, for leisure, family visit, and labor migration. According to the data collected from the Board of Protection of Indonesian Migrant Workers (BP2MI), there were more than 7,000 migrant workers stationed in Malaysia within the period of 2017- 2019.

Geographical location, cultural proximity and the high needs of the labor market in Malaysia are interrelated factors which drive the situation described above. Geographically, Indonesia and Malaysia are only limited by a strait. Some parts of the countries even share the same island of Borneo (Kalimantan in Indonesian) and are only separated by land borders, which are located in Sanggau, Sambas, Kapuas Hulu, and Nunukan Districts.

For a long time, the four districts have been known as the entry and exit points for the flow of goods and people to and from Malaysia. In early 2000, Nunukan District became an entry point for hundreds of thousands of Indonesian citizens who were forcibly repatriated by the Malaysian government because of their immigration status; such as working without valid working documents. This condition has a tremendous impact on Indonesia, including showcasing the practice of various labor violations and potential trafficking in persons (TIP) experienced by migrant workers.

Seventeen years have passed from what became widely known as the bloody tragedy of Nunukan. Various improvements have been made by the government of the Republic of Indonesia, however irregular migration flows that can potentially lead to TIP, are still commonly found in various border areas. On the other hand, the development of infrastructure and massive land clearing of oil palm in most areas of Kalimantan requiring workers from areas outside Kalimantan which also makes these regions vulnerable to the dangers of TIP.

To get an adequate picture of the situation of trafficking in persons in border areas, particularly West Kalimantan and North Kalimantan, the International Organization for Migration (IOM) worked with the Ministry of Women's Empowerment and Child Protection (KPPPA) and the BP2MI and with support from The Bureau of International Narcotics and Law Enforcement Affairs (INL) of the United States Government, conducted a study of the situation of trafficking in people in the four border regions.

This study reveals the types and characteristics of TIP in the four border regions. The study also map-out the responses and available resources in the four regions to tackle TIP, the challenges and best practices in the prosecution of the cases and handling victims of TIP. The research also provides several notes and recommendations to strengthen the integrated responses in handling and prosecute TIP cases in the border areas.

IOM would like to express its utmost appreciation to Ms. Destri Handayani as the Assistant Deputy for the Protection of Women's Rights from Trafficking in Persons, the Ministry of Women's Empowerment and Child Protection, and Mr. Anjar Prihartanto as the Deputy for the Protection Department of the Board for Protection of Indonesian Migrant Worker, who tirelessly accompanied the preparation of this research report. IOM also wishes to thank Sri Wiyanti Eddyono S.H., LL.M., Ph.D. and fellow researchers from the Faculty of Law, Universitas Gadjah Mada who have assisted IOM in the process of preparing reports and recommendations for the results of this study. In addition, IOM thanks the Local Governments in the four border areas; Sanggau, Sambas, Kapuas Hulu and Nunukan, who provided information and inputs during the process of compiling the results of the study and validating the results of the study. Last but not least, I would also like to extend my biggest appreciation to the IOM Counter Trafficking and Labor Migration team; Among Resi, Raden Sancaya and Felicia Clarissa, without them this research report would not be able to be presented.

IOM hopes that this research report can contribute to the efforts of the Government of Republic of Indonesia in the development of TIP policies and countermeasures programs at both national and regional levels. Furthermore, IOM also wishes that this report can be useful for all stakeholders and the wider communities who have an interest in the issue of TIP in Indonesia. Enjoy.

Jakarta, 16 March 2020

Chief of Mission of IOM in Indonesia

Louis Hoffmann

FOREWORD

The Ministry of Women's Empowerment and Child Protection of The Republic of Indonesia

Praise be to God Almighty for His grace and guidance so that “The Profile of Trafficking in Persons in the Border Area of Kalimantan: Studies of the Districts of Sanggau, Sambas, Kapuas Hulu and Nunukan” could be completed. This profile is successfully developed through a good cooperation among various partners, namely the International Organization for Migration (IOM) in collaboration with the Ministry of Women's Empowerment and Child Protection (*Kemen PPPA*) and the Board for the Protection of Indonesian Migrant Workers (BP2MI) and with the support of the Narcotics Affairs Agency International and Law Enforcement (INL-US Department of States), the Government of the United States.

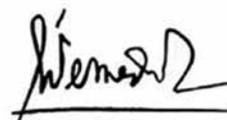
In the context of Trafficking in Persons (TIP), there are common terms of “origin area” which means the area where the victims come from and “transit area” which means the area where the victims are harbored or detained while waiting to be transported to another area or country of destination. Each district in the border in Kalimantan has a unique pattern of cross-border migration and TIP cases: Nunukan District and Sanggau District are transit area, whereas Sambas District rather becomes an origin area of Indonesian Migrant Workers than be a transit point. Kapuas Hulu District, on the other hand, which was previously known as a transit area, now has also become origin area and destination area.

This profile is published as an effort to have a real picture of the situation of TIP in the border area in Kalimantan as mentioned above, the factors that contributed to the TIP in the area, and the challenges faced in combating the TIP crimes. In addition, this study also explored the local governments commitment in dealing with TIP-related issues in their respective district.

We hope that this profile could be useful in strategizing more effective and efficient policies, creating programs for the prevention and subsequently handling of TIP cases. This product could also support the development of more focused and right-targeted districts' Plan of Action (RAD). In the end, this profile is expected to contribute to the efforts of the government of Indonesia in reducing TIP crime rates.

Finally, we would like to thank and express our highest appreciation for the contributions of the parties in the preparation of this Profile, especially to IOM who provided financial support and expertise during the process of developing the profile. I believe that the Ministry of Women's Empowerment and Child Protection could not walk alone in anti-trafficking efforts without the good cooperation and support from the relevant ministries and institutions, local governments, development partners, NGOs, academics, and the community; for which I am very grateful.

Deputy Minister for Women's Rights Protection



Prof. dr. Vennetia Ryckerens Danes, M.S., Ph.D.

FOREWORD

The Board for the Protection of Indonesian Migrant Workers (BP2MI)

By extending our gratitude to the Almighty God, finally the research under the project of “Promoting Integrated Governance in the Eradication of Trafficking in Persons and Other Related Crimes in Border Areas” has been completed by IOM Indonesia. This project is a collaboration amongs IOM Indonesia, the Ministry of Women Empowerment and Child Protection and the Board for the Protection of Indonesian Migrant Workers (BP2MI), with the support from the Department of State’s Bureau for International Narcotics and Law Enforcement Affairs (INL).

This research involved literature review and field studies in four border districts in Kalimantan, including Sanggau, Sambas, Kapuas Hulu and Nunukan. There have found several similarities in the trafficking in persons (TIP) situation and causes along the districts. On the other hand, however, there are differences found in the commitment and capacity of the local governments in handling TIP issues in each district.

Various parties including academics, practitioners, stakeholders, and the community in four districts give their full support to succeed the completion of the research. Therefore, we hereby would like to thank the Research Team from the Faculty of Law of Universitas Gadjah Mada, to the Chief of Mission of IOM Indonesia Mr. Louis Hoffmann, Mrs. Among Resi and fellow Counter Trafficking/ Labour Migration Unit, to the Ministry of Women Empowerment and Child Protection, and to all local governments, institutions and community in four districts (Sanggau, Sambas, Kapuas Hulu and Nunukan), including all officials from BP2MI for their endless support.

BP2MI, as a stakeholder in the field of migration, greatly appreciates this study which be very beneficial for the wider community in the border area. The findings will also provide recommendation for the stakeholders in the fields of manpower, migration, and border security in Indonesia. We hope that this research report can be used as a reference to develop strategic and integrated actions to deal with the TIP issues in the border areas in Kalimantan. Constructive suggestions to the research report are welcome.

Jakarta, 10 March 2020

Deputy of Protection Board for
the Protection of Indonesian Migrant Workers (BP2MI)



Dr. Anjar Prihantoro BW, MA

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LIST OF ABBREVIATIONS AND ELABORATIONS

Abbreviations	Elaboration
ATTF	Anti-Trafficking Task Force
BAPPEDA	<i>Badan Perencanaan Pembangunan Daerah</i> (Regional Development Planning Agency)
BAMAG	<i>Badan Musyawarah Antar Gereja</i> (Inter-church Deliberation Body)
BNP2TKI	<i>Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia</i> (National Agency for Placement and Protection of Indonesian Migrant Workers)
BP3TKI	<i>Balai Pelayanan Penempatan dan Perlindungan Tenaga Kerja Indonesia</i> (Service Center for the Placement and Protection of Indonesian Migrant Workers)
BPJS	<i>Badan Penyelenggara Jaminan Sosial</i> (Social Security Administering Body)
DISNAKER	<i>Dinas Tenaga Kerja</i> (Manpower Office)
DINSOS	<i>Dinas Sosial</i> (Social Service Office)
DINSOSP3AKB	<i>Dinas Sosial Pemberdayaan Perempuan, Perlindungan Anak dan Keluarga Berencana</i> (Social Service Office for Women Empowerment, Children Protection and Planned Family)
DINSOSP3AP2KB	<i>Dinas Sosial Pemberdayaan Perempuan, Perlindungan Anak Pengendalian Penduduk dan Keluarga Berencana</i> (Social Service Office for Women Empowerment, Children Protection, Population Control and Planned Family)
DP3AP2KB	<i>Dinas Pemberdayaan Perempuan Perlindungan Anak Pengendalian Penduduk dan Keluarga Berencana</i> (Office for Women Empowerment, Child Protection, Population Control, and Planned Family)
DISDUKCAPIL	<i>Dinas Kependudukan dan Pencatatan Sipil</i> (Population Affairs and Civil Registry Office)
DISKOMINFO	<i>Dinas Komunikasi dan Informasi</i> (Communication and Information Service Office)
DPRD	<i>Dewan Perwakilan Rakyat Daerah</i> (Regional People’s Representative Assembly)
DWP	<i>Dharma Wanita Persatuan</i> (Women’s Association)
FGD	Focus Group Discussion (<i>Diskusi Kelompok Terarah</i>)
GOW	<i>Gabungan Organisasi Wanita</i> (Association of Women’s Organization)
ILO	International Labour Organization
IOM	International Organization of Migration
LBH	<i>Lembaga Bantuan Hukum</i> (Legal Aid Institution)
LTSA	<i>Layanan Terpadu Satu Atap</i> (Single-roof Integrated Service Centre)
LSM	<i>Lembaga Swadaya Masyarakat</i> (Civil Society Organization)

LIST OF ABBREVIATIONS AND ELABORATIONS

Abbreviations	Elaboration
Kemen PPPA	<i>Kemenetrian Pemberdayaan Perempuan dan Perlindungan Anak</i> (Ministry of Women Empowerment and Child Protection)
NGO	Non-Government Organization (<i>Organisasi Nonpemerintah</i>)
Perda	<i>Peraturan Daerah</i> (Regional/Local Regulation)
P4TKI	<i>Pos Pelayanan Penempatan dan Perlindungan Tenaga Kerja Indonesia</i> (Service Post for Placement and Protection of Indonesian Migrant Workers)
PPTKIS	<i>Pelaksana Penempatan Tenaga Kerja Indonesia Swasta</i> (Private Indonesian Migrant Workers Placement Agent)
PoA	Plan of Action
POLRES	<i>Kepolisian Resor</i> (District Police)
POLSEK	<i>Kepolisian Sektor</i> (Sub-District Police)
SATPOL PP	<i>Satuan Polisi Pamong Praja</i> (Civil Service Police Unit)
P2TP2A	<i>Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak</i> (Integrated Service Center for Women and Children Empowerment)
PKBI	<i>Perkumpulan Keluarga Berencana Indonesia</i> (The Association for Planned Family Indonesia)
PLBN	<i>Pos Lintas Batas Negara</i> (Border Crossing Post)
Puskesmas	<i>Pusat Kesehatan Masyarakat</i> (Community Health Center)
RSUD	<i>Rumah Sakit Umum Daerah</i> (Regional Public Hospital)
Rutan	<i>Rumah Tahanan</i> (Detention Center)
TIP	Trafficking in Person

EXECUTIVE SUMMARY

The mapping of the global Trafficking in Persons (TIP) situation has become increasingly urgent, along with the agenda to achieve the Sustainable Development Goals 2030 (SDGs) and the call for Global Compact of Migration (GCM), 2018.¹ Under SDG target 8.7, there is a call for an end to all forms of forced labor, human trafficking, modern-day slavery, and child labor by 2025. Two additional targets, also addressing human trafficking, were outlined under target 5.2: Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking, sexual, and other types of exploitation; and target 16.2 which is the end of abuse, exploitation, trafficking, torture, and all forms of violence against children. While under the GCM, the target was set under objective 10 to Prevent, Combat and Eradicate Trafficking in Persons in the Context of International Migration.

Indonesia's Law No 21 Year 2007 on the Eradication of Trafficking in Persons Crimes has set a definition and standard to prevent, combat and eradicate TIP. The Law also describes victim rights and protection, and the obligation of the state to fulfil the rights of the victim. To support the implementation of the TIP Law, the Government of Indonesia has also established a National Task Force to Prevent and Handle Trafficking in Persons Crimes through Presidential Regulation No 69/2008 concerning the Task Force to Prevent and Handle Trafficking in Persons Crimes. Moreover, several ministerial regulations also have been enacted to strengthen the prevention and eradication efforts regarding TIP, namely: Ministerial Regulation of the Ministry of Women's Empowerment and Child Protection No 22 Year 2010 on the Standard Operational Procedures on Assistance of Victims and/or Witnesses of TIP Crimes, the Ministerial Regulation of Women's Empowerment and Child Protection No 10 Year 2012 on the Guidelines for the Establishment and Enforcement of the Task Force to Prevent and Handle TIP Crimes, Instruction of the Minister of Home Affairs no 183/373/Sj concerning the Prevention and Handling of TIP dated 5 February 2016. All these regulations are mandated to the sub-national government to establish an anti-trafficking task force, as well as allocating enough financial resources for the prevention and eradication of TIP.

While the regulations are in place; however, the implementation of the regulation itself needs to be assessed. This study exercises the implementation of the existing regulations at the sub-national level, especially at the border areas, with the focus on the provision of services for victims of trafficking, the capacity of frontline officers and local government, and at the same time identify existing TIP data and patterns in the border areas, which are well known as transit areas for migrant workers who depart to Malaysia.

¹ See, Combating Trafficking in Person and Contemporary Forms of Slavery on Global Compact Thematic Paper, IOM accessed through <https://www.iom.int/iom-thematic-papers> and Global Compact for Safe, Orderly and Regular Migration, July 2018, accessed through <https://refugeemigrants.un.org/intergovernmental-negotiations>.

In discussing the TIP profile of the border areas, aside from the lack of official and integrated TIP data, some of the key challenges include the diverse understanding and knowledge of TIP within local government officials, law enforcement and policymakers in border areas which also links to the local government's commitment to providing integrated responses towards VOTs. The study notes the minimal amount of assistance and monitoring from the Provincial and Central Government to the District Government on the development of prevention and eradication programs for TIP. In addition, interagency coordination within the local government as well as intra-agency coordination (between local government institutions and the representatives of central government offices) has not been well established. Further, inter-region cooperation is not being actively used as one of the redress mechanisms in combating TIP.

A discussion with local government stakeholders, as well as civil society organizations in the targeted research areas, reflected a limited understanding of TIP, within which most of the participants stated that there was no difference between trafficking and migrant smuggling. This situation also has driven the TIP discussion into cross-border issues related to labor placement. Only a few of the participants were aware and understood that border crossing is not necessary to prove TIP elements, as TIP can occur domestically.

In addition, the study also examined the legal verdicts of several cases between 2014-2018 in each targeted area. It is interesting to note that most of the court decisions with TIP indictments were not concluded as TIP crimes. One of the reasons highlighted was the lack of evidence to prove the TIP act from the investigator and the prosecutor.

Despite the challenges, the study underlines some of the good practices in collaboration between the local government and civil society organizations, especially in providing direct victim assistance. For instance, in Sambas and Sanggau, the local government has involved Non-Government Organizations in victim assistance programs, such as economic empowerment and legal assistance. The research concludes with some key recommendations, in particular for the government, which includes:

1). Establish a Strong Policy to Eradicate TIP that is Linked with Border Management Issues

A comprehensive and strong policy such as a district plan of action and referral mechanism to respond to TIP crimes in each targeted district needs to be formalized. This plan of action and its referral system should be designed together by all related stakeholders and involved community leaders in the drafting and consultation process. In addition, considering border issues, it is also important for the local government to engage with the border management offices in designing such programs on countering TIP. In this development process, it is urgent for the Central Government to provide direct assistance and support, to ensure that the plan of action and referral system is in accordance with the National Plan of Action on the Eradication of TIP, as well as the Standard Operational Procedure on the Assistance of Victims and/or Witnesses of TIP Crimes as stated in the Ministerial Regulation of the Ministry of Women's Empowerment and Child Protection Regulation No 22/2010.

While for the National Government, in the absence of a bilateral agreement between Indonesia and Malaysia on the Placement of Migrant Workers, it is important to develop a national policy and strategy to respond to labor migration issues in the Indonesia-Malaysia corridor, considering the level of labor migration, as well as protection issues towards Indonesian migrant workers in Malaysia.

2). Strengthen the Capacity of Human Resources in Local Governments at the Border Area

One of the pillars of the eradication of TIP is the provision of victim and witness protection, and effective prosecution of TIP crimes. The various understandings and interpretations of TIP elements should be addressed by enhancing frontline officer understanding - an integrated joint training for law enforcement and frontline officers is needed to close the gap. Furthermore, it is recommended that TIP and migrant smuggling is mainstreamed to border officers and law enforcement agencies that focus on border management, such as the Navy, Army, Coast Guard and Marine Police. A joint inspection program to prevent and combat TIP with clear guidelines and referral pathways can also be used as one of the methods to exercise and strengthen the capacity and coordination amongst law enforcement agencies.

3). Improve Infrastructure and Budget Allocation for Border Areas to Tackle TIP and Migrant Smuggling

With the unique border landscape, strengthening the border management system is urgently needed. Besides physical infrastructure (offices, monitoring tools, improved border check points), soft skills such as victim identification procedures and basic VOT assistance needs to be established within the border management system.

In addition, the government – both at the national and sub-national levels – should consider designing specific prevention programs in border areas, that take into account the geographical and cultural relationship between the two countries.

To measure the effectiveness of prevention and prosecution programs, it is recommended to develop data collection and sharing methods that can be accessed by related agencies that are responsible for border management, as well as trafficking in persons. In addition, these data collection tools can also be used as one of the monitoring methods for the province of origin and province of transit, in order to assess the delivery of their assistance.

4) Improve Research on the Nexus of TIP, Migrant Smuggling and Border Management Issues

It is important for the Government of Indonesia to develop and update its TIP Profile, particularly to link TIP with migrant smuggling and border management issues. Aside from that, a comprehensive study on border management issues that also captures the TIP situation and provides a strategy to prevent such crimes needs to be done.

1

INTRODUCTION

A BACKGROUND

In the age of globalization, trafficking in persons is a phenomenon that is becoming more pervasive with an overall increase in international migration. In 2018, the International Organization of Migration (IOM) recorded that the population of international migrants amounts to 258 million people, with 124.8 million (48%) of them female migrants and 36.1 million (14%) of them as minors.² IOM concludes that there was an increase in the population of international migrants in the year leading up to 2018, amounting to 2.8%. Migration continues to occur for various reasons: employment opportunities, better working and living conditions, higher education, conflict in the country of origin, or to seek a new life experience. Work is the most significant goal that pushes a person to migrate, as can be seen from the total population of migrant workers globally- reaching 150.3 million, with 44.3% being female migrants. From this earlier number, 110 million of the population of international migrants originate from Asia, and among them, 11.5 million are domestic migrant workers.³

However, the migration process can leave many individuals vulnerable to illicit practices such as trafficking in persons. The International Labour Organization (ILO) and Walkfree Foundation, in cooperation with IOM, stated that in 2016, there were 40 million victims of modern slavery and trafficking in persons which consisted of 25 million people who have endured forced labor, and 15 million people who have experienced forced marriage.⁴ The Counter-Trafficking Data Collaborative noted that by the end of 2017 there were approximately 80,000 people that indicated they were victims of cross-border trafficking in persons, with victims originating from 171 countries, who experienced exploitation in 170 countries. From this data, 71.1% of them are women.⁵

Trafficking in persons is a crime with a complex nature.⁶ This complexity has been acknowledged and highlighted in the US Department of State TIP Report.⁷ This practice has taken place long before the First World War, and has been considered to more frequently occur as the era of globalization progresses.⁸ This crime is often associated as being an organized clandestine crime, and a serious violation of human rights.⁹ The crime is carried out through various patterns, both through syndicates that use sophisticated technology, or through relatively traditional networks such as family networks, or by individuals that act independently.¹⁰

² See Global Migration Data Analysis Centre (GMDAC) and International Organization for Migration, *Global Migration Indicator 2018: Insight from Insights from the Global Migration Data Portal*, 2018, available at <http://www.migrationdataportal.org>.

³ Ibid.

⁴ Ibid. <https://www.iom.int/global-migration-trends>.

⁵ This data is the final data after the process of anonymization (structured categorization according to certain categories). See, Counter Trafficking Data Collaborative, *Data Codebook*, 2017, available at https://www.ctdatacollaborative.org/sites/default/files/CTDCper cent20codebookper cent20v6_0.pdf, accessed 17 April 2019.

⁶ Cherif M. Bassiouni, et. al., "Addressing International Human Trafficking in Women and Children for Commercial Sexual Exploitation in the 21st Century," *ERES* 2010/3 Vol. 81, pp. 417 & 491.

⁷ US Department of State, *Trafficking in Persons Report June 2018* (Washington D.C.), 2018.

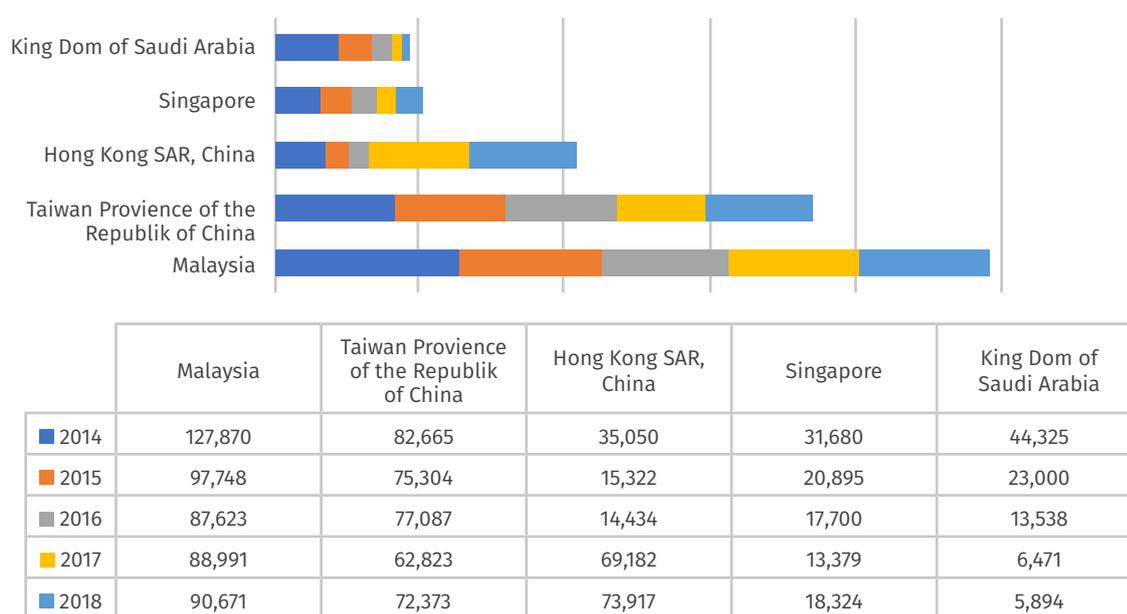
⁸ Ulbe Bosma, "Decolonization, Nation Building and Migration Crises in Southeast Asia" in *The Oxford Handbook of Migration Crises*, Cecilia Menjivar, Marie Ruiz, and Immanuel Ness, eds. (Oxford: OUP, 2019).

⁹ Bassiouni, "Addressing International Human Trafficking," n. 5.

¹⁰ US Department of State, *Trafficking in Persons Report June 2018* (Washington D.C.), 2018, n. 6.

In the Indonesian context, TIP is often associated with labor migration. As a source of migrants, Indonesia is one of the biggest sending countries for migrant workers in the Asia-Pacific. According to the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI), in the last four years (2014-2018), Indonesia sent 1,486,601 workers abroad, of which 63% are female migrant workers and the remaining 27% are male workers. From these, 472,905 migrant workers were placed in Malaysia- making Malaysia the highest placement country- followed by Taiwan, Province of the People’s Republic of China, and the Hong Kong Special Administrative Region of China (Hong Kong SAR, China), Singapore, and the Kingdom of the Saudi Arabia (KSA).¹¹

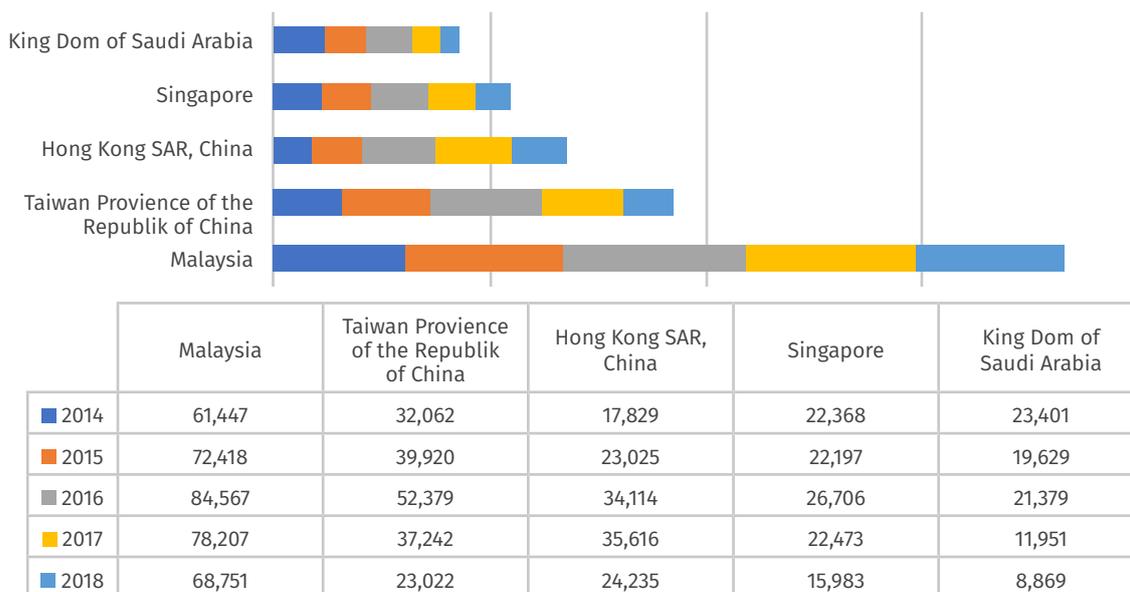
Chart 1. Number of Indonesian Migrant Worker Placed to the Destination Countries



Malaysia is also the highest country who returned or deported Indonesian migrant workers. As per BNP2TKI data, in 2018 there were 68,751 Indonesian workers returned or deported from Malaysia.

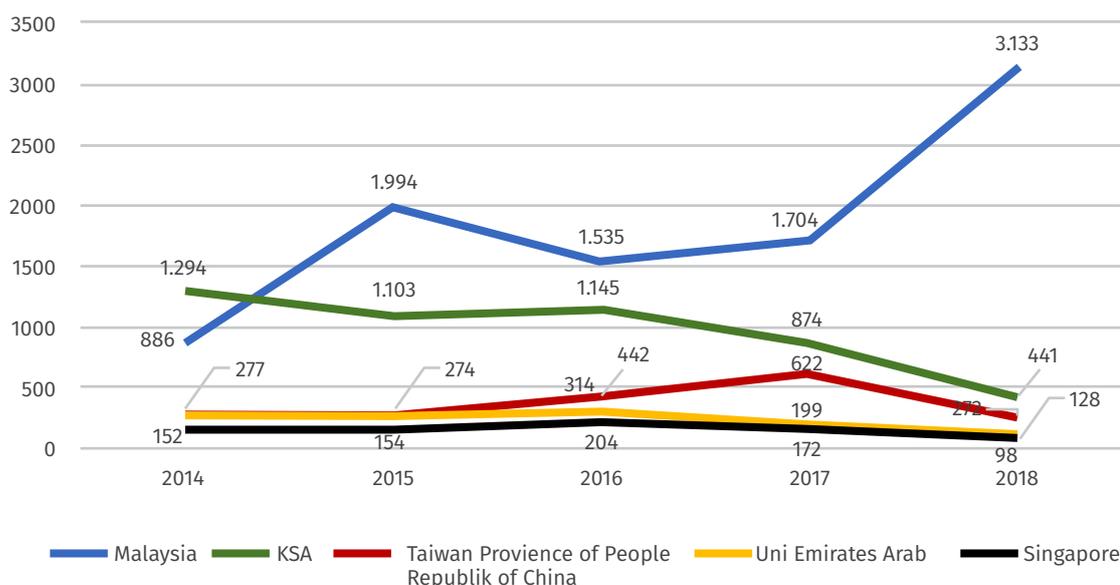
¹¹ BNP2TKI, Data on the Placement and Protection of IMWs 2018 (Center for Research, Development, and Information BNP2TKI, 2019).

Chart 2. Number of Indonesian Migrant Workers Returned from Destination Countries



In addition, BNP2TKI also noted that in the last four years, BNP2TKI has received 22,768 complaints from IMW and their family members, of which 7,069 complaints can be associated with TIP, such as unpaid salaries, loss of contact and communication with the family, placed in a different work place not in accordance with the employment contract, experiencing of violence from the employer, deduction of salary exceeding Government rules, undocumented and illegal entry, withholding of passports and documents by the agency, falsification of documents, fraud regarding type of work, and sexual abuse.¹² Further, Malaysia also has become the top country with highest complaints, follows by KSA, Taiwan Province of China, United Arabian Emirates (UAE) and Singapore.

Chart 3. Number of Case Report Based on Destination Countries



Source: National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI)

¹² Ibid.

The BNP2TKI data above is in line with IOM Indonesia data, which recorded that out of 9,062 victims of trafficking (VOT), more than 50% of them were exploited in Malaysia.¹³ Among these 9,062 VOTS, 75% of them experienced labor exploitation, and 23% of them were victims of sexual exploitation. This data also shows that 85% of the victims experienced exploitation when migrating abroad, while 15% of them experienced exploitation within the country.

The high number of labor migrants between Indonesia and Malaysia is influenced by the culture of migration that is deeply rooted in society. For example, people in South Sulawesi and East Nusa Tenggara see migration to Malaysia as something that has been inherited from generation to generation, and therefore the migration process is carried out independently, overlooking the importance of migration documents and formal migration. In parts of West Kalimantan, such as Kapuas Hulu, Sanggau and Sambas, which neighbor directly with Malaysia, migration is intended as a normal work process, as well as helping families. This is because employers in Malaysia still have kinship relations with them, as they originate from the same ethnic group. This background also supports people to move abroad without using proper travel documents or work documents, as is normally requested by the two countries.

This culture, and the geographic location of the border regions of Indonesia and Malaysia - which are only separated by straits or by land - has been utilized as “heaven” for unscrupulous agents in smuggling migrants to Malaysia. This situation is even worse when the criminal networks also use this channel as a TIP route, from the province of origin outside of these border areas to the region of East Malaysia.

With this background, the research would like to map out the TIP situation especially in the border areas between Indonesia and Malaysia, with a focus on some key issues below:

1. Trends of TIP at the border areas;
2. Level of knowledge and understanding of the local government, law enforcement, and policy makers on TIP, and its impact on the TIP response;
3. The availability and effectiveness of institutional frameworks in combatting TIP in border areas.

Aside from the key issues above, the research also aims to draw out some recommendations to support the Government of Indonesia’s efforts in combatting TIP, especially at border areas.

¹³ See, IOM Indonesia Counter Trafficking database, 2018.

B THE CONCEPTUAL FRAMEWORK OF TRAFFICKING IN PERSONS

International and Regional Frame Work

In 2009, Indonesia ratified two additional United Nations Convention **Protocols against Transnational Organized Crime, namely the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children** (also referred to as the Palermo Protocol) through Law No. 14 of 2009 and the Migrant Smuggling Protocol through Law No. 15 of 2009. The ratification of the two additional protocols strengthens the commitment of Indonesia under the international framework against TIP. The Palermo Protocol has become the primary reference document on TIP and migrant smuggling at the international level, and is considered a global framework. The Palermo Protocol defines Trafficking in Persons (TIP) as:

“..... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”¹⁴

According to this paragraph, the elements of TIP consist of:

- (a) process, including recruitment, harboring and transfer.
- (b) Means, which among others includes: threats of or the use of violence or other forms of coercion, abduction and fraud
- (c) purpose of exploitation.

Besides the Palermo Protocol, in 2017 Indonesia also ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, through Law No 12/2017 on the Ratification of the ASEAN Convention against TIP. This regional convention, set as the standard for the ASEAN Member States (AMS) to prevent and combat TIP, ensures just and effective punishment of trafficking offenders, protection and assistance of victims of trafficking (VoT), with full respect of human rights and the promotion of cooperation amongst AMS.¹⁵

¹⁴ Article 3 (a) **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**, Supplementing the United Nation Convention against Transnational Organized Crime, 2000.

¹⁵ Article 1 (1), ASEAN Convention on Trafficking in Person Especially Women and Children, 2015.

