



# **GUIDELINE ON TRAFFICKING IN PERSONS HANDLING**

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2021

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## PRODUCTION

The International Organization for Migration (IOM) Indonesia is committed to implementing the principles of safe, orderly, and humane migration, which benefits migrants and the community. As an intergovernmental institution, IOM and the Government of Indonesia, through the Attorney General's Office of the Republic of Indonesia, produced a publication entitled "Guideline for Handling Trafficking in Person." This publication has also been validated by member agencies of the Task Force for the Prevention and Handling of Trafficking in Person, including the Ministry of Women's Empowerment and Child Protection, the Witness and Victim Protection Agency, and the Directorate General of Immigration. This publication was developed as part of the programme "Building Effective Responses Against Trafficking and Smuggling in Indonesia," supported by the Bureau of Law Enforcement and International Anti-Narcotics (INL) of the United States Government.

The contents of this publication have been consulted with various government and non-government agencies. The opinions expressed in this book are those of the authors and do not necessarily reflect the views of the United States Government.

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# **GUIDELINE ON TRAFFICKING IN PERSONS HANDLING**

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2021

## FOREWORD

### CHIEF OF MISSION

### INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM)

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Trafficking in Persons (TIP) is a serious crime with an ever-growing modus operandi to attract more victims. In 2020, the International Organization for Migration (IOM) recorded a spike of TIP cases of around 62.5 percent compared to the previous year, particularly since new methods of victims entrapment has evolved to adapt to pandemic conditions. These cases occur both domestically as well as cross-border. In Indonesia, prevention and eradication measures to combat TIP are part of the collective efforts of many parties, including government entities, civil society organizations, and international organizations. IOM Indonesia has been part of the government effort to preventing and handling TIP consistently since 2005. Under the 3P + Partnership strategy, namely Prevention, Prosecution, Protection, and Partnership, IOM works hand-in-hand with government agencies, non-governmental organizations, academic institutions, and society to combat the scourge of TIP in an efficient and effective manner.

Through our program “Building Effective Responses Against Trafficking and Smuggling in Indonesia,” funded by the Bureau of International Narcotics and Law Enforcement Affairs (INL), United States Department of State, IOM has contributed to the Government of Indonesia’s integrated efforts to investigate perpetrators and networks involved in TIP and migrant smuggling, with a special focus in the border areas of Indonesia where migrant flows are most complex.

Our collective efforts to combat TIP are becoming more challenging with other criminal acts such as various modes of recruitment of Indonesian migrant workers, money laundering, collusion and corruption, and the linkage of trade networks with transnational organized crime. In recognizing and responding to emerging developments and trends in TIP cases, IOM collaborates with the Attorney General’s Office, the Republic of Indonesia, to pioneered the revision of the “Guidelines in Handling Trafficking in Persons.” The revised guidelines aim to better equip law enforcement officers with knowledge of the latest developments in trafficking trends, including the emerging modus operandi, and practical guidance on the latest procedures in handling TIP cases from the investigation to prosecution and court proceedings. In this regard, the revised guidelines will include substantial updates to relevant laws and regulations, such as the Law on the Protection of Indonesian Migrant Workers, Immigration Law, the Law on Witness and Victims Protection, and the Health Law. It will also include recent findings on the TIP situation both at a national and international level.

The development of this revised guideline was supported by a Working Group of key stakeholders, including members from the Attorney General’s Office, the Witness and Victims Protection Agency, the Ministry of Women Empowerment and Child Protection, and the Directorate General of Immigration. I would like to congratulate everyone for their commitment, hard work, and contributions to this process, particularly the Attorney General’s Office, Republic of Indonesia, for the longstanding partnership that has seen us through this latest, meaningful activity. All the ministries and agencies involved here represent the vanguard of law enforcement in Indonesia and are well-positioned to put these guidelines to best use in more effectively combatting TIP crimes in Indonesia.

This significant achievement would not be possible without the support of the Bureau of International Narcotics and Law Enforcement Affairs, U.S. Department of State. I am pleased to extend our sincere appreciation for this partnership. We believe that together we have generated guidelines that will prove an effective tool for anyone involved in the fight against trafficking in persons and migrant smuggling in Indonesia.

Jakarta, 29 November 2021  
Chief of Mission IOM in Indonesia



**Louis Hoffmann**

## FOREWORD

### ATTORNEY GENERAL REPUBLIC INDONESIA

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Assalamu'alaikum warohmatullahi wabarokatuh, Salam Sejahtera bagi kita sekalian, Om Swastiastu, Namu Budaya, Salam Kebajikan.

Dengan memanjatkan untaian puji dan syukur ke hadirat Tuhan Yang Maha Esa, Allah SWT, saya menyambut baik atas penerbitan Buku "Panduan Penanganan Tindak Pidana Perdagangan Orang" yang diinisiasi oleh Direktorat Tindak Pidana Terorisme dan Lintas Negara pada Jaksa Agung Muda Tindak Pidana Umum dan International Organization for Migration (IOM). Buku ini memberikan informasi dan pengetahuan tentang penanganan Tindak Pidana Perdagangan Orang secara komprehensif dan dapat dijadikan panduan bagi Jaksa dalam menangani perkara Tindak Pidana Perdagangan Orang.

Perkembangan modus Tindak Pidana Perdagangan Orang yang semakin kompleks mulai dari eksploitasi tenaga kerja, prostitusi online, bahkan penjualan organ tubuh manusia mengharuskan Jaksa sebagai pemegang dominus litis untuk terus meningkatkan kualitas dan kemampuan dalam menangani Tindak Pidana Perdagangan Orang. Kerjasama dan koordinasi dengan berbagai lembaga baik nasional maupun internasional diperlukan untuk keberhasilan penanganan perkara dan efektifitas penegakan hukum.

Untuk itu, saya memberikan apresiasi dan penghargaan kepada International Organization for Migration (IOM) yang telah memberikan perhatian terhadap penanganan penuntutan Tindak Pidana Perdagangan Orang yang selama ini kita lakukan, termasuk dalam penyusunan buku "Panduan Penanganan Tindak Pidana Perdagangan Orang" ini. Saya juga berharap dengan dicetaknya buku panduan ini dapat bermanfaat dalam upaya meningkatkan pengetahuan dan pemahaman atas Tindak Pidana Perdagangan Orang, guna mendukung profesionalitas, kompetensi, dan kapasitas Jaksa dalam melaksanakan penegakan hukum sebagai bentuk pengabdian terhadap masyarakat, bangsa, dan negara.

Wassalamu'alaikum Warohmatullahi Wabarokatuh. Salam Sejahtera bagi kita sekalian, Om Shanti, Shanti, Shanti Om.

Jakarta, 29 November 2021

A handwritten signature in black ink, appearing to be 'Burhanuddin', written in a stylized, cursive manner.

Jaksa Agung Republik Indonesia,  
**Burhanuddin**



## FOREWORD

### JUNIOR ATTORNEY GENERAL FOR GENERAL CRIMES REPUBLIC INDONESIA



Assalamu'alaikum warohmatullahi wabarokatuh,

Greetings for us all,  
Om Swastiastu, Namo Budaya, and Greetings of Virtue,

I am delighted to welcome the publication of the "Guideline for Handling Trafficking in Persons," initiated by the Directorate of Terrorism and Transnational Crimes and the International Organization for Migration (IOM). This book serves as a reference for handling trafficking in persons, which modus operandi is getting increasingly diverse.

Trafficking in persons is a serious violation of human dignity. Its practices, especially those involving women and children, are carried out extensively by organized and unorganized crime networks. This network of criminals has a wide range of operations, not only between domestic regions but also abroad. Consequently, the practice of trafficking in persons has become a serious threat to society, the nation, the state, and the norms of life based on respect for human rights. In this manner, efforts to prevent and eradicate trafficking in persons and the protection and rehabilitation of victims need to be implemented at national, regional, and international levels. The handling of victims of the trafficking in persons is as important as the handling of the crime itself. Currently, trafficking in persons tends to be performed across national borders in an organized manner as a form of transnational organized crime for financial gain. Unfortunately, the increasingly complex world of crime, with its transnational nature, is not always in line with the effectiveness of law enforcement and victim protection efforts.

The Guidelines for Handling Trafficking in Persons review and analyze each element of the criminal act of TIP. I believe this book will be very useful for prosecutors in carrying out their main duties.

Hopefully, this book can provide enlightenment and benefits for prosecutors who serve at the Directorate of Terrorism and Transnational Crimes of the Junior Attorney General for General Crimes at the Attorney General's Office and all prosecutors in Indonesia to realize a more progressive Indonesia.

Wassalamu'alaikum warohmatullahi wabarokatuh.  
Peace be upon us all, Om Shanti, Shanti, Shanti Om.

Jakarta, 29 Novemberi 2021  
Junior Attorney General for General Crime,

**Fadil Zumhana**

## FOREWORD

### RESIDENT LEGAL ADVISOR, OFFICE OF PROSECUTORIAL DEVELOPMENT, ASSISTANCE AND TRAINING (OPDAT)

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On behalf of the United States Department of Justice, Overseas Prosecutorial Development Assistance and Training (OPDAT), I would like to congratulate the International Organization of Migration (IOM) and the Terrorism and Transnational Crime Directorate of Indonesia's Attorney General's Office, for the creation of this manual on Trafficking in Persons crimes.

Trafficking in persons cases are serious crimes which transcend boundaries and result in the exploitation of vulnerable men, women, and children. The unique nature of these crimes makes them challenging to investigate and prosecute. This manual will provide helpful guidance to ensure the successful handling of these horrific crimes.

Partnerships such as the one between IOM and the Terrorism and Transnational Crime Directorate are important in the fight against human trafficking. Through this partnership both organizations are ensuring that traffickers are held accountable and victims freed from the shackles of modern slavery.

Jakarta, 29 November 2021  
Resident Legal Advisor  
OPDAT

**Bruce Miyake**



## PROLOGUE

### DIRECTOR OF TERRORISM AND TRANSNATIONAL CRIME REPUBLIC INDONESIA

---



Assalamu'alaikum warohmatullahi wabarokatuh,

Greetings for us all,  
Om Swastiastu, Namo Budaya, and Greetings of Virtue,

First and foremost, prayers are incessantly extended to Allah SWT for His mercy and grace that allow the completion of this Guideline for Handling Trafficking in Persons (TIP). The guideline has been successfully uploaded to the website of [www.jampidum.kejagung.go.id](http://www.jampidum.kejagung.go.id) to be accessed by prosecutors throughout Indonesia and the other Law Enforcement Officers (LEO) and members of the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons, both at the national and provincial/district/city levels throughout Indonesia.

Trafficking in Persons has always been one of the top three crimes, apart from drug trafficking and the illegal arms trade, which provides the perpetrators with substantial financial benefits. The Report on the Implementation of the Prevention and Handling of Trafficking in Persons (TIP) of 2015-2019, published by the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons (TIP) at the national level, noted that 2,648 people had become victims of TIP, of which 2047 of them were women and 272 were girls.

The most common modus operandi of TIP as reported are: 1. Prostitution (Commercial Sex Workers); 2. The exploitation of Indonesian Workers; 3. The exploitation of Domestic Workers; 4. Child Trafficking; and 5. Organ Trafficking. While the number of TIP victims is growing, in reality, law enforcement efforts or persecution do not go hand in hand. During 2015-2019, only 554 case reports and 757 suspects were recorded. From these findings, only 413 cases were tried and prosecuted by the Public Prosecutor, while 141 reports or as many as 25.45 percent could not be tried for various reasons, resulting in victims not getting justice.

In 2020, The International Organization for Migration (IOM) Research Report concluded that the challenge in combating TIP in border areas is related to the capacity gaps of the Frontline Officers and Law Enforcement. The report emphasizes that the gaps in officer's knowledge and understanding of this issue have challenged them to determine the TIP cases at the government, policy makers, and law enforcement levels in 4 regions (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, IOM, 2020, pp. 115-120).

Although the study was conducted in a small scale of border areas, the result reflects the capacity of Frontline Officers and Law Enforcement Officers at the national level.

This guideline was developed based on the State Policy on the Prevention and Eradication of the Trafficking in Persons, which equalizes the protection of the victim's rights (victim protections) and law enforcement (due process of law), and how the law enforcement process is oriented towards the fulfillment of victim's right. It also reflects

the vision of the Junior Attorney General for General Crimes of the General Attorney's Office of the Republic of Indonesia in 2020-2024, which embodies the "Junior Attorney General for General Crimes that is **RELIABLE. PROFESSIONAL, INNOVATIVE, AND WITH INTEGRITY.**" In addition, this guideline is part of the effort to achieve the mission to "Increasing the Quality of Human Resources of the Junior Attorney General's Apparatus for General Crimes and Increasing Optimum Performance of the Junior Attorney General's Apparatus for General Crimes in Handling General Crime Cases, especially Trafficking in Persons.