National Framework

Prior to the ratification of the TIP Protocol, Indonesia enacted a TIP Law in 2007 namely Law No. 21 of 2007, concerning the Eradication of Trafficking in Persons Crimes (TIP law). This law defines trafficking in persons as:

[the] recruitment, transportation, harboring, sending, transfer, or receipt of a person by means of threat or use of force, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within the country or cross border, for the purpose of exploitation or which causes the exploitation of a person.

The definition of human trafficking in this law has the same elements as the Palermo Protocol 2000, namely; various actions, in certain ways and for exploitation or to cause people to be exploited. The TIP Law, which is a special criminal act, regulates that the offenders of TIP can be individuals, organized crime groups, corporations and unscrupulous government officers. Furthermore, this TIP law also protects the victim's rights and regulates the state's obligation and civil society's roles in eradicating TIP crimes. Furthermore, this TIP law also protects the victim's rights and regulates the state's obligation and civil society's roles in eradicating TIP crimes.

The law regulates trafficking in persons as a special crime this is reflected through the broader forms of evidence that are accepted, including electronic information in the form of maps, photographs, writings, drawings or other forms; the statement of one witness is considered as valid evidence if backed up by other evidence; wiretapping can be done based on sufficient preliminary evidence, and the freezing and seizure of assets of those involved in trafficking in persons. The TIP law also places attention to victims by regulating victims' rights to information in the development of their cases; witness and victim protection systems; alongside the right to reparation, restitution and repatriation.

Another regulation related to the TIP is the Law No. 31 of 2014 on the amendments to Law No. 13 of 2006 on the Protection of Witnesses and Victims. This law affirms seven categories of victims of crime who are priorities for obtaining rights, including the right to protection. This law emphasizes the States obligations, including the Witness and Victim Protection Agency, in fulfilling the rights of victims of TIP.

Moreover, considering that majority of TIP in Indonesia is dominated by cross-border trafficking for labour, TIP is also regulated under Law No 18/2017 concerning the Protection of Indonesian Migrant Workers. This law explicitly mentions the need to protect migrant workers from trafficking, slavery and forced labor, therefore incorporating the principle of anti-TIP. The principle of anti-trafficking in persons is explained as follows:¹⁶

...

There is no act of recruitment, transportation, transfer, transfer or acceptance of Prospective Indonesian Migrant Workers or Indonesian Migrant Workers with the threat of violence, use of violence, abduction, confinement, counterfeiting, fraud and abuse of power or vulnerable position, monetary entrapment or providing payment or benefit to obtain approval from the person in control of the other person, whether done within the country or across the countries, for the purpose of exploitation or to cause Prospective Indonesian Migrant Workers or Indonesian Migrant Workers to be exploited.

Further, in regards to migrant smuggling related to TIP, and to complement the Migrant Smuggling Protocol, Indonesia also enacted Law no. 6 of 2011 on Immigration (the Immigration Law) which regulates preventative and repressive measures in preventing TIP and people smuggling. Preventive measures include monitoring and securing travel documents, detecting counterfeit documents, exchanging information, and monitoring and detecting people smuggling through conventional and non-conventional methods. Repressive actions regulated under Immigration Law include immigration investigations, administrative immigration actions, and cooperation with other institutions related to the perpetrators of TIP and people smuggling.

C GENERAL OVERVIEW ON TRAFFICKING IN PERSONS AND MIGRANT SMUGGLING IN INDONESIA

Scholars such as Ford, Lyons and Schendels¹⁷ have asserted the importance of study on the link between TIP, migrant smuggling and labor migration. There are at least two approaches: first, differentiating and proposing to use the ‘method’ element in the Palermo Protocol as a distinction between migrant smuggling and trafficking in persons, and using the ‘exploitation’ objective element as a differentiator between TIP and labor migration. If a person enters a

¹⁶ See Explanation of Law no. 18 of 2017 on the Protection of Indonesian Migrant Workers Art 2 letter h.

¹⁷ Ford, Lyons and van Schendel, “Labour Migration and Human Trafficking in Southeast Asia: Critical Perspectives”, (London and New York: Routledge) n. 23.

country without threats, the use of violence or other forms of coercion, abduction, or fraud, then the act can be called a case of smuggling. Meanwhile, when a person enters the country by irregular means, with the 'threat or use of violence or other forms of coercion, abduction, fraud' then trafficking in persons is considered to have occurred.¹⁸ Therefore Ford, Lyons and van Schendel proposed an anti-trafficking framework that focusses on coercion, fraud and exploitation experienced by those who carry out movement across the border. If the elements of coercion, fraud and exploitation are found in labor migration, then it can be concluded that the practice of TIP has been proven.

In contrast with Ford, Lyons and van Schendel, Bassiouni,¹⁹ suggested that the elements of coercion and exploitation must be present and be part of people smuggling. According to Bassiouni, people smuggling is on a continuum from coercion to exploitation, even though it looks as if there is an element of individual will and the victim is a victim of their own will (a victimless crime). The victim often experiences exploitation such as paying more than the usual amount, or rape. Therefore, the study stressed that people smuggling could also be indicated as TIP.²⁰

Migrant smuggling has been defined by the the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organized Crime as the procurement act to obtain financial and material benefit for the illegal entry, as stated on Article 3:

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

From this definition, smuggling of migrants stresses upon three elements:

- (a) the act; procurement
- (b) the purpose: to obtain direct and indirect financial benefit
- (c) the method; illegal entry into a country

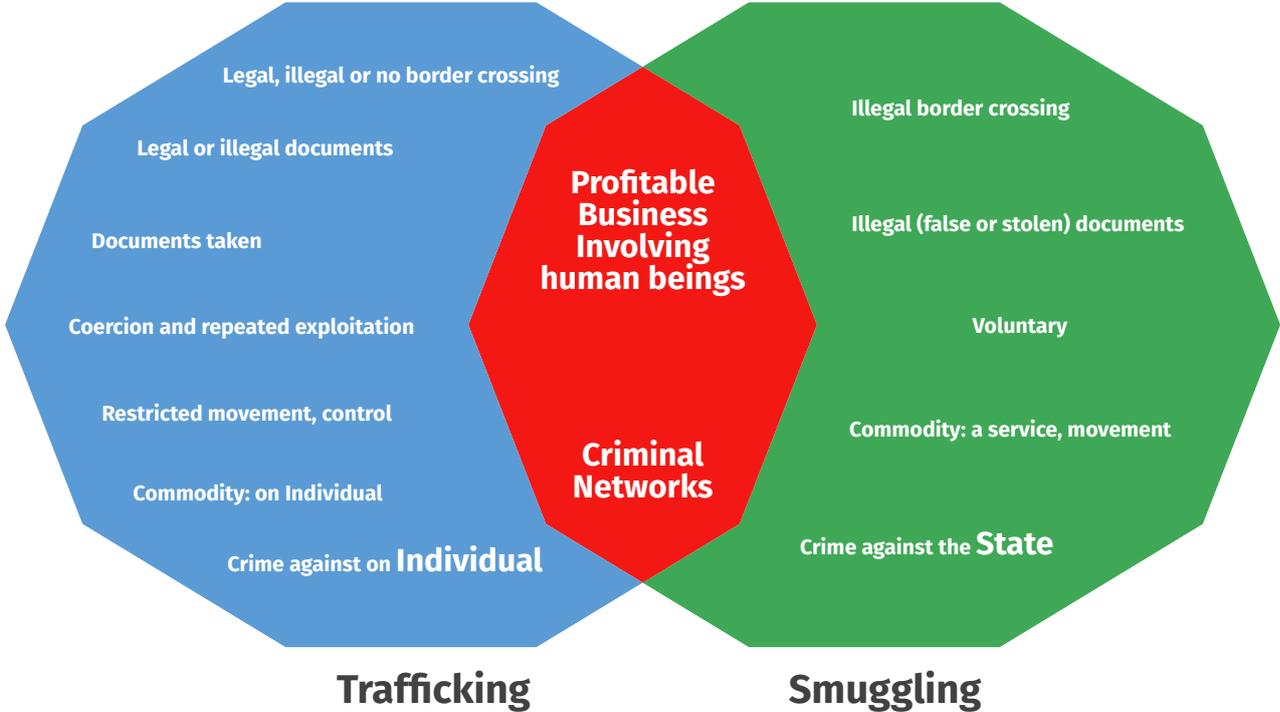
¹⁸ Ibid

¹⁹ Bassiouni, "Addressing International Human Trafficking," n. 5.

²⁰ Ibid.

The term “illegal entry” in the Protocol refers to the effort to cross a border without fulfilling proper requirements, including forged identity or documents.²¹ From the definition above we could draw the differences between smuggling of migrants and trafficking in persons as follows:

Image 1. TPPO dan Penyelundupan Migran



This definition and differentiation is very important to be highlighted considering that in the Indonesia context, the TIP situation is dominated by cross border trafficking for labor purposes. In the Indonesian context, issues of TIP are often mixed with migrant smuggling issues. Some difficulty in categorizing main crimes and in fulfilling TIP elements is still raised. As for the consequences- much of the cross-border TIP is considered as migrant smuggling, or simplified to be the non-procedural placement process of migrant workers only, without further investigation on the elements of TIP. In contrary, in some areas such as East Nusa Tenggara Timur (NTT), Sambas and Sanggau, the number of non-procedural placements will automatically be considered as contributing to TIP numbers, even though screening process towards TIP elements has not been conducted yet.

This situation also impacts on data collection and reporting procedures on TIP. These could not be integrated, as each institution has their own standard and indicators. Some of the institutions such as BNP2TKI and the Ministry of Manpower will classify cases based on administrative labor issues faced by workers, and does not include TIP. However, the Ministry of Social Affairs will categorize it as a cross-border TIP case, if the case has been categorized as a TIP case by the Ministry of Foreign Affairs, through the Indonesian Representative Office

²¹ See Art. 3 b, dan c Additional Protocol on Migrant Smuggling.

Overseas. Some of the Indonesian Representative Offices Overseas will categorized the case as a TIP case only if the victim pursues their case in the criminal justice system in the destination country. Meanwhile, in some destination countries, they do not have TIP Laws, or their TIP Laws have specific requirements that do not fully follow the Palermo Protocol. For instance, Hong Kong SAR China will not acknowledge labor exploitation as a form of trafficking²² and the Malaysian Government will require victims to stay in their shelter during the prosecution process, until their case is concluded by the court.²³

This research also captures the diverse understanding in determining and identifying TIP elements, which has a strong impact on the provision of integrated services for VOTs.

²² 2018 Trafficking Report – Hong Kong SAR, United States Department of State, 2018 *Trafficking in Persons Report - Hong Kong*, 28 June 2018, available at: <https://www.refworld.org/docid/5b3e0b254.html>.

²³ Act 670 Anti Trafficking in Person and Anti-Smuggling of Migrants Act, 2007.

2

RESEARCH METHODOLOGY

A RESEARCH APPROACH

This research takes a socio-legal approach and applies qualitative methods. Socio-legal research is research that relies on empirical research. Socio-legal research is not a study on doctrine, but rather a study that analyses how law and policy are operationalized in a social context.²⁴ This empirical research will help to analyze the law in various aspects: first, on how the law is contextualized in daily societal reality; second, on how context influences the operationalization of law. Indonesia already has established laws related to TIP; however, written law alone cannot represent what actually happens. Thus, empirical research will help to untangle the social phenomena that affects TIP, which is considered and interpreted as a crime under Indonesian law. The research on TIP, especially at the border, will be focused on seeing whether there is a gap between reality and the law.

Socio-legal research also has a dimension related to plurality, and it recognizes the presence of plurality in the law - which particularly affects certain circumstances in a certain area (legal pluralism).²⁵ Diversity can occur and therefore the situational difference between the regions can happen, because the law present within a certain region is different from the law in another region. In the Indonesian context, legal pluralism is not avoidable. Although the national law has been enacted, the law and policy at the local levels can affect the existence of different responses between the regions. The context of decentralization affects whether a region has a specific policy on the elimination of TIP, and how the other regions develop their service mechanisms for victims of TIP, and how to handle perpetrators.

Furthermore, the qualitative approach in research is known for analyzing phenomena that happen in society more deeply; the actors involved in certain activities under the study, and the relationships or key factors that influence what kind of information that needs to be investigated deeper.²⁶ The qualitative approach in this study rests on analyzing the factors that influence TIP, on how the government or law enforcement agencies respond to TIP; on how the related laws and policies are implemented; and what current obstacles are in eliminating TIP. However, this study also uses quantitative data provided by other institutions to strengthen the analysis of the phenomenon of TIP.

²⁴ John Baldwin and Gwynn Davis, "Empirical Research in Law," in Mark Tushnet and Peter Cane (eds.) *The Oxford Handbook of Legal Studies*, (Oxford: OUP, 2005).

²⁵ Margaret Davies, "Legal Pluralism" in Peter Cane and Herbert M. Kritzer, (eds.) *The Oxford Handbook of Empirical Legal Research* (Oxford: OUP, 2010).

²⁶ Ibid.

B TIME FRAME AND LOCATION

The research was conducted between November 2018- June 2019. The research was carried out in four locations on the island of Kalimantan, which has a land border area between Indonesia and Malaysia. These areas are situated in Sambas District, Sanggau District and Kapuas Hulu District in the Province of West Kalimantan, and Nunukan District in North Kalimantan Province. These locations were selected due to geographical location, and the huge number of border crossing activities for labor migration purposes from Indonesia to Malaysia.

C RESEARCH METHOD

This research was conducted through a mixed-method - namely literature research and field study, by conducting focus group discussions (FGDs), in-depth interviews with relevant stakeholders, informal discussions, and observations. The mixed-method is needed to ensure the availability of triangulated data and to avoid subjective biases found when only relying on one information source.²⁷ The data obtained from the field research was then strengthened by a literature review sourced from books, journals, reports, court decisions and other related documents.

1. Literature Review

During this research, the research team examined police documents at the national, provincial and local level; such as the National Plan of Action, Ministerial regulation, Government Regulations, District Regulations, and Mayoral Decrees. In addition, the researchers also researched finalized cases in each targeted district, in order to understand the context and knowledge of local law enforcement in applying TIP law. In addition, the researchers also reviewed existing research related to TIP, Placement of migrant workers, and border issues.

2. Focus Group Discussion (FGD)

FGDs were carried out in all research locations. The main targets of each FGD were local government representatives, law enforcement officials, community leaders, civil society organizations, and representatives of central government institutions, such as Immigration and the National Board for Placement and Protection of Migrant Worker (BNP2TKI), who are considered as key actors in counter-trafficking programs in each region. In each targeted district, the team conducted two FGDs. The first FGD was aimed

²⁷ Laura Beth Nielsen, "The Need for Multi-Method Approaches in Empirical Legal Research," Peter Cane and Herbert M. Kritzer, (eds.) *The Oxford Handbook of Empirical Legal Research* (Oxford: OUP, 2010).

at exploring the available data and availability of further information to analyze current conditions in each study area. To obtain comprehensive data, the first FGD was focused on discussing prevention programs and victim assistance programs. The participants were divided into two groups and discussed key issues on policies and regulations, current programs and funds, alongside coordination and cooperation mechanisms that are in place.

Further, the second FGD was used to confirm preliminary findings and further collection of data that was deemed necessary to be analyzed. In total, 167 individuals from four targeted districts participated in these FGDs. During this second FGD, the research team also invited individuals to participate in an in-depth interview process.

Table 1. Recapitulation of the Participants in the Focus Group Discussions

Research location	Recapitulation of FGD participants (persons)					Sum (persons)
	Local government	Law enforcement	Related agencies	NGO/ community/ academia	Press/ media	
Nunukan	16	3	8	7	4	38
Sambas	12	7	11	17	0	47
Kapuas Hulu	20	7	4	9	1	41
Sanggau	21	5	5	10	0	41
Total						167

3. In-Depth Interview

In-depth interviews are a data collection method that is conducted using face-to face meeting through a question and answer process between research participants and researchers. Interviews are conducted to gather more comprehensive data from the participants, which may not be conveyed in detail in a larger forum such as an FGD. The detailed information, experiences, and stories from each participant enriched and sharpened the data obtained through the FGD. The combination of interview data and the FGD is important in answering research questions accurately.

In-depth interviews were held through formal interviews and/or informal discussions. Formal interviews were conducted to obtain data from government stakeholders, while informal discussions were conducted with respondents from the community and civil society organizations. This informal approach was used to encourage the participants to speak openly, and provide any necessary information using their own language. Some key questions in this interview were understanding of TIP issues in general, and in specificity on the referral system, trends of cases, and their roles in responding to

TIP issues. In-depth interviews were conducted at four research locations with a total of 77 participants: 17 resource persons in Nunukan, 20 resource persons in Sambas, 14 resource persons in Kapuas Hulu and 26 resource persons in Sanggau. The sample of each targeted district may differ considering the scale and scope of TIP in each district. An detailed list of questions can be found in the annexes.

4. Observation

Observation is a method of data collection that is commonly carried out in empirical research. In this study, the observations made were qualitative observations that have a naturalistic character- meaning that the observation was conducted in a location that was considered interesting and important to participants, in order to enrich the results of the study. For this research, observation was conducted at official border posts and irregular channels for migration. This method of observation allows researchers to directly observe the key factors that support or inhibit TIP in each region. Observation also allows researchers to match the data obtained in FGDs and interviews with real conditions on-site. The results of observations helped researchers to understand the unique patterns of TIP in each research location.

The selection of locations for these observation processes were based on the data obtained in the FGDs or interviews. Below are the locations chosen for observation:

Table 2. Observation Activities

Location of research	Name of the location of the observation object	Date of observation	Number of the location
Nunukan	Integrated Service Center Nunukan	15-11-2018	6
	Integrated Service Centre for Women's Empowerment and Child Protection Nunukan (P2TP2A)	15-11-2018	
	Temporary Housing for Deportees	15-11-2018	
	Tunon Taka Harbor	16-11-2018	
	Border Post Number 3, Tanjung Kuning, Sebatik Island	16-11-2018	
	Tapal Batas Elementary School, Sebatik Island, Nunukan	17-11-2018	
Sambas	Integrated Service Center Sambas	4-12-2018	4
	Service Post for Placement and Protection of Indonesian Workers Sambas	4-12-2018	
	Indonesian Consulate at Kuching, Malaysia	5-12-2018	
	National Boundary Crossing Post (PLBN) Aruk	5-12-2018	

Location of research	Name of the location of the observation object	Date of observation	Number of the location
Kapas Hulu	National Boundary Crossing Post (PLBN) Nanga Badau	13-12-2018	3
	Lubuk Antu- Batang Ai	13-12-2018	
	Irregular footpath which is used for irregular border crossing of local residents in Nanga Badau	13-12-2018	
Sanggau	National Boundary Crossing Post (PLBN) Entikong	19-12-2018	5
	Integrated Service Centre Entikong	19-12-2018	
	Shelter of Integrated Service Centre for Women's Empowerment and Child Protection Sanggau	18-12-2018	
	Class II Detention Centre Sanggau	18-12-2018 and 18-06-2019	
	Shelter of Social Service Office, West Kalimantan Province	15-06-2019	
Total			18

D LIMITATION OF THE RESEARCH

The research was conducted in 2018, with the data gathered from 2014-2018, therefore all the data and analysis were made based on this period. In addition, the research also focused on four border areas in Indonesia namely Sanggau, Sambas, Kapuas Hulu and Nunukan. These four borders cannot reflect the entire Indonesia border situation. The research findings will also not represent the whole TIP Profile in Indonesia. Furthermore, the research was also conducted on the Indonesian border only and did not involve in-depth research on the Malaysian side. Hence, more research on the Malaysian side is recommended to be completed.

3

THE PROFILE OF TRAFFICKING IN PERSONS IN SANGGAU

A SANGGAU DISTRICT IN CONTEXT

Sanggau District situated in central and the northern part of West Kalimantan Province, with the area that covers 12,857.70 square kilometres and has an average population density of 35 people per square kilometres.²⁸ According to the population projection of 2017, the population of Sanggau District amounts to 457,701 people, which are spread among 15 districts.²⁹ The fifteen districts are among others, Toba, Meliau, Kapuas, Mukok, Jangkang, Bonti, Parindu, Tayan Hilir, Balai, Tayan Hulu, Kembayan, Beduwai, Noyan, Sekayam, dan Entikong.³⁰

The economy of Sanggau District is supported by two main commodities: rubber and palm.³¹ The national survey on workforce 2017 records, the most engaged business field is the agricultural sector which amounts to 69,33 per cent.³² Gross Regional Domestic Product (GRDP) is one of the important indicators to know the economic condition in a certain region in a specific period.³³ GRDP of Sanggau on the basis of prices in 2017 is 16,951 billion rupiahs, increasing 9,56 per cent from the previous year. The biggest contribution still came from the sector of agriculture, forestry and fisheries, which amount to 30,06 per cent.³⁴ In addition to the GRDP, the Human Development Index (HDI) can also be used to measure the socioeconomic conditions of an area. HDI explains how local residents can access the yield of the development in forms of obtaining income, health, education and others.³⁵ In 2017, the HDI of Sanggau District was 64,61. Despite the score has increased from 2015 (63,05) and 2016 (63,90) respectively. Sanggau District HDI score is still below the national HDI (70,81) which is categorized as high human development status (HDI 70-80).³⁶

Viewed from the geographical location, Sanggau District is situated in the strategic position, because among others, (1) situated in the eastern sector traffic lane heading to Sekadau District, Melawi, Sintang and Kapuas Hulu; (2) situated in Trans-Kalimantan lane (Central Kalimantan, South Kalimantan and East Kalimantan); (3) situated in the Trans-Borneo lane (Sarawak and Brunei Darussalam); and (4) bordering directly with Sarawak State (Eastern Malaysia).³⁷

²⁸ Statistics Indonesia (BPS) Sanggau District Office, *Kabupaten Sanggau dalam angka 2018*, (Sanggau: BPS, 2018), p. 4.

²⁹ *Ibid.*, p. 55.

³⁰ Statistics Indonesia (BPS) Sanggau District office, 2015, *Jumlah Desa menurut Kecamatan di Kabupaten Sanggau*, <https://sanggaukab.bps.go.id/statictable/2015/06/07/12/jumlah-des-a-menurut-kecamatan-di-kabupaten-sanggau.html>, accessed 1 April 2019.

³¹ West Kalimantan Provincial Government, *Rencana Pembangunan Jangka Menengah Daerah Provinsi Kalimantan Barat Tahun 2013-2018* (Pontianak: 2013), p. 136

³² *Ibid.*, p. 56.

³³ Bank Indonesia Department of Statistics, *Produk Domestik Regional Bruto (PDRB)*, p. 1

³⁴ Statistics Indonesia (BPS) Sanggau District Office, *Kabupaten Sanggau*, n. 74, p. 403

³⁵ Human Development Index 2017 No. 33/04/Th. XXI, 16 April 2018, p. 2

³⁶ *Ibid.*; The human development status of West Kalimantan is at the middle category (with the HDI 60-70). Compared to the provinces in the area of Kalimantan, HDI of West Kalimantan is persistently the lowest HDI. See, Bank Indonesia West Kalimantan Representative Office, *Kajian Ekonomi dan Keuangan Regional Provinsi Kalimantan Barat Mei 2018* (Pontianak, 2018), p. 88

³⁷ In-depth interview, Class II Entikong Immigration Office, 19 December 2018

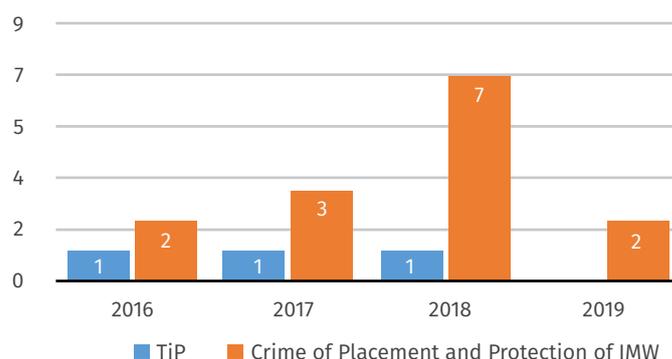
As the area that has a land border and directly intersects with Malaysia, Sanggau is identified as a region that is relatively vulnerable to various transnational crimes, including trafficking in persons. The border crossing post (PLBN) in Sanggau, which is PLBN Entikong has a land border with Malaysia (through Sarawak). This route is often called the silk route because it can be passed directly by buses both from Indonesia and from Malaysia without having to cross rivers or the sea. Therefore this pathway becomes a busy route that is passed by residents of various regions. Until the end of 2018, 1,000-1,500 people cross the PLBN Entikong every day,³⁸ but starting in early 2019, the number of crossers through PLBN Entikong has declined dramatically since the establishment of PLBN Aruk. The number of crossers only reached to 500-700 crossers per day.³⁹

B TRAFFICKING IN PERSONS DATA IN SANGGAU

Based on the field study and literature research, it was found that there are some potentials of TIP cases which were handed by several institution, however only one case that convicted as TIP case under Decision Number 301/Pid.Sus/2018/PN Sag dated 13 December 2018. According to the data obtained from Sanggau District Court, in 2016-2018, there are 10 cases related to cross-border TIP, and only one case which convicted under TIP Law No 21/2007 while the rest of the case were convicted under Law No 39/2004 on the Placement and Protection of Indonesian Migrant Workers.⁴⁰

However, refers to the District Police Office Data, during 2016-2018 there are 15 cases that reported as the Trafficking cases and related to the placement process of IMWs. Considering most of the cases were related to the placement process of migrant workers, 12 cases were investigated with Law No 39/2004 on the Placement and Protection of Migrant Worker and only three cases were investigated under Law No 21/2007.⁴¹

Chart 4. Number of Cases Investigated by District Police of Sanggau



Source: Sanggau District Police Office Data

³⁸ Ibid.

³⁹ Focus group discussion, Class II Entikong Immigration Office, 18 June 2019.

⁴⁰ Examination of Conviction Cases of Sanggau Court District 2016-2018. Detail of the case can be seen at <https://putusan3.mahkamahagung.go.id/direktori/periode/jenis/putus/pengadilan/pn-sanggau/tahun/2018/page/2.html>. The convict was sentenced with three years imprisonment and a fine IDR 120 million subsidiary with 2 months in prison.

⁴¹ Sanggau Police Office Data, 2016-2018.

While according to the Integrated Service Center for Women Empowerment and Child Protection (P2TP2A), in 2017-2018, there are only one potential TIP case, involving eight individuals (F: 4, M: 4) which referred by District Police of Tembayan in November 2018. These eight individuals were rescued by the districts police when the police organized a ride inspection. Considering those individual were originally from Aceh and none of them have a working document as well as the confirmation from the drivers who brought them that these persons will be departed to Malaysia, the police decides to stop the car and handed these eight persons to the DINSOSP3AKB and P2TP2.⁴² However, unfortunately there is no further identification or investigation of the cases. The driver was freed up and the individuals were returned home to Aceh, and some of them sought employment in Sanggau. In addition, there were no further monitoring from respective agencies to the individual who decides to stay in Sanggau.

Further, Immigration office of Entikong mention that on January-May 2019, the Office has refused to proceed 73 passport applications due to the applicants could not complete the requirement such as employment contract, working permit and or minimum saving on their bank account.⁴³ Moreover, the immigration offices also has prevented the departure of 19 migrant workers candidates to Malaysia because these 19 migrants candidates do not have working agreement with their employers in Malaysia. However, none of these cases were followed up with further investigation process.

C THE PATTERN OF TRAFFICKING IN PERSONS IN SANGGAU DISTRICT

Even though only one trafficking case that prosecuted in Sanggau, however based on the FGD and deep interview, it was confirmed that there is some potential of TIP cases that occurs in Sanggau. Most of the case were cross border trafficking from Sanggau to Malaysia which handle by DINSOSP3AKB or BP3TKI Pontianak. While for the internal trafficking, there is no officials data were obtained through this research, however some indication on TIP situation within palm oil industry in Sanggau were captured during the study.

1. Cross-Border Trafficking

The strategic location of Sanggau which bordering with Kuching-Malaysia has become one favorite areas for trafficker and smuggler. In the past, Sanggau is well known as the departure point for Indonesian migrant worker from West Java, Central Java, East Java, Banten, DKI Jakarta, Mollucas and West Nusa Tenggara who worked in Sarawak, East Malaysia.⁴⁴ This known information is one of the reason for the Central Government

⁴² Focus group discussion, Dinsos P3AKB, 18 December 2018.

⁴³ Based on Circular Letter from the Directorate of Immigration Number IMI-0277.GR.02.06 of 2017, each citizen who applying passport for tourism purposes need to attach their bank transaction with minimum balance IDR 25,000,000,- and for those who applying passport for job purposes need to comply with the Ministry of Manpower Requirement on Job Placement Process and Procedure.

⁴⁴ <https://nasional.tempo.co/read/421224/entikong-masih-jadi-celah-celah-tili-ilegal/full&view=ok>

to take over the operational and redesigning the function of Cross Border Check Point (Pos Lintas Batas Negara/PLBN) in Entikong, Sanggau on 2015. Prior to this revitalization of PLBN, some of front-line officer in Sanggau argue that the crossborder TIP in this area has been eliminated, and the remaining issues in Sanggau is irregular migration of migrant workers candidates to Malaysia only.⁴⁵

Although there is no factual data on cross border trafficking in Sanggau, however BP3TKI of Pontianak recorded there were 2,053 Indonesian Migrant Workers (IMW) who returned from Malaysia through PLBN Entikong. These 2,053 were returned to Indonesia due to their immigration status, illness, labor issues with their employment, death and or returned prior the employment process. Out of these 2,053 only 59 of them were originally from Sanggau, and among these 59 migrant workers, six of them were returned due to repatriation programs.⁴⁶

Table 3. Returned of Indonesian Migrant Workers through PLBN Entikong 2018

Returned Reason	Total Number		
	Male	Female	Total
Repatriation*	88	71	159
Immigration Status	1,401	315	1,716
Returned prior the employment**	36	1	37
Death	104	15	119
Illness	3	3	6
Stranded Migrant***	13	3	16
Total Number	1,645	408	2,053

*Repatriation refers to the IMW who returned due to the labor dispute, trafficking and or work injury

**Returned prior the employment refers to the IMW who returned to Indonesia prior their employment because of rescue process from authority

***Stranded Migrant refers to the IMW whom were neglected by their employers and reported to the Indonesian Consulate.

Source: BP3TKI of Pontianak

From the data above, it is clearly showing that irregular migration is a big gap in this region. This situation also has put the migrant worker at risk. The absence of working permit and employment contract, crossing the border through broker services could led into debt bondage. Moreover, this situation also prevents the migrant workers to enjoy

⁴⁵ In-depth interview, BP3TKI Pontianak, 20 December 2018; As explained in Chapter I, there are three terminologies that appear both in the Indonesian legislations, technical regulation, or in the result of the discussion with the stakeholders, these are illegal IMWs, irregular (non-procedural) IMWs and IMWs with problems. Illegal IMWs and irregular IMWs are used to specifies the same group of the IMWs – or within this research result called – irregular migrant worker. While IMWs with problems used for every IMWs that encountered problems with their employer regarding the presence of rights/obligations violation under the work agreement, experienced work accident, or became the victims of crime in the placement country. BNP2TKI, “TKI ‘bermasalah’”, http://info.bnp2tki.go.id/home/info_detail/192, accessed 1 April 2019.

⁴⁶ BP3TKI Pontianak data on Returned Indonesian Migrant Worker, 2018.

their labor rights in the destination countries also their country origin. Further, this situation could lead into trafficking situation, due to the vulnerabilities that the migrant workers may encounter in the destination countries. As highlighted by the BP3TKI's data above, that around 159 workers returned due to the labor issues with their employer and 16 migrants were neglected by their employers.

This data also confirmed during the FGD and in-depth interview with stakeholders in Sanggau and Pontianak. The participants describe the pattern of cross border trafficking in Sanggau are as follows:

First, long working hours which last 12 to 14 hours a day. For IMWs who work in the field or plantations, long working hours especially occur during harvesting season.⁴⁷ The length of these working hours is considered reasonable because it is applied to contract workers who are paid on the output unit basis. This long working hours which beyond the Malaysian regulation⁴⁸ is usually informed and known by the workers. However, the lack of information and understanding of labor law, has caused the IMWs accepting this task. Thus, the workers experienced exploitation without even realizing it. Every worker should have a decent duration of work hours regardless of the form of work they do as contract workers.

Second, the uncertainty of work placement. This situation happens because the IMW received the employment contract in the destination countries, after the IMW pass the training, medical test, and work ability test which conducted at the destination countries.⁴⁹ According to Indonesian Law on Placement and Protection of Indonesian Migrant Workers No 18/2017, the working permit, medical exam and employment contract should be done prior to departure process. However, the Government of East Malaysia is allowing foreign workers to process their working permit once the workers arrive in East Malaysia.

Third, deduction of wages. Deduction of wages is generally packaged as compensation for the arrangement of work permits managed by the company or as commission fees for company agents.⁵⁰ In cases that have been convicted by the Sanggau District Court, an agent could gain nearly 1,300 Malaysian ringgits and the money is requested directly from each IMW through salary deduction. Agents also get an additional commission of 800 ringgits per person, from the company, as the recruitment fee. The total profit of the agent is estimated at Rp10,000,000 (ten million rupiahs).⁵¹ This deduction practice is against Indonesian Law itself. Even though the Indonesian Government still allowing the placement fee, but its limited to maximum IDR 5,000,000 (USD 300), in which covering medical test in Indonesia, transportation from home to departure point, visa processing, passport, insurance, protection of IMS, competence test, recruitment agency fee,

⁴⁷ In-depth interview, Class IIB Sanggau Detention Center, 19 December 2018.

⁴⁸ Overtime should not be exceeded than 4 hour/day and its prohibited to employee more than 2 hours/day under any circumstance of work. See employment Act of Malaysia Section 60A.