It is important to continue to make improvements to policies, laws, and regulations related to the TIP since the modus operandi of this crime and many others are shaped by developments in science and technology. This Guideline contains eight chapters: Understanding the concept of TIP; Victims and Perpetrators in TIP; Crimes related to TIP; Doctrines of Criminal Law; Prosecution; Restitution Application; Cooperation in handling of TIP; and Case Studies.

On this excellent occasion, allow me to express our gratitude and appreciation to Gita Agnestasia as the IOM National Program Officer and her team, Justitia Avila Veda as the Executive Director (Lawyer Collective for Gender Justice), and the Drafting Team from the Directorate of Terrorism and Transnational Crime that consists of Anita Dewayani, Teguh Suhendro, Agus Tri Hartono, Jaya Siahaan and Juwita Kayana, for their support, participation, and cooperation in the development of this book.

We hope that this guideline can bridge the knowledge and understanding gap in determining TIP among law enforcement officials and serve as a guide for prosecutors and other law enforcement officers (LEO) throughout Indonesia and members of the Task Force for the Prevention and Handling of Trafficking in Persons at the national and provincial levels. /district/city. Hopefully, this guideline can provide a reference to related parties in handling TIP.

Thank you.

Wassalamu'alaikum warrohmatullahi wabarokatuh.

Peace be upon us all, Om Shanti, Shanti, Shanti Om.

Jakarta, 29 November 2021  
Director of Terrorism and Transnational Crimes



**Idianto, S.H., M.H.**  
Jaksa Utama Madya NIP. 19660501 198703 1 003

## ACKNOWLEDGEMENT

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This Guideline for Handling Trafficking in Persons is a revised edition of the guideline previously published in 2017. This guideline was drafted by a working group consisting of law enforcement officers, observers of trafficking in persons (TIP), a team of legal experts and academics, and a team of writers from IOM.

Accordingly, the IOM would like to express its appreciation and gratitude to all members of the working group involved in the writing of this guideline, both from law enforcement agencies and government agencies, including the Attorney General of the Republic of Indonesia, Ministry of Women's Empowerment and Child Protection, Witness and Victim Protection Agency, and Directorate General of Immigration.

IOM's special thanks also go to Mr. Idianto, SH, MH, as the Director of Terrorism and Transnational Crime, the Core Team for the Preparation of the Guideline from the Indonesian Attorney General's Office: Mrs. Anita Dewayani, Mr. Teguh Suhendro, Mrs. Juwita Kayana, Mr. Agus Tri Hartono, and Mr. Jaya Siahaan, and the validators from various institutions, especially the Deputy Chair of the Witness and Victim Protection Agency (Lembaga Perlindungan Saksi dan Korban, LPSK), Dr. iur. Anthony PS. Wibowo, SH, MH, and representatives from the Indonesian Ministry of Women Empowerment and Child Protection (MoWECP) and the Directorate General of Immigration.

Gratitude is also extended to the legal expert who has written this manual, Justitia Avila Veda. We also thank Among Pundhi Resi and Gita Agnestasia, Head of the Counter-Trafficking and Labor Migration Unit, who have provided support and guidance to the writing team during the development of this Guideline. We also thank the writing and editing team from IOM Indonesia, including Abie Sancaya, Mabella Azalia, Robiatul Adhawiyah, and Lidwina Putri.

Finally, gratitude is also extended to the Head and all members of the Task Force for Handling Terrorism and Transnational Crimes, the Attorney General's Office of the Republic of Indonesia, representatives of the Ministry of Law and Human Rights. Representatives of the Ministry of Women Empowerment and Child Protection, the Witness and Victim Protection Agency, and the Directorate General of Immigration have provided meaningful inputs in preparing this revised guideline for handling Trafficking in Persons.

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## LIST OF ABBREVIATIONS

ABBREVIATIONS	STAND FOR
ABK	<i>Anak Buah Kapal</i> (Vessel Crew)
ACTIP	ASEAN Convention on Trafficking in Persons especially Women and Children
ASEAN	Association of Southeast Asian Nations
BP2MI	<i>Badan Pelindungan Pekerja Migran Indonesia</i> (Indonesian Migrant Worker Protection Agency)
ESI	Electronically Stored Information
HR	Human Rights
HSU	Heads of Specialist Trafficking Units
ILO	International Labour Organization
IMEI	International Mobile Equipment Identity
IOM	International Organization for Migration
IET	Information and Electronic Transaction
IUU Fishing	Illegal, Unreported, and Unregulated Fishing
JAMPIDUM	<i>Jaksa Agung Muda Tindak Pidana Umum</i> (Junior Attorney General for General Crimes)
JARI	<i>Jaksa Agung RI</i> (Attorney General of the Republic of Indonesia)
KAPOLRI	<i>Kepala Kepolisian RI</i> (Chief of Indonesian National Police)
KBBI	<i>Kamus Besar Bahasa Indonesia</i> (Official Dictionary of Indonesian)
KBRI	<i>Kedutaan Besar Republik Indonesia</i> (Embassy of the Republic of Indonesia)
KJRI	<i>Konsulat Jenderal Republik Indonesia</i> (Consulate General of the Republic of Indonesia)
KPAI	<i>Komisi Perlindungan Anak Indonesia</i> (Indonesian Commission for Child Protection)
KUHAP	<i>Kitab Undang-Undang Hukum Acara Pidana</i> (Criminal Procedural Code)
KUHP	<i>Kitab Undang-Undang Hukum Pidana</i> (Criminal Code)
LAPAS	<i>Lembaga Pemasyarakatan</i> (Penitentiary)
LPAS	<i>Lembaga Penempatan Anak Sementara</i> (Temporary Child Placement Institute)
LPKA	<i>Lembaga Pembinaan Khusus Anak</i> (Juvenile Detention Center)
LPKS	<i>Lembaga Penyelenggaraan Kesejahteraan Sosial</i> (Social Welfare Implementing Institution)
LPSK	<i>Lembaga Perlindungan Saksi dan Korban</i> (Witness and Victim Protection Agency)

<b>LPTSA-P2TKI</b>	<i>Lembaga Pelayanan Satu Atap-Penempatan dan Perlindungan Tenaga Kerja Indonesia</i> (One-Roof Agency for Indonesian Worker Placement and Protection)
<b>NGO</b>	Non-governmental organization
<b>HQ</b>	Headquarter
<b>MARI</b>	<i>Mahkamah Agung RI</i> (Indonesian Supreme Court)
<b>P2TP2A</b>	<i>Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak</i> (Integrated Center for Women and Child Empowerment)
<b>PA</b>	Perlindungan Anak (Child Protection)
<b>UN</b>	United Nations
<b>PEKATING</b>	<i>Perkara Penting</i> (Important Cases)
<b>IMW</b>	Indonesian Migrant Workers
<b>INP</b>	Indonesian National Police
<b>PPMI</b>	<i>Perlindungan Pekerja Migran Indonesia</i> (Indonesian Migrant Worker Protection)
<b>PRT</b>	<i>Pekerja Rumah Tangga</i> (Domestic helpers)
<b>PTPK</b>	<i>Pemberantasan Tindak Pidana Korupsi</i> (Corruption Eradication)
<b>PTPPO</b>	<i>Pemberantasan Tindak Pidana Perdagangan Orang</i> (Eradication of Trafficking in Persons)
<b>SEMA</b>	<i>Surat Edaran Mahkamah Agung</i> (Supreme Court Circular)
<b>SIP2MI</b>	<i>Surat Izin Perekrutan Pekerja Migran Indonesia</i> (License for Indonesian Migrant Recruitment)
<b>SIP3MI</b>	<i>Surat Izin Perusahaan Penempatan Pekerja Migran Indonesia</i> (License for Indonesian Migrant Worker Deployment Company)
<b>SLO</b>	Senior Liaison Officer
<b>SPPA</b>	<i>Sistem Peradilan Pidana Anak</i> (Juvenile Justice System)
<b>TKP</b>	<i>Tempat Kejadian Perkara</i> (Crime Scene)
<b>TPK</b>	<i>Tindak Pidana Korupsi</i> (Corruption Crime)
<b>TIP</b>	Trafficking in Persons
<b>UU</b>	<i>Undang – Undang</i> (Law)
<b>VeR</b>	Visum et Repertum
<b>WNA</b>	<i>Warga Negara Asing</i> (Foreign Citizen)
<b>WNI</b>	<i>Warga Negara Indonesia</i> (Indonesian Citizen)

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# INTRODUCTION

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## 1. Background

This Guideline for Handling Trafficking in Persons is an extension of the Guideline previously published by the International Organization for Migration (IOM) Indonesia together with the Indonesian National Police, the Attorney General's Office of the Republic of Indonesia, and the Supreme Court of the Republic of Indonesia. The guidelines answer questions that are often encountered by law enforcement officers, especially public prosecutors, in the process of prosecuting Trafficking in Person (TIP) crimes, including those related to the specifics of formal and material law in Law Number 21 of 2007 on Eradication of Trafficking in Persons (Law 21/2007), handling of child victims of TIP, types of TIP perpetrators, filing for restitution, and many others. This guideline is expected to become a simple but solid and complete guideline for public prosecutors in dealing with TIP cases.

Over time, TIP cases are growing from the modus operandi, the role of the perpetrators, and the type of exploitation. This trend needs to be responded to with a breakthrough in law application and coordination in the field. In the last five years, law enforcement officers have proven that victims of trafficking are not only dominated by women, as there are also emerging TIP cases for vessel crews (Anak Buah Kapal, ABK). The TIP network also gets more complicated and involves cross-border actors, state administrators, and corporations. Not infrequently, TIP is also followed by other related criminal acts such as immigration crimes, fisheries crimes, money laundering crimes, and other crimes. To unravel every criminal act and target all perpetrators without exception, a thorough understanding of TIP is needed.

In addition, to respond to the developments of trends of TIP detailed above, this Guideline is also formulated to accommodate new legal instruments that are closely related to TIP, such as Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers and Prosecutor Guideline Number 1 of 2021 on Access to Justice for Women and Children in Criminal Case Handling. The application of such legal instruments must be carried out in a synergistic manner with previously issued legal instruments. Therefore, this Guide is essential to provide a complete picture of all existing legal instruments in the current handling of TIP. This Guideline for Handling Trafficking in Persons would not have been possible without the support of the Attorney General's Office of the Republic of Indonesia, practitioners, and academics, as well as supports from all relevant law enforcement agencies. In addition to being intended for law enforcement officers, this Guideline is also expected to be a practical guide for government officers, NGOs, social workers/companions, academics, community leaders, and other parties in implementing efforts to eradicate TIP.

## 2. Purpose and Objectives

This Guideline is formulated to be a more complete and up-to-date reference for law enforcement officers, especially public prosecutors handling TIP cases. This Guideline can also be used as reading material for parties who want to explore the handling of TIP and as supporting reading for training on the issue of TIP.

### 3. Scope

The scope of this Guideline includes:

#### Chapter 1: Understanding Concepts in TIP

This chapter provides an in-depth discussion on TIP according to the Palermo Protocol and Law 21/2007, including an explanation of the elements of TIP in Law 21/2007; differences in offenses in Law 21/2007; modus operandi and forms of exploitation of TIP (sexual exploitation, mail-order brides, labour exploitation in the field of fisheries, exploitation of children, exploitation of Indonesian migrant workers, exploitation in the form of organ transplants); and indicators of the occurrence of TIP as well as specificity in Law 21/2007 both in terms of criminal law and criminal procedural law. Furthermore, the concept of consent and TIP, which involves children, is also discussed.

#### Chapter 2: Victims and Perpetrators in TIP

This chapter discusses the types of victims of trafficking based on the form of TIP, including migrant workers, child labour, prostitution crimes, child trafficking through adoption, slavery under the guise of marriage and mail-order brides, organ implantation, and victims by gender and age. The types of TIP perpetrators are also discussed, including lay people, state administrators, corporations, organized groups, and perpetrators by age, starting from children to adults. For juvenile offenders, restorative justice approaches and diversion mechanisms are also discussed.

#### Chapter 3: Crimes related to TIP

This chapter discusses various criminal acts that can occur simultaneously or following the TIP, including labour exploitation, crimes against children, immigration crimes, money laundering crimes, corruption crimes, IET crimes, shipping crimes, health crimes, and other crimes in the Criminal Code.

#### Chapter 4: Doctrines of Criminal Law

This chapter discusses various doctrines and principles of criminal law that is very much needed in the prosecution of TIP, including the principle of enforceability of criminal law (territorial principle, universality principle, active nationality principle, passive nationality principle), the principle of enforceability of laws and regulations (the principle of *lex specialist derogat legi generali*, the principle of *lex superior derogat legi inferior*, the principle of *lex posterior derogat legi priori*), doctrine of inclusion (doing, co-performing, ordering, persuading, assisting, consensus), doctrine of concurrent criminal acts and punishment systems, theory of criminal responsibility, and the principle of double criminality.

#### Chapter 5: Prosecution

This chapter discusses the elements of TIP articles, definitions, and the concept of evidence in every legal process, starting from the investigation stage to legal remedies. In the concept of evidence, the types of evidence and their evidentiary value is also discussed. The principles or principles of evidence, theories of evidence, and the preparation of the indictment and evidence matrix will also be discussed. A matrix is



presented for various types of indictments taken from actual cases that have been decided and have legal force. In addition, this chapter will also cover the administration of prosecution, such as instructions for investigation and preparation of indictments.

#### Chapter 6: Restitution Application

This chapter discusses the theoretical framework, procedures for submitting restitution, the role of law enforcement officers in various stages of the legal process, authority to block assets, authority to provide instructions for tracking assets, auctions by courts and consignments, types of decisions on claims for restitution, and examples of various decisions that grant and reject the request for restitution.

#### Chapter 7: Cooperation in Handling TIP

This chapter discusses the coordination of handling TIP cases, which includes coordination of anti-trafficking task forces and coordination of law enforcement officers as well as all ministries and agencies for handling TIP in border areas, as well as mutual assistance between countries, which includes various forms of cooperation and procedures that must be followed if the victim of trafficking lives abroad and if the victim lives in Indonesia.

#### Chapter 8: Case Study

This chapter covers various types of case studies related to TIP, including commercial sexual exploitation of mail-ordered brides, labor exploitation in the fisheries sector, exploitation of children, payment of restitution, and prosecution of corporations. In this chapter, decisions that have permanent legal force are analyzed in terms of legal considerations and how the resulting decisions are in line with the principles of handling TIP cases and the applicable laws and regulations.

# CHAPTER I

## UNDERSTANDING CONCEPTS IN TIP

### 1. TIP according to Law Number 21 of 2007 (Law 21/2007)

Provisions regarding TIP are regulated in Law Number 21 of 2007 on Eradication of Trafficking in Persons (Law 21/2007). After the issuance of Law 21/2007, Indonesia ratified the Palermo Protocol through Law Number 14 of 2009 on the Ratification of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children 2000. However, this chapter only discusses Law 21 /2007.

#### 1.1. Explanation of TIP Elements

Article 1 number 1 of Law 21/2007 defines trafficking in persons as:

*“...the act of recruiting, transporting, sheltering, sending, transferring or receiving a person by means of the threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or position of vulnerability, bondage of debt or giving payment or benefit despite obtaining consent from a person who has control over another person, whether carried out within a country or between countries, for the purpose of exploitation or causing people to be exploited.”*

By referring to this definition, there are 3 (three) components in TIP:

Component	Definition and Examples
Act	<p>Act is the action of how TIP is carried out.</p> <p>An example of an act is the recruitment, transportation, transfer, sheltering, or receiving of persons.</p> <ul style="list-style-type: none"> <li>Recruitment: Actions in the form of inviting, collecting, bringing, separating someone from their family (Article 1 number 9 of Law 21/2007).</li> <li>Delivery: The act of dispatching or anchoring a person from one place to another (Article 1 point 10 of Law 21/2007).</li> </ul> <p>If one of the examples is met, it can be considered that the process element has been fulfilled.</p>
Mean	<p>Includes ways to carry out processes to achieve goals.</p> <p>Examples of means are threats or coercion, violence, abduction, fraud, deception, abuse of power, or a position of vulnerability or the giving or receiving of payments or benefits to obtain the consent of a person having control over another person.</p> <ul style="list-style-type: none"> <li>Threats of violence are acts against the law in the form of words, writings, pictures, symbols, or body movements, either with or without using means that cause fear or restrict a person's essential freedom (Article 1 number 12).</li> </ul>

	<ul style="list-style-type: none"> <li>• Violence is an act against the law with or without the use of physical and psychological means that poses a danger to life, body or results in the deprivation of one's freedom (Article 1 point 11).</li> <li>• Debt entrapment is the act of placing people in the status or condition of pledging or being forced to pledge themselves or their families or persons for whom they are responsible or their personal services as a form of debt repayment (Article 1 point 15).</li> </ul>
Purpose	<p>Purpose are things to be achieved from a series of act and mean. In Law 21/2007, the context of the purpose include exploitation, which is defined as an act with or without the consent of the victim which includes but is not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, physical use, sexual, reproductive organs, or unlawfully moves or transplant of organs and/or body tissues or use a person's power or ability by another party to obtain material or immaterial benefits (Article 1 point 7).</p>

Table 1: Components of TIP

These three components are described in more detail in accordance with the articles of criminal acts regulated in Articles 2 to 12 of Law 21/2007. Some of these articles contain formal offenses and material offenses.

Formal offense	The offense is fulfilled as long as the elements of action in the formulation of the article are fulfilled
Material offense	The offense is fulfilled if the consequences required in the article occur

Table 2: Table on Differences between Formal and Material Offenses

The following table describes elements of Article 2 to Article 12 of Law 21/2007, along with the types of

offenses:

	Perpetrator	Act	Mean	Purpose	Type of offense
Article 2 sub-article (1)	Each person	Recruiting, transporting, sheltering, sending, transferring, or receiving a person	Threat violence, use of force, abduction, confinement, fraud, deception, abuse of power or a position of vulnerability, debt bondage, or giving payments or benefits despite obtaining the consent of the person holding control over others	For the purpose of exploiting the person	Formal offense
Article 2 sub-article (2)	Each person	Recruiting, transporting, sheltering, sending, transferring, or receiving a person	Threat violence, use of force, abduction, confinement, fraud, deception, abuse of power or a position of vulnerability, debt bondage, or giving payments or benefits despite obtaining the consent of the person holding control over others	Resulting in people being exploited	Material offense

Article 3	Each person	Entering people into the territory of Republic Indonesia	-	To be exploited in the territory of the Republic of Indonesia or exploited in other countries	Formal offense
Article 4	Each person	Bring Indonesian citizens outside the territory of the Republic of Indonesia	-	With the intention to exploit the person outside the territory of the Republic of Indonesia	Formal offense
Article 5	Each person	Adopting a child	Promise something or give something	With the intent to be exploited	Formal offense
Article 6	Each person	Sending children into or out of the country	In any way	Resulting in the child being exploited	Article 6
Article 7 sub-article (1)	Each person	Those who commit the crime in Article 2 sub-article (2), Article 3, Article 4, Article 5, and Article 6		To cause the victim to suffer serious injuries, severe mental disorders, other infectious diseases that endanger life, pregnancy, or impaired or loss of reproductive function	Material offense
Article 7 sub-article (2)	Each person	Those who commit the crime in Article 2 sub-article (2), Article 3, Article 4, Article 5, and Article 6		Causing the death of the victim	Material offense
Article 8 sub-article (1)	Every state administrator	Those who commit crimes in Article 2, Article 3, Article 4, Article 5, and Article 6			Formal and material offenses depend on the article
Article 9	Each person	Trying to mobilize other people	-	So that people commit TIP, and the crime does not happen	Formal offense

Article 10	Each person	Helping, trying to conduct TIP	-	-	Formal offense
Article 11	Each person	Planning or making a wicked deal	-	To commit TIP	Formal offense
Article 12	Each person	Using or exploiting Victim of Trafficking (VoT)	Doing intercourse or other obscene acts with Victim of Trafficking (VoT), employing Victim of Trafficking (VoT) to continue exploitation practices, taking advantage of TIP proceeds	-	Formal offense
Article 15 sub-article (1)	Corporation	Those who commit crimes in Article 2, Article 3, Article 4, Article 5, and Article 6			Formal and material offenses depend on the article
Article 16	Organized group	Those who commit crimes in Article 2, Article 3, Article 4, Article 5, and Article 6			Formal and material offenses depend on the article

Table 3: Table of Description of TIP Elements and Types of Offenses

Some indicators that can be used as a reference to identify the occurrence of TIP in terms of activities in the area of origin and the transit area are listed below:

	Daerah asal	Daerah transit
Recruitment	<ul style="list-style-type: none"> <li>• Deception in the form of job offers and promises of wealth</li> <li>• Sudden departure from the area of origin</li> <li>• The presence of injuries, body defects, or threats</li> <li>• Victims are missing for a long period of time</li> <li>• Promise to marry</li> </ul>	None

Advertisement	<ul style="list-style-type: none"> <li>• Offer to migrate, especially with the lure of free of charge or fees, can be paid when the victim is already working</li> <li>• Using social media to recruit prospective employees</li> <li>• Offer gender-specific and youth-only jobs</li> <li>• Recruiting through telemarketing or approaching victims directly</li> <li>• Giving a gift to a child or teenager for no apparent reason</li> <li>• Agents who offer work without an agreement and required to pay all fees before work</li> </ul>	None
Residence	<ul style="list-style-type: none"> <li>• Places of prostitution that accommodate women who have migrated</li> <li>• Approach to children or youth in orphanages, schools, and other places where children gather</li> <li>• People offer work in places where migrants congregate, such as at bus terminals</li> <li>• Existence of illegal employment agencies recruiting workers in foreign areas</li> </ul>	<ul style="list-style-type: none"> <li>• Group accommodation is paid for by one person. This can be a sign that none of the members in the group have access to money and financing</li> <li>• Being in an inn or residential area that is famous for its prostitution</li> </ul>
Transportation	<ul style="list-style-type: none"> <li>• Evidence that the victim's movements are monitored</li> <li>• Child victims who travel unaccompanied by family members or relatives</li> <li>• A group of children traveling with one adult</li> <li>• Use of circular transportation routes to avoid security checks</li> </ul>	<ul style="list-style-type: none"> <li>• A group of people in one group where there is one person who controls all documents</li> <li>• Groups traveling together but not sharing the same language</li> <li>• The route taken is associated with trafficking in persons</li> <li>• Children traveling unaccompanied by parents or relatives or by one adult</li> <li>• Purchase of near-departure tickets, especially airline tickets</li> <li>• Stop near the checkpoint in the border area to change means of transportation</li> <li>• One person is speaking on behalf of the group</li> </ul>



Communication	<ul style="list-style-type: none"> <li>Letters, telephones, emails, etc. are sent back to the sender's location, indicating the victim does not have freedom of movement or other rights at the destination</li> </ul>	<ul style="list-style-type: none"> <li>Frequent international calls to the destination</li> <li>The identity of the person being called is unknown; only the number</li> </ul>
Finance	<ul style="list-style-type: none"> <li>Money is paid to parents or guardians to take children as workers or the like</li> <li>Relatives or families of the victim try to pay a debt not long after the victim leaves her hometown</li> <li>The existence of remittances sent by the victim to relatives or family. Perpetrators can also send remittances to the victim's family to restrain the victim from escaping. Remittance controlled by a third person is a strong indication of TIP</li> </ul>	<ul style="list-style-type: none"> <li>Among all the people in the traveling group, only one person holds money</li> <li>For TIP that occurs across countries, it can be identified if there is only one person holding the currency of the destination country</li> <li>The money found is not commensurate with the victim's type of work</li> </ul>

Table 4: TIP Indicators in Origin and Transit Area

Some indicators that can be used as a reference to identify the occurrence of TIP can be identified from the stages of TIP:

Adult victim	Exploitation Type			
	Sexual Exploitation	Labor Exploitation	Domestic Slavery	Forbidden Activities
<ul style="list-style-type: none"> <li>Unable to negotiate working conditions</li> </ul>	<ul style="list-style-type: none"> <li>Age tends to be young</li> </ul>	<ul style="list-style-type: none"> <li>No job or ID documents</li> </ul>	<ul style="list-style-type: none"> <li>Living with family</li> </ul>	<ul style="list-style-type: none"> <li>Begging in public</li> </ul>
<ul style="list-style-type: none"> <li>Cannot quit from work</li> </ul>	<ul style="list-style-type: none"> <li>Signs that the victim is 'controlled' by the perpetrator</li> </ul>	<ul style="list-style-type: none"> <li>If the persons have ID or work documents, they are usually fake</li> </ul>	<ul style="list-style-type: none"> <li>Do not eat together with family</li> </ul>	<ul style="list-style-type: none"> <li>One adult becomes the companion for many children</li> </ul>
<ul style="list-style-type: none"> <li>Expressions of fear and anxiety</li> </ul>	<ul style="list-style-type: none"> <li>Always supervised when leaving or coming home from work, or to other places</li> </ul>	<ul style="list-style-type: none"> <li>No record of payroll</li> </ul>	<ul style="list-style-type: none"> <li>No personal space</li> </ul>	<ul style="list-style-type: none"> <li>Children live with adults who are not their parents</li> </ul>
<ul style="list-style-type: none"> <li>Restrictions on communication and social interaction</li> </ul>	<ul style="list-style-type: none"> <li>Sexually nuanced clothing</li> </ul>	<ul style="list-style-type: none"> <li>Very few or non-existent security equipment</li> </ul>	<ul style="list-style-type: none"> <li>Rarely or never leaves the house for social reasons</li> </ul>	<ul style="list-style-type: none"> <li>Vulnerable individuals traveling in groups or traveling with a number of adults</li> </ul>