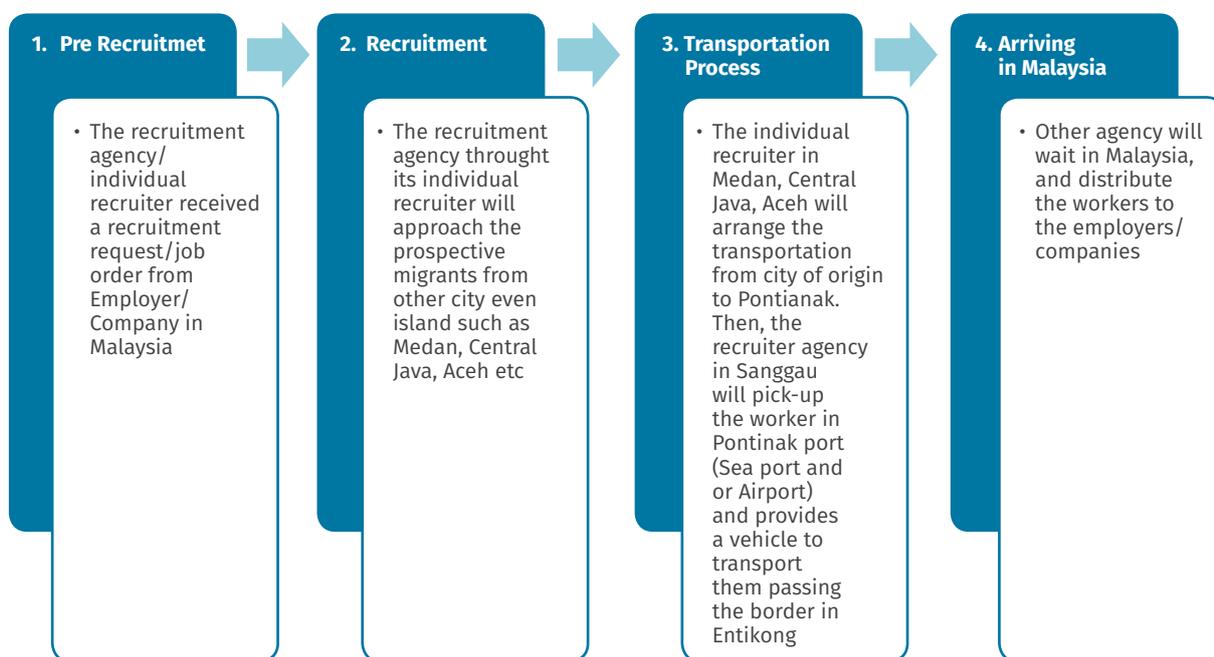
⁴⁹ In-depth Interview with BP3TKI Pontianak, 20 December 2018.

⁵⁰ Ibid.

⁵¹ Sanggau District Court decision no. 301/Pid.Sus/2018/PN Sag.

accommodation and training.⁵² In addition, this over deduction practices also been used by the trafficker to ensnare the individual into debt bondage schemes.

To sum, the cross-border trafficking in Sanggau were patterned below:



2. Internal Trafficking

Despite there is no official record in internal trafficking case, Sanggau has the potential of internal trafficking in persons. The massive development of palm oil plantation which recruited workers from other island such as Central Java and East Nusa Tenggara has increased the TIP risk within this area. Palm oil is one of the sectors that prone to the trafficking due to the nature of works and the site which located in remote areas has often hinder from the labor inspection. According Rain Forest Action Network most palm oil Indonesia has practiced a precarious works and did not fulfill labor rights standards.⁵³ Moreover, Sawit Watch note that the palm oil plantation can create jobs and prosperity for local communities. But, in the other hand, it can damage lands, the livelihood and ecosystem and social conflicts, including labour exploitation, if the plantation did not manage properly.⁵⁴

Based on the results of the focus group discussion, it was confirmed that the presence of several palm companies or palm plantation companies in Sanggau area has attracted job seekers from Central Java and East Nusa Tenggara to work in Sanggau. Most of them

⁵² Cost Structure for the Placement Process of Indonesian Migrant Workers, accessed on http://siskotkln.bnp2tki.go.id/files/Cost_Structure_dan_Angsuran_KUR.pdf.

⁵³ Rain Forest Action Network, Victim of Palm Oil Company: The Role of Pepsico towards the labor Exploitation in Indonesia, June 2016.

⁵⁴ See <http://sawitwatch.or.id/2019/05/02/catatan-catatan-buruh-perkebunan-sawit-di-indonesia/>

are men who are looking for work in the palm plantation in the Tayan area as general workers.⁵⁵

Research by Tania Murray Li in Meliau district, Sanggau District also shows the tendency of palm companies to employ non-local workers from Java and East Nusa Tenggara for various reasons: recruiter network and working stigma.

“Compare to Local Chinese and Dayaks, the company preferred to hire Javanese migrants, who they thought were hard working. Javanese and NTT transmigrants used kin networks to recruit men from their home areas Local men, especially young men with good social networks in the surrounding communities, could do harvest work for smallholders for good pay, while migrant men without local networks were tied to the plantation and could be paid lower wages.”⁵⁶

Tania Murray Li who conducted research on two palm companies in Meliau district, Sanggau District namely PTPM-ME (state-owned company) and a private company, HD-DS. The research explained about the poor condition of the palm workers.⁵⁷ In general, palm workers are both male and female and migrant or local or migrant workers, work as a casual labourer with low salary, without health insurance or work protection. They are in a depressed condition and afraid of the work accidents and are in debt. Their income is only enough to survive and not feasible to support the family. They have limited control and mobility, to be able to ensure their family can live, they are living in isolation and in competition with fellow workers and do not care about other workers.⁵⁸

Alleged exploitation also revealed from data on industrial relations disputes submitted to the Sanggau District Workforce and Transmigration Office. Based on data from the Technical Implementation Unit (UPT) of Labour Inspection of the Government of West Kalimantan Province, there are 139 companies in Sanggau District: among them 37 companies or 26 per cent of the companies are the palm industry; as many as 26 palm plantation companies, two palm mill companies, nine companies are CPO (Crude Palm Oil) processing industry. In 2018, as many as 68 per cent of industrial relations disputes submitted to the Manpower Office were from palm companies with the majority of disputes are about the termination of employment and salary rights.⁵⁹ This means that the salary conditions for the certainty of continuing work in the palm oil sector in Sanggau are still problematic.

⁵⁵ Focus group discussion, Satpol PP, 18 December 2018.

⁵⁶ Tania Murray Li, “Social Impacts of Oil Palm in Indonesia: a gendered perspective from West Kalimantan,” (Bogor: CIFOR, 2015), p. 14.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Processed from the data of West Kalimantan Employment Supervision Technical Implementation Unit (UPT Pengawasan Ketenagakerjaan) and Nominative of Industrial Relation Dispute in Sanggau District 2018.

From the data above, it could be concluded if the internal trafficking may be exist, even though no official data were obtained. The fact that majority of palm oil compaies recruits the workers from Java island and avoiding to employ local workers, has indicated there are recruitment process and practicess. In addition, the figure of 68% of industrial dispute with palm oil company in Sanggau caused by the termination of employment and salary issues, its indicate that there is a labor issues and potential of trafficking in person situation. Indeed that contracts termination clausul and salary issues is not necessary to be trafficking cases, but unclear employment contract, withholding wages or salary deduction can be one of the indicator of trafficking cases.

D KEY FACTORS OF TRAFFICKING IN SANGGAU

This research identifies important factors, both pulling and pushing factors of TIP in Sanggau. Geographical, economic, government policy are the factors which interrelated and intersect each other.

1. Geographical and Cultural Factors

Entikong and Sekayam area of Sanggau District are directly bordering with Malaysia. Both areas are geographically vulnerable to trafficking in persons. Since long time ago, people in these borders are migrated regularly, they bond with the economic activities, culture and blood. This border location also has been used by people outside Sanggau to reach Malaysia, for works, trade, leisure and individual needs such us health. This can be seen during the direct observation in PLBN Entikong, Sanggau which recorded a high volume of cross-border mobility, including cross-country vehicle passing.⁶⁰

From this field observation, the researchers clearly found that broker services to pass the immigration check point is existing. For example, the researcher witnessing one brokers who work closely with Indonesian immigration officials to collect passports of people who are going to pass the border, and the officer stamped the passport without checking those people nor following the applicable procedures.⁶¹

In term of culture, both areas have the same ethnicity and culture. In Sarawak, the major ethnic group are Iban, Chinese, Malay, Bidayuh, Melanau, and Orang Ulu, as well as smaller but still significant populations like the Kedayan, Javanese, Bugis, Murut, and Indian. The *Iban* and *Bidayuh* are indigenous ethnic groups of Sarawak, and they are officially recognized by the government of Malaysia as comprising the Dayak people.⁶² While in Indonesian side, especially Sanggau, Dayak and Malay were the original inhabitants. With this same ethnicity, many of peoples in both areas were shared blood

⁶⁰ Field observation at PLBN Entikong, 19 December 2018.

⁶¹ Field observation at PLBN Entikong, 19 December 2018.

⁶² Lord, Montague and Chang, Susan on the Pre-Feasibility Study of Sarawak-West Kalimantan Cross Border value Chain, Asian Development Bank, 2019, p:41.

and relative. Therefore, for Sanggau people, migrated to Sarawak means visiting their old family and for Dayak-Sarawak, employing Sanggau people means help and share the wealthiness with their relative and share their despite of the States and its regulation.

2. Economy Factor

The dominant driving factors of the TIP situation in Sanggau is economic problems. The lack of job opportunity, also the better income offers in Malaysia are the main reasons IMWs migrated to Serawak, Malaysia despite the uncertainty of employment there.⁶³ In 2018, the minimum wage in Sanggau is IDR. 2,145,310/months or USD 150.⁶⁴ While the minimum wage in Malaysia is 1,100 RM,⁶⁵ or as equal to IDR 3,773,638 per month.⁶⁶ This differences on minimum wages has attracted IMWs to work in Malaysia.

Apart from better wages in Malaysia, work requirements in Malaysia especially for plantation company is also considered easier than in Indonesia's requirement. Working in Indonesian plantations requires a high school diploma, while in Malaysian, education background is not required for the plantation worker, Malaysia only require the working experiences in palm oil plantation, in which many of the Indonesian worker does.⁶⁷

In here (Indonesia) to get a job requires high school level education, one year we apply for a job it is not necessarily meaning that we will be hired, right? Meanwhile there, as soon as we arrived there, the boss proceeds to interview, there was the contract and signing (of the contract) and the following day, we started to work.⁶⁸

In addition, Sanggau District 's economic growth in 2017 was only 4.50 per cent, slowing compared to 2016 which reached 5.34 per cent.⁶⁹ Meanwhile, the poverty line in Sanggau in 2017 is IDR 283,608 per capita per month. Which is below the poverty line of West Kalimantan Province. In 2017, the number of people living below the poverty line in Sanggau District was 20.62 thousand people or around 4.52 per cent of the population in the same year. The percentage of the number of poor people in 2017 was 0.01 per cent higher than in 2016.⁷⁰ The number of open unemployment in Sanggau as of 2017 was 7,608 residents (3.27 per cent), while the working population was 225,202

⁶³ Concluded from the statement of several participants: Entikong Local Government, BAMAG, BAPPEDA Sanggau, DINSOSP3AKB, Focus group discussion, 18 December 2018.

⁶⁴ West Kalimantan Governor Decree No. 708/Disnakertrans/2017 on the Determination Minimum Salary of Sanggau District 2018.

⁶⁵ Malaysia, Minimum Wages Order (Amendment) 2018, 28 November 2018, Federal Government Gazette, Published by Attorney General's Chambers.

⁶⁶ Asfahan Yahsi dan Dinda Audriene, "5 Provinsi dengan Upah Minimum Tertinggi dan Terendah di 2018", CNN Indonesia, <https://www.cnnindonesia.com/ekonomi/20171107141454-81-254037/5-provinsi-dengan-upah-minimum-tertinggi-dan-terendah-di-2018>, accessed 20 April 2019.

⁶⁷ Ibid.

⁶⁸ In-depth interview, class IIB Sanggau Detention Centre, 19 December 2018.

⁶⁹ Ibid.

⁷⁰ Ibid, p. 4.

(96.73 per cent) dominated by elementary school graduates and workers who did not complete school.⁷¹

With this economy discrepancy between Sanggau and Sarawak, the East Malaysian areas become one of the favorite destination countries for IMWs to seek the job and this situation has been used by the trafficker to lured the prospective migrant workers.

3. Government Policy and Its Implementation

Another factors that contribute to the TIP issues is the government policy and its implementation. In term of the policies, Sanggau Government do not have specific policy on TIP. The TIP issues regulated under District Government Regulation on Child Protection No 5/2013 under article 1 point 13 which defines the trafficking in person for child as follows:

criminal act or act that fulfills one or more elements of recruitment, sending, surrender of children by using violence or threat of violence, fraud, kidnapping, confinement, abuse of power, exploiting vulnerable position or entrapment through debt for the purpose and or resulting in children exploitation.⁷²

This local regulation only regulates the trafficking for children, while in most cases in Sanggau, TIP occurs to the women and man. Therefore, this regulation was not sufficient enough to address the TIP in Sanggau.

In addition, in 2008 Government of Sanggau through the DINSOSP3AKB has established Anti Trafficking Task Force (ATTF). This Task Force comprise of 20 government institutions. However, since its establishment, the ATTF has never conducted any coordination meeting yet, due to the budget issues. Moreover, the ATTF also did not equipped with the plan of action.⁷³ Therefore, the ATTF could not run their function considering the lack of budget and workplan. The establishment of ATTF was mandated by Presidential Regulation No 69/2008 on the Establishment of ATTF. Through this regulation, the President has instructed to the Province and District Government to establish ATTF. However, lack of assistance and monitor from the Central Government has contribute to the ineffectiveness of the ATTF. The ATTF was established on paper only to fulfill the Central Government requirement but never run properly.

⁷¹ Ibid, p. 66.

⁷² See art. 1 point 21, Sanggau Disttict Regulation No 5 of 2013 on the Implementation of Children Protection.

⁷³ In-depth interview with the DINSOSP3AKB, 18 December 2018.

Other policies that contribute to the trafficking in Sanggau, especially cross-border trafficking is the overlap regulation between trafficking and placement process of migrant workers. The placement process of migrant workers to work in overseas could be proceed anywhere despite of their origin location. In addition, the issuance of national identity card and passport also could be done in any places. According to Interior Minister Regulation Number 8 of 2016 on the Second Amendment to Interior Minister Regulation Number 9 of 2011 on the Guidelines on the Nation-wide Issuance of National Identity Number-based Identity Card, the Civil Registry Office can issue identity cards for non-residents who are from the region outside of the office's authority, with one condition that the concerned citizen could demonstrate other residential documents such as family card. This gap has been used by unscrupulous agent to recruit the workers outside of West Kalimantan and processing all the documents in Sanggau. For example, the broker recruits the migrant worker in Central Java, transporting them to West Kalimantan, sheltering in Sanggau and process all new document such as national identity and passport in Sanggau. This process could lead into falsifying document and trafficking situation.

E KEY ACTORS INVOLVED

Based on the research there are several government and non-government organization who has mandate and or actively engage on the prevention and assistance of the TIP in Sanggau. This chapter will elaborate the key players and their roles in Sanggau.

1. Anti Trafficking Task Force (ATTF)

The establishment of ATTF at District level was a mandate from Law No 21/2007 on the Eradication of TIP Crimes as well as Presidential Regulation No 69/2008 on the Establishment of ATTF. To fulfill Central Government regulation, Sanggau District has established an ATTF in 2008, unfortunately there is no official documents on this.⁷⁴ According to the Presidential Regulation, the ATTF at Province and Districts should be chaired by Regional Leader. This mean, at the Province level, the Governor will be the Head of the task force and Mayor/Head of District will be the ATTF head for the district/city level. In addition, at the national level, the ATTF will be run by the steering chair which is Ministry of Women Empowerment and Child Protection. While at sub national level, the steering chair of the ATTF will be depend on regional needs, it could be Women Empowerment and Child Offices and or other Government Offices that responsible for women and labor migration issues. In Sanggau, the ATTF was chaired by Head of District and the daily operation was headed by DINSOSP3AKB. However, as mentioned above, this ATTF was not active. This statement also confirmed by other participants during the FGD.

⁷⁴ Wawancara mendalam dengan DINSOSP3AKB Sanggau, 18 Juni 2018

According to the national regulation, the ATTF is a coordination body which responsible to implement and monitor anti-TIP programmes ranging from the prevention, prosecution and protection.⁷⁵ In absence of the ATTF, the anti-TIP programs were carried out by the DINSOSP3AKB. However, the program is limited to the prevention activities such as campaign and awareness raising on TIP issues. While the assistance of victim of TIP was provided through Integrated Service Center for Women Empowerment and Child Protection (P2TP2A).

2. One Roof Integrated Service Institutions for Placement and Protection of Indonesian Worker (*Lembaga Pelayanan Terpadu Satu Atap-Penempatan dan Perlindungan Tenaga Kerja Indonesia/LPTSA-P2TKI*)

LPTSA-P2TKI was formalized through the West Kalimantan Governor Regulation Number 11/2016 concerning One Roof Integrated Service Institutions for the Placement and Protection of Indonesian Workers Western Kalimantan Provinces which then amended through West Kalimantan Governor Regulation No 10/2017 on the Amendment of Governor Regulation No 11/2016. According to the article 7, the LPTSA-P2TKI has five function as follows:

1. Formulate and prepare the Standard Operational Procedure of the LPTSA-P2TKI
2. Provides guidance and supervision on the implementation of the LPTSA-P2TKI
3. Provides clear instruction to solve the problems that may encountered by LPTSA-P2TKI
4. Carry-out the supervision of the implementation of the LPTSA-P2TKI.

Furthermore, this integrated service institution was funded by Provincial Government and involving several agencies, namely: Manpower and Transmigration Offices, Health Offices, Civil Registration Offices, West Kalimantan Police Offices, Office of the Ministry of Law and Human Rights of West Kalimantan and Agency for Service, Placement and Protection of Indonesian Migrant Workers (BP3TKI) of Pontianak.⁷⁶

In addition, according to the BP3TKI Pontianak, LPTSA-P2TKI's function is not only focus on the placement process but also provide protection mechanism for IMWS, including to prevent the IMWs from irregular migration/placement process and to avoid the risk of TIP during the migration process. Further, this integrated services also designed to provides capacity building and empowerment program for returned migrant, support the return process of IMWs from Sanggau to their province of origin, and provide internal job option and placement to the returned migrant.⁷⁷

⁷⁵ Presidential Regulation No 69/2008 on the Establishment of Task Force to Prevent and Handle Trafficking in Person.

⁷⁶ See West Kalimantan Regulation No 10/2017 and No 11/2016 concerning *One Roof Integrated Service Institutions for the Placement and Protection of Indonesian Workers*.

⁷⁷ BP3TKI Pontianak, "Kick Off Layanan LTSA P2TKI Entikong, Siap Memberikan Pelayanan Prima Bagi Pekerja Migran Indonesia," available at <http://www.bp3tkipontianak.com/berita-kick-off-layanan-ltsa-p2tki-entikong-siap-memberikan-pelayanan-prima-bagi-pekerja-migran-indonesia.html>, accessed 5 Mei 2019.

However, the research found that the LPTSA-P2TKI is inactive. Lack of the budget commitment from the province Government and limited resources at the district levels were the factors. According to the Governor regulation, the operational of the LPTSA-P2TKI will be borne by the Province Government Budget. However, in practice there were no such allocation from the Province Government. Secondly, the fact that many of the IMWs who crossing the border through Sanggau are non-Sanggau residents, has been seen as an additional work of services instead of main responsibility of the Sanggau District Officials. With the limited resources at District Offices, the District Government more focus to provide regular services in their Office instead of LPTSA-P2TKI Offices.⁷⁸

3. Post for the Placement and Services of Indonesian Migrant Worker (P4TKI).

P4TKI is a branch office of the National Board for Placement and Protection of Indonesian Worker (BNP2TKI) which located in District level. This offices responsible to the national government and funded by national government. The P4TKI has a function to support the return process of IMW's who repatriated through Sanggau area as well as to provide reintegration programs to the IMWs who in needs. Each months, the P4TKI will receive a notification from Indonesian Consulate in Kuching regarding the return process of IMW's from Serawak. Some of the IMWs were returned due to their immigration status such as irregular entry, do not have working permit or their passport and working permit are expired, criminal cases such as drug selling, robbery, thief etc, victim of violence including trafficking in person and labor dispute including major and minor clashes. This notification will be followed up by P4TKI through return and reintegration programs.⁷⁹ Once the IMWs arrived in Entikong-Sanggau, the IMWs will be sheltered by P4TKI. During this time, P4TKI will conduct the identification process toward the IMWs. Background check is the main purpose of the identification; to obtain the correct address of each IMWS prior to the return process. Unfortunately, this identification process does not designed to obtain deep information on the IMW's journey and experiences. Therefore, the potential of TIP cases that faced by the IMWs could not be captured.

In addition, as part of the reintegration programs for IMWs, P4TKI also has job placement programs. This program was regulated under the Cooperation Agreement between BP3TKI Pontianak, Employment, Industry and Transmigration Offices of Kapuas Hulu and Duta Nusa Lestari Company.⁸⁰ According to this agreement, the IMWs whom repatriated through Entikong-Sanggau will have an opportunity to work in Duta Nusa Lestari Company as plantation workers. This initiative was taken as a solution for IMWs who decided to stay in West Kalimantan and refuse to be repatriated to their home villages due to the stigma as "failure migrants" from the community. Moreover, recognizing the vulnerability of workers in the plantation services on the practices of forced labour or TIP, this cooperation agreement also underlines the importance of monitoring and

⁷⁸ Informal discussion with several government officials, Sanggau District, 25 Juli 2019.

⁷⁹ In-depth interview, P4TKI Entikong, 19 December 2018.

⁸⁰ Agreement between BP3TKI Pontianak with the Kapuas Hulu Manpower, Industry and Transmigration Office and PT Duta Nusa Lestari Nomor B. 239/BP3TKI-13/II/2018.

reporting to the PT Duta Nusa Lestari as stated in Article 6. Unfortunately, it is not explained the definitive monitoring and reporting are only carried out annually or at any time if necessary. This mechanism will be stronger if the periodic monitoring is in place and the complaints handling and case resolution that may arise in the future are included.

4. Immigration Offices

As one of the front-line offices on migration process, Immigration Offices also has a mandate to prevent the TIP through the irregular migration schemes. In 2017, the Directorate General of Immigration has issued a circular letter Number IMI-0277. GR.02.06/2017 concerning the prevention of non-procedural placement of Indonesian Migrant Workers. This circular letter was issued as a response to the rising number of Indonesian citizens who became the victims of TIP in overseas. According to the Immigration Office, one of the causes of TIP is the irregular migration or un-procedural process of the placement of migrant workers. Some of the modus operandi that been used by the trafficker are utilize visa for hajj, umrah, apprenticeship, special job market program, scholarship and cultural exchanges.⁸¹ This circular letter also provides a guidance for all immigration offices in passport issuance and immigration inspection at the border checkpoints. Based on the circular letter, the immigration office is authorized to postpone or refuse the passport issuance of Indonesian citizens who is indicated as an irregular migrant.⁸² The circular letter stated that if the inspection result, indicates a strong indicator of non-procedural placement process of migrant workers/people smuggling that would lead into trafficking in persons situation, the head of Immigration Office is requested to reject the application without a doubt.⁸³ Referring to this instruction, the Immigration of Entikong-Sanggau, has refused 73 passport applications and prevent the departure of 19 prospective migrants at border check point.

5. Indonesian Consulate General (KJRI)

The nearest Indonesian consulate with Sanggau is the Consulate General of Indonesia in Kuching-Serawak. Aside of consular and immigration services, one of the KJRI's services is citizen protection. Through this services, KJRI provides an assistance to the Indonesian citizen who encounter a problem in overseas, including labor issues, trafficking, people smuggling and etc. In addition, KJRI Kuching also provide a temporary shelter for IMW's who has a problems with their employer and to the victim of trafficking from Indonesia. The KJRI officials will conduct identification towards the citizen who reported their cases to the consulate. In 2018 KJRI has assisted 3,085 consular cases, in which 1,662 of them were repatriations of IMWS cases due to immigration violations. Meanwhile, only five TIP cases were recorded; three cases in March and two cases in October.⁸⁴ The small

⁸¹ Director General of Immigration, Ministry of Law and Human Rights, Circulation Letter No. IMI-0277. GR.02.06 of 2017 on the Prevention of Non-procedural Workers.

⁸² Focus group discussion, Sanggau Immigration Office, 18 December 2018.

⁸³ Ibid.

⁸⁴ Data exercised from the consulate function at Indonesian Consulate General Kuching

number of TIP case is because the KJRI will consider the case as TIP cases if the case is prosecuted under Malaysian Laws Number 670 concerning Anti Trafficking in Person and Anti-Smuggling of Migrants Act 2007. Considering many of the IMW's who work in Malaysia do not hold the working permit, the KJRI decides to solve the cases through settlement process, instead of legal claims. The reason behind this decision is the KJRI worry if the illegal status of the workers will be used by the Malaysian authority to press charge the workers with the Immigration Act. In addition, under this Act 670, the foreign national who claims as victim of trafficking need to be sheltered in custody during the investigation and trial process. For IMW's this will be difficult to follow, waiting for months without doing nothing and there is no certainty that their cases will be convicted as TIP case.⁸⁵

The categorization of TIP case which only based on the Police Report in Malaysia has hinder the potential victim to receive comprehensive assistance upon their return to Indonesia. For instance, the case that experienced by migrant worker is meet with the TIP element under Palermo Protocol and Indonesian law: the provision of act, means and purposes. However, since the IMW do not reported the case to Malaysian Police, the KJRI will consider the case as labor dispute case instead of TIP. Therefore, during the return process, the workers will not be facilitated with free return process (means the workers or their family need to cover the return cost). Further, the workers also will not be considered to receive government programing toward victim of trafficking, such us reintegration assistance, health and social rehabilitation as well as protection and legal assistance.

6. Law Enforcement Agency

Police Offices is the leading agency who mandated to proceed the investigation of TIP and provides legal assistance to the victim of trafficking. In Sanggau, the TIP crimes was uder the responsibility of Women and Child Protection Unit of Police Offices. According to the interview with the Police Offices, the lack of investigation budget and victim assistance were the challenges in conducting comprehensive investigation. Most of the case, the victim of TIP comes from outside region, its mean the recrutment process also has taken places since their origin. While the offender in Sanggau, often is only a driver or individual broker who facilitated the border passing. Therefore, ideally the investigation process should be initiated from the workers origin, not from Sanggau. Moreover, the locus of crimes which is exploitation happened is on Malaysia side, which is beyond the Indonesian olice jurisdiction. These become an obstacle for the investigator to apply TIP laws. As result, applying the Law No 39/2004 on Placement and Protection of Indonesian Workers in Overseas is more feasibe in this case. Aside of that, the deep investigation means the provision of protection to the victim. Unclear function of District Government's role has put police offices in difficult situation, especially availibility to cover the temporary accomodation and to repatriate the victim to their home proviencens.

⁸⁵ In-depth interview, Consulate General on 5 December 2018.

Moreover, the study also indicates the differs understanding of the TIP elements from the law enforcer perspective. One of the example can be obtain between the court decision No 301/Pid.Sus/2018/PN Sag and Court Decision No 7/Pid.Sus/2017/PN Sag. Both of cases gas similiarity on the factual elements: modus operandi: high salary promises, salary deduction once the victim employed in Malaysia, the recruiters has direct contact with the employer in Malaysia. However, the decision for both cases were different. In the Decision No 301/Pid.Sus/2018/PN Sag, the defendant was provent guilty violating the Law No 21/2007 on the Eradication of TIP Crimes and convicted with three years imprisonment and fine IDR 120 million subsidiar to two months in prison. While, the Decision No 7/Pid.Sus/2017/PN Sag, the defendant was proven guilty violating the Law No 39/2004 on the Plavement and Protection of Indonesian Workers in Overseas.⁸⁶

7. Non Government Organization and Civil Society Organization

Based on the research finding, there is one non-government organization only which actively involved in the anti-TIP programs namely Yayasan Pelangi Anak Bangsa (YPAB) and located in Entikong, Sanggau. This NGO has been established for 18 years and focused on the women and child issues, including TIP. YPAB has a training program for victims of trafficking in persons through small scale enterprise training. This program aims to empower the victim economically, so they could prevent the victims to migrated irregularly to Malaysia.

In addition, the research also maps out the potential actors who could be engage on anti-TIP program such as Deliberation Body of the Churches (BAMAG). During the FGD, BAMAG acknowledge that they do not have any expertise on TIP issues, however they were ready to support the government to tackle the issues.⁸⁷

⁸⁶ Sanggau District Court Decision No 301/Pid.Sus/2018/PN Sag and Decision No 7/Pid.Sus/2017/PN Sag.

⁸⁷ Focus group discussion, Badan Musyawarah Antar Gereja (BAMAG), 18 December 2018.

F THE CHALLENGES IN PREVENTING AND HANDLING TRAFFICKING IN PERSONS IN SANGGAU

The research highlighted several key challenges in preventing the TIP case and assisting victim of trafficking in Sanggau, namely inter agency coordination, government commitment, capacity of the frontline officers and law enforcement agencies as well as inter-region cooperation.

1. Inter-Agency Coordination

As explained on the previous part, inter agency coordination in Sanggau has not well established yet. This not only the cooperation among government to government offices but also between government and civil society organization. The inactive of ATTF and LPTSA-P2TKI has indicate the absence of coordination among agencies. Moreover, the varies of TIP data in each institution with different TIP indicator has indicated the lack of data sharing mechanism as part of the interagency coordination.

2. Government Commitment

Government commitments has significant roles in combating TIP. The commitment from the Government will be reflected through its policies including budget allocation. However, based on the research finding, the commitment of the Government of Sanggau still need to be strengthen. The absence of policy and regulation concerning TIP has indicated the low level of commitment from the Government. The explanation that Sanggau is transit point and only few of the Sanggau resident who become victims of trafficking should not justify that the combating TIP is not the government priority. The fact that 59 Sanggau resident returned from Malaysia due to the dispute with their employers and thousand of Indonesian returned from Malaysia through Sanggau has indicated the urgency of the government to regulate the TIP issues including victim services. This commitment should also be refflected by the district government budget allocation which provides sufficient budget for the agency who has a mandate to provide prevention, protection and prosecution programs for TIP cases.

3. Capacity of Frontline Officer and Law Enforcement

Based on the FGD, it was reflected that the frontline officer and law enforcement has differs understanding on TIP. Some of the officers will simply the TIP cases as irregular migration case. There is no different between trafficking and irregular migration, all the person who migrated to Malaysia irregularly were victim of trafficking. In other hand, there also officials who argue that people who migrated to Malaysia through irregular channel and or do not fulfill the placement procedure of migrant workers could not be considered as victim of trafficking, since the people has been aware of the process. Other opinion that also raise during the research is all the labor cases between worker and employers that occurs in the destination countries could not be categorized as TIP

case, because both parties have employment contracts. These various interpretation of TIP and its correlation between irregular migration and labor migration clearly indicates the lack of capacity of frontline officer and law enforcement in determine the TIP case.

Furthermore, the capacity of law enforcement also could be examined through the the court decision. For instance, the Court Decision No 83/PidSus/2018/PN Sag and No 224/Pid.Sus/2018/PN Sag, both of the decision describes the indictment and Judge decision were based on the Law on Placement and Protection of Indonesian Migrant in Overseas, eventhough the elements of the committed crimes is in accordance to the TIP elements under TIP Laws.

The need to strengthen the capacity of law enforcement is also reflected on the background of the offenders who arrested. Most of the case, the investigator will arrest the transporter in this regards, travel drivers who brought the victim from Pontianak to pass the border in Sanggau. Cost obstacle is the reason why the investigator could not arrest the master mind of the crimes. The recruitment process and the exploitation phase of the TIP cases were located outside of Sanggau. To obtain comprehensive investigation, the police will need lot of resources including the budget. However, the investigation budget for TIP and other women and children cases were limited. Therefore, a comprehensive investigation report could not be conducted, as result, the investigator will put the travel driver who transporting the victim as the offender. Further, this situation has become a challenge for prosecutor to develop comprehensive indictment and to proof the exploitation elements, since the drivers role is only transporting the victims. Hence, the prosecutor will put alternative indictment Law No 21/2007 and Law No 39/2004. Thus, this will allows to the judges to punish the offender with Law No 21/2007 or Law No 39/2004.⁸⁸ Similarly with the prosecutor, the judges prefer to use Law No 39/2004 instead of Law No 21/2007 due to the difficulty to fullfill exploitation elements.⁸⁹

4. Inter-Region Coordination

The cost obstacles which described above should not be a challenge if inter region coordination is well established. However, the research found that the inter agency coordination has not been utilized yet. Police to Police cooperation and or referral system on victim assistance between provience and district as well as provience to provience were absence. The inter-region coordination, especially between sending area and transit area is needed, so each area could contribute to eradicate the TIP crimes. Strengthening the network with the areas of origin of the workers remains a challenges despite the central government has suggested this cooperation models.

⁸⁸ In-depth interview, Sanggau Prosecutor's Office, Sanggau, 19 December 2018.

⁸⁹ In-depth interview, Sanggau District Court, Sanggau, 19 December 2018.