<ul style="list-style-type: none"> <li>• Not familiar with the local language</li> </ul>	<ul style="list-style-type: none"> <li>• No identification (documents controlled by the perpetrator)</li> </ul>	<ul style="list-style-type: none"> <li>• No working contract</li> </ul>	<ul style="list-style-type: none"> <li>• Always accompanied by the employer</li> </ul>	<ul style="list-style-type: none"> <li>• Physical disability or signs of violence and abuse</li> </ul>
<ul style="list-style-type: none"> <li>• Distrust of government</li> </ul>	<ul style="list-style-type: none"> <li>• If the person has ID or work documents they are usually fake</li> </ul>	<ul style="list-style-type: none"> <li>• Tight security to prevent victims from escaping</li> </ul>	<ul style="list-style-type: none"> <li>• Do not have identification or travel documents (controlled by perpetrator or employer)</li> </ul>	<ul style="list-style-type: none"> <li>• Signs indicating victims are "controlled" by the perpetrator</li> </ul>
<ul style="list-style-type: none"> <li>• Very little or almost no salary</li> </ul>	<ul style="list-style-type: none"> <li>• Limited vocabulary in the local area</li> </ul>	<ul style="list-style-type: none"> <li>• Very long working hours</li> </ul>	<ul style="list-style-type: none"> <li>• If the person has ID or work documents, they are usually fake</li> </ul>	
<ul style="list-style-type: none"> <li>• Working very long hours</li> </ul>	<ul style="list-style-type: none"> <li>• Very long working hours</li> </ul>	<ul style="list-style-type: none"> <li>• Forced restriction of movement and accommodation</li> </ul>	<ul style="list-style-type: none"> <li>• Be a victim of humiliation, harassment, threats, or violence</li> </ul>	
<ul style="list-style-type: none"> <li>• Injuries caused by violence</li> </ul>	<ul style="list-style-type: none"> <li>• There is an obligation to fulfill specific income target</li> </ul>	<ul style="list-style-type: none"> <li>• Workers are dependent on employers for various aspects of life (transportation, accommodation, work)</li> </ul>		
<ul style="list-style-type: none"> <li>• Poor living conditions</li> </ul>	<ul style="list-style-type: none"> <li>• Earn very small wages when compared to the workload</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of basic training, certification, or work permits</li> </ul>		
<ul style="list-style-type: none"> <li>• Tend to be loyal to the perpetrator because of the fear of the perpetrator</li> </ul>	<ul style="list-style-type: none"> <li>• The brothel manager has sent part of the payment to a third party</li> </ul>			
<ul style="list-style-type: none"> <li>• Lack of trust in new people</li> </ul>	<ul style="list-style-type: none"> <li>• Mobile because of work</li> </ul>			
<ul style="list-style-type: none"> <li>• Forced marriage</li> </ul>				
<ul style="list-style-type: none"> <li>• Same person as recipient/contact person</li> </ul>				
<ul style="list-style-type: none"> <li>• Victims are not familiar with their surroundings</li> </ul>				

Table 5: TIP indicators with adult victims by stage

Child Victim	Exploitation Type			
	Sexual Exploitation	Labor Exploitation	Domestic Slavery	Forbidden Activities
<ul style="list-style-type: none"> <li>• Separate accommodation from other family members</li> </ul>	<ul style="list-style-type: none"> <li>• Age tends to be young</li> </ul>	<ul style="list-style-type: none"> <li>• No job or ID documents</li> </ul>	<ul style="list-style-type: none"> <li>• Living with family</li> </ul>	<ul style="list-style-type: none"> <li>• Begging in public</li> </ul>
<ul style="list-style-type: none"> <li>• Traveling unaccompanied by an adult</li> </ul>	<ul style="list-style-type: none"> <li>• Signs that the victim is 'controlled' by the perpetrator</li> </ul>	<ul style="list-style-type: none"> <li>• If the child has ID or work documents, they are usually fake</li> </ul>	<ul style="list-style-type: none"> <li>• Do not eat together with family</li> </ul>	<ul style="list-style-type: none"> <li>• One adult becomes the companion for many children</li> </ul>
<ul style="list-style-type: none"> <li>• Wearing child sex worker clothes/costumes for work</li> </ul>	<ul style="list-style-type: none"> <li>• Always supervised when leaving or coming home from work, or to other places</li> </ul>	<ul style="list-style-type: none"> <li>• No record of payroll</li> </ul>	<ul style="list-style-type: none"> <li>• No personal space</li> </ul>	<ul style="list-style-type: none"> <li>• Children live with adults who are not their parents</li> </ul>
<ul style="list-style-type: none"> <li>• Traveling with a group of people who do not affiliated with the victim</li> </ul>	<ul style="list-style-type: none"> <li>• Sexually stimulated clothing</li> </ul>	<ul style="list-style-type: none"> <li>• Very lacking or non-existent security equipment</li> </ul>	<ul style="list-style-type: none"> <li>• Rarely or never leaves the house for social reasons</li> </ul>	<ul style="list-style-type: none"> <li>• Vulnerable individuals traveling in groups or traveling with a number of adults</li> </ul>
<ul style="list-style-type: none"> <li>• No access to education</li> </ul>	<ul style="list-style-type: none"> <li>• No identification (documents controlled by the perpetrator)</li> </ul>	<ul style="list-style-type: none"> <li>• No work contract</li> </ul>	<ul style="list-style-type: none"> <li>• Always accompanied by the employer</li> </ul>	<ul style="list-style-type: none"> <li>• Physical disability or signs of violence and abuse</li> </ul>
<ul style="list-style-type: none"> <li>• No friends of the same age outside of work</li> </ul>	<ul style="list-style-type: none"> <li>• If the child has ID or work documents, they are usually fake</li> </ul>	<ul style="list-style-type: none"> <li>• Tight security to prevent victims from escaping</li> </ul>	<ul style="list-style-type: none"> <li>• Do not have identification or travel documents (controlled by perpetrator or employer)</li> </ul>	<ul style="list-style-type: none"> <li>• Signs that the victim is 'controlled' by the perpetrator</li> </ul>
<ul style="list-style-type: none"> <li>• Intimidated expressions or behaviour that is not appropriate for the child victim's age</li> </ul>	<ul style="list-style-type: none"> <li>• Limited vocabulary in the local language of the area</li> </ul>	<ul style="list-style-type: none"> <li>• Very long working hours</li> </ul>	<ul style="list-style-type: none"> <li>• If the child has ID or work documents, they are usually fake</li> </ul>	
<ul style="list-style-type: none"> <li>• Working very long hours</li> </ul>	<ul style="list-style-type: none"> <li>• Very long working hours</li> </ul>	<ul style="list-style-type: none"> <li>• Forced restriction of movement and accommodation</li> </ul>	<ul style="list-style-type: none"> <li>• Be a victim of humiliation, harassment, threats, or violence</li> </ul>	

<ul style="list-style-type: none"> <li>Children's toys, bedding and clothes in inappropriate locations such as brothels</li> </ul>	<ul style="list-style-type: none"> <li>There is an obligation to fulfill specific income target</li> </ul>	<ul style="list-style-type: none"> <li>Dependent employers for various aspects of life (transportation, accommodation, work)</li> </ul>		
<ul style="list-style-type: none"> <li>Poor living conditions</li> </ul>	<ul style="list-style-type: none"> <li>Earning very small amount of wages when compared to the workload</li> </ul>	<ul style="list-style-type: none"> <li>Lack of basic training, certification, or work permits</li> </ul>		
	<ul style="list-style-type: none"> <li>The brothel manager has sent part of the payment to a third party</li> </ul>			
	<ul style="list-style-type: none"> <li>Mobile for work</li> </ul>			

Table 6: Indicators of TIP with child victims by stage

In addition to the three categories of indicators above, it is necessary to pay attention to indicators of the method used to commit TIP, including:

- Violence, that is the threat or use of violence against the victim and/or the victim's family
- Coercion
- Psychological means, referring to the victim's relationship with other people, threats of rejection by a group or family, anger or expressions of dislike by a partner, blackmail
- Economic methods, namely forcing to pay very large amounts of money, large salary cuts, debt bondage
- Kidnapping
- Fraud, which includes 5 (five) elements: 1) false statement; 2) the perpetrator knows the error of the statement; 3) the purpose and intention of the perpetrator to deceive the victim; 4) the victim's trust in the perpetrator's statement; 5) result in the loss suffered by the victim
- Abuse of power or use of a vulnerable position, i.e., a situation where the victim has no other choice but to accept the situation he is in
- Payments to third parties who take care of the transfer of victims

## 1.2. TIP exploitation modus operandi and forms

TIP has various types of modus operandi and exploitation. There are at least 5 (five) types of TIP exploitation are seen most frequently as explained below.

### 1.2.1. Sexual Exploitation

Article 1 number 8 of Law 21/2007 defines sexual exploitation as a form of using sexual organs or other organs of the victim to gain profit including, but not limited to, all activities of prostitution and fornication. This sexual exploitation includes the production and distribution of pornographic content that includes the victim alone or with other people. Modes that can be found in sexual exploitation include:

- Physical and psychological coercion
- Change from brothel practice to private accommodation facilities
- The rising trend of female pimping
- Approach through social media

- Marriage
- Promise to work in tourism area
- Promise of a student exchange program

### 1.2.2. Force Marriage/Mail-Ordered Brides

One form of exploitation of TIP is force marriage/mail-order brides. Usually, young women from less fortunate families are offered to marry foreigners with the promise of an established life. The husband is asked to provide a fee of hundreds of millions of rupiah, most of which is taken by intermediaries. The victim and his family are given very little money. In the husband's country of origin, the victim experiences the sexual and labor exploitation. For this TIP series, the modus operandi that are often used include:

- Promise to live well
- Married and living with a Foreign Citizen
- Marriage can be done officially or informally in the husband's country of origin
- The intermediary approaches the family to support the victim's decision
- The victim's identity and immigration documents are in the possession of the husband
- If the victim wants to return to her area of origin, she is asked to pay compensation to the husband

### 1.2.3. Labour Exploitation in Fisheries

Exploitation of vessel crew members (ABK) is now widely found. ABK recruited to work on foreign ships with very poor working conditions and very little income. They also often experience persecution. The mode of labor exploitation in the fisheries sector includes:

- Do not require higher education certificates, only elementary and junior high school certificate
- Salary offered is very high
- No special skills required
- Recruitment and placement fees are deducted from the salary earned
- Huge amount of salary deduction
- Work accidents are not handled by the employer
- Experiencing physical and verbal violence during work

### 1.2.4. Child Exploitation

The most widespread exploitation of children is in the form of sending children as female migrant workers, sending children as domestic workers, sexual exploitation, slavery, force marriage/mail-order brides, child labor, organ trafficking, child adoption, and servitude. The modes used to exploit are:

- Recruiters build psychological closeness by inviting peers
- Recruiters approach victims using social media
- Recruiter approaches the victim's family members and persuades the family to allow the victim to work or marry
- Recruiter agreed on a sum of money with the victim's family but the payment is not made in full
- Victims get facilities that are quite luxurious which then become debts
- Victims are offered a lucrative scholarship or skills training program
- Victims are offered jobs with very high salaries and easy conditions

### 1.2.5. Indonesian Migrant Worker Exploitation

Exploitation of Indonesian Migrant Workers is one of the most common forms of TIP in Indonesia. The modes used in this exploitation include:

- Recruitment to work as Domestic Workers abroad with the promise of a large salary
- A clumsy medical test is performed and the victim is given fit money as a form of debt bondage
- No formal training at the Job Training Center or other training places verified by the Government
- Victims do not receive language training or orientation before working abroad
- If the victim wants to resign, the victim is required to pay a large amount of compensation

- Victims often work very long hours
- Victims experience torture/persecution
- The victim's salary is not paid by the employer

#### 1.2.6. Exploitation in the Form of Organ Transplant

There are not many cases of TIP in the form of organ transplants, perhaps because the operation is carried out very secretly. However, the modus operandi of organ transplantation can be:

- Personal approach by the perpetrator or through advertisement on social media
- Offer a fairly high amount of money even though the price is very inappropriate when compared to the value of the organ
- Invited to do medical tests with doctors who accept illegal practices
- Patient data in medical records tends to be kept confidential
- The perpetrator does not pay the victim the promised amount
- No post-operative health condition check

### 1.3. Specificities in Law 21/2007

The Junior Attorney General for General Crimes has issued a letter Number: B-185/EJP/03/2005 on the Pattern of Handling Trafficking in Persons Cases. This letter confirms that:

- The Palermo Protocol is used as a reference to identify TIP
- In order for an incident to be categorized as TIP, the incident must meet the criteria of act, mean, and purpose
- Consent is considered irrelevant if the elements of the mean have been met
- The need for coordination between the public prosecutor and investigators to maximize the investigation

Law 21/2007 also regulates several specificities that cause the prosecution of TIP cases to deviate from the concepts of criminal law and criminal procedural law found in general crimes. The following is a description of the specifics in Law 21/2007.

#### 1.3.1. Legal Aspects of Criminal Procedural Code

Several aspects of the criminal procedure law in Law 21/2007 that differ from the Criminal Procedure Code are as follows:

1. Additional evidence includes:
  - a. Information that is spoken, transmitted, received, or stored electronically by optical or similar means; and
  - b. Data, recordings, or information that can be seen, read, and/or heard, which can be issued with or without the help of a means, whether written on paper, any physical object other than paper, or recorded electronically (Article 29 of the Law 21/2007), including but not limited to:
    1. Text, sound, or image;
    2. Maps, designs, photographs, or the like; or
    3. Letters, signs, numbers, symbols, or perforations that have meaning or can be understood by people who are able to read or understand them.

Examples of data, records, or information in question are bank account records, business records, financial records, credit records, debts, or other corporate transaction records, travel records, communication records between people, sworn statements obtained from foreign countries obtained through mutual legal assistance between Indonesia and other countries.

2. One witness is deemed sufficient if accompanied by other valid evidence. Article 30 of Law 21/2007 stated that the testimony of a victim witness alone is sufficient to prove that the defendant is guilty, if it is accompanied by one other valid piece of evidence. Thus, the testimony of one witness, for example a victim's witness, plus one more piece of evidence, be it a letter or a statement from the defendant, for example, is considered valid evidence.
3. Wiretapping of phone or other communication device that is suspected to be used in preparing or conducting TIP can be executed by the investigator with adequate initial evidence (Article 31 subarticle (1) Law 21/2007) under the Order of the Chief Justice for a maximum of 1 (one year).
4. The blocking of the assets of a suspect or accused of TIP is carried out by a financial service provider based on the orders of an investigator, public prosecutor, or judge (Article 32 of Law 21/2007).
5. The Whistleblower/Witness may request that his/her identity be kept confidential at the stage of investigation, prosecution, and examination in court (Article 33 subarticle (1) of Law 21/2007). The obligation to keep this identity secret is notified to witnesses and other people concerned in the TIP case prior to examination (Article 33 subarticle (2) of Law 21/2007).
6. Witnesses and/or victims may ask the judge to give testimony before a court session without the presence of the defendant (Article 37 subarticle (1) of Law 21/2007). The defendant will be asked to leave the courtroom. The examination of the defendant can be continued after the judge has notified the information given by the witness and/or victim when the defendant is outside the courtroom (Article 37 subarticle (3) of Law 21/2007).
7. Examination of witnesses and/or child victims may be conducted outside the court session using recordings if approved by the judge (Article 40 of Law 21/2007).

### 1.3.2. Criminal Code Aspects

Some aspects of criminal law in Law 21/2007 that differ from the Criminal Code are as follows:

1. Anyone who tries to mobilize another person to commit TIP but the crime does not occur, in this case ordering to do/doing fails, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 6 (six) years and a fine of not less than IDR 40,000,000.00 (forty million rupiah) and a maximum of IDR 240,000,000.00 (two hundred and forty million rupiah) (Article 9 of Law 21/2007).
2. Everyone who helps (medeplichtige) or tries (poging) to commit TIP shall be punished as the perpetrator who actually commits TIP in Article 2, Article 3, Article 4, Article 5 and Article 6. The penalty is imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years with a minimum fine of IDR 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of IDR 600,000,000 (six hundred million rupiah) (Article 10 of Law 21/2007).
3. Everyone who plans or commits a malicious conspiracy to commit TIP shall be subjected to the same punishment as the perpetrators who commit TIP in Article 2, Article 3, Article 4, Article 5 and Article 6. The penalty is imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years with a minimum fine of IDR 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of IDR 600,000,000 (six hundred million rupiah) (Article 11 of Law 21/2007).
4. Everyone who takes advantage of the victim by having sexual intercourse or obscene acts, employs the victim to continue the exploitation practice, or takes advantage of the existing TIP cases, shall be punished as the perpetrator who committed TIP in Article 2, Article 3, Article 4, Article 5 and Article 6. The penalty is imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years with a minimum fine of IDR 120,000,000 (one hundred and twenty million rupiah) and a maximum of IDR 600,000,000 (six hundred million rupiah) (Article 12 of Law 21/2007).
5. Other criminal acts related to TIP are regulated in Law 21/2007 as follows:



Chapter	Criminal act	Element	Punishment
Article 19	Falsifying information/ documents	<ul style="list-style-type: none"> <li>Anyone who gives or submits false information on state documents or other documents or falsify state documents or other documents to facilitate TIP</li> </ul>	Imprisonment for a minimum of 1 (one) year and a maximum of 7 (seven) years and a minimum fine of IDR 40,000,000 (forty million rupiah) and a maximum of IDR 280,000,000 (two hundred and eighty million rupiah).
Article 20	Give false testimony/ proof and false evidence in court hearings	<ul style="list-style-type: none"> <li>Anyone who gives false testimony, presenting false proof or false evidence, or influencing witnesses through unlawful acts in TIP court</li> </ul>	Imprisonment for a minimum of 1 (one) year and a maximum of 7 (seven) years and a minimum fine of IDR 40,000,000 (forty million rupiah) and a maximum of IDR 280,000,000 (two hundred and eighty million rupiah).
Article 21	Sub article (1): Physical attack on witnesses or court officers	<ul style="list-style-type: none"> <li>Anyone who Physically assaults witnesses or officers at TIP case trial</li> </ul>	Imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a minimum fine of IDR 40,000,000 (forty million rupiah) and a maximum of IDR 200,000,000 (two hundred million rupiah).
	Sub article (2): Physical assault causing serious injury	The element in sub article (1) is added with the element "causing the witness or officer at trial to be seriously injured"	Imprisonment for a minimum of 2 (two) years and a maximum of 10 (ten) years and a minimum fine of IDR 80,000,000 (eighty million rupiah) and a maximum of IDR 400,000,000 (four hundred million rupiah).
	Sub article (3): Physical assault leading to death	The element in sub article (1) is added with the element "causing the witness or officer at trial to die"	Imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of IDR 120,000,000 (one hundred and twenty million rupiah) and a maximum of IDR 600,000,000 (six hundred million rupiah).

Article 22	Thwart the investigations, prosecutions and court hearings	<ul style="list-style-type: none"> <li>Anyone who purposively, directly or indirectly prevent, hinder, or thwart the investigation, prosecution and examination in court of suspects, defendants, or witnesses in cases of trafficking in persons</li> </ul>	Imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and a minimum fine of IDR 40,000,000 (forty million rupiah) and a maximum of IDR 200,000,000 (two hundred million rupiah).
Article 23	Helping the TIP perpetrators to escape from the judicial process	<p>Anyone who assists the escape of TIP perpetrators from the criminal justice process by :</p> <ul style="list-style-type: none"> <li>a. Giving or lending money, goods, or other assets to the perpetrator</li> <li>b. Provide housing for perpetrators</li> <li>c. Hiding the perpetrator; or</li> <li>d. Hiding the perpetrator's whereabouts information</li> </ul>	Imprisonment of a minimum of 1 (one) year and a maximum of 5 (five) years and a minimum fine of Rp40,000,000 (forty million rupiah) and a maximum of Rp200,000,000 (two hundred million rupiah).
Article 24	Tell the identity of the witness or victim	<ul style="list-style-type: none"> <li>Anyone who discloses the identity of the witness or victim even though he has been informed that the identity of the witness or victim must be kept confidential.</li> </ul>	Imprisonment for a minimum of 3 (three) years and a maximum of 7 (seven) years and a minimum fine of IDR 120,000,000 (one hundred and twenty million rupiah) and a maximum of IDR 280,000,000 (two hundred and eighty million rupiah).

Table 7: Other Crimes in Law 21/2007 Related to TIP

### 1.3.3. Witness/victim rights

In addition to the rights of witnesses and/or victims as regulated in Law Number 13 of 2016 on the Protection of Witnesses and Victims and its amendments in Law Number 31 of 2014, Law 21/2007 also regulates the rights of witnesses and victims in the TIP case. including:

- a. The right of the complainant to keep his/her name and address confidential in the investigation, prosecution, and examination in court (Article 33 subarticle (1) of Law 21/2007);
- b. The right of witnesses and/or victims to be accompanied by advocates and/or other companions (Art 35 Law 21/2007);
- c. The right of the victim to obtain information about the progress of the case in the stages of investigation, prosecution, and examination before a court hearing (Article 36 subarticle (1) of

- Law 21/2007);
- d. The right of witnesses and/or victims to ask the presiding judge of the trial to provide information before the court session without the presence of the defendant (Article 37 subarticle (1) of Law 21/2007);
  - e. The right of witnesses and/or victims to obtain identity confidentiality (Article 44 subarticle (1) of Law 21/2007);
  - f. The right of victims or their heirs to obtain restitution (Article 48 subarticle (1) of Law 21/2007);
  - g. The right of victims to obtain health, social rehabilitation, repatriation, and social reintegration from the government (Article 51 subarticle (1) of Law 21/2007);
  - h. The community's right to obtain legal protection when playing a role in helping the prevention and handling of TIP (Article 62 in conjunction with Article 60 and Article 61 of Law 21/2007).

## 2. Consent in TIP

### 2.1. Definition and type of consent

According to the Formal Indonesian Dictionary (KBBI), 'agree/consent' means:

- Agree, approve, consent to (not contradicting, not disputing)
- Match, harmonious, fit
- Feeling happy, or interested in, like, pleased

Consent can be defined as an agreement/feeling of approval from two or more parties on a matter. To be able to give consent, one must know thoroughly about the things he/she wants to agree to. Consent can be in the form of an agreement or an act of participating in something.

In the context of TIP, the form of 'consent' can take the form of, for example, expressing a desire to work, providing the documents requested by the recruiter, traveling with the accompanying person. The form of this consent really depends on the mode of the TIP.

### 2.2. Modes to get consent in TIP

To obtain 'consent' from the victim and/or the victim's family so that the victim is willing to be transferred for later exploitation, the perpetrator usually uses the following means:

- Lure with high-paying jobs
- Provide facilities, such as cellular phones or clothing, especially for child victims
- Promise victims that they can return to their hometowns for a certain period of time
- Promise victims that they can communicate with their families
- Convince the victim to contact the perpetrator if there is a problem at work
- Promise the victims that they will marry a rich husband
- Promise the victims that they will marry the perpetrator and have an good life

### 2.3. Consent does not eliminate crime

In TIP cases, it is not uncommon for the TIP perpetrators to successfully obtain the victim's consent to go with him or her to be taken to a place where the victim will be employed. However, this consent does not mean eliminate the crime, so prosecution must still continue (Article 26 of Law 21/2007). This consideration arises because the perpetrators tend to take advantage of the vulnerable position of the victim in the economic, physical, and emotional aspects. In the context of this vulnerable position, consent obtained means that the perpetrator abuses his/her power to control the vulnerabilities of others and lead them to be exploited.

In other words, consent is irrelevant for consideration as long as the above-mentioned 'means' component has been met. This is confirmed by United Nations (UN) Resolution Number 55/25 of 2000 which was adopted by the United Nations General Assembly on November 15, 2000. This resolution stated that the victim's consent can be ignored if the methods mentioned in the Palermo Protocol are used. by the perpetrator.

### 3. Prosecution of TIP that involves children

The prosecution of TIP against adult and child victims differs in the fulfilment of the 'means' component. In the case of TIP involving children, the 'means' component is not a determining component to prove whether TIP is fulfilled or not.

#### 3.1. Definition of Means

In table 1 on TIP Components, the definition of 'means' has been defined as the way, method, or things that the perpetrators do to commit TIP. The means here include, for example, threats of violence, kidnapping, confinement, and so on. In the context of TIP involving child victims, the element of means needs to be proven, but it is not a determining element whether TIP occurs or not. Therefore, the description of the 'means' element must still be in the indictment. However, it is the elements of the act and objectives that will be the main determinants of the occurrence of TIP against children.