4

THE PROFILE OF TRAFFICKING IN PERSONS IN SAMBAS

A SAMBAS DISTRICT IN CONTEXT

Sambas District is located in the northernmost part of West Kalimantan Province. On its northern and eastern side lies the State of Sarawak, East Malaysia. In total, Sambas District covers 6,394.70 km² or about 4.36% of the total territory of West Kalimantan Province. The local government is divided into 19 districts and 193 villages. The biggest of them all is Sajingan Besar district, with Salatiga district being the smallest.⁹⁰

In 2017, the population of Sambas was 529,684 people, comprised of 260,502 (49.18%) males and 269,182 (50.82%) females with Malay and Madurese as the ethnic majorities of the local population.⁹¹ It was recorded that 4.93% of the population are considered as migrants (newcomers) with multiple ethnicities.⁹²

The Sambas Gross Regional Domestic Product (GRDP) relies on several main economic sectors and commodities: agriculture and fisheries, trading and reparation of motorbikes and cars, industrial processing products, construction, finance, and insurance.⁹³ Yet, economic development is relatively slow; in 2015 GRDP increase was 4.88%, increasing to 5.20% in 2016 and decreasing to 5.18% in 2017.⁹⁴

Referring to the Human Development Index of Sambas District in 2018, Sambas ranked 7th out of 14 regencies in West Kalimantan in regards to the poverty level. In 2017, the total population of Sambas District living in poverty was 8.9%, which decreased from 9.1% in 2013. In terms of education, the average years of school attendance was 6.67 years, meaning most of the population went to school for at least six years. The number of high school dropouts is higher than junior high school dropouts. The biggest sector of the economy is agriculture. Job scarcity contributed to a high unemployment figure, especially the number of unemployed people, which was 10,944 people out of 368,571 people in 2017.⁹⁵

In the context of migration flows, Sambas is a place of origin and a transit location for many migrant workers heading to Malaysia and Brunei Darussalam.⁹⁶ Many people from Sambas choose to move to Malaysia or Brunei rather than stay in Sambas due to being jobless. The reputation of Sambas being a migrant worker source region can be seen from the number of Sambas natives migrating abroad, about 52% or around 5,000 people of all individuals crossing the border.⁹⁷ On 17 July 2017, BP3TKI Pontianak reported that 2,172 people were returned from Malaysia through the Entikong border crossing post, of which 347 were Sambas residents. These individuals were returned due to noncompliance with immigration regulations.

⁹⁰ Central Bureau of Statistic Sambas, "Statistik Daerah Kabupaten Sambas 2018," Report, BPS, 2018.

⁹¹ Ibid

⁹² BPS, "Data Penduduk Sambas 2017"
<<https://sp2010.bps.go.id/index.php/site/tabel?tid=324&wid=6100000000>>, accessed on 2 Mei 2019.

⁹³ From agricultural, mainly from production of Palm oil, coconut, padi, soya bean, green bean, orange and durian. In addition, duck farming also significant contribution since it contributes to 46% in West Kalimantan. See, <https://pontianak.tribunnews.com/2017/09/26/unggul-di-kalbar-inilah-data-potensi-pertanian-dan-peternakan-di-sambas>.

⁹⁴ Sambas District Central Bureau of Statistic, n.15

⁹⁵ Sambas District Central Bureau of Statistic, n. 186.

⁹⁶ Focus group discussion, IAIS and MUI Secretary, 4 December 2018.

⁹⁷ Focus group discussion, Sambas Police Resort, 4 December 2018. This discussion was initiated because of the large number of Sambas population who returned from Malaysia to work on religious holidays.

The land border between Sambas and Sarawak has been used by people of Sambas as alternative methods of travelling to Malaysia and Brunei; some of those paths are located around the Sanjingan area. The official border cross check point in Sanjingan was opened in 2012.⁹⁸ Later in March 2017, this border cross check point was rebuilt by improving their facilities and function. The Government named this check point as Aruk Border Crossing Post (PLBN Aruk). With this new design, this border crossing post is expected to strengthen the economy in Sambas District as it eases the migration process for Indonesians going to Malaysia while simplifying the monitoring of Indonesians crossing the border.⁹⁹

B TRAFFICKING IN PERSONS DATA IN SAMBAS

During 2016-2018, the District Police Office of Sambas investigated nine TIP cases: two in 2016, two in 2017 and five in 2018. Nevertheless, the small number of trafficking in persons cases processed through the legal system is an inaccurate representation of Trafficking in Persons cases in the district.

In addition, during this research, the team also examined the Court Decisions from the Sambas District Court. Based on this examination, there were seven TIP cases processed in Sambas District Court between 2015-2018. From these seven cases, only two cases were convicted as TIP crimes under Law No 21/2007, while the rest of the cases were convicted under Law No 39/2004 on the Placement and Protection of Indonesian Workers Overseas, even though the prosecutor charged the defendant with Law No 21/2007.

Table 4. TIP cases Prosecuted in Sambas District Court

No	Year	Court Decision Number	Indictment	Conviction
1	2015	97/Pid.Sus/2015/PN Sbs	Single indictment: Law No 21/2007	Law No 21/2007
2		34/Pid.Sus/2015/ PN Sbs	Alternative indictment: Law No 21/2007 Law No 39/2004	Law No 39/2004
3	2016	28/Pid.Sus/2016/PN Sbs	Alternative indictment: Law No 21/2007 Law No 39/2004	Law No 39/2004
4		29/Pid.Sus/2016/ PN Sbs	Alternative indictment: Law No 21/2007 Law No 39/2004	Law No 39/2004
5		213/Pid.Sus/2016/PN Sbs	Alternative indictment: Law No 21/2007 Law No 39/2004	Law No 21/2007

⁹⁸ Op.cit. Prasajo, "Dinamika Masyarakat," n. 197.

⁹⁹ Cabinet's Secretary of the Republic of Indonesia, "Sambutan Presiden Joko Widodo pada Peresmian PLBN Aruk di Sajingan Besar Sambas Kalimantan Barat," available at <https://setkab.go.id/sambutan-presiden-joko-widodo-pada-peresmian-plbn-aruk-di-sajingan-besar-sambas-kalimantan-barat-17-maret-2017/>; Yohanes Kurnia Irawan, "Presiden Jokowi: Desain PLBN Aruk Paling Bagus Se-Indonesia," available at <https://regional.kompas.com/read/2017/03/18/10582441/presiden.jokowi.desain.plbn.aruk.paling.bagus.se-indonesia>, accessed on 2 Mei 2019.

No	Year	Court Decision Number	Indictment	Conviction
6	2017	34/Pid.Sus/2015/ PN Sbs	Alternative indictment: Law No 21/2007 Law No 39/2004	Law No 39/2004
7	2018	34/Pid.Sus/2015/ PN Sbs	Alternative indictment: Law No 21/2007 Law No 39/2004	Law No 39/2004

Aside from law enforcement data, BP3TKI Pontianak also recorded that in 2018 there were six migrant workers from Sambas who were returned from Malaysia due to labor issues and/or experiences of trafficking in persons.¹⁰⁰ However, BP3TKI does not have records as to whether these six individuals brought their case to the authorities.

In addition, the Immigration Office in Sambas has also collected some data related to TIP, even though there was no further investigation to outline the case elements more clearly. Throughout 2018, the Sambas Immigration Office rejected 137 (M: 122, F: 15) passport applications on the grounds of the individuals allegedly being non-procedural migrant workers.¹⁰¹ These rejections were because the applicants did not fulfill all the passport requirements, and the involved Immigration Officer believed there were strong indicators of people smuggling or TIP.

C THE PATTERN OF TRAFFICKING IN PERSONS IN SAMBAS DISTRICT

Existing data on Trafficking in Persons in Sambas just shows the “tip of the iceberg” where it initially seems small, but the reality is considerably worse.¹⁰² The phenomenon of trafficking in persons in Sambas occurs in many forms: exploitation of migrant workers, and sexual exploitation in the form of prostitution, which happens domestically as well as across the border. Furthermore, Sambas District is the biggest source region of migrants in West Kalimantan contributing to the Indonesian migrant worker population in Malaysia.¹⁰³

¹⁰⁰ See, BP3TKI, Recapitulation of IMW return from abroad based on the place of origin, (*Rekapitulasi Data Kepulangan PMI dari Luar Negeri Berdasarkan Daerah Asal*, BP3TKI, Pontianak, from January to December 2019).

¹⁰¹ PLBN Aruk Rejection to Leave Territory Report, January – May 2019.

¹⁰² Focus group discussion, Sambas Police Resort and Sambas District MUI Secretary, 4 December 2018.

¹⁰³ Atem, “TKW’ sebuah perangkap perdagangan perempuan (menelisik fenomena human trafficking di Kabupaten Sambas,” *Raheema: Jurnal Studi Gender dan Anak* 4:1 (2017).

1. Cross-Border Trafficking

As explained above, Sambas is considered as a major source of migrants for West Kalimantan Province – this combined with its location that borders Malaysia has made Sambas prone to cross-border trafficking. This can be reflected through data from BP3TKI Pontianak which in 2018 stated that there were 289 IMWs from Sambas who experienced work-related issues such as conflict at work, fleeing the workplace, wage theft, criminal conduct and others. Cases related to work and fleeing ranked at the top with a total of 97 cases for work-related issues and 70 cases for workplace runaways.¹⁰⁴ This shows that there are many chances for exploitation, forcing workers to flee from their employer – which also negatively impacts their immigration status.¹⁰⁵

Almost all my neighbors have worked in Malaysia. It is the goal of every parent that when a child is old enough, they will work in Malaysia. Education is not too necessary since even without schooling, they are already able to earn some money. They are invited by neighbors or family who are agents, close people ... so if there is a problem, they won't dare talk - they're afraid.¹⁰⁸

Previous research carried out by Atem states that one of the main ways that TIP manifests in Sambas is the sending of irregular migrant workers – those that migrate for work without fulfilling legal requirements.¹⁰⁶ In the absence of employment documents, issues of labor exploitation, such as withholding of wages or workplace violence, is very likely to occur.¹⁰⁷ The phenomenon of labor migration through non-procedural placement is a common occurrence.

Even before 2013, the practice of sending children as IMWs had already occurred, as stated by a paralegal at LBH APIK.¹⁰⁹ The practice of sending children has significantly diminished and has not been seen openly since efforts to prevent trafficking in Sambas have been carried out both by the community (for example, LBH APIK paralegals) and by local governments through approaches to villages.¹¹⁰

Irregular migrant workers will not automatically become Victims of Trafficking. However, they are more vulnerable to being entrapped into a situation of trafficking in persons.

¹⁰⁴ Ibid.

¹⁰⁵ R. Yunus, et. al. "Strategies against trafficking in persons: the role of education in Jeneponto district, South Sulawesi, Indonesia," *International Journal of Social Science and Humanity* 6:115 (2016).

¹⁰⁶ Atem, "'TKW' sebuah perangkap perdagangan perempuan (menelisik fenomena human trafficking di Kabupaten Sambas)," *Raheema: Jurnal Studi Gender dan Anak* 4:1 (2017).

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ In-depth interview, LBH Apik Pontianak Pos Sambas Paralegal, 3 December 2018.

¹¹⁰ In-depth interview, DP3AP2KB of Sambas District, 2 December 2018.

The absence of an employment contract, work permit and their immigration status in destination countries can be used by unscrupulous agents or brokers to engage in worker exploitation.

This research concludes that patterns on cross-border trafficking in Sambas can be found as follows:

First, in most cases the recruitment was conducted by an individual agent/broker that has a relation with the prospective migrant worker. The worker is not aware they are at risk of being exploited, as they believe the agents will assist them in finding work.

Second, most of the victims were employed as domestic workers. However, in Sambas there is no official agency for domestic worker recruitment, most agencies are for more formal sectors, such as manufacturing and agriculture.¹¹¹ This situation also impacts on the unavailability of training centers for domestic workers. With the absence of official agencies and training centers, the role of recruitment and placement has taken over by the broker or individual agents. The workers departed to Malaysia without a pre-employment program. This situation has put the workers at risk, due to lack of formal protection and job skills.

Third, passport retention, salary deductions, and a salary below the minimum wage are common means of exploitation that have been used by traffickers. Passport retention makes the migrant worker unable to escape workplace exploitation without placing themselves at risk. Employers will often threaten to report them as ‘illegal’ workers if they don’t do exactly what the employer asks. It is very difficult for migrant workers to engage in the legal process, as they do not hold passports and formal work agreements. Without documents they are unable to leave and to be targeted by the security officers. Out of fear that if they were caught by the police they would be sentenced to jail or deported, they are pressured to do what their employer wants.¹¹² In addition, the research found that salary deductions may also lead into debt bondage. Pre-departure, an initial loan may be given to the worker on the condition of repayment as the victim works. However there is rarely a written or formal debt agreement, and the victim is still required to continue paying – even after more than a year of work, and overpaying the initial loan amount.¹¹³

2. Internal Trafficking

In addition to the high risk of TIP occurring in cross-border migration flows, cases of TIP can occur within Sambas District, even though there is no official data on domestic trafficking from the related stakeholders in Sambas. However, based on a media review, it was found that in 2015 there were 23 workers from Medan who worked in Sambas, and claimed they did not receive their salary as promised. They brought this issue to the company, but the company abandoned them in Sambas without any salary

¹¹¹ In-depth interview, Consulate of Republic of Indonesia in Kuching, Malaysia, 5 December 2018.

¹¹² In-depth interview, LBH Apik Sambas, 3 December 2018.

¹¹³ Focus group discussion in Sambas, 4 December 2018.

or repatriation funds.¹¹⁴ In 2016, a handful of children from Sambas were brought to Jakarta by individuals with the aim of being employed in the garment industry, and consequently exploited.¹¹⁵ Thus, TIP in Sambas District occurs both to individuals who cross national borders and those that migrate domestically to Sambas District.

D KEY FACTORS OF TRAFFICKING IN SAMBAS

There are some important factors that influence trends of trafficking in persons in Sambas District: geographic location, economic, educational issues and law enforcement factors. The causes of trafficking in persons include those of the push and pull factors, which are generally very complex; the push factor can also turn into the pull factor and vice versa. Specifically, in Sambas, there are several major factors that drive and attract migration – also known as strategic factors – that influence the occurrence of trafficking in Sambas.

1. Geographical and Cultural Factors

The Sambas area is an area with a vast land border. Although in Sambas, there is PLBN Aruk operating as the official border with Lundu (Malaysia) but there are unofficial border crossings (rat roads) commonly found as transit points between both regions.¹¹⁶ Long before PLBN Aruk was established in 2017, trade between Indonesia-Malaysia had been carried out in Sambas. In 2017, SME's (small and micro enterprises) carried out 91.61% of trade in Sambas District.¹¹⁷

The informal migration of Sambas people between Malaysia and Indonesia has been common since ancient times.¹¹⁸ There are already interdependent relationships between communities on the border of Indonesia and Malaysia. Not only because the Sambas community needs employment and the Malaysian community provides employment, it is also influenced by kinship/family relations. There is usually a close relationship between Sambas residents and Malaysians: because of marriage, blood relationships, or because of shared ethnic groups and clan connections. For example, it may frequently occur that an IMW initially wishes to visits his uncle, who owns a plantation business. Once in-country, the uncle offers him a job in harvesting, so the IMW works and earns wages from his own relatives.¹¹⁹

In addition, another cultural problem in Sambas is child marriage. A common story is that girls are married off by their parents at a young age and forced to quit school. There

¹¹⁴ Tribun Sambas, "Puluhan Pekerja Asal Medan Terlantar di Sambas" available at <https://pontianak.tribunnews.com/2015/10/09/puluhan-pekerja-asal-medan-telantar-di-sambas>, accessed on 3 September 2019.

¹¹⁵ Okenews, "Polisi Ungkap Eksploitasi 12 Anak di Bawah Umur," available at <https://megapolitan.okezone.com/read/2016/08/09/338/1459311/polisi-ungkap-eksploitasi-12-anak-di-bawah-umur>, accessed 3 September 2019.

¹¹⁶ Focus group discussion, P4PMI Sambas District, 4 December 2018.

¹¹⁷ Sambas District Central Bureau of Statistic, n. 186, p. 20.

¹¹⁸ Focus group discussion, Social Services, Village and People Empowerment of Sambas District, 6 December 2018.

¹¹⁹ Focus group discussion, P4PMI Sambas District, 4 December 2018.

were many stories of violence and financial neglect occurring during the marriage, followed promptly by a divorce. Divorced women who are not provided with financial assistance while having young children tend to seek jobs in Malaysia.¹²⁰

2. Economic Factor

The disparity in economic development at the border is one of the driving factors behind trafficking in persons. There is a significant economic disparity between Indonesia and the Malaysian border area.¹²¹ The total workforce of Sambas District (based on the results of *Sakernas* August 2017) is 368,571 people, consisting of 247,108 employed, while 10,944 people were unemployed.¹²² This high number of unemployed individuals is certainly a trigger factor for them to seek better lives in Malaysia. Also, in 2017, the GRDP per capita was 33.08 million IDR,¹²³ while if thoroughly calculated, the average population income in Sambas is around 2.75 million IDR per month. This is greater than the Sambas District's minimum wage, which in 2018 had reached 2.3 million IDR, but was still far below the minimum wage in Malaysia, which had reached 1,100 MYR or around 3.7 million IDR/month. This is compounded by two factors – first, in Sambas job availability is very limited, and that there is significant income inequality at the community level. Small traders often only earn between 200,000 – 500,000 IDR/month.¹²⁴ Most Sambas residents who graduate from junior high school find it difficult to get a job in Indonesia. Even if they manage to get a job, the salary is quite low, approximately 500,000 – 600,000 IDR/month.¹²⁵ This income disparity between Indonesia and Malaysia (approximately an equivalent of 3,000,000 IDR) is a very strong pull and push factor for IMW's to migrate.¹²⁶ Looking for a higher income in Malaysia has become part of the regional culture. Many couples after marriage choose to earn a better living by working in Malaysia.¹²⁷

General optimism of outcome held by the migrants is frequently used as a method in which traffickers recruit people.¹²⁸ The limited employment options in Indonesia and the ease of finding employment as a laborer in Malaysia encourages many Sambas people to migrate to Sarawak, Malaysia. Sarawak has even become a favored destination for workers rather than the Malay Peninsula or Sabah. Sarawak has yearly vacancies of approximately 18,000 job openings.¹²⁹ This is a strong pull factor for Sambas residents to migrate. If the labor migration process is carried out in accordance with procedures and in accordance with predetermined conditions, then this migration will be a matter of strengthening the economy for all parties.

¹²⁰ In-depth interview, LBH Apik, 4 December 2018.

¹²¹ In-depth Interview, DP3AP2KB of Sambas District, 3 December 2018.

¹²² Sambas District Central Bureau of Statistic, n. 186, p. 5.

¹²³ *Ibid.*, p. 22.

¹²⁴ Atem, “TKW’ sebuah perangkap perdagangan perempuan,” n. 206, p. 53.

¹²⁵ Focus group discussion in Sambas, 4 December 2018.

¹²⁶ Focus group discussion in Sambas, 4 December 2018.

¹²⁷ Focus group discussion in Sambas, 4 December 2018.

¹²⁸ Focus group discussion in Sambas, 4 December 2018.

¹²⁹ Focus group discussion in Sambas, 4 December 2018.

3. Educational Factor

A low level of education is one of the significant factors driving trafficking in persons in Sambas. In 2017, the level of education in Sambas was relatively low, at 6.77 years. This figure means that the average Sambas citizen attended formal education only up to grade 7 (not graduating from junior high school). The high number of children dropping out of school in Sambas is partly because there is an assumption that education is not important, compounded by schooling being very expensive – directly impacting the need of a family to earn money to cover daily needs. There is an inherent view in the Sambas community about the role of children in earning money. If their children (both girls and boys) have graduated from junior high school, the child is asked to work abroad in order to earn money that can be used to build a house.¹³⁰ This view is mainly influencing poor households that have expectations of financial prosperity attached to their children, who are then expected to work abroad.¹³¹ In fact, in several districts such as Teluk Kramat, Tebas, and Paloh, many children do have aspirations to work abroad – it is a matter of pride for those that manage to achieve it.¹³² Data from the Sambas Central Statistics Agency supports the information above. The working population in Sambas District is dominated by those who have only graduated elementary school - 32.33% (79,880 people) of the entire workforce. The working population that had a vocational or university qualification was 15,346 people (6.21%). Meanwhile, the working population educated at High School/Religious School/Package C equivalent had the fewest number - 14,183 people (5.74%).¹³³ This shows that the number of elementary school educated workers was quite high and only a small proportion graduated from high school and went on to university or vocational training. With this, it can be said that community awareness about the need for education in Sambas District is low.

4. Government Policy and Its Implementation

Sambas District has district regulation No. 3 of 2015 concerning Prevention and Management of Victims of Trafficking in Persons. The regulation covers the necessary arrangements for preventing and handling cases of trafficking in persons.¹³⁴ In this case, the Sambas Regional Regulation on Trafficking in Persons was issued with the aim of creating a TIP prevention and handling system in Sambas District.¹³⁵ The regional regulation gives additional duties and authority to the Sambas District government to:¹³⁶

¹³⁰ Focus group discussion in Sambas, 4 December 2018.

¹³¹ Focus group discussion in Sambas, 4 December 2018.

¹³² Focus group discussion in Sambas, 4 December 2018.

¹³³ Sambas District Central Bureau of Statistic, n. 186, p. 5.

¹³⁴ Sambas District Regional Regulation no. 3 of 2015 regarding to Prevention and Victims Handling of Trafficking in Persons.

¹³⁵ *Ibid.*, article 2 paragraph 2.

¹³⁶ *Ibid.*, article 3.

- Develop policies, programs, activities and allocate budgets to carry out prevention of TIP and Treatment of VoTs;
- Establish a task force for preventing and handling trafficking in persons;
- Establish UPT (technical implementation unit) and provide UPT facilities and infrastructure;
- Ensuring ease of access to services for victims;
- Promote cooperation and coordination in efforts to reduce victims; and
- Monitoring, evaluating and improving the performance of the implementation of prevention and handling of victims in a transparent and responsible manner.

With these various tasks, the district government also formed a task force that is a combination of various units under the Sambas District government, NGOs and other relevant policy stakeholders. However, this regulation has not been implemented well – a lack of financial support from the government is the main issue. The research found that some of the relevant government agencies are also not aware of the existence of the regulation and the task force.

Further, the government policy on the placement process of migrant workers also has become an indirect push factor on the number of cross-border trafficking cases. The requirement to pass the job training and competence test has been seen by the community as prolonging the process instead of helping them. Attending job training may take several months, while there is an immediate need to get a job and earn money. Many IMW choose the procedure-less shortcut, and this situation is supported by the existence of informal relationships between actors in trafficking rings that were able to circumvent official processes.

E KEY ACTORS INVOLVED

In Sambas, the Office of Women Empowerment, Child Protection, Population Control and Family Planning (DP3AP2KB) is the lead agency that mainly conducts anti-TIP programs. Aside from DP3AP2KB, there are some other agencies that work on TIP issues, even though TIP is not their core mandate. Below are the agencies that have anti-TIP programs in Sambas.

1. Anti Trafficking Task Force (ATTF)

Following District Regulation No. 3 of 2015 concerning the Prevention and Management of Victims of Trafficking in Persons, the Sambas Government established an Anti Trafficking Task Force (ATTF) which is chaired by Deputy Regent of Sambas and has DP3AP2KB as the secretariat. The ATTF consist of four sub-task forces: Prevention, Social Rehabilitation, Health Rehabilitation and Law Enforcement. However, based

on the research it was found that the respective ATTF members were not aware of their involvement or their roles and responsibilities within the ATTF.¹³⁷ In addition, the DP3AP2KB as the secretariat of ATTF argues that the ineffectiveness of the ATTF was because of low commitment from other agencies.¹³⁸ For instance, the budget for ATTF programs should be attached to each ATTF members budget, however, in practice, it was only DP3AP2KB who had allocated only a small amount of funding. In addition, there also a perception from DP3AP2KB that their role as the secretariat of the ATTF was not strategic enough, and that they could not be a decision maker. On the other hand, the deputy Regent as the Head of ATTF also did not allocate any budget for DP3AP2KB.¹³⁹ Considering this background, DP3AP2KB carried out their own programs as DP3AP2KB programs, not as ATTF programs. Below are some DP3AP2KB programs related to TIP, women, and child protection issues¹⁴⁰:

- (a) Promulgation of efforts to protect victims of trafficking in persons in every district, and also in villages prone to trafficking in persons. In 2018, the socialization efforts have covered five regencies in accordance with the available budget.
- (b) Procurement of multiple media formats for socialization, including making comics (stories), billboards, banners, stickers and film screenings in each village and sub-district. This was done before starting activities in the villages and sub districts as a form of TIP prevention.
- (c) Appointment of anti-trafficking ambassadors in every district.
- (d) Handling of victims (not limited to trafficking in persons) with the following process:
 - The case handling process begins with case reporting started by paralegals, legal aid, or the community;
 - Based on these reports, an assessment is conducted on necessary handling, especially on medical and psychological needs;
 - Coordination with related agencies for further handling.

Further, DP3AP2KB also has a victim empowerment program, engaging with life skills and vocational training, such as sewing or salons. However, this training program was provided based on a top down policy, and did not consider the needs of victims. In addition, there was no evaluation and follow-up from the training. Hence, the measurement of successful programs could not be reflected and evaluated.

Apart of DP3AP2KB, there is also the Office of Social Services, Community and Village Empowerment (DINSOSPMD), which has the mandate to provide return, rehabilitation and reintegration services for victims of trafficking under ATTF schemes. According to the interview, DINSOS does not have special programs for victims of trafficking other

¹³⁷ Focus Group Discussion in Sambas, 4 December 2018.

¹³⁸ In-depth interview, DP3AP2KB Sambas District, 3 December 2018.

¹³⁹ Ibid.

¹⁴⁰ Ibid

than a fast repatriation process.¹⁴¹ DINSOSPMD also has social workers that can provide basic social services, however there are no individuals specifically trained on assisting victims of trafficking. Financial limitation is the main reason that comprehensive support towards victims cannot be provided. Further, according to DINSOSPMD, there is no coordination with other agencies in providing victim support, since the ATTF is not well operated.

2. One Roof Integrated Service (LTSA) of Sambas

The establishment of this LTSA is mandated by article 18 of Law Number 18 of 2017 concerning The Protection of Indonesian Migrant Workers. This Law was an amendment to Law No 39/2004 concerning of the Placement and Protection of Indonesian Worker Overseas. LTSA, consist of several agencies - both central government representative offices and district government offices: Immigration, BNP2TKI, Social Insurance and Protection Agency (BPJS), Sambas District Police, Manpower, and the Civil Registration offices. LTSA is the one-stop service center for the labor migration process, which aims to simplify the labor migration management process. Specifically, the LTSA's objectives are:¹⁴²

1. Realize the effectiveness of the implementation of placement services and the protection of Indonesian migrant workers;
2. Provide efficiency and transparency in the administration of placement documents and protection of prospective and current Indonesian migrant workers; and
3. Accelerate the improvement of service quality.

In addition, with the establishment of LTSA, TIP that occurs through labor migration can also be prevented, because the source of information on labor migration is accessible to the public and marginalizes the role of the informal broker.

3. Post for the Placement and Services of Indonesian Migrant Worker (P4TKI).

The P4TKI in Sambas was established in 2009. As the branch of BNP2TKI at the district level, P4TKI Sambas is also actively involved in LTSA as the representative of BNP2TKI and reports to BP3TKI Pontianak (BNP2TKI Office at the Province level). P4TKI has several programs that aim to prevent TIP and promote safe migration as well as handle cases. Details of the P4TKI program are outlined below:

¹⁴¹ In-depth interview, DINSOSPMD, 6 December 2018.

¹⁴² Article 18 paragraph (2) Law no. 18 of 2017 concerning Protection of Indonesian Migrant Workers.

a) Data collection and pre-departure program

In 2018, there were 1,106 official workers registered by the government that had complete documents. The average education level of migrant workers is from elementary to junior high, with an age-range of 18 to 30 years.¹⁴³ The data is in line with the average education level of Sambas residents who graduated in 6th grade or 1st grade of junior high school.¹⁴⁴ Moreover, 33% of the working population in Sambas District are primary school graduates.¹⁴⁵ Further, P4TKI records also state that in Sambas there are two private recruitment agencies: PT Arwana Citra Lestari and PT Mapan Samudera Jaya. Both recruitment agencies send migrant workers to refineries or plywood processing plants in Malaysia.¹⁴⁶ Apart from data collection, P4TKI also provides pre-departure programs for migrant workers. An one-day session prior to their departure aims to strengthen the migrant workers capacity on laws and regulations in Malaysia, cultural differences, their work environment as well as their labor rights.

b) Empowerment Programs for Returned Migrants

Additionally, to improve prevention of trafficking in persons, an empowerment program for returned migrants and their families has been developed. This empowerment program was carried out through vocational training programs and business coaching. For example, one returnee was trained as a Songket (a traditional hand-woven textile) craftsman, and with one year of business coaching, this migrant was supported to participate in an international exhibition in Kuching, Malaysia.¹⁴⁷

4. Immigration Offices

One of the responsibilities of the Sambas Immigration Office is operationally supporting the PLBN in Aruk, Sambas. In January 2019, PLBN Aruk recorded that Indonesian citizens who travelled to Malaysia through PLBN Aruk amounted to 7,252 individuals, and 6,892 Indonesian citizens who returned to Indonesia through PLBN Aruk.¹⁴⁸ This figure increased rapidly in June 2019. In June 2019, there were 23,089 Indonesian citizens heading to Malaysia through PLBN Aruk and 11,644 Indonesian citizens returning to Indonesia.¹⁴⁹ The high level of border crossings needs to be adequately supervised, so that crossings become safer and free from trafficking practices. In addition, throughout 2018 the Sambas Immigration Office rejected 137 passport applications on the grounds of the applicants being alleged non-procedural migrant workers. Among the number of applications rejected, 15 were women and 122 were men.¹⁵⁰ From January to February

¹⁴³ P4TKI Sambas data.

¹⁴⁴ Sambas District Central Bureau of Statistic, n. 186, p. 7.

¹⁴⁵ *Ibid.*, p. 8.

¹⁴⁶ Informal discussion in the observation in LTSA, 4 December 2018.

¹⁴⁷ P4TKI Sambas data.

¹⁴⁸ Sambas Immigration Report, January 2019.

¹⁴⁹ Sambas Immigration Report, June 2019.

¹⁵⁰ Sambas Immigration Office Passport Rejection Report 2018.

2019 there had been a rejection of 40 passport applications at the Sambas Immigration Office.¹⁵¹ Further, from January to May 2019, there have been 19 regional rejections for suspected irregular workers.¹⁵²

Based on this data, we can see that the Sambas Immigration Office is actively involved in the prevention of trafficking in persons by preventing irregular migrant workers from leaving for Malaysia.

5. Law Enforcement Agencies

Law enforcement officials in Sambas District, including the Police, Prosecutors, and Judges at the District Court have handled various cases of trafficking in persons in Sambas District. As outlined in the TIP data section, law enforcement agencies in Sambas have been actively involved in assisting victims to pursue their legal cases. In practice, the law enforcement agencies will conduct investigations based on received reports. Unfortunately, as described above, very few cases of trafficking have been reported. Law enforcement agencies, especially the Police and Prosecutors Office can initiate the investigation process based on initial information that they find in the community. Is not necessary to wait for individuals to directly report, however this function has not been maximized yet. Based on the data from police reports, all investigations were based on direct reports only.¹⁵³

6. Non Government Organization and Civil Society Organization

Based on the research findings, there is one NGO who works on women and child issues, including TIP – the LBH APIK legal aid organization. LBH APIK is an independent organization and not tied to the government. LBH APIK is also a member of the ATTF. Based on an interview with a paralegal of LBH APIK, the paralegal confirmed that the ATTF is not active. Despite the ineffectiveness of ATTF, LBH APIK has appointed their paralegals based in Sambas to actively engage with the Government to provide support for the victim as well as to develop prevention activities at the community level. The task of the paralegals at LBH APIK is to conduct socialization directly to the community groups at the lowest level. The outreach method used by paralegals is through discussions at the village level informing the community about trafficking in persons issues, including emphasizing to parents the prohibition of children being sent to work in Malaysia.¹⁵⁴ In addition, the paralegals of LBH APIK also provide economic empowerment programs for trafficking victims – such as developing a cooperative for a cassava chips business, as well as sewing pillowcases and doormats.¹⁵⁵

¹⁵¹ Sambas Immigration Office Passport Rejection Report January – February 2019.

¹⁵² PLBN Aruk Rejection to Leave Territory Report, January – May 2019.

¹⁵³ Focus group discussion in Sambas, 4 December 2018.

¹⁵⁴ In-depth interview, LBH Apik, 3 December 2018.

¹⁵⁵ Ibid.

Apart from this NGO, there is also a women's organization funded by the Government called Family Welfare Empowerment (Pemberdayaan Kesejahteraan Keluarga/PKK). This organization also plays a significant role in the effort to prevent TIP. PKK often becomes an informal data bank for all stakeholders in Sambas District. Through PKK, a lot of information at the community level can be retrieved – including education drop-out rates and the general level of education in each area. This can be achieved because of the existence of PKK within the smallest communities. Under the PKK in each neighborhood association, there will be a *dasawisma* group, which is a group with ten adjacent neighbourhood members. Through this *dasawisma* group, it is entirely possible to collect accurate data on local citizens who are working abroad, or on family members who are working abroad.¹⁵⁶

F THE CHALLENGES IN PREVENTING AND HANDLING TRAFFICKING IN PERSONS IN SANGGAU

In Sambas, the research noted some key challenges faced by the District Government and Law Enforcement to carry out anti-TIP programs and deliver comprehensive assistance to victims of trafficking. Some challenges are inter-agency coordination, government commitment on budget and human resources, capacity of frontline officers and law enforcement, as well as inter-regional cooperation.