#### 3.2. Definition of 'Means' in Legal Article

The stipulation that the 'means' component is not a determining component for the occurrence of TIP can be seen in the provisions of Article 6 of Law 21/2007:

*"Anyone who sends a child into or out of the country in any way that results in the child being exploited shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of IDR 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of IDR 600,000,000.00 (six hundred million rupiah)."*

In the provision of the article it is stated as 'any way'. Thus, it does not matter what means are used, if the process components and objectives are met, then TIP in Article 6 of Law 21/2007 is considered fulfilled. The Palermo Protocol clearly stipulates that in TIP involving children, there is no urgency at all to identify the 'means' component. Therefore, the components of TIP involving children are often shown in the following chart:

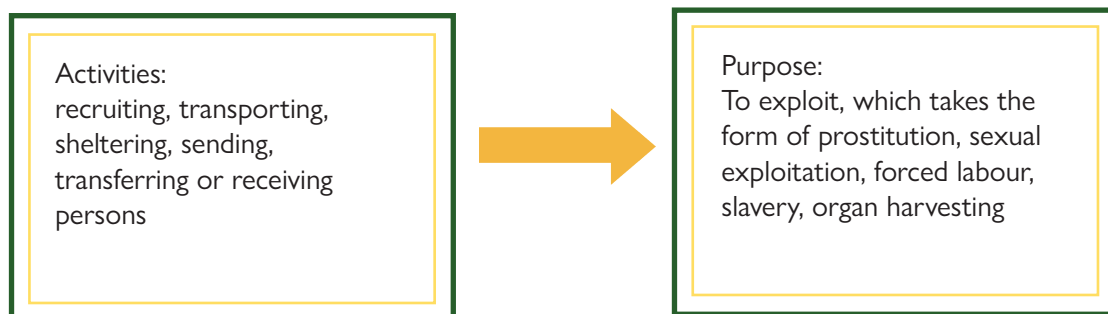


Figure 1: Components of TIP that involves Children

However, in the context of TIP involving children in Indonesia, the element of 'means' still has to be proven, although this element is not a determining element whether TIP occurs or not.

#### 3.3. Children in TIP

Children involved in TIP are divided into 2 (two) roles: children as victims and children as perpetrators.

##### 3.3.1. Children as Victims

Children as victims is the phenomenon that we often encounter in society. This is due to several factors:

- More targeted by perpetrators because they are still innocent and easily deceived
- Actively use social media
- Difficulty in resisting the perpetrator's solicitation, deception, or threats
- Still under the control of parents who may be involved in the implementation of TIP

- Have a lot of desire to develop themselves
- Have empathy to help parents in improving their economy situation

### **3.3.2. Children as Perpetrators**

The current development has led to a situation where children do not only become victims, but also become perpetrators due to pressure by adult TIP perpetrators. Some situations and factors that indicate that children are also involved as perpetrators in TIP are as follows:

- Become a recruiter because it is easy to mingle with other children who will be the victims
- Forced to commit or recruit other children to ease the burden of debt or with the lure of the promise of freedom
- Take advantage of social media facilities or start with the closest circle of friends

## CHAPTER II

# VICTIMS AND PERPETRATORS IN TIP

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### 1. Victim of Trafficking (VoT)

#### 1.1. Victims based on Type of TIP

The distribution of trafficking in persons (TIP) cases in Indonesia shows that the highest number of cases is always observed in areas with lagging economic levels with the majority of victims having a low level of education. Some areas that are often targeted by TIP perpetrators are:<sup>1</sup>

- a. West Java
- b. East Java
- c. Central Java
- d. East Nusa Tenggara
- e. West Nusa Tenggara
- f. West Kalimantan
- g. Banten
- h. Lampung

Generally, the victims will be trafficked to big cities which are considered promising to improve their standard of living. Victim of Trafficking (VoT) are usually sent to several areas such as:

- a. Jabodetabek (Jakarta, Bogor, Depok, Tangerang, Bekasi)
- b. East Java
- c. Riau islands
- d. Even abroad as Indonesian Migrant Workers (IMW)

TIP can happen to anyone regardless of gender and age. There are many factors that can trigger TIP, including:

- a. Economic problems
- b. Limited employment opportunities and low community knowledge and skills
- c. Gender discrimination and inequality in the family
- d. Domestic violence
- e. Tradition of young marriage
- f. Consumptive lifestyle
- g. Emergence of migrant worker recruitment business, and
- h. Natural disasters

#### 1. Migrant Worker

Migrant worker is one of the most vulnerable groups to become the victim of trafficking. According to the literal definition, a migrant worker is a person who migrates from the area where he/she was born to another place and works there for a relatively permanent period of time. Generally, this regional displacement occurs because of the difference in value between the origin and destination areas. Migration occurs due to two factors:

1. The driving factor of the area of origin.
2. Pull factors from the destination area.

Migrant workers can be classified into 2:

1. Domestic migrant workers

Domestic migrant workers are migrant workers who move from one area to another that are still within the territory of the Republic of Indonesia. Meanwhile, international migrant workers are workers who leave the territory of the Republic of Indonesia to work in other countries.

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<sup>1</sup> Annual Report on Prevention and Handling of Trafficking in Persons, Ministry of Women's Empowerment and Child Protection, 2018 p. 85.

## 2. International migrant workers

International migrant workers are commonly referred to as Indonesian Migrant Workers (IMW). There are so many problems that arise as a result of IMW becoming unskilled laborers abroad. Some of them go to their destination countries illegally with the help of individuals who could be TIP perpetrators. These perpetrators often entice potential victims with the lure of jobs and decent wages. But in reality, they often use illegal means to send these migrant workers. In some cases, the victims are not employed according to the initial agreement. This causes harm and even trauma to the victim.

For example, in case Number 2710 K/Pid.Sus/2019 regarding TIP that occurred in Sambas, the perpetrator took advantage of the situation by offering jobs and decent wages to attract potential victims. In this case, Bong Miao Long alias Along, the son of Bong Kim Lin, was charged with Article 10 of Law 21/2007.

Meanwhile, in Case Number 214/Pid.Sus/2020/PN Mtr, the victim who was persuaded by the syndicate of perpetrators was successfully employed in Saudi Arabia and became a victim of violence by her employer. Not only that, the victim also does not receive a full salary for her duration of work. During one year and six months of service, the victim only received six months' salary. In this case, Farida Wati Binti Idham as the perpetrator was charged with Article 10 of Law 21/2007.

## 2. Child Labor

TIP also targets child victims with employing children as *modus operandi*. Trafficking in children includes all forms of acts and attempted acts involving the recruitment, transportation, both within and between countries, the purchase, sale, delivery, and receipt of children using deception, violence, or debt entanglement for the purpose of forced domestic work, sexual services, slavery, bonded labor, or any other condition of slavery, whether the child is paid or not, in a community different from the community in which the child lived when the fraud, violence, or debt entanglement first occurred. Based on Law Number 1 of 2000 on Ratification of ILO Convention Number 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor in Indonesia, in general, children are physically and economically exploited in the form of:

- a. Children working as prostitutes
- b. Children working in the mines
- c. Children working as pearl divers
- d. Children working in construction sector
- e. Children working on the jermal (traditional fishing facility)
- f. Children working as garbage pickers
- g. Children involved in production and activities using explosives
- h. Children working on the street
- i. Children working as housemaids
- j. Children working in home industry
- k. Children working in plantations
- l. Children working in logging, processing and transporting wood
- m. Children working in industries and types of activities that use hazardous chemicals

KPAI data shows that there are hundreds of cases with children as victims of TIP. From this data, it is revealed that in almost 25% of cases, child victims are exploited as workers. This is evidence that there are still many child workers who are victims of exploitation.

## 3. Prostitution Crime

Prostitution is an activity of selling sexual services in the form of various sexual acts in return for payment. Payment in prostitution can be in the form of money or other things that have been agreed

upon. Prostitution can involve women and girls in the activities.

Many prostitution crimes begin with several modes, promises, and lures, including:

1. To work as:
  - a. Migrant workers
  - b. Domestic Workers
  - c. Shopkeeper
  - d. Restaurant service
  - e. Other jobs that do not require expertise
2. Forced to enter into prostitution after arriving at the destination area
3. Stuck in a working condition that forces victims to be engaged in prostitution, but with no power to fight back
4. Massage parlor prostitution and localization

In some of the modus above, the women and girls chosen must serve the needs of the customers. This has to be done because there is no clarity regarding their job obligations regarding whether they have to serve the customers or not.

The crime of prostitution is a form of TIP because it encourages the recruitment of women and girls to become a large source of income for those involved in the process of recruiting, transporting, and sheltering women and girls recruited for this purpose. In contrast to the case of workers, prostitution provides recurring benefits as long as women and girls are trafficked.

The two largest countries that are the main destinations for trafficking in persons for commercial sexual exploitation are Malaysia and Japan.

- a. Malaysia  
Generally, victims are recruited with the promise of being employed in karaoke places or as singers in restaurants, waiters, and hostesses or entertainers, or even promised as domestic workers.
- b. Jepang  
Meanwhile, for Japan, victims are brought under the pretext of being ambassadors of cultural arts or traditional dancers, then forced to provide sexual services.

#### 4. Child Trafficking through Adoption

Cases of child trafficking through adoption are usually carried out by perpetrators to couples who want to have children but have not been able to have one. Adoption is regulated in the Circular Letter of the Supreme Court Number 2 of 1973 and enhanced by Indonesian Supreme Court Circular (SEMA RI) Number 6 of 1983. The regulation regulates direct appointments between biological parents and adoptive parents, as well as regarding the adoption of children who can be done by Indonesian citizens who are not bound by a legal marriage or unmarried and also regulates the procedures for adopting children, that:

*“To adopt a child, you must first apply for approval/ appointment to the District Court where the child to be adopted is located. The form of the application can be verbal or in writing and submitted to the Registrar of the District Court. The application is submitted and signed by the applicant him/herself or his/her proxy, with sufficient material affixed and addressed to the Chairman of the District Court whose legal area includes the residence/domicile of the child to be adopted”.*

Adoption procedures must be carried out strictly to protect the rights of adopted children and prevent various violations and crimes such as child trafficking with the mode of adoption. People who do not know this procedure often assume that the process of adopting a child is easy, which leads to so many illegal adoption and even child trafficking crime.

One example of a child adoption case is the Tristan Dows case. Tristan became a victim of child trafficking through adoption when he was 2 years old. At that time, he was adopted by a foreign



citizen with a legalization from the South Jakarta District Court. The perpetrator, named Rosdiana, was later arrested and it was discovered that there were more than 60 babies that she sold abroad. There are many cases of child trafficking through adoption like this, although only a few have been successfully uncovered.

## 5. Slavery under the Cover of Marriage and Force Marriage/Mail-Order Bride

Slavery with the mode of marriage and mail-order brides is often carried out by male foreign nationals with female citizens of Indonesia. This mail-order bride is a mode of trafficking in persons prepared for a forced marriage, which is usually arranged by the parents. This mode includes trafficking in persons if there is an element of exploitation, both sexual and economic, through fraud, misery, withholding documents, so that the victim cannot escape exploitation, as well as closing access to information and communication with families. There are two types of trafficking through marriage:

1. Marriage as a way of deception  
Marriage as a fraudulent way to take a woman/girl to another very foreign area, but when she arrives at the destination, the woman is forced into prostitution.
2. Marriage that entraps the victim into slavery  
Marriages that entrap the victim into slavery are marriages that trap women into the household to do very exploitative forms of domestic work.

The case of TIP using the mail-order bride mode is common in people of Chinese descent in West Kalimantan. Women of Chinese descent who are usually called amoy are usually sent to marry men from Taiwan. However, several cases that involves mail-ordered brides also recently occur in the East Java region.

Many cases of marriage and mail-bride orders are not recorded or victim refuses to file a complaint and cannot go home, so this type of crime is still not widely known to the public. Violence and fraud that have been reported vary, such as:

- a. Married to a much older man
- b. Contrary to what was previously told
- c. Men with severe mental or physical disabilities
- d. Not legally married, meaning the victim becomes mistress
- e. Become a servant without getting paid
- f. Working in a factory and forced to work in prostitution.

Not only arranged marriages, this case also involves underage girls and document falsification. The majority of marriages are facilitated by local brokers with the wedding ceremony taking place in Indonesia. In some cases, upon arrival of the bride and groom in Taiwan, the nationality of the bride and groom is changed immediately, sometimes without their knowledge. This makes it difficult for the victim to return to Indonesia.

## 6. Organ Implantation

Cases of organ implantation in Indonesia often occur in Jakarta. Indonesia has even been declared as an area that is rampant for trafficking in children and women. Many cases of organ trafficking involve domestic networks. The Kupang District Court in East Nusa Tenggara once handled the case of the death of a migrant worker in Malaysia, Yufrinda Selan. Yufrinda's death presented many indicators, such as there were incisions and indications of being a victim of organ trade. The police managed to arrest 16 suspects in this case, but only 15 people were successfully imprisoned. One of the defendants in this case, Putriana Novita Sari Alias Novi, was sentenced in Case No. 17/Pid.Sus/2017/PN.Kpg on charges under Article 4 in conjunction with Article 48 of Law 21/2007 in conjunction with Article 55 subarticle 1 of the Criminal Code.

In another case, the TIP perpetrator seduced his victim by luring him in return for money when the victim wanted to sell his kidney. When the victim was entrapped, the kidney was sold. This process is of course not in accordance with hospital procedures so it was dangerous for the victim. Human organ trafficking only benefits the perpetrators because for every organ obtained, he will get a commission or reward.

## 1.2 Victims by Gender

Indonesia is one of the countries with the highest number of TIP in the world. From the number of victims identified, the following is the rank of victims of TIP by gender in a descending order:

- a. Adult women
- b. Girls
- c. Adult men
- d. Boys

Basically, TIP does not target a specific gender as victims. The majority of victims of TIP are women and children because they are people who are vulnerable to exploitation. However, the TIP case involving vessel crews is now starting to involve many victims. This shows that there is a shift in the trend from the majority of female victims to male victims.<sup>2</sup>

According to data from the National Project Coordinator for Counter Trafficking and Labor Migration Unit of IOM Indonesia, of this number, the majority of female victims become workers, both in the country and abroad, and are exploited for their labor. Meanwhile, most male victims also become workers of which the majority experience exploitation as vessel crews. In addition, male victims are also found in palm oil plantations in West Kalimantan, Sumatra, Papua, and Malaysia.

### Victim of Trafficking by Gender

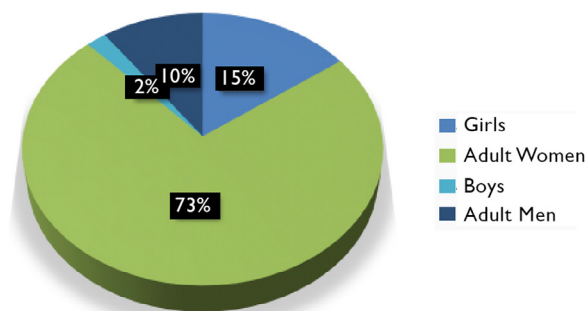


Figure 2: Chart of Victim of Trafficking (VoT) by Gender

<sup>2</sup> Ibid.

### 1.3 Victims by Age

Currently TIP is a fairly complex crime to resolve. In addition to targeting victims, the majority are women. The perpetrators of TIP are also seen as targeting adult women for trafficking in persons. However, this does not mean that TIP perpetrators are not looking for victims other than adult women. Here are some age categories that are vulnerable to become victims of TIP:

- a. Women aged 16-25 years  
Women aged 16-25 years are very vulnerable to being victims. This age is considered ideal for entering victims into the target market of human trafficking such as manual labor, prostitution, and even mail order brides.
- b. Men in the productive age ranging of 15-40 years  
Men in the productive age range of 15-40 years are prone to become victims of slavery on ships and plantations.
- c. Girls and boys  
Girls and boys, either in infancy or under-age children are vulnerable to being victims of adoption. The procedure for adopting a child that is not in accordance with the regulation will jeopardize the rights and status of the adopted child. The mode of child adoption is also prone to occur in babies born to poor families. In some cases, the sale of babies was actually assisted by unscrupulous nurses and employees of the hospital where the baby is born.

This situation demonstrates that apart from the absence of gender preference, TIP perpetrators also do not have age preference for potential victims. For them, as long as the action is profitable, anyone can become a victim.

## 2. TIP Perpetrators

Article 2 of Law 21/2007 regulates several forms of TIP, namely TIP perpetrated by individuals and TIP perpetrated by corporations. This law stipulates that anyone involved in TIP can be referred to as a perpetrator and must be held accountable for their actions in accordance with the applicable laws and regulations. In general, TIP actors can be classified into individual actors and corporate actors.

### 2.1 Individuals (Natuurlijke Persoon)

Prof. Dr. Wirjono Prodjodikoro, SH stated that in view of the Criminal Code, the subject of a criminal act is a human being as an individual. This can be seen in the formulations of criminal acts in the Criminal Code which show the power of thinking as a condition for the subject of the crime, as well as in the forms of punishment/criminals contained in the articles of the Criminal Code, namely imprisonment, confinement, and fines. Humans as legal subjects have the authority to take legal action on the condition that the human being has matured and is spiritually/spiritually healthy and is not under guardianship. The standard of the maturity of a human being varies according to the law/law that governs it, for example:

- The Civil Code (KUH Perdata), that a man's maturity is after he is 18 years old, and a woman's maturity is reached after she is 15 years old (article 29 of the Civil Code)
- Law Number 12 of 2006 on Citizenship of the Republic of Indonesia stated that a person is an adult when he or she is 18 years old
- Law Number 1 of 1974 on Marriage, that a man's maturity is after he is 19 years old, and a woman's maturity is after she is 16 years old (article 7 subarticle (1))
- The Criminal Code (KUHP), that a man and a woman are mature when they are 16 years old (article 45)
- Law Number 8 of 2015 on General Elections for Members of DPR and DPD, that citizens (male and female) become adults after they are 17 years old or married (article 19)

An individual can become a TIP perpetrator when he/she is involved in TIP activities, whether it is in the recruitment, transportation, sheltering, delivery, transfer, or receipt of a person by means of threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits despite obtaining the consent from a person who has control over another person with the purpose of exploiting that person in the territory of the Republic of Indonesia. An individual is called a perpetrator not only because he or she sells the victim directly to the buyer but also anyone who assists in the process of a criminal act and then receives a profit can also be assigned as a TIP perpetrator. Individuals as perpetrators of TIP can be divided into 2 categories:

a. Lay people

TIP committed by lay people as individuals can occur due to various factors such as economic conditions and consumptive lifestyles. Lay people can commit TIP either alone or together with other perpetrators. For example, in Case Number 214/Pid.Sus/2020/PN Mtr, one person helped dispatching and another one accommodated the victim before she was sent to Saudi Arabia were also found guilty by the Panel of Judges because they were deemed to have participated in the TIP.

b. State Administrators

Law 21/2007 contains penalties for every State Administrator if he or she abuses the power he or she has in the administration of the state. State administrators here can be government officials, members of the Indonesian National Armed Forces, members of the Indonesian National Police, security forces, law enforcement or public officials who abuse their power to commit or facilitate TIP. Article 8 sub article (1) of Law 21/2007 reads:

*"Every State Administrator who abuses his power resulting in the occurrence of a criminal act of trafficking in persons as referred to in Article 2, Article 3, Article 4, Article 5, and Article 6, shall be punished with an additional 1/3 (one third) of the criminal threat in Article 2, Article 3, Article 4, Article 5, and Article 6".*

According to the explanation of Article 8 subarticle (1), what is referred to as state administrators are government officials, members of the Indonesian National Armed Forces, members of the Indonesian National Police, security forces, law enforcement or public officials who abuse their power to commit or facilitate TIP. Meanwhile, what is referred to as abusing power in this provision is to exercise the power vested in him or her that deviates from the purpose of granting the power or to exercise it in violation of the provisions of the regulation.

State Administrators involved in TIP will also receive criminal penalties as referred to in Article 8 subarticle (2) of the TIP Law which stated that any State Administrator who is proven to be a TIP perpetrator may also be subject to additional punishment in the form of dishonorable dismissal from his or her position. Dishonorable dismissal from position should be included in the court decision.

State administrators can become perpetrators of TIP when the official abuses the authority or power he or she has to assist the operation of TIP. For example, unscrupulous officials have the potential to be bribed into providing incorrect information on Identity Cards (KTP), birth certificates and passports, which makes migrant workers more vulnerable to TIP due to illegal migration.

Meanwhile, for state officials who are aware of the existence of TIP but neglect it, the Article 165 of the Criminal Code shall apply which reads:

*"Whoever knows there is an intention to commit one of the crimes under articles 104, 106, 107 and 108, 110 – 113, and 115 – 129 and 131 or there is an intention to run away from the army in time of war, to desert, to murder with a plan, kidnapping or raping or knowing that there is an intention to commit the crime referred to in chapter VII of this law, as long as the crime endangers the life of a person or to commit one of the crimes under articles 224, 228, 250 or one of the crimes under Articles 264 and 275 as long as there is a letter of credit intended for circulation, while there is still time to prevent the crime, and intentionally not immediately notifying the judicial or police officials or to people who are threatened by the crime, will be punished if the crime is committed with a maximum imprisonment of nine months or a maximum fine of four thousand five hundred rupiahs."*

This means that anyone is obliged to report to the police if they know that a crime has occurred, even

though Article 165 of the Criminal Code only mentions several articles of crime. If this is not done immediately, the person can be said to have given someone the opportunity to commit a crime and can be punished.

## 2.2 Corporations

Corporations as legal subjects in Law 21/2007 are not only limited to corporations with legal entities, but also corporations in the form of business entities (Article 1 point 6). This means that all corporations involved in TIP can be held criminally responsible. However, Law 21/2007 has not clearly and firmly regulated the responsibilities of the management involved in the crime.

There are different definitions of corporations according to civil and criminal law. Corporations according to the civil law are legal entities (legal persons). Meanwhile, according to the criminal law, corporations do not only include legal entities such as limited liability companies, foundations, cooperatives, or associations that have been legalized as legal entities in the form of corporations, but also firms, limited liability companies or CV, and partnerships or *maatschap*.

Article 13 subarticle (1) of Law 21/2007 regulates TIP committed by corporations as follows::

*The criminal act of trafficking in persons is considered to be committed by a corporation if the crime is committed by persons acting for and/or on behalf of the corporation or for the benefit of the corporation, whether based on employment or other relationships, acting within the corporate environment, either individually or jointly.*

Article 13 has a broad meaning with the element "based on work relations or other relationships". This allows perpetrators who are not employees to be categorized as being involved in the crime of TIP, provided that they act within the corporate environment, either individually or collectively.

Theoretically, the theories of corporate criminal liability consist of:

1. The **direct liability doctrine** or **Identification Theory** or **Alter Ego** Doctrine (Organ Theory); the actions of senior officers are identified as corporate actions/errors. In a narrow sense only the actions of **senior officer** can be accounted for to the corporation, but in a broad sense that do not only include senior officials, but also agents under them.
2. The doctrine of criminal liability substitute (vicarious liability) which is based on the doctrine of respondeat superior (a master in certain cases is liable for the wrongful acts of his servant, and a principal for those of the agent): employer is primarily responsible for the actions of the employees (the servant's act is the master's act in law). It can also be based on the delegation principle, that employee's guilty mind can be linked to the employer if there is a relevant delegation of authority and obligations (there must be a relevant delegation of powers and duties according to the law).
3. The doctrine of strict criminal liability according to law: occurs when a corporation violates or does not fulfill certain obligations/conditions/situations determined by law (company offences, strict liability offences).

Referring to the opinion of Rummelink, van Bemmelen, and Preadvis Hulsman, corporate wrongdoings can arise from cooperation carried out by people who have relations with the corporation, whether consciously or unconsciously. This cooperation must have a certain relationship between the actions of these people. Furthermore, corporate wrongdoing can also be found from the minor faults of each person acting for the corporation, which if collectively will indicate a major mistake on the part of the corporation.

Theory	Relationship with Actor of Corporate Crime	Scope of Action	Purpose of Action	How to Conduct the Crime
Identification	Actor as directing mind: high level manager, senior manager	Within the corporate environment	For and on behalf of the corporation	Alone or together
Vicarious Liability	Connection in the form of Subordination: employer-employee, principal-agent, master-servant	Within the corporate environment	For and on behalf of the corporation	Alone or together
Functional Perpetrator	Work relationship and/or other relationship	<ul style="list-style-type: none"> <li>• Implementation of tasks outside the corporate environment</li> <li>• Implementation of tasks within the corporate environment</li> </ul>	For and on behalf of the corporation	Alone or together

Table 8: Corporate Theory of Criminal Actors

Furthermore, the accountability of TIP committed by corporations is regulated in the provisions of Law 21/2007 article 13 subarticle (2) which reads:

*In the event that the criminal act of trafficking in persons is carried out by a corporation as referred to in subarticle (1), the investigation, prosecution and sentencing shall be carried out against the corporation and/or its management.*

The application of corporate responsibility as referred to in the article is guided by the Regulation of the Attorney General of the Republic of Indonesia Number: PER-028/A/JA/10/2014 on Guideline for Handling Criminal Cases with Corporate Legal Subjects and Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Cases of Criminal Acts by Corporations. Perja Number: PER-028/A/JA/10/2014 stipulates the criteria for corporate actions that can be held criminally responsible as:

- All forms of actions that are based on the decision of the Corporate Management that performs or participates in performing;
- All forms of good deeds done or not done by someone for the benefit of the corporation either because of his or her job and/or other relationship;
- All forms of actions that use human resources, funds, and/or all forms of support or other facilities from the corporation;
- All forms of actions carried out by third parties at the request or orders of the corporation and/or corporate management;
- All forms of actions in the context of carrying out the daily business activities of the corporation;
- All forms of actions that benefit the corporation;
- All forms of action accepted/usually accepted by the corporation;
- Corporations that actually accommodate crime proceeds with corporate legal subjects; and/or
- All other forms of action that can

Meanwhile, the actions of corporate management that can be held accountable include:

- Anyone who commits, participates in committing, orders to do, recommends committing, or assists in committing a criminal act;

2. Any person who has the control and authority to take steps to prevent the crime but does not take the appropriate steps and is aware that he or she will accept a large enough risk if he or she knows that the crime was committed by a corporation; and/or
3. Anyone who has knowledge of the existence of a fairly large risk that it is sufficient if he knows that the crime is committed by a corporation; and/or
4. All other forms of actions that can be held accountable to the Corporate Management according to the law.