1. Inter-Agency Coordination

Inter-agency coordination in Sambas is low. Many parties are involved in TIP programming, but none of them share their data and programs with each other. This was outlined from the stakeholder interviews, which strongly confirms that coordination has not taken place. The lack of the inter-agency coordination also has impacted on existing TIP data in Sambas- there is no single, coherent dataset on TIP that can be found. Each institution has their own data, and uses their own standards in determining TIP cases. This difference in terms also implies a difference in treatment. For instance, the P4TKI will prefer to consider most cases as non-procedural migrant worker cases instead of trafficking cases. The DP3AP2KB and P2TP2A will use Trafficking in Persons terminology, while DISOSPMMD will use the term “Troubled Indonesian Citizens” (*warga negara Indonesia bermasalah* or WNIB) in categorizing victims of trafficking.¹⁵⁷ The use of different terms without having any particular guidelines or standards results in neglect of potential cases – especially with the term “troubled Indonesian citizen” being used.

¹⁵⁶ Focus group discussion in Sambas, 4 December 2018.

¹⁵⁷ Focus group discussion in Sambas 4 December 2018.

In addition, the lack of interagency coordination hinders victims of trafficking to access available services provided by government and non government partners. For instance, a victim of trafficking who is categorized as “troubled Indonesian citizen” will not be provided with further treatment, such as psychosocial rehabilitation and reintegration, because they are only entitled to repatriation support. Furthermore, for cross border trafficking, when a person is not identified as a victim, the procedure to repatriate them is through deportation instead of voluntary return or repatriation. They do not get the same protection as victims do. Therefore, the Social Service Office does not refer cases or does not coordinate repatriation to P2TP2A.¹⁵⁸

2. Government Commitment

Despite the Government policy concerning TIP being ratified in Sambas, its implementation has been problematic. Limited budget and human resources allocation has directly contributed to the ineffectiveness of the ATTF. Moreover, this situation also impacts directly to victims, due to the unavailability of trauma healing programs and psychologists. Shelters for victims did not function well – even though the shelter existed, it was not provided with any operational funding. Hence, the shelter could not provide any services. In addition, Sambas also has an established P2TP2A- unfortunately this P2TP2A is run by one person staff member for administration purposes. They are only able to collect data, and not provide direct services to migrants.

3. Capacity of Frontline Officer and Law Enforcement

The lack of knowledge and capacity of law enforcement agencies in Sambas has contributed to the ineffectiveness of victim support as well as a non-comprehensive investigation process. As reflected in the Court Decisions, of seven cases that were prosecuted using Law No 21/2007 only two cases were convicted under Law No 21/2007. Further, out of these seven cases, the prosecutor was only confident in once case to use Law No 21/2007 as a single indictment. The rest of these cases were using alternative indictment Law No 21/2007 and Law No 39/2004 on the Placement and Protection of Indonesian Migrant Workers.

It was found in Sambas District Court Decision no 82/Pid.Sus/2018/PN Sbs an inconsistency in the Panel of Judges in proving the element of “placing Indonesian citizens to work abroad,” in utilizing law on placement and protection of IMW overseas. The Panel of Judges even stated that the victims in the case were clearly TIP victims, but their decisions were not based on TIP Law. This variation of understanding in determining TIP elements can be reflected in two different Court Decision below, even though both cases have similarities:

¹⁵⁸ In-depth interview, DP3AP2KB, 3 December 2018.

Case 1. Sambas District Court Decision No: 97/Pid.Sus/2015/PN Sbs

The defendant lives in Darulsalam hamlet, Sari Makmur village, Tekarang district, Sambas District. The defendant recruited the victim in order to be employed at Café Doi, Putusibau. For each worker who was brought by the Defendant, the Defendant will receive a reward of Rp400,000 per person from the owner of Café Doi. The victims were interested in working there because the Defendant said that each worker would get a salary of Rp20,000 per hour for the morning shift and Rp25,000 per hour for the night shift. Before being dispatched to Putusibau, the Defendant was stopped by the Police from the West Pontianak Police Station. The victims of this case totaled five persons.

The Public Prosecutor, in this case, made a single indictment (*dakwaan tunggal*) using article 2 paragraph (1) *juncto* article 10 of the TIP law. Article 2 paragraph (1) *juncto* article 10 of the TIP law was applied because the exploitation had not yet occurred, meaning the offence of TIP has not yet been completed. Therefore, Article 10 of the TIP law is applied to show that the act is still at the preparatory stage. In this case, the defendant was sentenced to imprisonment for three years and six months and fined 120 million IDR in substitute of two months in prison. This sole indictment shows that the Public Prosecutor's team believes that the article under which the Defendant was charged will be proven.

Case 2. Sambas District Court Decision No: 28/Pid.Sus/2016/PN

In Decision No: 28/Pid.Sus/2016/PN Sbs, the modus operandi of the perpetrators was that the defendant met with the victim and was promised work in Malaysia as a babysitter and was promised a net salary of RM 350. The victim agreed. All this occurred in Sambas District. They travelled by a motorboat to the Malaysian border. The worker did not apply for any work permit in Malaysia. While working for approximately five months as a babysitter, the victim was never given a salary but was only given food. During employment, the victim was physically abused. The victim then fled and reported the incident to the Indonesian Consulate in Kuching, Malaysia. At the time of the incident, it turned out that the victim was still 14 years old according to their elementary school certificate issued by SDN (public elementary school) 28 Tengging, Sambas.

The Public Prosecutor charged the defendant with a combination of alternative indictments (*subsidiaries-alternatives*), the first claim: primary indictment article 11 *juncto* article 6 of law no. 21 of 2007 on the TIP law, subsidiary indictment: article 11

juncto article 4 of the TIP law alternated with second claim: primary indictment: article 10 *juncto* article 6 of the TIP law, subsidized with article 10 *juncto* article 4 of the TIP law also stipulated in Article 4 *juncto* Article 102 paragraph 1 letter a of the Law on the Placement and Protection of IMW overseas. The Judges decided to apply article 4 *juncto* article 102 paragraph 1 letter a of the Law on the Placement and Protection of IMW overseas.

With the alternative-subsidiarity form of charges, the judge who heard the case *a quo* has the freedom to directly choose which provisions are deemed applicable to the defendant. It is questionable why the Judges preferred to apply the IMW placement and protection law overseas instead of TIP law. In this case, the victim is minor female, and was exploited for approximately five months of unpaid work. Article 4, *juncto* article 102 paragraph 1 letter a of the law on Placement and Protection of IMW overseas does not state anything regarding the exploitation of underage victims. Therefore, in this case, it is more appropriate for the Panel of Judges to apply the Law No 21/2007 instead of Law No 39/2004.

5

THE PROFILE OF TRAFFICKING IN PERSONS IN KAPUAS HULU

A KAPUAS HULU DISTRICT IN CONTEXT

Kapuas Hulu District is one of the easternmost regencies in the West Kalimantan. This area borders directly with East Kalimantan Province and Central Kalimantan Province, meanwhile, the northern part of Kapuas Hulu District bordering directly with Sarawak State, East Malaysia.¹⁵⁹

The population of Kapuas Hulu consists of various ethnic backgrounds. The natives of Kapuas Hulu, in general, are Dayak and Malay tribes with proportionate balance among them. Dayak tribes widely spread in almost all the districts in Kapuas Hulu and there are twenty subethnic groups of Dayak Tribe with their distinctive languages. The majority of the Dayak tribe residents are Christian (protestant and catholic). Meanwhile, the Malays are Muslim majority. Both Dayak and Malay in Sarawak and Kapuas Hulu have a familial relationship. In 1975s, Javanese migrated to Kapuas Hulu with the national transmigration policy implemented. The Javanese residents are centralized in Silat Hilir area, Kapuas Hulu.¹⁶⁰ The majority of Dayak residents rely on agriculture, meanwhile, most of the Malays rely on fishing. The migrants from different islands engage in more diverse economic activities

In 2017, the poverty line of Kapuas Hulu was predicted to reach 9.45 per cent of the total population with economic growth of 5.39 per cent.¹⁶¹ HDI in 2017 ranks 11th out of 14 regencies/cities in West Kalimantan with a score of 64.18.¹⁶² With regard to education, 97.34 per cent of the population in Kapuas Hulu received elementary school education, 66.67 per cent received junior high school education and 55.75 per cent of the population received an education until high school.¹⁶³

The result of the national labour survey of 2017 showed that the population aged 15 years and over who worked during the week reached 58.03 per cent or 81,013 people, while the open unemployment rate was 1.24 per cent or 3,159 people. Also, 56.74 per cent of the workforce works in the agricultural sector, which contributes to 72 per cent of regional gross income. The agricultural sector includes farming, forestry, hunting, fisheries and plantation.

¹⁵⁹ Summarized from the official website of Kapuas Hulu District, Kabupaten Kapuas Hulu, available at <https://web.kapuashulukab.go.id/page/geografi>.

¹⁶⁰ Laurio Leonald and Dominic Rowland, "Drivers and effects of agrarian change in Kapuas Hulu District, West Kalimantan, Indonesia," in Liz Deakin, Mrigesh Kshatriya, and Terry Sunderland (eds.), *Agrarian Change in Tropical Landscapes* (Jakarta: CIFOR, 2016).

¹⁶¹ Kapuas Hulu, Central Statistics Agency, *Kabupaten Kapuas Hulu dalam Angka 2018*, (Kapuas Hulu: BPS, 2018); When compared with economic growth of West Kalimantan Province the growth of Kapuas Hulu only marginally above on the provincial number, which is 5.17 per cent. This per centage is higher than the economic growth in 2016 that is 5.28 per cent. In addition, the regional GDP per capita per year is 31.3 million rupiahs.

¹⁶² Ibid. As a comparison, the highest HDI in West Kalimantan province is entitled to Pontianak with the score of 77.93, followed by Slingkawang with 70.25. The result of BPS's project in 2010 which was reported by BPS in 2018 stated that Kapuas Hulu District has the area of 29,842 square km and consists of 23 district, 282 villages and 703 sub-villages/orchards with the population density of nine people per square km. The Central Statistics Agency (BPS) in Kapuas Hulu District 2018 projects that in 2017 the population in Kapuas Hulu District will reach 254,712 people with a gender composition of 50.85 per cent (129,510) men and 49.15per cent (125,202) women. The highest age composition of Kapuas Hulu population is owned by the young age group (20 - 39 years) with a per centage of 34.29per cent, followed by the group of children (<15 years) with a per centage of 28.97 per cent of the population.

¹⁶³ Kapuas Hulu, Central Statistics Agency, *Kabupaten Kapuas Hulu dalam Angka*, n. 308.

For the agricultural sectors, Kapuas Hulu has large scale on palm, rubber and plywood plantation. Palm plantations have existed since the 2000s. Presently, there are two major companies that dominate the palm plantations in Kapuas Hulu, they are, Sinar Mas Agro Resources Technology (SMART) Group and First Borneo International.¹⁶⁴ There are around 26 of 29 companies that being controlled by the two groups. Before 1998, Kapuas Hulu relied to timber businesses that exported to Malaysia both legally and illegally.¹⁶⁵ Timber businesses reduced drastically since the anti-illegal logging policy was implemented on 1999.¹⁶⁶ Meanwhile, the palm companies often employ workers from the outside of Kalimantan. The locals usually do not work as a permanent worker, but as part-time labour with minimum income. In that way, the practices of palm plantation are considered more profitable for the company and the elite (government or certain community leaders).¹⁶⁷ The urgency of economic needs has the potential to be the factor that drives people to migrate to work in Malaysia, even as irregular workers.

Currently, Kapuas Hulu is the largest protected forest area (more than 57 per cent) in the Kalimantan region. The regional government has drawn up a spatial plan which will provide around 19 per cent of the land for alternative plantations. At the same time, the local residents who work as subsistent farmers are starting to feel pressure from the palm plantation practices, which are excessively expanding their plantation area.

In addition, traditional and mechanical gold mines also operate in Kapuas Hulu. Mining occupies the second-lowest employment absorption at 9 per cent. Also, construction, despite only absorbing 4.9 per cent of the workforce, is considered to play a larger role (24.42 per cent) in terms of gross regional income.¹⁶⁸

B TRAFFICKING IN PERSONS DATA IN KAPUAS HULU

The research found that there is no available data on TIP in Kapuas Hulu. Based on the in-depth interview and FGD with various stakeholders, it was confirmed that there is no TIP cases that has been recorded by the government authority, law enforcement and civil society in Kapuas Hulu. However, considering the Kapuas Hulu background and previous report on the potential of TIP in Kapuas Hulu, the researcher believes that the TIP in Kapuas Hulu does exist, but under reported. There are several issues why the TIP data could not be obtained in Kapuas Hulu and how the risk of TIP in Kapuas Hulu was captured. The sections below will provide detail elaboration on these issues.

¹⁶⁴ Sastriyani, et. al., n. 60; Leonald and Rowland, n. 307.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

C THE PATTERN OF TRAFFICKING IN PERSONS IN KAPUAS HULU

The pattern of trafficking in persons in Kapuas Hulu has been revealed through previous studies. Sastriyani et. al. indicated that Kapuas Hulu is vulnerable to the practices of trafficking in persons, both for the cross-border and internal trafficking. One of the areas in Kapuas Hulu that bordered with Sarawak is Nanga Badau sub-district.¹⁶⁹ In this area especially Lanjak village, around 10 per cent of the residents worked in Malaysia irregularly in plantations in Sarawak, Malaysia, including the children, and according to the Sastriyani et.al many of them were exploited. They were later arrested because they do not possess legitimate documents to work and stay in Malaysia. In the return process of these migrants by Malaysian authority, some of them were escaped. Once arrived in Badau, they entered into the trap of the traffickers and were employed as servants at the karaoke places that turned out to be a prostitution site.¹⁷⁰

The field research conducted by the team found several findings; **First**, the Kapuas Hulu area tends not only serve as the transit area in the migration process but also as the place of origin. The practice of trafficking in persons occurs and is experienced by Indonesians in the migration process across the national borders and within the territory of Kapuas Hulu (internal trafficking). **Second**, this study confirms previous studies that the forms of trafficking in persons that occur include labour exploitation and sexual exploitation. **Third**, the practices of cross-border trafficking were experienced both by natives and the non-residents that made transit through borders in Kapuas Hulu. Meanwhile, internal trafficking in persons is often experienced by non-residents that came from other regencies such as West Kalimantan, West Java, Central Java, Sulawesi and East Nusa Tenggara, but does not happen to the residents.

1. Cross-Border Trafficking

As explained above, Kapuas Hulu is considered as a source of migrant worker and also transit areas for migrant workers from outside of Kapuas Hulu. At the time of study, there had not been any official reporting to law enforcement or local government on cross-border trafficking in persons cases. However, that does not necessarily mean that there was no trafficking in persons practices occurring.¹⁷¹ The practice of trafficking in persons could be indicated from the work exploitation experienced by the migrant worker. For example, according to information and monitoring obtained by immigration officials, there is an area in Kuching (Malaysia) that has night entertainment businesses which exposed to the TIP practices, where all the women's worker are Indonesian, originally from West Java. However, these people have never been recorded crossing the border check point at PLBN Badau, which means that they pass through other routes that were not detected by the immigration authorities.

In addition, several research participants also mentioned the indications of exploitation of workers employed in palm plantations in Malaysia. Research participants said that

¹⁶⁹ Sastriyani, et. al, n. 60.

¹⁷⁰ Ibid.

¹⁷¹ In-depth interview, Putussibau Immigration Office, 12 December 2018.

there were indications of labour exploitation such as abusive working condition and unpaid salary, especially for irregular workers employed in palm plantations.¹⁷² The modus operandi of exploitation that occurred in the palm oil industry is through the enticement to prospective workers for working in the plantation with the fixed term contract. But in fact, when the prospective workers are arrived, they will be worked for temporary jobs with no employment contract and the salaries will be held until their work is completed (usually three months).¹⁷³ However, in many cases, before the salaries are paid, there were often raids from the Malaysian Police, and many of the workers who did not have working permit will be arrested, and unfortunately their employer did not provide any support to them. Instead of releasing them from the Police or handed their salary, the employer remains silent and ignorance, even their salary never been handed to workers.¹⁷⁴

This research also found that some recruiter was used *social media* to recruit the migrant worker, especially young males. Based on the observation and informal discussion with some individuals who cross the PLBN Badau to Malaysia, they said that they have been invited to work in Malaysia by someone known through social media (facebook). They have never been to Malaysia before and cannot explain further about their type of works, their rights and obligation concerning the work and where their work is located.¹⁷⁵ This situation raises the question of whether they are aware of their working condition and or they just been lured to work in overseas without proper information.

Despite of the potential of cross-border trafficking as indicated by the explanation above, however, until this research completed, there is no official report on cross-border trafficking in Kapuas Hulu.

2. Internal Trafficking

From the previous study, it was known the connection between cross-border and internal trafficking in persons. Exploitation of women and children in the plywood plantation in Badau was confirmed by Sasriyani et. al. on her research.¹⁷⁶ However, currently these plywood companies that operated on the border between Badau District and Batang Lupar district indicated by earlier research ceased to operate since 2016.¹⁷⁷

In addition, the research also reveals that cafes and karaoke places in Badau are still running. One of the café owners stated that they established the businesses since 1982. The women who are employed in the cafés stayed voluntarily and they came from outside of Kapuas Hulu, such as Pontianak, Sanggau, Sintang, even some of them originally from West Java and Central Java.¹⁷⁸ These cafés are usually crowded with palm

¹⁷² In-depth interview, Disnakertrans, 25 June 2019

¹⁷³ In-depth interview, DINSOSP3AP2KB, 11 December 2018; In-depth interview, Badau District Local Government, 12 December 2018.

¹⁷⁴ Delivered at the opening of the focus group discussion, 12 December 2019.

¹⁷⁵ Observation PLBN Nanga Badau, 13 December 2018.

¹⁷⁶ Sasriyani, et.al, p: 60.

¹⁷⁷ Observation in Lanjak village and surrounding areas.

¹⁷⁸ Informal discussion with the café owners and some women who lived in café, the café specified is café that sell beverages as well as a karaoke place, 23 June, 2019.

plantation workers, particularly during the paydays. Not all the women employees in the cafes are victims of trafficking in persons,¹⁷⁹ some of them can be categorized as victims because they were deceived, were in debt when they were about to leave to work in Kapuas Hulu, and also were not paid what was promised.

According to the information from the in-depth interview, some of these women workers were offered to work in Kapuas Hulu as waiters or saleswomen. To be allowed to leave for Kapuas Hulu by their families in the area of origin, a 'loan' will be given to their family. This 'loan' must be paid back through salary deduction upon the individual worked. Apparently, after leaving for Kapuas Hulu, they were employed in the café as guest servants to accompany the customer drinking, some of them also forced to serve the customer sexually. There are also indications that the women workers in the cafes are prohibited from going out for a certain period by the café owner as stated by one of the study participants.¹⁸⁰

...

café owners usually contract the perspective workers for 6 months until a year. They were promised to work in a restaurant but apparently once they arrived at Kapuas Hulu their job is to serve the consumer at the perverted cafes. During the work, they are prohibited to go out from the café where they work. If they want to go out for groceries shopping, they have to be accompanied, when they want to buy food also, they need to be supervised. A lot of the women employee whom I believe are underage. They are forced to owe the money for the café owners to meet their daily needs, so they are increasingly dependent and difficult to get away from their work.¹⁸¹

From the statement above, it is indicated that the practices that occurred in the cafes in Kapuas Hulu have the tendency to be categorized as trafficking in persons. The recruitment above fulfills the three elements which stated in Palermo Protocol, that are, 1) the presence of recruitment and movement; 2) presence of the means of deceiving that are used in the recruitment, in this case, they are promised to be employed in the restaurants but in reality they are working in perverted café; and 3) their work is exploitative in nature, in this case, is sexual exploitation.

Moreover, cases of minors that are employed in the café are also found. The researchers had the opportunity to meet with victim X, a minor (17 years old) who was also caught while police conducted a raid at one of the cafes located in Kapuas Hulu. This case shows another pattern in trafficking in persons in Kapuas Hulu, which is recruitment through social media (Facebook). Victims become acquainted with recruiters and exchanged telephone numbers. This conversation continues in the form of communication

¹⁷⁹ Focus group discussion, Immigration Office, 24 June 2019

¹⁸⁰ In-depth interview, DINSOSP3AP2KB, 14 December 2018; Focus group discussion, 12 December 2018.

¹⁸¹ In-depth interview, DINSOSP3AP2KB, 11 December 2018.

via WhatsApp. The recruiters are not much different in terms of their age with the prospective workers and the recruiters offered a job as singers at the karaoke cafe. In reality, the work offered is different from what is undertaken.

Victim X mentioned that when she invited to work in Kapuas Hulu (the victim is originally from Sanggau), it was said that she would only work as a singer at the Putussibau cafe, but apparently during her employment, the victim was employed as escort girls, she often treated unfavorably by guests and was required to use revealing clothes that made her uncomfortable. The victim stated that from the first day, she had intended to run away but she was too afraid.¹⁸² Finally, when the Putussibau Police inspected her café, the police suspected that she was minor and rescued her. The victim said that she was relieved when she was rescued and could be returned to her hometown with support of local government and IOM Indonesia.¹⁸³

Other than TIP for sexual exploitation purposes, the researchers also sought to trace the indication of trafficking in persons that occur in the plywood and palm plantation spread across the border area of Badau as explained in the previous studies. However, not much confirmation on the practice of trafficking in persons was obtained, most government agencies stated that there was no recorded data related to trafficking in persons in plywood and palm plantation sectors. However, the Manpower Office confirmed the possibility of unrecorded local Kapuas Hulu residents working in the plywood and palm plantations in border areas.¹⁸⁴

In the Badau-Malaysia border area, there are palm plantations whose workers are Indonesian. More than 70 per cent of palm plantation workers are migrants from the outside of Kapuas Hulu who are originate from East Nusa Tenggara, West Nusa Tenggara, Papua and Java. The working conditions on the plantations cannot be known because the plantation area is a closed area. The local government does not have the authority to supervise working conditions in these plantations because the authority to supervise the palm oil companies is fall under Provincial authority.¹⁸⁵

From the examples above, the internal trafficking in Kapuas Hulu was organized through several pattern: **First**, the victims of trafficking were originally from outside of Kapuas Hulu. **Second**, the recruitment process was carried out by the recruiter through social media or direct contact. **Third**, the victims were promised to work as salesgirls and the victims did not provided with the whole picture of their working condition. **Fourth**, most of the internal trafficking cases that found were for the sexual exploitation process.

¹⁸² In-depth interview, Kapuas Hulu Police Office, 24 June 2019.

¹⁸³ Ibid.

¹⁸⁴ In-depth interview, Disnakertrans, 25 June 2019.

¹⁸⁵ In-depth interview, Badau District Local Government, 13 December 2018; FGD, 24 June 2019.

D KEY FACTORS OF TRAFFICKING IN KAPUAS HULU

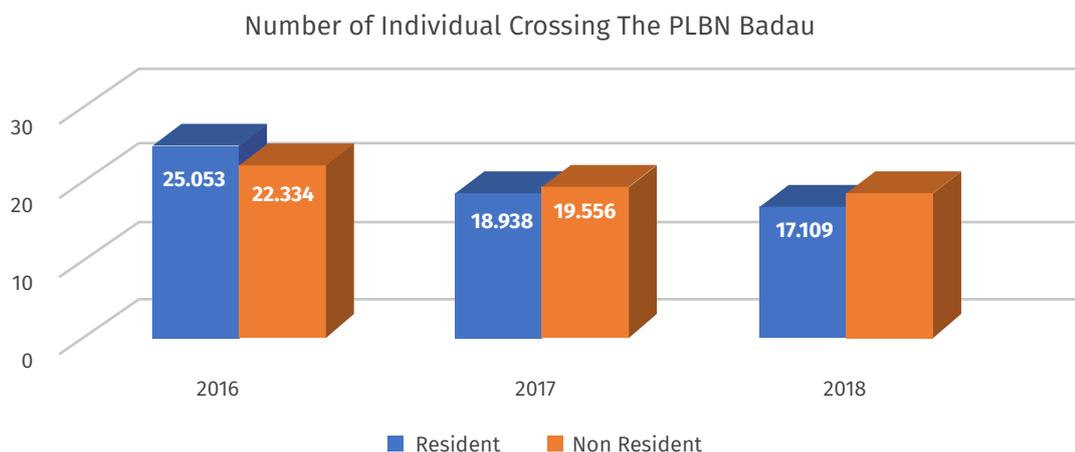
According to this research there are several factors that affect the occurrence of trafficking in persons namely geographical and cultural, economic, infrastructure development and the government policies and its implementation.

1. Geographical and Cultural Factors

The condition of Kapuas Hulu that borders directly with Malaysia made it easier for the residents to cross the border. The tradition of visiting each other among the residents of Sarawak and Kapuas Hulu has been established since ages.¹⁸⁶ Visits to Malaysia are usually carried out for economic activities, for instance, the grocery needs of the households, trading or working. Before the presence of PLBN Badau, the residents could enter and exit to Malaysia without any inspection.¹⁸⁷ The geographical proximity along with the cultural and familial relationship between the Malays and Dayaks at the border area of Kapuas Hulu and Sarawak and the custom of preference to work at the family's business has been a tradition since a long time.

Over time, the border crossing to Malaysia is not only done by the local but also the non-residents. The number of non-locals who crossed the border formally is almost as the same as the local who crossed Badau.

Chart 5. Entrance and Exit Data in PLBN Nanga Badau 2016-2018¹⁸⁸



Source: Entrance and exit data in PLBN Nanga Badau Tahun 2016-2018

¹⁸⁶ Focus group discussion, Kapuas Hulu traditional elders, 12 December 2018; In-depth interview, Badau District Local Government, 12 December 2018.

¹⁸⁷ In-depth interview, Badau District Local Government, 12 December 2018.

¹⁸⁸ See, Entrance and exit data in PLBN Nanga Badau Tahun 2016-2018, Kapuas Hulu Immigration Offices.

The number of non-formal crossings is unknown. In addition to having PLBN Badau, Kapuas Hulu has informal crossing paths and routes. These informal routes are usually used by the local who are accustomed to entering and exit Malaysia to shop, meet their family, or work. In practice, these routes can be used by anyone not only locals. In addition, there are sixty alternative routes through forests, farms and plantations. In other hand, the Guard Posts are only present at certain points with limited number of border officers. This situation was used as an opportunity for the traffickers and smuggler, to move their victim crossing the border illegally.¹⁸⁹

Image 2. Unofficial/Informal Border Crossing Route Kapuas Hulu (Indonesia and Lubok Antu (Malaysia))



Source: documentation of research team, 2018

Other than that, there are five crossing routes that could be crossed by four-wheeled vehicles, both cars and trucks.¹⁹⁰ At the time of field research as of June 2019, it was noted that four informal roads were had been closed (the roads were made into trenches) and only one road that still exists and under the supervision area of the border guards (PAMTAS) of the Indonesian Army and Customs.¹⁹¹

2. Economic Factor

Economic factors have a large impact on the occurrence of cross-border trafficking situation. The unemployment rate in Kapuas Hulu is still high followed by the number of the residents living in poverty in Kapuas Hulu that is 9.45 per cent in 2017. The data from Central Statistical Agency (BPS) shows that in 2017 the number of unemployment rate is 1.24 per cent.¹⁹² The unemployment rate and the job opportunity are still becoming the main causing factors on why the community is interested to migrated to Malaysia. This situation has been used both by the agent or the employers to get additional benefits from the workers, aside of their labor.

¹⁸⁹ In-depth interview, Disnakertrans, 11 December 2018.

¹⁹⁰ Observation PLBN Nanga Badau, 13 December 2018; In-depth interview, Badau District Local Government, 12 December 2018.

¹⁹¹ In-depth interview, Badau District Local Government, 12 December 2018.

¹⁹² In-depth interview, Disnakertrans. 11 December 2018.

3. Infrastructure Development

Further, in term of the district physical development, there are development gaps between the two border regions of Indonesia and Malaysia.¹⁹³ The Malaysian side of the border area is adequately equipped with residential facilities. On the contrary, Indonesia has just begun the process of physical development of infrastructures, particularly since President Joko Widodo established development policies at the border in 2016.¹⁹⁴ Development disparities have an impact on the disparities in education and health facilities. When the research was carried out by Satriyani in 2006, the facilities for electricity, for example, were obtained by accessing electricity from Malaysia. When researchers conducted field observations in the Badau border area in June 2019, the conditions had changed. Most areas already have the accessed to electricity, though not for the whole day. There are residents who use electricity alternatively from two countries (from Indonesia and Malaysia). This is because the electricity from Indonesian power company (PLN) only starts from the late afternoon until night, while in the morning and afternoon, they use electricity from Malaysia.¹⁹⁵

Health services are also still minimal in the Badau region and the quality of education in Malaysia is considered better than Indonesia.¹⁹⁶ Previously, the Malaysian government even specifically provided free education and health facilities to the Badau residents who gave birth in Malaysia. This policy was introduced because the Kapuas Hulu residents, especially the Iban (Dayak) in Badau, were considered to have family relations with the people of Sarawak. This caused many local prefer to give birth or to access other medical services in Malaysia than in Indonesia.¹⁹⁷ However, based on the information from the public, this policy no longer exists.

4. Government Policy and Its Implementation

During this research, Kapuas Hulu does not have any policy yet to respond the TIP issues. In other hand, in term of the migration management issues, especially for the labor migration, the frontline officers tend to accept the irregular migration practices. There are some reasons from the frontline officer for this. For instance, because the people from Kapuas Hulu migrated and worked for their relative, the long process of regular migration procedure. Based on information from the Kapuas Hulu Manpower and Transmigration Office, there are still many Indonesians who use tourist visas (as travelers) to work in Malaysia, although administratively this practice cannot be justified. A participant from the Manpower and Transmigration Office conveyed this following information:

¹⁹³ Observation of researchers in Nanga Badau and Lubuk Antu, 13 December 2018.

¹⁹⁴ Eduardo Simorangkir, "Pembangunan Wisma hingga Pasar di Perbatasan RI Kelar Akhir Tahun," available at <https://finance.detik.com/infrastruktur/d-4217195/pembangunan-wisma-hingga-pasar-di-perbatasan-ri-kelar-akhir-tahun>, accessed pada 11 Mei 2019.

¹⁹⁵ Informal discussion with Badau resident, 23 June 2019.

¹⁹⁶ In-depth interview with Badau District Local Government, 12 December 2018

¹⁹⁷ Ibid.

stay in their family's house in Malaysia to be employed later. For example, in the harvesting season, he or she will join the harvesting work only for 30 days. Things like this are considered normal by the community... because there are many families in Malaysia, it is usually easy for them to be invited/drawn to work there. They also do not feel the need to take care of their work relationship as a formal relationship because they feel that they are guaranteed by their own families.¹⁹⁸

The Immigration Office also confirmed and indicated the situations that cause migrant workers to not manage their working document. Most of the prospective migrants do not want to use a work visa because the long process of visa issuance, which is on average three months.¹⁹⁹

Another problem is the supervision and law enforcement to the specific industry which prone to the TIP practices, such as cafes or karaoke places. The existence of the practice of trafficking in persons in these cafes has been identified by Satriyani et. al. since 2009. However, the absence of comprehensive action from the government and law enforcement agencies toward this issue, causes the practice of TIP in these sector of work still happens.

E KEY ACTORS INVOLVED

The unavailability of the local government policy concerning the TIP issues is quite influential with government programs. The government participants are generally aware on this situation and the lack of vigorous efforts to prevent and combat TIP in Kapuas Hulu. However, there are some agencies at the district level that have some activities that could be categorized as the anti-TIP programming.

1. Anti Trafficking Task Force (ATTF)

In the absence of ATTF in Kapuas Hulu, the prevention of TIP programs ideally should be carried out by the Office of Social, Women Empowerment, Child Protection, Population Control and Family Planning (DINSOSP3AP2KB). However, the prevention programs have not developed systematically yet.²⁰⁰ This is due to DINSOSP3AP2KB's belief that the Kapuas Hulu is still safe from the TIP cases.²⁰¹ In responding to the potential of TIP cases that happened within Kapuas Hulu itself, DINSOSP3AP2KB mentioned that until

¹⁹⁸ In-depth interview, Disnakertrans. 11 December 2018.

¹⁹⁹ Focus group discussion, Immigration office, 12 December 2018.

²⁰⁰ Focus group discussion, DINSOP3AP2KB, 12 December 2018.

²⁰¹ In-depth interview, DINSOP3AP2KB, 11 December 2018.

now there have been no comprehensive prevention efforts from the government. The measure that is usually carried out is the police ride toward this cafe.²⁰² Unfortunately, there is no further legal follow-up to enforce the police operation results, except alleged the individual who work in this sectors as the offenders of the public order.²⁰³

2. One Roof Integrated Service (LTSA)

In Kapuas Hulu, there is no such LTSA. The labor migration services are carried out by the Manpower Agency only.

3. Post for the Placement and Services of Indonesian Migrant Worker (P4TKI).

Until this research completed, there is no P4TKI in Kapuas Hulu. There is no explanation from the district government nor BP3TKI why P4TKI was not established in this area. The BP3TKI Pontinak only indicates that the budget and human resources is the reason behind this problems.

4. Immigration Offices

Kapuas Hulu Immigration Office has a role in the prevention mechanism of trafficking in persons. The prevention mechanism carried out by the immigration is through the control of passport issuance for the residents that were indicated as potential VoT. For instance, if there are residents that intend to apply for a passport, but indicated as minors, or do not have a clear destination on where and what will they do, then the immigration could decide not to grant a passport for them.²⁰⁴

The Immigration Office believes that the provision of passports incorrectly to the community would create the trafficking in persons to be happened.²⁰⁵ The Immigration Office carries out their duty based on the mandate under Law No. 6 of 2011 on the Immigration. In the Immigration Law, there is a specific provision on the handling of trafficking in persons and migrant smuggling victims. One of the preventive measures is the protection of travel documents, to ensure that the document issued is not potentially misused, forged, or used for other purposes.²⁰⁶

Based on the information from the Kapuas Hulu Immigration Offices, in 2018, the Immigration has postponed the passport issuance for 49 applicant and rejected the passport application to six applicants. The postponement of applications was caused by the suspicion of the applicant being an irregular migrant worker. The applicant will

²⁰² Focus group discussion, Satpol PP, 12 December 2018

²⁰³ Focus group discussion, DINSOSP3AP2KB, 12 December 2018.

²⁰⁴ Focus group discussion, Kapuas Hulu Immigration, 12 December 2018.

²⁰⁵ Ibid.

²⁰⁶ Immigration law also granted the authority a power to detain the violator of immigration law, investigation on trafficking in persons and people smuggling.

be interrogated or asked to submit additional documents. If the applicant could not answer the queries from the officer and completed the documents, their application will be rejected. Meanwhile, the rejection means that the application has been rejected automatically by the system if the applicant documents does not match with the individual data record stored by the Civil Registration System. For example, the different addresses used in the ID card and family card, or incorrect residential identity number entry. The rejection was also caused because the applicants have been deported before. The majority of passport applicants who were rejected/postponed are the resident of Kapuas Hulu, despite some of them are from other regions such as West Java.²⁰⁷

5. Law Enforcement Agencies

According to Law No 21/2007 on the Eradication of TIP crimes, the law enforcement has significant role in combating TIP crimes. In Kapuas Hulu, there were Police Offices, District Attorney Office and District Courts. However, based on the data obtained during the research, its show that the law enforcement has not been actively investigate the TIP cases. This can be confirmed by there is no single TIP case investigated by Police since 2016-2018. This unavailability data also reported by Prosecutor Offices and District Court.

6. Non Government Organization and Civil Society Organization

Based on the research there are some organization that has been aware on the violence against women and exploitation issues, however they never conduct comprehensive identification and screening process, therefore there is no official report on TIP cases. These organization namely Coalition of the Kapuas Hulu Women's Organization (*Gabungan Organisasi Wanita Kabupaten Kapuas Hulu*); *Nasyiatul 'Aisyah* (Women Moslem Organization); Islamic Learning Forum (*Badan Kontak Majelis Taklim*); and Legal Aid Foundation of Kapuas Hulu.

²⁰⁷ In-depth interview, Kapuas Hulu Immigration, 24 June 2019

F THE CHALLENGES IN PREVENTING AND HANDLING TRAFFICKING IN PERSONS IN KAPUAS HULU

Among three border areas within West Kalimantan, Kapuas Hulu is less developed in term of migration management system than two other districts – Sanggau and Sambas – even though Kapuas Hulu is the areas which has largest forest among West Kalimantan areas, as well as potential for gold and mining. With this characteristic, Kapuas Hulu has some unique challenges from two other regions.

1. Inter-Agency Coordination

With the absence of ATTF and referral mechanism on victim assistance, the coordination among institution could not be measured. Lack of interagency coordination also can be seen from the absence of informal communication channels within the government instituion who has main responsibility in tackling the issues. This situation has impacted to the unrevealed of TIP cases in Kapuas Hulu.

2. Government Commitment

Government through DINSOSP3AP2KB realized that the protection of VoT is the authority and the responsibility of the local government, particularly DINSOSP3AP2KB. However, up until the present, there is no case of trafficking in persons being reported and handled by this agency. Lack of identified victim and uncovered TIP cases, become one of the reason from the Government to foresee the referral mechanism is not urgently needed, this has impacted to unavailability of victim protection mechanism.²⁰⁸ In addition, the unavailability of LTSA and P4TKI also has contributed to the difficulties of data collection and monitoring of the labor migration process. Aside of this, migration management for the labor purposes also could not be managed effectively.

Responding to this issues, government at district level should give more attention to the TIP issues and the Province and Central Government need to prioritizing kapuas Hulu as well as to provide intensive assistance, guidance and monitoring to the Kapuas Hulu District in designing the program intervion towards TIP issues.

3. Capacity of Frontline Officer and Law Enforcement

Although Law No 21/2007 on the Eradication of TIP crimes has been enacted since 2007, but some of the research participants in this areas did not aware on TIP definition. The lack of understanding of trafficking in persons is apparent from the initial understanding that trafficking in persons is only related to sexual exploitation or prostitution. Initially,

²⁰⁸ In-depth interview, DINSOSP3AP2KB Kapuas Hulu, 11 December 2018.

the participants did not see that labor exploitation, the element of deceiving and the debt bondages are also an important indicator of the TIP. The limited capacity of the frontline officers and law enforcement has contributed to the unrecorded or TIP cases.

Based on the data from the Police Offices of Kapuas Hulu, there is no single TIP cases that has been investigated by Police Offices since 2016, even though each year almost hundreds of criminal cases were investigated by the Police. For instance, in 2016, the Office had handled 152 cases, in 2017 there were 112 cases and 88 cases in 2018.²⁰⁹ The fact that there is no single TIP case prosecuted in Kapuas Hulu also confirmed by Attorney Offices and District Court. However, the Kapuas Hulu District Court informed that in 2018, there was a case which related to TIP, despite the decision was not based on Law No 21/2007.²¹⁰ The case was convicted as violating Labor Law No. 13 of 2003 considering the defendant employing minor. Below is the summary of this case:

Case 1. Decision No.58/Pid.sus/2017/PN.Pts.

The defendant in this decision was Helmi AR bin Abdurrahman. The case was tried for the first time on 15 June 2017. In this case, the defendant was accused of recruiting a minor (under the age of 18) to be employed to serve guests in the cafes and karaoke including other work outside the café. The defendant transferred the child from his home in Pontianak to Putusiabu. During the work, the worker was asked to look attractive, wearing clothing that reveals the cleavage or exposing certain body parts during work and allow clients to touch their body parts. The defendant made a work agreement with the parents a month after the child was employed. The defendant did not convey to the parents that the child's work was as the servant of karaoke guests, including serving in terms of the victim's body being touchable for the guests. The children who are employed may not live outside the café and may only leave the café for one hour per day with permission from the café owner. No holidays are given including religious holidays. If the children violate the agreement, they must pay compensation in the form of ten times of their salary in the form of 100 hours of work, paying the costs of food, lodging and round-trip transportation costs that have been spent to recruit the child worker. Salaries are only given to workers when they have finished their contract period. As long as the salaries are not provided for daily needs, child worker is lent money by the café company.

²⁰⁹ West Kalimantan, Kapuas Hulu Resort Police, Annual Analysis and Evaluation Januari to December 2016; West Kalimantan Regional Police, Kapuas Hulu Resort, Analysis and Evaluation January to December 2017; West Kalimantan Regional Police, Kapuas Hulu Resort Police, Annual Analysis and Evaluation January to October 2018.

²¹⁰ Focus group discussion, Putusibau District Court, 12 December 2018.

The Public Prosecutor charged the defendant alternatively. The first indictment was that the defendant has committed act violating article 2 of law no. 21 of 2017 on trafficking in persons. The second indictment is the violation of article 76 juncto 88 of law no. 35 of 2014 on the amendment of law no. 23 of 2003 on the child protection. The third indictment is that the defendant is considered guilty of committing the crime of employing an underage child against article 68 of law no. 13 of 2003 on Labor Law.

After the process of evidence proving, the Prosecutor carried out the prosecution under the third alternative indictment, that is, guilty of employing a minor in contravention of article 68 of law no. 13 on manpower with a sentence of one year of imprisonment reduced with the term of confinement.

In its consideration, the judges stated that the judges had the freedom to determine which indictments they want to prove, and the judges chose to prove the third indictment. The judges considered that the elements had been fulfilled against the third indictment, therefore, the judges decided to:

1. Declare the defendant has been found guilty of a crime of employing minors.
2. Impose a fine of Rp100.000.000 (one hundred million rupiah) or a substitute penalty for one month and 15 days of confinement.

Based on the analysis from the existing court decision, it is apparent that the case above is a TIP case. This is because there is the process of recruitment, deception and the exploitation that happened in the form of sexual exploitation. In that case, the prosecutor initially charged the defendant in alternatively: the first indictment is the crime against trafficking in persons (TIP law); the second indictment is in the form of crime against a child based on law no. 35 of 2014 amending law no. 23 of 2003; and the third indictment, the crime of employing minors under Law No. 13 of 2003 on labor law. There is no clear indication of the reason why the prosecutor charged the convict with the third indictment instead of the first indictment. Furthermore, in the consideration of the judges, there is no clear reason why the judge did not prove the first indictment, namely the crime of trafficking in persons or the second indictment on the crime against the children. The Judges' decision tends to be very low since it only decides the fines and penalty substitute to the fines only for a month and 15 days of confinement. This decision was very low because the judges did not observe any criminal acts on trafficking in persons against the children or based on child protection law.

From the case above and from the discussion with the law enforcement officers it can be concluded there is a reluctance of law enforcement officials to use the TIP Laws. This reluctance is among others caused by the lack of knowledge among the law enforcement officers on what constitutes trafficking in persons and indictment based on the Law on Trafficking in Persons is not considered as important. This also could be because of the lack of socialization on the issue of trafficking in persons and the importance to eradicate the practice of illicit trafficking in persons with various modus operandi.

6

THE PROFILE OF TRAFFICKING IN PERSONS IN NUNUKAN

A NUNUKAN DISTRICT IN CONTEXT

Nunukan District, North Kalimantan Province, has the area of 14,247 square kilometers consist of 19 districts, nine *kelurahan* (urban village) and 232 villages. The majority of Nunukan District residents are muslim.²¹¹ Based on the Human Development Index (HDI), the position of Nunukan District is at the number 65.10, with the average of school years is 7.65. This means that the average education of Nunukan residents is at the level of junior high school.²¹² In 2017, palm became one of the commodities with the largest production number, with 367,879.70 tonnes (only traditional plantations), followed by cacao with a total production of 1,194.71 tonnes.²¹³ The economic growth of Nunukan in 2017 is 6.78 Percent which was influenced by the mining industry. Mining industry contributed 49 percent to Nunukan' Gross Regional Domestic Product (GRDP). This also impacts on the increase of populations' income in Nunukan District.²¹⁴

Nunukan District bordering directly with several regions of Malaysia, these are, on the west side bordering directly with Sarawak and the northern side is bordering directly with Sabah.²¹⁵ This district has a port that can be used as the transport access between the provinces and intercountry to Malaysia. As a result, it is one of the crucial ports that serves as a connector between Nunukan and other regions, including Tawau, Malaysia. Tawau is the port of Tunon Taka. This port is designed as a modern port at the border area.²¹⁶

Image 3. Tunon Taka Port



The journey from Tunon Taka Port to Ferry Terminal in Tawau, Malaysia only requires an hour

Source: Documentation of research team, 2018

²¹¹ Indonesia Mengajar, "Profil Kabupaten Nunukan," available at <https://indonesiamengajar.org/kabar-terbaru/profil-kabupaten-nunukan>, accessed 2 January 2019.

²¹² See, Nunukan District, "Komponen Indeks Pembangunan Manusia Kabupaten Nunukan 2010-2017," available at <https://nunukankab.bps.go.id/dynamictable/2017/10/11/98/komponen-indeks-pembangunan-manusia-kabupaten-nunukan-2010-2017.html>, accessed 14 May 2019.

²¹³ Nunukan District Central Statistics Agency, 2018, "Kabupaten Nunukan dalam Angka", Report, BPS Nunukan, p. 158.

²¹⁴ Ibid, p. 308.

²¹⁵ Website Pemerintah Kabupaten Nunukan, "Kelurahan dan Desa (Urban Communities and Villages)," available at <http://www.nunukankab.go.id/web/page-kelurahan-dan-des.html>, accessed 2 January 2019.

²¹⁶ Observation, Tunon Taka Port, Nunukan, 16 November 2019.

The presence of ports is important because the residents of Nunukan District used to purchase goods for daily activities at Tawau, Malaysia. The prices at Tawau is believed to be cheaper compared to Indonesia. The high price disparity between Tawau, Malaysia and Nunukan District is driven by the price of distribution to carry goods from other regions of Indonesia to Nunukan.

Related to the high level of mobility of Nunukan Resident to travel to Malaysia, the Government of Indonesia and Malaysia grant easiness for the Nunukan Resident to obtain '*pas lintas batas*' (PLB), which is a passport special for the daily travel to Malaysia.²¹⁷ PLB is a product of the Agreement on Border Crossing between the Republic of Indonesia and Malaysia 1984 or commonly known as Border Crossing Agreement (BCA) 1984.

Image 4. Pas Lintas Batas (Border Crossing Pass)



The resident of Nunukan can obtain Pas Lintas Batas (PLB) as the replacement of passport

Source: documentation of research team, 2018.

Nunukan is known as a transit area for migrant workers, both who cross through regular channel and irregular channel. Those who migrated through regular channel or Government procedure, mostly work at the plantations and wood industry, meanwhile the migrants who cross the border illegally meaning do not passed government procedure, worked in various sectors: palm plantation, domestic worker and sex industry worker or prostitution.²¹⁸

Further, in 2002 there was big case load in Nunukan related to the Indonesian Migrant Workers (IMWs) which worked in Malaysia, called by "*Nunukan tragedy*". This incident started when Malaysia on August 1st 2002, enforce the Immigration law No. 1154/2002. As the consequences of the Immigration Law, Malaysia carried out the policing towards the foreign migrant workers that could not demonstrate their official documents, Malaysia carried out a mass deportation of irregular migrant worker. Around 400,000 irregular migrant workers from Indonesia were deported by Malaysian Government through the various regions in the

²¹⁷ Informal discussion, Tunon Taka Port Office, 16 November 2018.

²¹⁸ The information was obtained from the various sources through FGDs as well as in-depth interviews.

border, including Nunukan. Nunukan became a temporary transit place for these migrant workers. These migrant workers who originally from outside of Nunukan stranded in this regent and waiting the government support to returned them to their home village. However, the Government of Nunukan as well as Central Government does not have enough means to respond this tragedy. The unavailability of temporary accommodation, in adequate health facilities, lack of food and non-food supplies, has triggered a chaos situation in Nunukan. Some of the migrant worker were sick with chronical illness, even some of them were died, while waiting the repatriation process.²¹⁹ This Nunukan tragedy has become one of the reason for the Government of Indonesia to issued Law No 39/2004 on the Placement and Protection of Indonesian Migrant Workers, which further amended by Law No 18/2017 on the Protection of Indonesian Migrant Worker.

B TRAFFICKING IN PERSONS DATA IN NUNUKAN

In Nunukan there were various data on TIP case which officially published by the Government. For example, based on the Law Enforcement agencies data, since 2014-2018, there only three cases that has been prosecuted under Law No 21/2007 on Eradication of TIP Crimes. One case in 2014, two case in 2016, and from 2017-2018 was zero TIP case.²²⁰ However, only one case that successfully convicted as TIP crimes.

Table 5. TIP cases Prosecuted in Nunukan District Court²²¹

No	Year	Court Decision Number	Indictment	Conviction
1	2014	80/Pid.Sus/2014/PN.Nnk	Alternative indictment: Law No 21/2007 Law No 35/2014 on Child Protection	Law No 21/2007
2	2016	170/Pid.Sus/2016/PN.Nnk	Alternative indictment: Law No 21/2007 Obscene Act article 296 of Criminal Code.	Obscene Act article 296 of Criminal Code
3		171/Pid.Sus/2016/PN.Nnk	Alternative indictment: Law No 21/2007 Obscene Act article 296 of Criminal Code.	Obscene Act article 296 of Criminal Code

²¹⁹ Benny Hari Juliawan, "Seeing migration like a state: the case of irregular Indonesian migrant workers deported from Malaysia," *Anti-trafficking review* 11 (2018), p. 37.

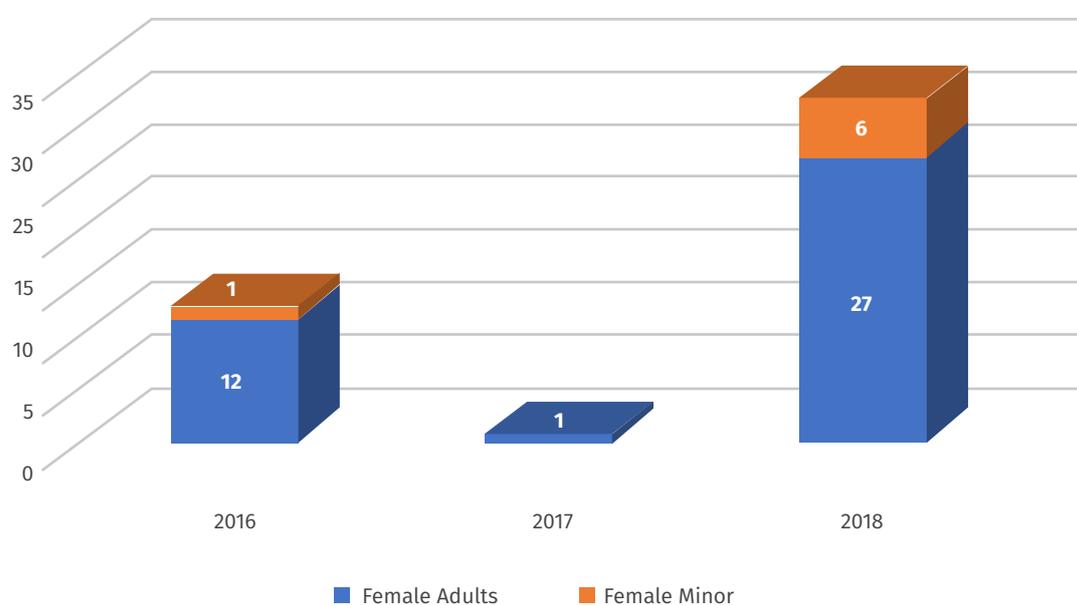
²²⁰ Focus Group Discussion with P2TP2A, BP3TKI, dan Police Offices of Nunukan, 15 November 2018.

²²¹ The examination of Court Decision was gathered from the <https://putusan3.mahkamahagung.go.id/search.html?q=Nunukan>.

In addition, in 2018 there is also one case that could be linked to the cross-border TIP. However, due to the limited information from the police investigation report, the prosecutor charged the offender with Immigration Law 2011 and Law No 18/2017 on the Protection of Indonesian Migrant Workers.²²²

In addition, according to the Integrated Services Center for Women Empowerment and Child Protection (P2TP2A) in these past five years, P2TP2A only handle three case of internal trafficking which involving 47 victims exploited in sexual industry. However, these three cases were not in line with the Law enforcement data, since the cases were happened in 2014, 2017 and 2018. There were no TIP cases recorded in 2016. Further, P2TP2A also did not aware if the cases were prosecuted under TIP Law or not, because they only provide shelter and basic counseling before the victims returned to their home villages.²²³ Below is the detail of the case and victim of trafficking (VoT) assisted by P2TP2A Nunukan.

Chart 6. Number of VOT Assisted by P2TP2A Nunukan



Sources: Integrated Services Center for Women Empowerment and Child Protection (P2TP2A)

In addition to the sexual exploitation, there are research participants who indicated that there was also potential of TIP cases in palm companies. These workers work under the Nunukan minimum wages, long working hours with poor living condition.²²⁴ However, there is no official report on this.

²²² In-depth interview, Nunukan Prosecutor's Office, 16 November 2018 and see the Court Decision No 152/ Pid. Sus/2018/PN.Nnk.

²²³ Focus Group Discussion, P2TP2A, 15 November 2018.

²²⁴ Focus group discussion, NGO, 17 November 2018.

Moreover, considering the strategic location of Nunukan which is bordering with Sabah and Sarawak, some of the potential of cross-border TIP was also identified during the research. For instance, BP3TKI Nunukan data describes that various reasons behind the deportation of migrant workers from Malaysia were undocumented, escape from the employer, do not have working permit and employment contract, labor dispute, sick, overstay and involved in criminal activities such as thief and drugs.²²⁵ However, as outlined above there is no official record on cross border trafficking data from the related agencies in Nunukan.

C THE PATTERN OF TRAFFICKING IN PERSONS IN NUNUKAN

The TIP situation in Nunukan can be categorized into two type of TIPs. Cross-border TIP and internal trafficking. In addition, most of the TIP cases which found in Nunukan were Indonesian citizen who originally from outside of Nunukan. The cross-border TIP mostly occurred to the Indonesian migrant worker who worked in plantation and for the domestic work sectors. While for the internal trafficking that reported to the local authority was sexual exploitation cases.

1. Cross-Border Trafficking

In the past, the TIP situation in Nunukan was linked to the illegal logging activities in Nunukan in the 1980-1990. The actors who involve in this illegal lodging, supplies their wood to Malaysian timber companies, and at the same time also supplying its workers. These workers are not only from Nunukan, but from another regions and islands, such as West, Central and East Java, East Nusa Tenggara and South Sulawesi.²²⁶ For those who comes from outside of Nunukan, the native from Nunukan will help them to obtain the documents required to retrieve a passport, including a certificate of domicile.²²⁷ Somehow, this practice was acknowledged by the local as a good practice and contribute to their economic situation, because they could rent their houses for the prospective migrants, collecting some fee from the recruiter and from the migrants worker its self for connecting both of them, and or a fee from the prospective migrants to obtain the official document from the local government, such as certificate of domicile.²²⁸ Indeed that this situation does not reflect the TIP situation directly, however this commons practice could lead into TIP situation that may be faced by the migrant workers.

In the early 2000s, there were changes in trends that occurred in Malaysia and Nunukan. The timber logging companies suffered losses and did not continue their operations as a result of the issuance of law no. 41 of 1999 on forestry which prohibits illegal logging. However, this did not stop the business of migrant workers supplier service. The recruitment process were continued, only the sector of occupation that changed, from timber company to the palm plantations and domestic employments.²²⁹

²²⁵ BP3TKI Nunukan, *Data of the place of origin of deportants 2018* (Jakarta: BNP3TKI).

²²⁶ The information was obtained from the various sources through FGDs as well as in-depth interviews.

²²⁷ Focus group discussion, NGO, 17 November 2018.

²²⁸ Informal discussion, Nunukan District, 16 November 2018.

²²⁹ Benny Hari Juliawan, "Seeing migration like a state: the case of irregular Indonesian migrant workers deported from Malaysia," *Anti-trafficking review* 11 (2018), p. 37.

In addition, in 2004 Central Government began to regulate labor migration through Law No 39/2004. This impacted to the migration process between Nunukan and Malaysia. Promoting safe migration become the government program. Moreover, in 2007 the central government also issues TIP Laws through Law No 21/2007 concerning Eradication of TIP Crimes. However, the irregular border crossing still occurring, and some cross-border TIP cases recorded by Women Empowerment, Child Protection and Family Planning Offices (DP3AKB). In 2007-2009, the DP3AKB identified 16 TIP cases which involving 23 victims both male and female and exploited in Malaysia as plantation worker, domestic worker and forced to engage in prostitution in Sabah.²³⁰

Up to now, Nunukan still become favorite channels for Indonesian migrant workers to enter Sabah-Sarawak, Malaysia. According to the data within 2015-2018, BP3TKI Nunukan has facilitated labor migration process towards 10.203 workers to Malaysia. Meanwhile, in these period, BP3TKI Nunukan had also received 15.715 migrants who were deported by Malaysian Government through Nunukan due to several reason namely, undocumented, over stay, escape from the employer, involves in criminal activities, sick, do not have working permit, and others.²³¹

Chart 7. Number of Indonesian Migrant Worker Placed and Deported Through Nunukan



Sources: BNP2TKI Data on Placement and Protection of Indonesian Migrant Worker 2018

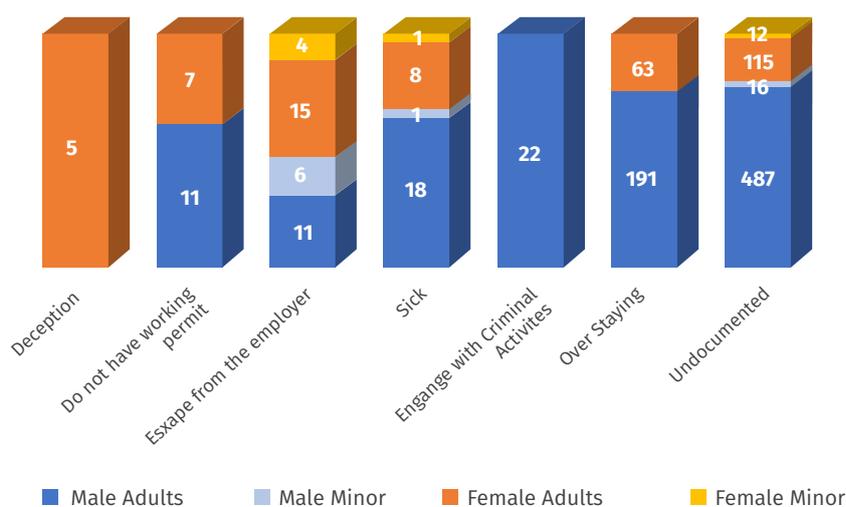
²³⁰ See: *Human Trafficking in Nunukan is the Highest* at <https://www.jpnn.com/news/human-trafficking-di-nunukan-paling-tinggi>

²³¹ BNP2TKI, *Data on Placement and Protection of Indonesian Migrant Worker 2018*, Center for Research, Development and Information (PUSLITFO) of BNP2TKI, 2018. See also *Thousands of Indonesian Migrant Workers Deported* at <https://kaltara.prokal.co/read/news/20875-wni-ribuan-wna-belasan-yang-dideportasi.html> and *The Problems Behind Deportation of Indonesian Migrant Workers* at <https://kaltara.prokal.co/read/news/24812-pengusiran-wni-didominasi-masalah-ini.html>.

The considerable amount of job seeker in Nunukan has been used as an opportunity to facilitate the recruitment and placement process of migrant workers. Recruitment agency has become an important business in Nunukan. Before the One Roof Service Center for Migrant Workers was established in 2016, there are hundreds of unofficial recruitment agency. But, currently there only six recruitment agency who operated in Nunukan namely PT Maharani Anugerah Pekerti, PT Bumi Mas Citra Mandiri, PT Buyung Karya Mandiri, PT Lucky Mitra Abadi, PT Muhdi Setia Abadi and PT Arni Family. The Government stated that strong monitoring and inspection from Government has reduce the number of unofficial agencies. However, according to some respondent, hundreds of unofficial agency or individual brokers still exist and operates, even though they did not register by the Government.²³²

Referring to the number of placement and deportation above, it seems that the role of unofficial recruitment agencies was there. The huge gap between the number of migrant workers who placed and deported could indicate this irregular migration process which could lead into TIP situation. For instance, according to BP3TKI, out of 3766 migrant workers who deported from Sabah and Sarawak, 966 migrant workers were indicated with migrant workers with problem.²³³

Chart 8. Number of Indonesian Migrant Workers Returned with Problems 2017



Sumber: Laporan tentang The Assistance of Indonesian Migrant Workers Returned with Problem, BP3TKI Nunukan, 2017

From the data above, it can be seen there are risk of TIP towards the migrant workers who categorized as migrant returned with problems. Deception, Not possess working permit, and escape from the employer are some of the indicator of TIP. Further,

²³² Informal discussion, Tunon Taka Port, 16 November 2018.

²³³ Report on Assistance of Indonesian Migrant Workers Returned with Problems, BP3TKI Nunukan, 2017. Indonesian Migrant Worker Returned with Problems is a term which refers to the migrant workers who returned from overseas due to special cases such as having labor dispute with the employer, undocumented, sick, overstaying. This terminology is used by Ministry of Manpower and National Board for Placement and Protection Agencies (BNP2TKI) and its branch offices namely BP3TKI and P4TKI.

under the category escape from employer, there were 10 minor workers (M:6, F:4). Unfortunately, BP3TKI Nunukan did not examine the cases further and or conduct the comprehensive screening process to identify the TIP cases. The reason why the in-depth interview to identify the TIP risk were not conducted is because the limited resources of the BP3TKI as well as the lack of understanding on TIP elements and how to carry out the identification process.²³⁴

Aside of the data above, BP3TKI also recorded some special return case, which is a case where the migrant workers were returned through the assistance and funded by the Consulate General. Based on this data, in 2017, there were eleven migrant workers (M:3, F:8) who returned by Indonesian Consulate General of Kota Kinabalu and identified as victim of trafficking (VoT). These eleven VoTs were adults and originally from East Java (Mojokerto, Nganjuk, Malang, Lumajang, Surabaya and Ngawi), Central Java (Brebes and Kebumen) and South Sulawesi (Enrakeng).²³⁵ All the victims were repatriated to their home village through Nunukan, however there is no further follow-up to press charge the TIP cases once they arrived in Nunukan. The assistance that provided further were only return assistance to their home. Therefore, there is no data on cross-border TIP that can be obtained from the Law Enforcement sides.

Based on the in-depth interview with some respondent and the information from FGD, the research found some pattern on cross border TIP through Nunukan. **First, the process entering TIP.** Recruitment of victim conducted by official recruitment agency and unofficial agency or individual recruiters. The victims recruited on their home villages outside of Nunukan. The recruitment agencies used their sub-agent to approach the prospective migrant worker through their family or friends and inform them on the job opportunity that available in Malaysia.²³⁶ Based on the information provided by the recruiters, the victim decided to leave their village with their own money, and some were even willing to sell their land.²³⁷ Some also agree to work in overseas, because the recruiters will provide a loans for the transportation cost as well as for their family who left behind. For this circumstance, the recruiter will deduct their salary to cover this loan.²³⁸ Further, once arrived in Nunukan the migrant workers were accommodated by the network of the recruiters. During this time, the recruiter will arrange their migration document such as passport, working visa etc. Once the document completed, the recruiter will assist them to cross the border through regular channel and or unofficial route for border crossing. Those who transported through unofficial route usually are the migrant who did not have working permit nor employment contract.

²³⁴ In-depth interview, BP3TKI Nunukan, 16 November 2018.

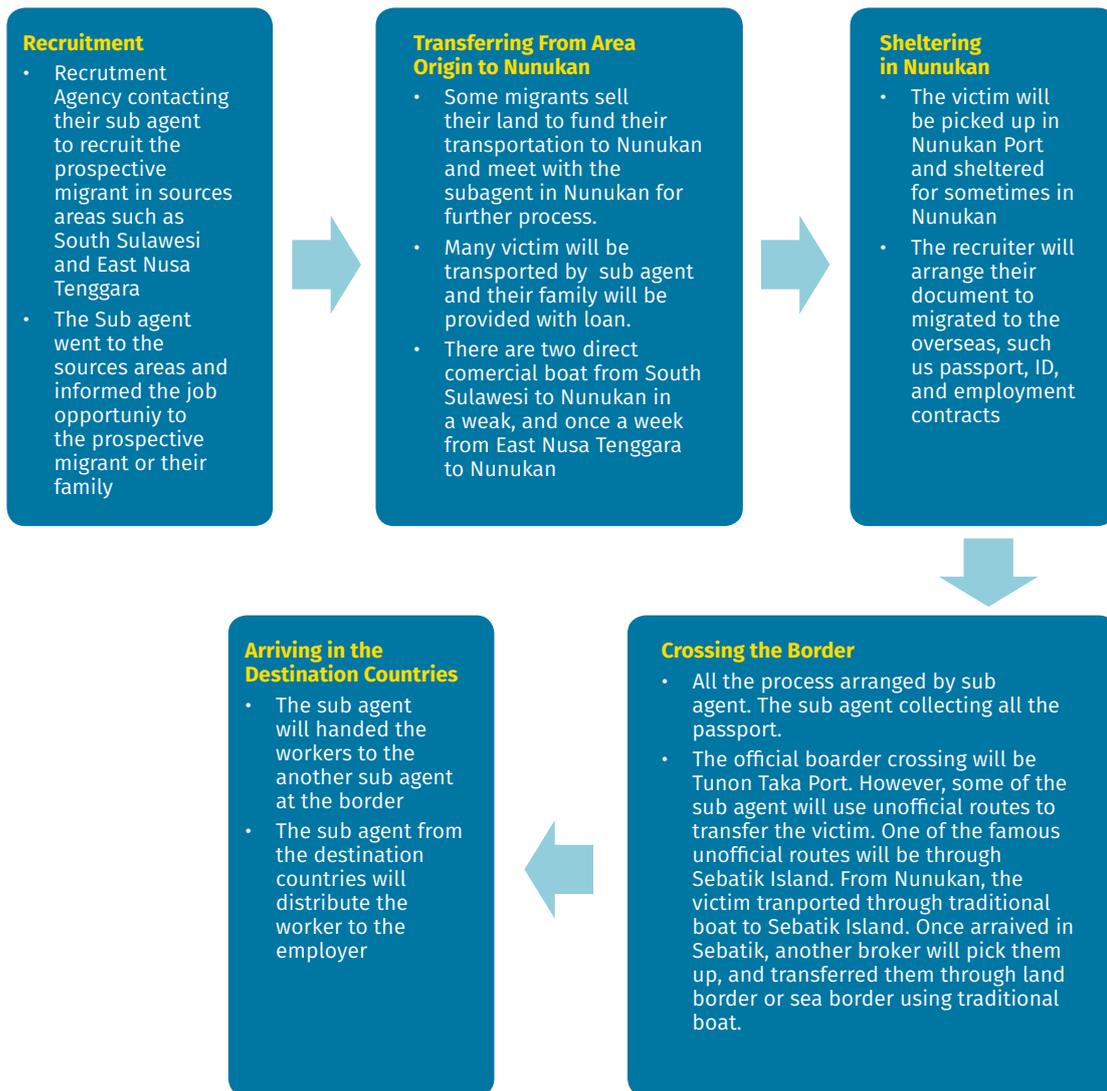
²³⁵ Special Return Data 2017. The data was obtained from BP3TKI Nunukan data base.

²³⁶ Informal discussion, a deported female, Transit house, Nunukan, 15 November 2018.

²³⁷ Ibid.

²³⁸ Informal discussion, Transit House, Nunukan, 15 November 2018

Chart 9. Recruitment Process of VOT for Cross-border TIP



Second, means and modus operandi that been used. Based on the data collected during individual interview and FGD. The trafficker will lured the prospective migrant worker or their family with good salary and living condition, loan and financial bondages for the transportation cost and the family who left behind, falsifying the document, and passport retention.

Third, exploitation phase. One of respondent stated: *“The situation is different, we were like being deceived, but what can we do, it has been already there... we do not have land anymore. It is embarrassing if we return to our origin, there is nothing there, what can we do...”*²³⁹ Salary deception and working condition, wage deduction and debt bondages was the major exploitation, restricted movement due to passport retention, long working hour and employed to various employer are among the exploitative situation that faced by the victims.

²³⁹ Informal discussion, Transit house, Nunukan, 15 November 2018

2. Internal Trafficking

Internal trafficking in Nunukan were dominated by TIP for sexual exploitation purposes. As outlined in previous section, all the internal trafficking that assisted by frontline officer in Nunukan were sexual exploitation cases. Throughout 2014-2018, three sexual exploitation cases convicted as TIP crimes. The pattern of internal TIP in Nunukan can be outlined below:²⁴⁰

- a. The victims were recruited outside of Nunukan, mostly from Sulawesi. The victims were promised with proper job and salary.
- b. The recruiter did not provide comprehensive information on type of work, salary and its payment method.
- c. The victims were employed in prostitution services without their consent, and or they are being forced to perform sexual activities.
- d. Withholding wages and some of the victims even did not receive any salary at all.

Considering that all the VoTs above were not Nunukan resident, therefore Nunukan could be categorized as destination areas for the internal TIP in Indonesia.

D KEY FACTORS OF TRAFFICKING IN NUNUKAN

Among the studies of trafficking in persons practice at the global level, there were several pull and push factors that often influence the practice of trafficking in persons that were identified. The pull and push factors are usually interrelated and coincide and therefore they are not relevant to be distinguished. These factors are among others geographical, economic and poverty, inadequate employment in the area of origin, lack of education and law enforcement.²⁴¹ This study found that the factors above also influenced the emergence of trafficking in persons practices in Nunukan.

1. Geographical and Cultural Factors

Nunukan borders directly with Sarawak and Sabah by both land and water. With the large of borders areas, the monitoring of all border points is not easy. The number of human resources at the Nunukan Immigration Office is limited. Consequently, only a few border posts have supervisors and guarded. Up to now, only two border check point that officially managed by the Government namely the Long Midang State Border Check

²⁴⁰ the data gathered from the Focus group discussion with P2TP2A, BP3TKI, dan Police Offices, 15 November 2018

²⁴¹ Kathryn Farr, *Sex trafficking: the global market in women and children* (New York; Worth Publisher, 2015); E. O'Brien et. al., "Causes of trafficking," in *The Politics of Sex Trafficking: Critical Criminological Perspectives* (London: Palgrave Macmillan, 2013).

Post (PLBN) in Krayan District and PLBN Sei Pancang in Sebatik.²⁴² Apart of this PLBN, there were some cross-check point which marked with simple border post. For instance, in Sebatik, an island which has land and water border, there is one post check point near with the river called Post Number 3. This simple Post only guarded by one or two officers. From this Post, the Indonesian residents could reach Malaysia using a small-sized motorboat (*speed boat*) in less than an hour.²⁴³

Image 5. The Situation of Border in Post Number 3, Aji Kuning, Sebatik Island



Source: Research Team's Collection

Nunukan residents go to Malaysia to shop for their daily needs, for vacation and even for work.²⁴⁴ Culturally, crossing the border among the two countries' citizen is a common occurrence. Moreover, the departure of the residents usually happens within the day. However, this route usually used for smuggling non-residents. They are smuggled to Malaysia irregularly in uncertain times, usually when the border officers are absent, in the night at the full moon, or other times when the supervisions were considered weak.²⁴⁵

With this geographic background, Nunukan has extensive number of international migration flows from Nunukan to Malaysia and considering the culture from both border regions, Indonesian Government has regulated special border pass for Nunukan resident namely Border Crossing Pass (*Pas Lintas Batas/PLB*). With this PLB, the local could entering Sabah without passport. However, the number of citizens that use PLB

²⁴² Prokal, "Dua PLBN Terpadu di Nunukan Mulai Dibangun Tahun Ini," available at <http://news.prokal.co/read/news/4221-dua-plbn-terpadu-di-nunukan-mulai-dibangun-tahun-ini.html>, accessed 15 December 2018.

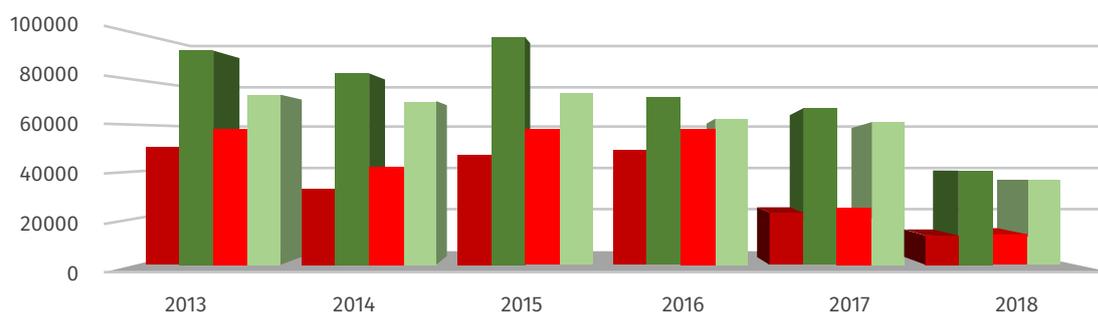
²⁴³ Observation at post number three, Sebatik Island, Nunukan, 17 November 2018.

²⁴⁴ Informal discussion, Sebatik Island, Nunukan, 17 November 2018.

²⁴⁵ In-depth interview, Sebatik Island, 16 November 2018.

has decrease since 2016. Aside of this PLB, passport is the national travel document that is required to cross the border. Based on the Immigration Offices data, the number of citizens who migrated to Malaysia using the passport also decrease time to time. Especially since 2016. The number were reduced significantly. This situation could be one of the positive impacts from the establishment of LTSA in Nunukan and the government programs on the one single identity record through Citizen Identity Number (*Nomor Induk Kependudukan/NIK*) managed by the Civil Registration Offices under Ministry of Home Affairs.

Chart 10. Data of Indonesian Citizen Crossing Using PLB and Passport



	2013	2014	2015	2016	2017	2018
■ Departure with PLB	50722	32285	47290	49232	22769	12624
■ Departure with Passport	92367	82936	98404	72225	67255	40433
■ Arrival with PLB	58344	42199	58512	59187	23248	13079
■ Arrival with Passport	73225	70444	74515	62906	61356	35865

Source: Statistical data of Nunukan Immigration Office

The establishment of LTSA Nunukan in 2016 is a breakthrough for Indonesian Migrant Workers to take care of permits and requirements to work abroad easier, cheaper and faster.²⁴⁶ These programs were established by considering the migration flow through the Nunukan that tends to be high, both among the crossers who use a passport or PLB.²⁴⁷ With the establishment of LTSA and the NIK system which has been imposed by Central Government and implemented by Nunukan District, the administration of travel documents issuance is also getting better. The impact is, when applying for a passport and PLB, they would not be granted easily. Further, the presence of supervision in LTSA reduces the practice of improper or irregular document issuance, as stated by the local community leaders:

²⁴⁶ World Bank, "Pekerja Global Indonesia: Antara Peluang dan Resiko," *World Bank Report*, November 2017, p. 42.

²⁴⁷ Immigration Office divided the crossing of Indonesian citizen based on the overseas identification documents, which are, passports and PLB that only can be possessed by Nunukan residents.

The practices of departing with forged documents are common. Our own residents are also involved to help people get the documents; this has been becoming daily business. (The income is) not bad... there were people that could have a two-floored house because of this business... even though it only provides certain documents... well, since 2 or 3 years ago the conditions have changed... since LTSA was there... it is increasingly difficult to forge (the documents)...²⁴⁸

Undoubtedly, this geographical and cultural factors in Nunukan has contributed to the TIP situation that happened in Nunukan and or transited through this border region.

2. Economic Factor

The economic disparity factor becomes one of the pushing factors for people to choose leaving their home origin. This mainly happens when the place of origin does not have enough and proper employment opportunities. Moreover, there is a general view in society that by working abroad they could get a better income. The majority of migrant workers come from the area of South Sulawesi and East Nusa Tenggara. In both areas the success story of migration was widely known and event some peoples in both areas believe that Malaysia is the land that God provides for them. They were enticed to get decent work and salaries. However, when the migrant workers have worked in Malaysia, they find the situations are not as imagined and may be worst than what they expected. Meanwhile return to their home village is not an option. Besides of ashamed and do not want to be labelling as failure, the unavailability of job employment on their home origin has pushed them to stay.²⁵⁰ They have no choice but to work in Malaysia while learning the existing situation.

This is confirmed by research which states that when Indonesia has a chronic problem related to unemployment and low income, the Malaysian economy is fully dependent on migrant workers which have an impact on work exploitation among 15-25 per cent of the total Indonesian Migrant Workers in Malaysia.²⁵¹ In addition, the minimum wage in Malaysia is higher than Indonesia. For instance, in 2018 the minimum wage in Malaysia is MYR 1100 (USD250) for all work sectors including plantation and domestic workers. While in Nunukan the minimum wage is IDR 2,630,000,- (USD 180) and this minimum wage is only applied for the formal job sectors such as company and factory. While for the domestic worker and plantation worker, there is no regulation on minimum wage. Hence, most of the worker who employed in these sectors will be paid below the minimum salary standard.

²⁴⁸ Focus group discussion, NGO activists and community leader, 17 November 2018

²⁴⁹ Informal discussion, Transit house, Nunukan, 15 November 2018

²⁵⁰ Ibid.

²⁵¹ Benny Hari Juliawan, "Seeing migration like a state: the case of irregular Indonesian migrant workers deported from Malaysia," *Anti-trafficking review* 11 (2018), p. 37.

3. Access to the Information on Safe Migration and Migrant Worker Rights

The low level of awareness about safe migration and the rights of migrant workers became one of the factors that make migrant workers enter the trap of irregular migration, and TIP situation. These migrant workers often do not know about the procedures and requirements to work in Malaysia and whether they could access said procedures and services.²⁵² Presently, the socialization on the procedure and service is commonly done through the electronic media, but it should be acknowledged that the community, particularly those who come outside of Nunukan do not have the awareness of said technology.

The presence of agents operating illegally also influences migrant workers to move to irregular routes. This is because of the supply of migrant workers is considered as the field of business, which could provide a large profit. One of the participants stated,

*“well... we can build a house because of this business, it is not bad, everybody has their part; those who accommodate, look for documents and brings them to the border, almost all of us can benefit from this business...”*²⁵³

For those who depart through regular procedures, they also do not understand the risks and do not know their right to keep travel and work documents by themselves while working in Malaysia.²⁵⁴ Some of them do not understand the function of the passport.²⁵⁵ From the observation at Tunon Taka port, the team found that workers who passed through the immigration checkpoint did not keep travel documents but the documents were collected and held by the agent who accompanied them into the ship to cross the border. Although there is the crew on board, the crew did not have the authority to question why the passports were not held by their respective owners. The authority of the crew is to check how many passengers on board and whether the ship is overloaded. In addition, the crew that accompanied the research team stated that the practice of retaining passport by the agents was very common, it is to prevent the workers from fleeing from the agents after they arrived in Malaysia.²⁵⁶

From the situation outlined above, its important to provide an awareness session on safe migration and the risk of TIP through irregular border crossing. This information should be spread to the community at the origin area but also in Nunukan itself. Both areas should work together to improve the knowledge and capacity of their community on the TIP issues and other border related crimes.

²⁵² Focus Group Discussion, BP3TKI, 15 November 2018.

²⁵³ Focus group discussion, at Johan's house, 17 November 2018.

²⁵⁴ Observation, Tunon Taka Port, 16 November 2018.

²⁵⁵ Observation, Tunon Taka Port, 16 November 2018.

²⁵⁶ Observation, Tunon Taka Port, 16 November 2018.

4. Government Policy and Its Implementation

Nunukan has a special regulation to prevent trafficking in persons, which is Local Regulation No. 16 of 2015 concerning Prevention and Treatment of Victims of Trafficking in Persons (hereby referred to *Perda*). One of the main considerations behind the formulation of the local regulation is the concern of the ever-increasing practice of trafficking in persons within the district, where the district becomes a transit area for trafficking in persons across Indonesia.²⁵⁷

This *Perda*, has put out mechanisms to tackle trafficking in persons, especially on the prevention of trafficking in persons. Article 7(1) stipulates that every person that is going to work outside Nunukan has to have a Letter of Recommendation to Work Outside Region (*Surat Rekomendasi Bekerja Luar Daerah/ SRBLD*).²⁵⁸ However, there is no further explanation on whether the letter only applies to a citizen of Nunukan, or if it also applies to a person who not originating from Nunukan. In the article (2), it is stated that to acquire the letter, the applicant must apply to the head of the village.²⁵⁹ Further, this *Perda* also explains that the SRBLD letter will be managed by Nunukan's Manpower and Transmigration Office.²⁶⁰

Based on the data from Manpower and transmigration agency, it was found that throughout 2018, there have been 6,763 SRBLDs issued by the agency. However, based on the BNP2TKI data, in 2018, there only 554 migrant workers who originally from Nunukan²⁶¹. With this plenty of recommendation letter, a constant supervision needs to be done to prevent the TIP from happening.

Further, the *Perda* does not clearly stipulate how each of the prevention steps should be undertaken. The only point made are that the duty to prevent trafficking in persons within Nunukan District is the responsibility of families, society and Nunukan's local authority.²⁶² In order to implement the purpose of the local regulation on trafficking in persons, also mandates the establishment of Anti Trafficking Task Force (ATTF). However, until the end of 2018, the ATTF has not been formalized yet.

TIP in Nunukan has already been identified that utilizing the sea as mean of transportation. For instance, there was an enforcement raid on the waters carried out by the Nunukan Transportation Office along with the joint team from the Navy, Port Authority and the Civil Service Police Unit (Satpol PP). The joint team found that a longboat that attempts to cross to Sebatik Island carried several passengers consisting of a minor and several women. There was a suspicion that the longboat carried passengers to Malaysia irregularly, but since the Nunukan Transport Office only has the authority to supervise the departure route permits and the travel documents of the boat, the Transport Offices

²⁵⁷ See the consideration in local regulation no. 16 of 2015 concerning Prevention and Treatment of Victim of Trafficking in Persons

²⁵⁸ Article 7(1) of Local Regulation No. 16 Year 2015 concerning Prevention and Treatment of Victim of Trafficking in Persons

²⁵⁹ *Ibid.*, art. 7(2).

²⁶⁰ Focus group discussion, The Office of Manpower, 15 November 2018

²⁶¹ Number of Placement of Indonesian Migrant Worker Based on The Province of Origin 2018, BNP2TKI data 2018, p:58

²⁶² Article 5(2) of Local Regulation No. 16 Year 2015 concerning Prevention and Treatment of Victim of Trafficking in Persons

did not inspect the passengers and other things. The measure by the joint team was to command the longboat to return to its place of origin and required to bring the travel documents next time.²⁶³

Further, in 2018 the joint inspection was also carried out by BP3TKI Nunukan, Marine Police of Nunukan, Army, Navy, Manpower Offices, Civil Registration Offices, Immigration Offices, Port Authority, and Community Police at Tunon Taka Sea Port. With this joint inspection, the local authority has prevented the departure of 35 individual who suspected did not possessed working documents.²⁶⁴ However, there is no further investigation on this case. Returning the individuals to their home origin is the only solution that local government offers.

The fact that Nunukan Government has not established an ATTF, the massive gaps between the number of letter recommendation and actual number of Nunukan resident who work abroad, as well as unavailable further investigation toward the joint inspection result has describes the level of commitment and understanding of the related stakeholders in tackling the TIP issues. With the improvement of the capacity and infrastructure to combat TIP and provides integrated respond to the victim, the TIP issues can be tackling more effectively.

E KEY ACTORS INVOLVED

According to the *Perda* No 16 of 2015 concerning Prevention and Treatment of Victims of Trafficking in Persons, there are several actors who involved in assisting TIP case in Nunukan, ranging from the local government, vertical government institution such as Immigration, BP3TKI and Law Enforcement agencies as well as non-government organization.

1. Anti Trafficking Task Force (ATTF)

Eventhough Nunukan has enacted a local regulaton on TIP in 2015 and the regulation mandated to the District Government to establish Anti Trafficking Task Force (ATTF), however, up to know the ATTF has not established yet. In the absence of ATTF, the roles on anti-TIP Programs including prevention and victim assistance was carried out by several agencies namely Women Empowerment, Child Protection and Family Planning Offices (DP3AKB), Social Affairs Offices (DINSOS) and Integrated Service Center for Women Empowerment and Child Protection (P2TP2A) of Nunukan.

DP3AKB has a main roles to record the TIP data from various institution, mainstreaming the TIP issues to the community and other government institution and overseeing the implementation of P2TP2A as service providers for victim of violence, including TIP. Unfortunately, the lack of budget from the local government and lack of supervision from

²⁶³ Focus Group Discussion, Transportation Office, 15 November 2018.

²⁶⁴ See <http://www.bnp2tki.go.id/berita-detail/cegah-pmi-non-prosedural-bp3tki-nunukan-lakukan-razia-di-pelabuhan-tunontaka>

the Ministry of Women Empowerment and Child Protection has become a challenges for the DP3AKB to carried out their role and responsibility.²⁶⁵ Although most of the Officials in DP3AKB acknowledge that Nunukan is prone to the TIP situation, however this limited sources and budget has put them in the difficult situation. Nevertheless, DP3AKB try their best to repond the TIP cases suh as with the establishment of informal communication channel with DP3AKB from the victims origin, refer the case to the province level and etc. However, the prevention program is are limited and the victim assistance also could not be delivered in comprehensive manner, repatriation of the victims to their home origin is the priority for the DP3AKB.

Another institution is Social Affairs Office (DINSOS) which has responsibility to provide education and improve the understanding of community related to migrant worker issues and provides psychological support for victim of violence who experiences the cases in Nunukan or transited in Nunukan such as for the migrant workers who returned from Malaysia through Nunukan, and reintegration program to the Nunukan resident. However, the budget allocation from District Government to the DINSOS are limited. Responding this situation, DINSOS establish a collaboration with other counterpart, for instance community leader, faith-based organization, hospitals and other social services.²⁶⁶

Further, responding to the TIP issues, DINSOS has various programs to overcome the situation. **First**, provides basic counseling to the community on the importance of education for children. **Secondly**, provides basic counseling toward the returned migrants from Malaysia which assisted by BP3TKI on the safe migration and the risk of TIP. **Third**, providing rehabilitation in the form of psychological support and psychosocial counseling for victims who needs. For the victims who originally from outside of Nunukan, the support will be provided during the victim sheltered in Nunukan, waiting their return process. For the victims who are Nunukan resident, the support will be provided anytime based on the victim needs and assessment. **Fourth**, returning the victim to the area of origin with the collaboration of North Kalimantan Provincial Government.

However, for rehabilitation assistance, the DINSOS also does not have sufficient funding.²⁶⁷ Another challenges is the limited of human resources, in term of staffing and capacity of the staff.²⁶⁸ With this limited resources, the DINSOS could not provide comprehensive assistance including identifying type or exploitation and TIP situation that encounter by the victim. Hence, the DINSOS only relay on the information that provided by the Consulate General as the first institution who identified the case.²⁶⁹ For instance, if the Consulate General stated the individual as victim of trafficking, DINSOS will provides further assistance such as communicate with other parties to support the return and rehabilitation programs. However, there is no communication with

²⁶⁵ In-depth interview, DP3AKB Offices, 15 November 2018

²⁶⁶ Focus group discussion, Social Affairs Offices, 15 November 2018.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ Ibid.

the Consulate General as the first service provider on the type of assistance that has been provided previously and how the psychological condition of the victim has been improved. Therefore, a comprehensive respond and integrated assistance could not be monitored.

Along with D3AKB and DINSOS there is a P2TP2A which also mandated to provides direct services toward the victim. P2TP2A also has a temporary accommodation, however, considering the limited budget, this temporary accommodation could not be run and the building was abandoned and unused.

2. One Roof Integrated Service (LTSA) of Nunukan

Established in 2016 with the support from the Nunukan District budget²⁷⁰ aims to simplify the migration process, with cheaper cost and ensure the protection of migrant workers. The formation of LTSA is a mandated by Law No. 18 of 2017 concerning Protection of Indonesian migrant workers. Article 38 paragraph (2) stipulates that purpose of establishment of LTSA are; (1) to achieve the effectiveness of managing placement and protection of Indonesian migrant workers service; (2) to provide efficiency and transparency in handling documents for placement and protection of prospective Indonesian migrant workers and/or Indonesian migrant workers; and (3) to accelerate the service quality improvement for Indonesian migrant workers.

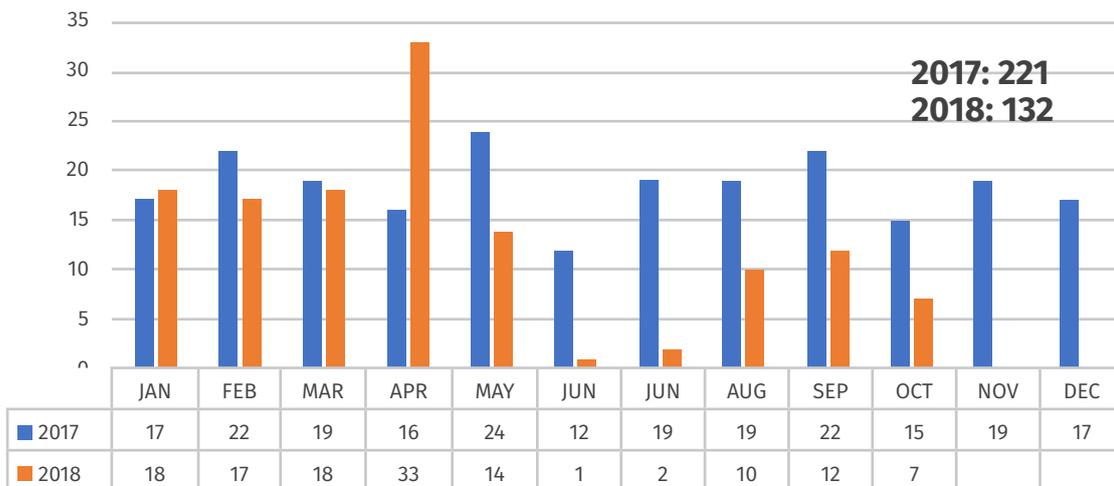
With the existence of LTSA, several services for migrant workers can be coordinated in one places, which includes: workers' information service, civil registries, Health Insurances (BPJS Ketenagakerjaan), immigration and police.²⁷¹ Previously, the fabrication of identity is a common thing in obtaining the required documentation for departing prospective workers. However, since LTSA is established the number of forge documents is reduce.²⁷² LTSA also provides a mechanism to decline suspicious passport applications. In 2017, there have been 221 suspicious passport applications rejected. Until October 2018, there have been 132 cases of an applications being rejected due to the same reason.

²⁷⁰ Sigit Ari Prasetyo, "Layanan Terpadu Satu Atap," available at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/meetingdocument/wcms_647497.pdf, accessed 1 May 2018.

²⁷¹ Ibid.

²⁷² Informal discussion, Transit House, Nunukan, 15 November 2018.

Chart 11. Rejection of Passport Application Data in LTSA



Source: Statistical Data of Nunukan Immigration Office 2018

Aside of the Immigration Offices who actively engage in LTSA, BPJS *Ketenagakerjaan* also plays a pivotal part in providing protection towards the worker. The workers who registered with social insurance program, will be protected from the risk of migration such as deception, sick and work injury, TIP and labor violence during their migration process, since pre employment, during the placement process and when they returned back to their origin. However, this health and social insurance could be accessed if the migrant register their migration process to the LTSA.

3. Center for Placement, Protection and Services for Indonesian Worker in Overseas (*Balai Penempatan Perlindungan Pelayanan Tenaga Kerja Indonesia/BP3TKI*)

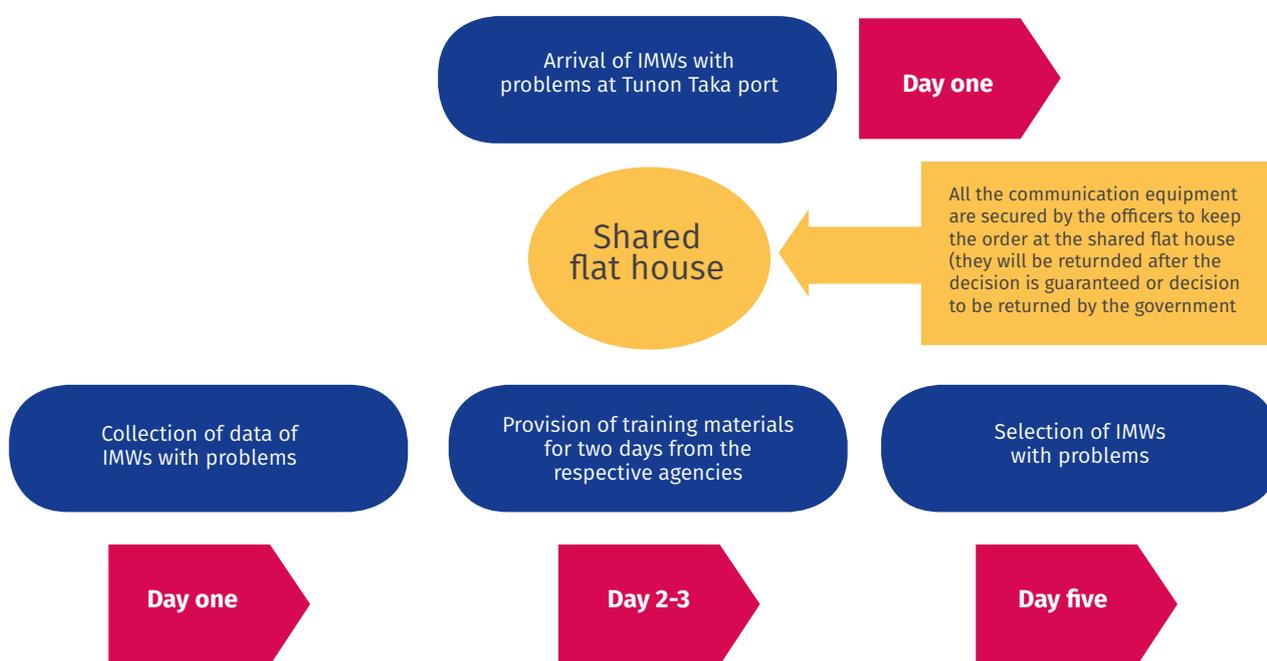
BP3TKI is a technical service unit under the National Agency for Placement and Protection of Indonesian Workers (*Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia/ BNP2TKI*) at the Province level. BNP2TKI is governmental agency which has a function to implement the policy of placement and protection of migrant workers abroad. Based on BNP2TKI regulation no. 10 of 2016 concerning organization and working procedure for technical service unit, BP3TKI has several sections responsible for carrying out its duties, namely: Placement and Correctional Program Section; Preparation of Placement Section and Protection and Empowerment Section.

Under the Protection and Empowerment Section of BP3TKI has special task to assist migrant workers that were returned from Malaysia, including those who returned due to the illegal status or victims of violence and crimes, including TIP. To assist these returned migrant, BP3TKI has develop their standard operational procedure, as follows;²⁷³

²⁷³ Diskusi kelompok terarah, BP3TKI, 15 November 2018

- (a) day one, picking up the returned migrant at Port
- (b) day two, collection the migrant data
- (c) day three and four, assessing the migrant needs
- (d) day fifth, providing alternatives solution to the migrant worker, either,
 - (i) repatriation
 - (ii) settling in Nunukan
 - (iii) return to work as a migrant worker in Malaysia.

Chart 12. Mechanism for Assisting Indonesian Migrant Worker Returned with Problems



Source: BP3TKI, 2018

The funding for the implementation of the scheme as explained in the chart above is fully supported by the central government. However, there are several weaknesses in handling the situation. One of them is limited human resources. The fact that majority of BP3TKI officials are men and do not have profound assessment skills of victims of trafficking in persons. This problem causes the BP3TKI to only rely on data provided by the Indonesian Consulate General in Malaysia concerning cases experienced by the returned Indonesian workers.

Image 6. Crisis Centre, BP3TKI



Source: documentation of research team, 2018

With the limited resources, BP3TKI has designed the repatriation of the migrant worker as the main program. However, this repatriation process is not voluntary basis, but an obligation for all returnee who departed through Nunukan.²⁷⁴ The reason behind this decision is because allowing the returned migrant worker to stay in Nunukan will provides negative impact to the social issues within Nunukan district such as high unemployment and the emergence of crimes committed by these migrant workers. Therefore, forced repatriation is a choice of policy that might be deemed appropriate by BP3TKI.

However, the policy of forced repatriation by BP3TKI does not completely solve the problem, especially if it is not accompanied by a measurable assessment before the return. Without proper assessment, the root of the problems experienced by deportees and the extent to which indications of trafficking occur could not be identified. This condition has hindered the potential victims to receive further assistance from the Government of Indonesia. Under Article 48 Law No 21/2007, the victim of trafficking has rights to the health rehabilitation, psychosocial rehabilitation, return and reintegration program, legal assistance and protection, as well as restitution.²⁷⁵ Because this assessment result will be use by other government institution at their areas of origin as the basis data for handling the migrant worker, including if there are indications that the returned migrant has experienced the TIP along with their migration journey.

²⁷⁴ Focus group discussion, BP3TKI, 15 November 2019.

²⁷⁵ Article 48, Law No 21/2007 concerning the Eradication of TIP crimes.

4. Indonesian Consulate General (KJRI) of Kota Kinabalu and Tawau

KJRI Kota Kinabalu and Tawau, actively provides citizen protection program to the Indonesian national who work and stay in both locations. One of the programs is a consular assistance. The KJRI has special officer who assign to conduct identification towards all the complains including TIP cases. However, some challenges that faced by the KJRI is limited resources. The small number of officials compare to the case load received by KJRI has hinder the office to be able to dig a comprehensive information on each case. Another issue is the capacity of the consular to conduct screening process. Not all the consular staff has been trained on victim identification process. Moreover, the Malaysian regulation concerning TIP also required that all victim who report the case should sheltered on Malaysian safe house until the case is convicted. Therefore, pursuing the legal case in Malaysia is not the option for many migrants, then the Consular also need to support the victim decision. Previous study on the protection of Indonesian Migrant Worker in Malaysia has confirmed this reason. According to the study, there is a tendency from the Indonesian government abroad (in this case, the Indonesian Embassy in Malaysia) to direct the victim back to the place where they came from. This is caused by several reasons.

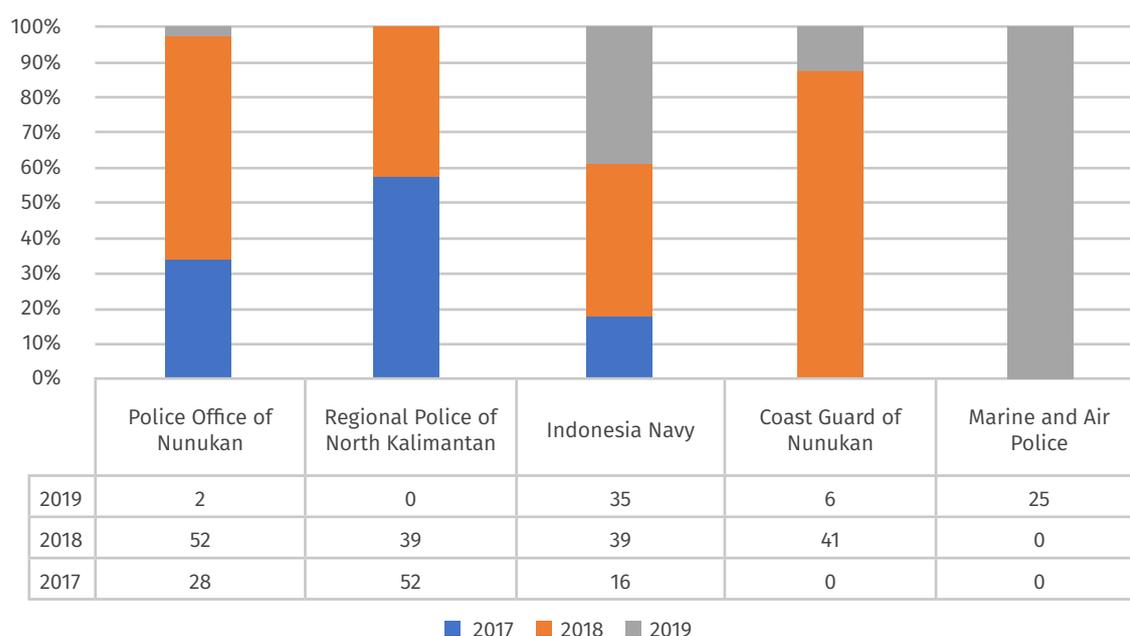
First, if the victim decided to file for a legal proceeding, then they could not work while waiting for the legal proceeding because of existence of Malaysian labour law forbidding them to do so. **Second**, the legal proceeding is lengthy in terms of duration and because of that victims usually cannot stand to wait until the proceeding end, while the need work for a living is constant; third, it is very difficult to prove. As long as they wait for their case settlement facilitated by the Embassy, that there are large sums of funds to bear the living cost of the victim.²⁷⁶ Despite of the challenges, there were a number of cases where the Indonesian government finally assisted victims, including when the victim returned to Indonesia, the government still paid the cost of the victim to return to Malaysia if needed to give testimony. For instance, in 2017, KJRI Kinabalu assisted 16 migrant workers who indicated as victim of trafficking in Malaysia with return support.

5. Law Enforcement Agency

Based on the data obtained from the field, law enforcement in Nunukan has actively involved on the prevention measure. Based on the BP3TKI data, there are four institution namely Police Office of Nunukan, Marine and Air Police of North Kalimantan, Regional Police Office of North Kalimantan, Navy and Sea and Coast Guard of Nunukan. They actively refer the cases to the BP3TKI Nunukan for return process of the individual who has been rescued and prevented to cross the border. Unfortunately, there is no further investigation to identify potential TIP cases other than illegal border crossing. Hence, the number of individual that has been prevented to cross the border is high, but the number of TIP cases is almost zero. Below is the number of individual that have been prevented to migrated to Malaysia due to lack of supporting the documents.

²⁷⁶ Lia Evanty Andriany, *Perlindungan Hukum terhadap Perempuan Pekerja Migran Indonesia, di sektor Domestik yang Menjadi Korban Kekerasan Seksual di Malaysia*, [Bachelor thesis], Faculty of Law Gadjah Mada University, Yogyakarta, 2019.

Chart 13. Number of Migrant Candidates That Prevented to Cross the Border



Source: Data Obtained from the Field

6. Non Government Organization and Civil Society Organization

The non-government organization in Nunukan dominated by faith-based organization and regional-based organization (an organization which established based on the ethnicity). For the faith-based organization, Women Islamic organization namely Aisyiah has been engaged with the Government to promote the prevention of violence against women and children including TIP. However, the officials from the organization confirmed that none of their officials have deep understanding on TIP. They even never attended the specific training on this.²⁷⁷ Another faith-based organization that actively provide services for vulnerable migrant in Nunukan is the Commission for Justice and Peace – the Pastoral Care of Migrants and Itinerant People. This commission was under the Nunukan Church Diocese.²⁷⁸

Furthermore, in Nunukan there also some organization based on the regional/ethnicity. For instance, peoples from South Sulawesi who migrated to Nunukan and stay in Nunukan for ages, they build their own community and establish an organization based on the ethnicity. Often, the migrant or victims were run to this organization to seek the help, because they share the same language and feel that they were safe. However, in

²⁷⁷ Focus Group Discussion, Nasyiatul Aisyiah, 15 November 2018

²⁷⁸ In-Depth Interview, Church and NGOs, 15 November 2018

some case, this organization also being used by recruiter to identify potential candidates for migrant worker. Therefore, basic knowledge on TIP and how to assist the victim should be provided for this community organization.

F THE CHALLENGES IN PREVENTING AND HANDLING TRAFFICKING IN PERSONS IN NUNUKAN

1. Inter-Agency Coordination

One of the challenges in Nunukan is the inter-agency coordination. Each of the agency focus on their respective responsibilities and there is low initiative to coordinate with one another. For instance, when the Transportation Office discovered a suspicious vessel transporting passengers without any vessel documentation, they only check the seaworthiness of the vessel, and not assessing the passengers background.²⁷⁹

Many of the Government agency think that the TIP is the issues of Law Enforcement, DP3AKB, DINSOS and P2TP2A only. Therefore, even though other government institution realized that the TIP situation may occur, but they do not take further action. This situation has also contributed to the ineffectiveness implementation of the local regulation on TIP. For example, when the Civil Registry Office conducted an incidental inspection along Satpol PP²⁸⁰, it was found that there was an indication of child prostitution that violates both trafficking in persons law and child protection law. However, the Civil Registry Office only inspected the IDs of the alleged persons involved and took no further action towards them. The Civil Registry Offices argued that the handling of such action was not under their jurisdiction.²⁸¹ The Offices also did not issue any report to the competent authorities concerning that suspicion. This condition has identified as one of the challenges to tackle the TIP issues effectively.

In another hand, the issues of TIP have not been mainstreamed by the Government as the priority program, even the Government has enacted local regulation on TIP. The TIP issues are not discussed widely. Intervention programs to prevent TIP and Irregular Migration has not been combined as mutual programing. DP3AKB has anti TIP campaign, however they do not include BP3TKI and Manpower Offices as the leading sector in preventing irregular migration. At the same time, BP3TKI Nunukan has a lot of prevention program on irregular labor migration, however they do not touch the TIP issue.

²⁷⁹ Focus group discussion, Manpower Offices, 15 November 2018

²⁸⁰ Satpol PP is an institution that has a responsibility to maintain order in every level of sub national governments

²⁸¹ Focus group discussion, Civil Registry Offices, 15 November 2018

The lack of inter-agency coordination also has impacted to the poor data collection on TIP in Nunukan. Since there is no coordination among agency, the data sharing also could not be carried out and reported. There is no further examination on the cases that has been handle by each institution, this has contributed to the poor data collection. For instance, in 2018 LTSA has rejected 132 passport applications and one of the rejection reasons is the applicant could not complete the passport application requirement and prevent the applicant from TIP and people smuggling crimes. However, there is no further follow up or intervention toward these applicants. Ideally, monitoring and assistance towards these applicant should be conducted, so the government could measure that these applicants are safe and they could reapply the passport with complete documents and have deep understanding on safe migration and labor migration issues, including the risk of TIP.

To address such problems, the establishment of ATTF as the coordination body is highly needed. With the ATTF, each agency will have an understanding on their role in tackling the TIP, thus each agency could contribute in designing and implementing anti TIP programs. Moreover, with the ATTF, the government also will have clear mechanism and referral platform in assisting the TIP.

2. Government Commitment

Neverthelss the government has enacted local regulation on TIP, however the budget allocation for anti TIP programing is need to be improved. The sufficient budget plays significant roles to support the success of program. To improve the commitment, some intervention on budget advocacy and capacity building for the government institution in designing anti TIP programs are crucials. In addition, suprvision and monitoring from Central Government also important to push the comitment of the local government.

3. Capacity of Frontline Officer and Law Enforcement

Similiarly with other areas, the capacity of law enforcement and frontline officers still become one of the challenges in assisting TIP case. The diversese knowledge on TIP can be reflected from the different response on TIP issues. Apart of this, this also could be examine from the Police Report, Indictment Letter and Court Decision of the cases.

Various respond in defining TIP cases can be obtain from the data that collected by each institution. For instance, DP3AKB, P2TP2A and Social Offices will determine the case as TIP case nomatter the exploitation is happened in Nunukan or outside of Nunukan. While BP3TKI, who deal with the migrant worker, the case will be consider as TIP if the migrant workers has been identified as Victim of TIP by the Consulate General who acknowledge the return process of these migrant workers. However, the Consulate will only classify the migrant worker as the victim of trafficking, if the migrant worker pursuing their legal case in Malaysia.²⁸² In another hand, many of the migrant worker in Malaysia decides to settle their cases through non-litigation mechanism, instead of

²⁸² In-Depth Interview, Indonesian Consulate General in Kuching, 5 December 2018.

legal procedure, because of many reasons, and return to the home countries as soon as possible is their primary option. With this definition, many of migrant worker cases that also meet with the TIP element on Palermo Protocol and Law No 21/2007, could not be consider as TIP case, since the migrant workers did not persui their cases through criminal justice system in Malaysia. When the cases is reflected as non-TIP case, the local government in Indonesia, will not be aware if the case is actually TIP case, because there is no reassessment once the migrants worker arrived in Indonesia, eventhough the return through deportation schema from Malaysian Government with several problems that they may encounter during their migration journey.

In addition, the level of knowledge and undertanding from law enforcement on TIP could be reflected from the number of cases that assisted and how the case being prosecuted by law enforcement agencies. Within five years since 2014, there have been three cases that have been processed under law no. 21 of 2007 on the Eradication of TIP Crimes, however only one cases convicted as TIP crimes. Meanwhile, other cases were convicted under different laws, even though the investigation report and indictment letter stated that the offender has violating TIP laws.

As example, in the court decision no. 170/Pid.Sus/2016/PN.NNK, the victims were originated from Manado, North Sulawesi²⁸³ The victims were promised as waitress with good salary. However, once arrived in Nunukan, they were employed in a bar and forced to provide sexual services. The employer will impose a fine IDR 300,000/day if they did not show up on the bar, as well as to repay the travel expenses from Manado to Nunukan, if they decide to leave the bar.

Case 1. Nunukan District Court Decision No. 170/Pid.Sus/2016/PN.NNK

The victims were offered a job as escort ladies in a karaoke club named “Mahkota” in Nunukan District. They were promised to be paid a monthly salary amounting to Rp3,000,000 and an accommodation facility equipped with an air conditioner. At first, they refused and intended to leave the place, but the agent who recruited them asked for a compensation fee amounting to Rp4,600,000 for their travel expenses from Manado to Sebatik. The victims were forced to sign a contract for the duration of six months with a salary less than Rp2,000,000, including a fine of Rp300,000 if they did not show up for each day.

²⁸³ Nunukan District Court Decision No. 170/Pid.Sus/2016/PN.NNK

The Police report stated that above case is a TIP case while the prosecutor has made an alternative-based indictment between law on prevention of TIP and article on obscene acts under the Criminal Code. The first indictment which the prosecutor used Article 2 paragraph (1) of TIP law stipulates that “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.” The second indictment, where the prosecutor charged the perpetrator based on article 296 of the Criminal Code stipulates that “Any person who makes an occupation or a habit of intentionally causing or facilitating any obscene act by others with third parties”.

Responding to this indictment, the Judges decides to use the Article 296 as the main punishment, thus the offender was sentenced with eight months in prison, instead of Law No 21/2007 even when the element of sexual exploitation was found clearly on this case. Another example also reflected on the case on 13 prospective migrant workers which rescued by Police offices of Nunukan.

Case 2. Nunukan District Court Decision Number 152 / Pid.Sus / 2018 / PN.Nnk.

There were thirteen victims, including four boys, three women and six children in cases that were tried. The perpetrators could not identify the names of the victims. The main task of the perpetrators was to deliver all the victims. The victims were intended to be employed in Malaysia without taking care of any documents in Nunukan. They all came from Pare-Pare, South Sulawesi. They were transiting in one house in Nunukan by paying RM 200 or around Rp6,000,000 when police officers arrested the perpetrators.

The public prosecutor in the indictment charged the perpetrators with article 120 paragraph (2) of the Immigration law and as alternative indictment, article 81 of law no. 18 of 2017 on the protection of IMW. Further, the judges responding this crimes as the violation of the law on protection of Indonesian Migrant Worker. The consideration, the Panel of Judges stated that the transportation routes for these migrant candidates were illegal routes without immigration control. In addition, the Judge also proved that there was no permit for the perpetrator to send the victims as migrant workers. However, because the arrest was made before the victims arrived in Malaysia, and the exploitation has not happened yet, the judge stated that the act was a criminal act of protection for Indonesian migrant workers. Perpetrators were sentenced to eight months in prison and a fine of Rp. 5,000,000 with one-month imprisonment as a substitute.

Based on the above case, it can be found that acts could also be exercise as TIP under Indonesian Law. According to article 4 (1) stated “.....everyone who bring Indonesian national to the overseas for the purpose of exploiting them outside of the Indonesian authority will be punished with imprisonment minimum three years and maximum 15 years with minimum fine IDR 120 million and maximum IDR 600 million.” According to the jurisprudence, purpose of exploitation can be indicated by avoiding legal procedure, falsifying the document, the use of debt etc. In addition, the fact that some of the victims were also minor, this should be further investigated whether there is indication of TIP or not.

Among other reason why the law enforcer did not exercise the case with TIP law is budget availability and lack of coordination with other law enforcement agencies. Most of the perpetrators of cross-border trafficking are in Malaysia and mutual assistance is required to handle the case. In cases involving Malaysian jurisdiction, it would be much more difficult to be handled by legal enforcement officials. The element of “exploitation” in trafficking in persons is difficult to prove and will likely more difficult to implement when it involves perpetrators from Malaysia, which gives the case an “international element”.²⁸⁴ Further, the recruitment process has been happened in the place of origin, outside of Nunukan, and the law enforcement need more support to conduct deep investigation on this. Lastly, the element of trafficking is not easy to prove.²⁸⁵ The formulation of the crime of trafficking in persons is far more difficult than the immigration law, the Criminal Code and also the IMW protection law. Not all the law enforcement agree that the intention of exploitation could be proofed even though there has been some jurisprudence on this case.

4. Inter-Region Coordination

Another problem is the lack of regional coordination across municipal/provincial governments. The Nunukan District is primarily an area of transit. Cooperation between Nunukan as a transit area and other regions as areas of origin, such as South Sulawesi and East Nusa Tenggara is required. Until now, there has been no MoU between the origin and transit regions in preventing trafficking in persons. The role of the area of origin and transit is very important in the prevention and control of trafficking in persons.²⁸⁶

²⁸⁴ In-Depth Interview, Nunukan District Attorney

²⁸⁵ In-depth Interview, Nunukan District Attorney, Supported by Indictment and Judgement in Immigration related crimes, 16 November 2018

²⁸⁶ In-Depth Interview, BP3TKI, 16 November 2016

7

CONCLUSIONS AND RECOMMENDATIONS

A CONCLUSIONS

From the field study of the four border areas: Sanggau, Sambas, Kapuas Hulu and Nunukan, as well as a literature review, the research found that there are some similarities in term of the risks and causes of TIP. In addition, the research also noticed there were differences in the commitment and capacity of local government in tackling TIP issues in each region.

1. Trafficking Patterns in Border Areas

Trafficking patterns in these four regions can be described as follows. **First**, TIP occurs both within the border areas of Indonesia (internal) and across the border of Indonesia (cross-border) to Malaysia. **Second**, internal or cross-border TIP happens in the form of labor exploitation (on plantations, in households, or other informal work such as household production) and sexual exploitation. **Third**, there are massive flows of irregular migration at the border area, which is a strong indicator for TIP.

Fourth, the recruitment process happens through traditional methods and non-traditional methods. Traditional recruitment is carried out through recruitment agency services, or individual brokers. Victims are recruited in their home villages, especially from the provinces with high number of migrant worker candidates, and are transported to the border areas. Further, in the border, other individuals have waited for them at the airport/seaport and have brought them to temporary accommodation for migration document processing, before assisting them to cross the border legally or illegally. The non-traditional method also drew from the research by maximizing the use of social media and peer group recruitment. This method was found frequently in sexual exploitation cases. The victim is usually approached through social media, and offered a good job opportunity and a high salary. The victim will arrange their own transportation to the border area, and once they arrive at the border, receival agents will pick them up and arrange travel to their workplace, where they are subsequently exploited.

Fifth, there is a strong disparity in TIP data in each institution. Event though all the research participants in four targeted areas confirmed that TIP cases can occur in their region, each agency has their own data. There is no single database on TIP within this area. Aside from this, each agency also uses their own indicators to identify TIP cases. The only reliable data was gathered from law enforcement, however the prosecution numbers of TIP cases in these border areas is considered low. Only 1 or two cases per year are prosecuted, and upon further examination, the conviction results from the District Court did not use TIP Law, but Immigration and Placement of Migrant Workers Laws.

Besides these similarities, each region also has unique TIP and cross-border migration patterns. For instance, Nunukan is prominent as a transit area. People have migrated to and from Malaysia through this border for a very long time. Till now, Nunukan is still an active transit point for cross border migration. Meanwhile Sanggau, even though it is a transit point, does not have as significant cross-border migration levels as Nunukan. Sanggau is still a migrant return area, especially for those who were returned by the Government of Malaysia due to immigration problems and trafficking in persons. Further,

the Sambas area is considered as a source area instead of a transit point for many migrants. People in Sambas migrate to Malaysia through regular channels, especially those who will work as a domestic worker. The absence of official recruitment agencies in Sambas for the domestic work sectors has contributed to the high number of irregular migration and led in to trafficking situation of the Sambas resident. Another border region – Kapuas Hulu – even though it is well known as a transit area, has now become a source and destination area. People outside of Kapuas Hulu migrate to Kapuas Hulu for domestic work instead of crossing to Malaysia. A common trend is for people from East Nusa Tenggara to work at palm plantations in Kapuas Hulu. Some female workers from other regions also worked in cafes or pubs in Kapuas Hulu near the plantations. On the other hand, many locals of Kapuas Hulu migrate to Malaysia to seek work through familial connections, considering Kapuas Hulu and Sabah have similar ethnicities.

2. Contributing Factors of Trafficking in Persons in Border Areas

In general, there are two main contributing factors in border area TIP. External factors are especially related to the policy of the Malaysian Government, while internal factors are geographical, cultural, economic, and the level of governmental commitment and policy implementation at the district level.

a. External Factors

Malaysia is the main destination country for Indonesian Migrant Workers. Migration to Malaysia is characterized by low- or semi-skilled workers. Malaysia has a high demand for Indonesian Migrant Workers, and is highly dependent on their contribution to national development and industrialization. There are three main reasons for the continued high demand for Indonesian Migrant Worker in Malaysia: first, there are notable demographic and economic imbalances between Malaysia and Indonesia. Second, networks of brokers, sponsors and work placement agents have become culturally formalized. In these networks brokers also function as sponsors, resulting in the intensification of the flow of labour migrants to Malaysia. Third, the linguistic, cultural and historic relationship between the two countries allows an easier working relationship between employers and Indonesian labor migrants, compared with labor migrants from other countries.²⁸⁷ In addition, labor migrants from Indonesia generally fill shortages in low-skill and labor-intensive sectors. With this mix of factors in the two countries, irregular border crossings for labor migration continues to occur at a high volume, as described in the previous chapter.

In addition, the policy of labor migration governance in Malaysia is another factor. Since 26 June 2009, Indonesia has enacted a moratorium on placing Indonesian domestic workers in Malaysia. However, at the time of research, the Government

²⁸⁷ Labor Migration from Indonesia, an Overview of Indonesian Migration to Selected Destinations on Asia and the Middle East, IOM, 2016 p:41

of Malaysia continues to issue permits to Indonesian foreign domestic workers. The Ministry of Home Affairs (MOHA) of Malaysia reported that there are 1.99 million foreign workers in Malaysia as of 31 Aug 2019.²⁸⁸ In addition, a World Bank Report on Labor Migration to Malaysia estimated that in 2017 there were between 1,228,000 - 1,459,000 irregular migrant workers in Malaysia.²⁸⁹ One of the reasons why Malaysia has such a significant number of irregular migrant workers is the demand of irregular workers itself. According to the World Bank, in 2016 a total of 1174 employers were involved in hiring, harbouring, and helping irregular foreign workers escape arrest (according to information from the Immigration Department), and in 2017 an estimated 70–80% of the 650,000 small and medium-sized enterprises (SMEs) utilized undocumented foreign workers.²⁹⁰ The demand of undocumented workers caused several issues below:

Table 6. Contributing Factors to The Demand of Undocumented Workers in Malaysia

Factors	Demand for Undocumented Workers
High Employment Cost	<ul style="list-style-type: none"> Employers seek informal channels to avoid higher employment costs. Starting in the year 2018, employers must cover levy payments and provide housing in permanent structures for migrant workers. Employers also must cover insurance and medical costs of foreign workers. Employers in smaller operations seek informal channels due to a high fee charged by labor outsourcing companies.
Limited approved quantity	Employers hire undocumented foreign workers to fill some formal positions they are unable to have approved by regulating agencies.
Long hiring process	Employers seek informal channels because of long hiring process. The hiring process of foreign workers can take about 6 months before employers receive approval from regulating agencies.
High risk of paying penalty	Employers may prefer to hire undocumented foreign workers to reduce the risk of paying a penalty for runaway cases.

Sources: World Bank Report, 2019

Cultural issues, economic disparity, labor demand for low-skill workers as well as a high cost policy on labor migration management on the Malaysian side is a clear contributing factor to cross-border trafficking and irregular migration from Indonesia to Malaysia, and demonstratedly affected these four border regions.

²⁸⁸ Malaysia has 1.99 million foreign workers registered as at Aug 31 at <https://www.theedgemarkets.com/article/malaysia-has-199-million-foreign-workers-registered-aug-31>, accessed on Dec 2019

²⁸⁹ Wei San Loh, Kenneth Simler, Kershia Tan Wei, and Soonhwa Yi on Malaysia: Estimating the Number of Foreign Workers, World Bank Report, March 28, 2019, p: 3,

²⁹⁰ Ibid, P: 14

b. Internal Factors

Geographical location is an important factor that contributes to TIP and irregular migration between the two countries. With a large border area and minimum supervision from the authorities, this situation has been used by unscrupulous agents to smuggle people overseas, as well as engaging in TIP for the purpose of exploitation. Further, the cultural bond in some border areas has also become one of the triggers why people in both countries connect easily. For some individuals, this situation is an opportunity to establish labor recruitment networks. In some cases, this network is not only for labor supply purposes but also to smuggling services.

In addition, economic disparity between Indonesia and Malaysia is another factor. This economic disparity does not stand alone, but is influenced by the low education level of job seekers and a lack of employment in the area of origin. Labor demands from Malaysia are utilized by recruiters to approach job seekers and send them overseas.

The difference in commitment from government institutions in responding to TIP is another contributing factor to TIP in the region. Out of four regions, only Sambas has established a Local Regulation Concerning the Prevention and Management of Victims of Trafficking in Persons, through *Perda No 03 of 2015*. However, this regulation was not implemented well, due to a lack of financial support from the government. This lack of financial support was also found in three other regions: Sanggau, Kapuas Hulu and Nunukan. The absence of an Anti-Trafficking Task Force in the four districts- which is responsible to coordinate prevention efforts and provide integrated services for victims of trafficking as mandated by Law No 21/2007 on the Eradication of TIP- was one of the impacts of low commitment from the district government.

3. Challenges in Combating Trafficking in Persons in Border Areas

The research also outlined some challenges faced by the district government in combatting trafficking in persons in their areas.

a. Inter-Agency Coordination

At least there are eight government institutions in each district which have TIP programs and or programs related to TIP issues: Women's Empowerment and Child Protection Agency (DP3A), Social Affairs Agency (DINSOS), Integrated Service Center for Women's Empowerment and Child Protection (P2TP2A), BP3TKI or P4TKI, LTSA, Immigration Office, Police Office and the Attorney's Office. All the agencies have their own perspectives in responding to TIP, and do not talk each other. There is no formal coordination mechanism. An Anti-Trafficking Task Force (ATTF) has not been established in these four regions, and coordination is still conducted based on personal communication rather than inter-institutional communication.

b. Government Commitment

Government commitment is reflected through policy initiatives and budget allocation. Unfortunately, the research found that amongst the four regions, only one area (Sambas) has enacted a local regulation to respond to TIP, while other areas have not initiated any regulations concerning TIP. Moreover, budget allocation for prevention efforts and victim support is not adequately reflected in the district's annual budget.

Further, the need for commitment and support from the Central Government is also highlighted in this research. The districts that are bordering with neighboring countries should be prioritized by the Central Government, not only for infrastructure development but also human resource development. One of the reasons why the ATTF is not yet established, and why the district regions have no plan of action to combat TIP is the lack of central government commitment to mainstreaming this issue in border areas. Most of the local government institutions at the border region admit that TIP situation does exist within their region, and cross-border trafficking through irregular migration is present, however they need assistance from the central government on program formulation in overcoming these issues. Also, the district government needs budget support from the central government – considering most of victims of trafficking found in their areas were originally from other islands and provinces.

c. Capacity of Frontline Officers and Law Enforcement

This study found that there are differences in knowledge and understanding in determining trafficking in persons at the government, policy-making, and law enforcement levels in all four districts.

First, at the district government level, the knowledge and understanding of TIP issues are diverse. Most officers still have a mixed understanding of TIP and irregular migration. During discussions, most participants described irregular migration as trafficking, while there was no VOT identification process completed with individuals who migrated to Malaysia irregularly. Moreover, all discussions in the four regions were filled with cross-border trafficking issues, and participants did not realize that trafficking also happens internally within their areas. This situation was strongly influenced by the Central Government's Program within the border area, which is more focused on the prevention of irregular migration. This is carried out by the Immigration Office and the National Board for Placement and Protection of Indonesian Workers Overseas (BNP2TKI), through its sub-offices: Placement and Protection Services for Indonesian Worker Overseas (BP3TKI) and Post for Placement and Protection of Indonesian Worker Overseas (P4TKI) as well as the Integrated Services Establishment (LTSA) for the Placement and Protection of Indonesian Migrant Workers. Further, in terms of cross-border trafficking issues, some officials also acknowledge that passport retention is a common practice, and that this practice does not violate any law- both in Malaysia or Indonesia.

Second, a diverse knowledge and understanding of the application of TIP laws within law enforcement is prevalent. Most of law enforcement officials who participated

in the research stated that they have difficulty in proving the exploitation element as stated within Article 2 of Law No 21/2007. Differentiating TIP crimes with other crimes, especially the Immigration Act, Prostitution Act and labor Act is the main reason. This situation created another challenge to the prosecution of TIP crimes and an integrated response to victims of trafficking. Most of the indictment letter prepared by the prosecutor used alternative indictments, as the prosecutor was not confident to deliver a single indictment – even though single indictments are possible in the Indonesian criminal justice system.

Third, the lack of data collection and sharing mechanisms due to gap and understanding on TIP issues faced by frontline agencies and law enforcement agencies. For instance, BP3TKI will document Indonesian Migrant Workers who return with issues around their employment. These problems include labor disputes, immigration violations, escaping from the employer, salary disputes, illness and injury, or experiencing abusive situations during their work. However, there is no classification of TIP cases in the BP3TKI data. This situation happened because BP3TKI only recorded the data based on initial information from the Indonesian Consulate-General that received the initial report. For the Consulate-General Office itself, they will categorize the case as a TIP Crime and the individual as a victim of trafficking only if the individual pursues their case through the Malaysian justice system. Otherwise, the case and victim will be recorded as a labor dispute only. Further, the Immigration Office will only record the number of aspiring Indonesian migrant workers who are prevented in crossing the border or have their passport applications rejected. There is no further data collection conducted to identify the risk of TIP these migrant worker candidates are exposed to. Aside from that, the Women's Empowerment and Child Protection Agency, as the leading institution in coordinating anti-TIP Programs, only records TIP data if the Police Office refers the victim for further assistance.

d. Inter-Region Coordination

Although all areas acknowledge that communication with source provinces is essential to address TIP in their area, none of the district governments have established coordination with the district government of source areas, such as East Nusa Tenggara or South Sulawesi. If there is a victim from these two regions, the respective government in the border region will seek support from regional organizations (organizations based on region of origin or ethnicity) to communicate with the victim's family in their home village. This has hindered the victim from assessing available and appropriate support from their government once they returned to their home villages. In addition, a lack of inter-region coordination was also found within law enforcement. One of the reasons why is that in some cases the investigator only targets the transporter, but not the main recruiter – this is due to a lack of budget for carrying out in-depth investigations, including investigating recruiters in labor source areas. However, when the research team explored the potential of inter-regional police cooperation, this channel was not been used effectively.

B RECOMMENDATIONS AND INPUTS

Based on the research findings above, the following areas can be improved in order to support an integrated response against TIP at the border region as follows:

1. Policy

- a. Establish regional action plans using a participatory method by involving the broader community in the drafting and consultation process;
- b. Review the existing victim assistance mechanisms in each agency, and mainstreaming the victim assistance and referral mechanism that has already been established by central government through the Ministerial Decree of Women's Empowerment and Child Protection No 22/2010 concerning Standard Operational Procedures on Services for the Victims and/or Witnesses of Trafficking in Persons Crimes;
- c. Develop a national policy and strategy to respond to labor migration issues in the Indonesia-Malaysia corridor, in the absence of a MoU between the two countries – especially for informal employment sectors, such as domestic work;
- d. Provision of financial support from Central and Regional governments to support the operation of the ATTF, especially on Victim support;
- e. Mainstreaming TIP issues to other institutions responsible for border management and transportation, for instance: the National Board for Border Management, Marine Police, Coast Guard, Navy, Army, and the Sea Transportation Directorate-General of the Ministry of Transport;
- f. Design specific prevention programs for border areas, especially considering the geographical and cultural relations between the two countries.

2. Human Resources

- a. Enhancing understanding and awareness of TIP and its impact, especially for law enforcement officials, regional governments, district and village government at the border areas as well as labor source areas. Also introduce other types of trafficking, especially domestic trafficking issues;
- b. Improve the capacity of law enforcement and frontline officers in prosecuting TIP crimes through integrated training and mentoring programs;
- c. Strengthening the knowledge and capacity of civil society organizations, faith-based organizations, the youth community and community leaders on TIP prevention programs, as well as victim assistance;
- d. Develop monitoring tools to evaluate the performance of law enforcement officers based on court decision results;
- e. Strengthening comprehensive supervision in border areas, not only focusing on goods smuggling, but also people smuggling and TIP.

3. Infrastructure

- a. Strengthening border management systems at border areas, considering many border crossings are not yet guarded, or are guarded with minimum supervision.
- b. Establish a data collection and data sharing method that can be accessed by related agencies responsible for border management, as well as TIP and people smuggling issues.
- c. Positioning border areas as specific regions that need more support and monitoring from the national government, particularly those areas that are well known as source and transit areas for labor migration.
- d. Facilitate joint inspection programs at the border region, specifically to prevent smuggling and TIP, as well as develop clear guidelines on institutional roles and responsibilities in tackling TIP at the border, as well as an agreed referral system.

4. Research and Analysis

- a. Conduct a policy review on migration management related to the prevention of trafficking and people smuggling on the Indonesia-Malaysia migration corridor.
- b. Map the available services for victims of trafficking, and develop a referral mechanism policy within Indonesian Consulate-General Offices, especially Consulates that host migrant workers such as Malaysia, Brunei Darussalam, and Singapore.

Based on these general recommendations, the research also provides specific recommendations for each border areas, as outlined below:

SANGGAU

1. Establish the Anti-Trafficking Task Force along with the district plan of action to secure budget commitment from the local parliament for implementation of ATTF programs;
2. It is necessary to establish technical regulations regarding the duties and responsibilities of each agency in the LTSA, in order for the LTSA in Sanggau to run effectively;
3. Develop a clear mechanism on victim assistance and referral, including on return and reintegration programs. Enhance cooperation with the central government and other entities to support victim assistance, especially for legal support;
4. Improve socialization on TIP and irregular migration issues to the wider community, and ensure community participation in the activities, including civil society organizations and faith-based organizations;
5. Enhance the capacity of community leader, frontline officer and law enforcement agency in victim identification training programs;

6. Reviewing data collection instruments and strengthening capacity and resources for data collection, including further exercises on collecting the data of returned Indonesian migrant workers.

SAMBAS

1. Activate the ATTF as mandated by local regulations, and develop an action plan on prevention and assistance of TIP crimes in Sambas;
2. Disseminate TIP information to the community, especially heads of villages;
3. Inform the community of private recruitment agencies in Sambas, with special attention paid to publicizing a list of individual agents or recruitment agencies that have been blacklisted by the local government;
4. Encourage each law enforcement agency and government agency to allocate prevention program funding within their annual budget. For example, legal education is no longer budgeted in the District Court Offices since 2016, so legal counseling is only carried out if there is a request initiated by the regional government;
5. Establish comprehensive data collection on the migration process, particularly on the number of residents leaving their home villages. Most Sambas residents worked in Malaysia. However, there is no clear and adequate data collection on Sambas residents who migrated outside of Sambas;
6. Promote the importance of basic education for children, in order to reduce child marriages;
7. Provide capacity building programs for related institutions and sectors;
8. Provide assistance and support to civil society organizations and improve cooperation with community organizations and community leaders;
9. Establish vocational training centers for the domestic work sector to improve the skills and competency of domestic workers from Sambas.

KAPUAS HULU

1. Establish a district policy to regulate the prevention and handling of TIP and an Anti-Trafficking Task Force to implement this policy;
2. Develop district action plans to eliminate TIP in a participatory manner, involving regional governments and citizens who are in the border area;
3. Enhance the knowledge and capacity of law enforcement, government officials, and community leaders in preventing and handling TIP;
4. Enhance the role of DINSOSP3AP2KB to lead anti-TIP programs and support DINSOSP3AP2KB with sufficient financial resources;

5. Improve border management in Kapuas Hulu;
6. Improve the monitoring and labor inspection of palm plantation operations in Kapuas Hulu, not only focusing on environmental issues but also specifically inspecting labor issues;
7. Mainstreaming and socialize the importance of child education to reduce the amount of child marriages and child labor;
8. Improve monitoring of 'leisure businesses', especially those located outside of the city, and conduct regular inspections to prevent sexual exploitation cases.

NUNUKAN

1. Establish an Anti-Trafficking Task Force, along with a plan of action and sufficient financial support;
2. Build a coordinated inter-agency data collection system covering TIP in Nunukan;
3. Improve the assessment system for returned migrant workers from Malaysia who are assisted by BP3TKI Nunukan, prior to repatriation to their origin area;
4. Enhance the capacity of law enforcement and government officials in handling TIP cases, especially cross-border trafficking cases;
5. Strengthen border supervision in sea and land border areas- this includes the monitoring of the border authority's performance;
6. Establish joint cooperation and referral mechanisms between agencies who have the authority and responsibility to protect the sea and land border, as well as those who have the mandate to tackle TIP issues;
7. Strengthen leadership capacity at the local level in program planning and development;
8. Support community initiatives, especially in the provision of schools for the children of migrant workers at the border;
9. Improve awareness and capacity of faith-based organizations and the community on TIP and irregular migration issues;
10. Strengthen coordination and collaboration between provinces that are source areas of migrant workers who transit through Nunukan.

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