Perma No. 13 of 2016 in Article 4 subarticle (2) stipulates that in imposing a crime against a corporation, judges may assess the corporation's faults, including:

- a. The corporation may obtain profits or benefits from the crime or the crime is committed for the benefit of the corporation;
- b. Corporations allow criminal acts to occur; or
- c. The corporation does not take the necessary steps to prevent in order to avoid a greater impact and ensure compliance with applicable legal provisions to avert the occurrence of criminal acts.

Furthermore, Article 15 of Law 21/2007 stipulates the followings:

- (1) In the event that a criminal act of trafficking in persons is committed by a corporation, in addition to imprisonment and a fine against its management, the punishment that can be imposed on the corporation is in a fine of 3 (three) times the fine as referred to in Article 2, Article 3, Article 4, Article 5, and Article 6.
- (2) In addition to the fine as referred to in subarticle (1), the corporation may be subjected to additional penalties in the form of:
  - a. revocation of business license;
  - b. confiscation of assets resulting from criminal acts;
  - c. revocation of legal entity status;
  - d. dismissal of management; and/or
  - e. prohibition of the management from establishing a corporation in the same line of business.

One of the corporations that has been involved in TIP is PT Mahkota Ulfa Sejahtera (PT MUS). In this case, PT MUS became the intermediary for the departure of 161 prospective illegal migrant workers who were dispatched from East Nusa Tenggara, West Nusa Tenggara, and various regions on the islands of Java and Sumatra. The President Director, Director of Operations, as well as several employees of PT MUS were accused in the TIP involving this corporation. In Verdict Number: 726/PID.SUS/2014/PN.BKS, one of the defendants, Jamilah, Director of Operations of PT. Mahkota Ulfa Sejahtera (PT.MUS), was charged under Article 6 jo. Article 10 of Law Number 21 of 2007 on Eradication Trafficking in Persons in conjunction with Article 55 subarticle (1) point 1 of the Criminal Code. As for the corporate punishment against PT MUS, the panel of judges sentenced the corporation through Verdict Number 359/Pid/Sus/2015/PN.Nks with a fine of IDR 350,000,000 and imposed additional penalties by revocation of business license and PT MUS legal status as a business entity.

In the case of trafficking in persons aboard the Chinese-flagged Lu Huang Yuan Yu vessels 117 and 118, the Riau Islands Police named the Director of PT GMI, Harsono; Commissioner of PT MJM, Taufiq Alwi; Director of PT MJM, Totok Subagyo; Director of PT NAM, Laila Kadir alias Ella; Commissioner of PT MTB, Sutriyono bin Wardo as suspects. This ship carried 12 victims of the vessel crew of the Lu Huang Yuan Yu 118 ship and 10 victims of the crew of the Lu Huang Yuan Yu 117 ships. They became suspects of TIP as corporate administrators who participated in the series of TIP on the Lu Huang Yuan Yu 117 and 118 ships.

Laila Kadir alias Ella is the Director of PT Novarica Agatha Mandiri whose job is to receive registration and documents for illegal Indonesian Migrant Workers (IMW) who will become vessel crew members on the Lu Huang Yuan Yu ships 117 and 118. She was charged with alternative charges, namely Article 4 in conjunction with Article 10 of Law Number 21 of 2007 on the Eradication of Crime and Article 81 of Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers in conjunction with Article 55 Subarticle (1), first point, of the Criminal Code. Laila Kadir alias Ella was found legally and convincingly



guilty of committing a crime of deployment of Indonesian Migrant Workers as referred to in Article 81 of Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers in conjunction with Article 55 Subarticle (1), first point, of the Criminal Code in Case Number 931/Pid. Sus/2020/PN Btm.

### 2.3. Organized Group

According to the explanation of Article 16 of Law 21/2007, "Organized Group" is defined a structured group consisting of 3 (three) or more people that exists for a certain time and acts with the aim of committing one or more criminal acts as regulated in Law 21/2007 with the aim of obtaining material or financial benefits, either directly or indirectly. This article also stipulates that if TIP is committed by an organized group, then every TIP perpetrator in the organized group can be punished.

The Criminal Code contains instruments for inclusion (Article 55) and assistance (Article 56), but these two instruments alone are not sufficient to ensnare organized crime, because:<sup>3</sup>

- Binding participation (*accessoir*) in the main facts or offenses involving the direct perpetrators.<sup>4</sup> Meanwhile, in organized crime, the actions of each actor are specified. The use of participation in organized crime must be accompanied by the formulation of variations in the actions of each actor in the organization so that participation is not too far away if it is to be drawn to the main offense.
- Actions classified as assisting or persuading in an organized crime are considered as a part of the network's working mechanism, which has the same burden of responsibility. Therefore, in the law that ensnares organized crime, there is no criminal distinction between the perpetrators of the principal offense and those assisting the offense.<sup>5</sup> In some laws, it is even stated that persuading to commit a crime becomes a crime with its own criminal threat.<sup>6</sup> This is in contrast to the Criminal Code which provides a one-third leniency of the principal penalty for those who assist or persuade people to commit an offense.
- The long chain of protected TIP activities will involve multi-layer inclusion. inclusion.<sup>7</sup> Although inclusion of inclusion in jurisprudence is not rejected,<sup>8</sup> however, the typology of TIP activities involving many actors with different hierarchies will test the extent to which the flexibility of interpretation of participation is acceptable to judges.

Not everyone who commits TIP can immediately be said to be part of the organized group because this group has the following special characteristics:<sup>9</sup>

- 1) Continuous organized hierarchy;
- 2) Rational profit through criminal acts;
- 3) Use of force or threats;
- 4) Bribery of government officials to obtain impunity;
- 5) Public demand for services;
- 6) Monopoly on certain markets;
- 7) Limited membership;
- 8) Not ideological;
- 9) Specialization;
- 10) Secret code;
- 11) Extensive planning

There are specific criminal penalties for organized crime due to the impact of such organization is more

<sup>3</sup> Menjerat Kejahatan Perdagangan Tumbuhan dan Satwa Liar Dilindungi sebagai Kejahatan Terorganisasi < [https://icel.or.id/wp-content/uploads/Polbrief-1\\_Organized-Crime\\_rev-3\\_compressed\\_opt.pdf](https://icel.or.id/wp-content/uploads/Polbrief-1_Organized-Crime_rev-3_compressed_opt.pdf) accessed on 4 June 2021

<sup>4</sup> Jan Rummelink, 2003, *Hukum Pidana: Komentar atas pasal-pasal terpenting dari Kitab Undang-Undang Hukum Pidana Belanda dan padanannya dalam Kitab Undang-undang Hukum Pidana Indonesia*, Jakarta: PT. Gramedia Pustaka Utama, pp. 307-308

<sup>5</sup> Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 on Eradication of Corruption Crime; Law No. 15 of 2003 on Eradication of Terrorism Crime; Law No. 8 of 2010 on Prevention and Eradication of Money Laundering; Law No. 35 of 2009 on Narcotics.

<sup>6</sup> Law No 18 Tahun 2013 on Prevention and Eradication of Forest Destruction; Law No. 21 of 2007 on Trafficking in Persons.

<sup>7</sup> Multi-layer participation is a type of participation on other participation that involves several layers up to the primary offender. For example, A persuades B to persuade C to help D with a crime.

<sup>8</sup> Jan Rummelink, op cit, pp. 342-343



massive than TIP. Law no. 21/2007 increases the prison sentence and a fine of 1/3 (one third) of the main crime if the crime is committed in an organized manner.

## 2.4. Actors based on age

### a. Child Perpetrators

The definition of a child in the Child Protection Act is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Based on Law no. 11 of 2012 on Juvenile Justice System, children are classified into:

1. Children in conflict with the law
2. Children who are victims of criminal acts
3. Children who are witnesses to criminal acts (Children Presented to the Law).

A child in conflict with the law, hereinafter referred to as a Child, is a Child who has reached 12 (twelve) years old, but not yet 18 (eighteen) years old, who is suspected of committing a crime. The Law on Juvenile Justice System has not yet regulated the handling of Child TIP Perpetrators. However, children are still children who must be protected and have all their rights fulfilled, especially when children are only manus ministra (tools for committing crimes). Children, regardless of their position, must be seen as victims of the surrounding environment that shapes them. Thus, the criminal responsibility of children as perpetrators of TIP is still carried out based on the principle of child protection so that the provisions of the Child Criminal Law apply.

Article 3 of the Juvenile Justice System Law affirms the rights of children in the Juvenile Justice System:

*Every child in the criminal justice process has the right to:*

- a. *Be treated humanely by taking into account the needs according to age*
- b. *Be separated from adults;*
- c. *Obtain legal and other assistance effectively;*
- d. *Carry out recreational activities;*
- e. *Be free from torture, punishment or other cruel, inhuman, and degrading treatment;*
- f. *Not sentenced to death or life imprisonment;*
- g. *Not arrested, detained, or imprisoned, except as a last resort and for the shortest time;*
- h. *Obtain justice before a juvenile court that is objective, impartial, and in a trial that is closed to the public;*
- i. *Have their identity not published;*
- j. *Obtain assistance from parents/guardians and people who are trusted by the child;*
- k. *Obtain social advocacy;*
- l. *Acquire a personal life;*
- m. *Gaining accessibility, especially for children with disabilities;*
- n. *Obtaining education;*
- o. *Obtaining health services; and*
- p. *Obtain other rights in accordance with the provisions of laws and regulations*

Perlind One of the ways to protect children is by distancing the formal process of the juvenile criminal justice system itself through diversion. Article 5 of the Juvenile Justice System Law affirms that:

- 1) *Juvenile Criminal Justice System must prioritize the **Restorative Justice** approach.*
- 2) *Juvenile Criminal Justice System as referred to in sub article (1) includes:*
  - a. *criminal investigation and prosecution of children carried out in accordance with the provisions of laws and regulations, unless otherwise stipulated in this law;*
  - b. *child trial is conducted by the court in the general court environment; and*

<sup>9</sup> Frank E. Hagan, *Pengantar Kriminologi, Teori, Metode, dan Perilaku Kriminal* (Jakarta Kencana 2013).

- c. *guidance, mentoring, supervision, and/or assistance during the process of punishment or actions and after undergoing a punishment or actions.*
- 3) *In the Juvenile Criminal Justice System as referred to in sub article (2) letters a and b, **diversion** must be sought.*

**Diversion** is the transfer of settlement of children's cases from the criminal justice process to processes outside of criminal justice.

The objectives of Diversion are:

- a. Achieving resolution between victims and children;
- b. Resolving child cases outside the judicial process;
- c. Preventing children from deprivation of liberty;
- d. Encouraging communities to participate; and
- e. Instill a sense of responsibility in children.

The Supreme Court has issued Regulation No. 4 of 2014 on Guideline for Implementing Diversion in the Juvenile Criminal Justice System. Article 3 of this regulation states that Juvenile Judges are required to seek Diversion in the event that a child is accused of committing a crime with a criminal penalty of less than 7 (seven) years in prison and is also charged with imprisonment of 7 (seven) years/more in the form of a subsidiary, alternative, cumulative or combined indictments.

Regarding the arrest and detention of children, it is regulated in detail in Articles 30 to 40 of the Juvenile Justice System Law. The arrest of a child must prioritize the principle of presumption of innocence in order to respect and uphold the dignity of the child. It must also be understood that the child does not understand his legal problems. Investigators who make arrests must also pay attention to children's rights, such as the right to obtain legal assistance at each level of examination. Children undergoing detention must still have their physical, spiritual and social needs met. Child safety must also be maintained in the form of placement in (Social Welfare Organization) (LPKS) or detention can be carried out through the Temporary Child Placement Institution (LPAS) as regulated in Article 32 of the Juvenile Justice System Law.

**Restorative Justice** is the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a just solution by emphasizing recovery in its original state, not retaliation. The basic principle of restorative justice is the existence of recovery for victims who have suffered as a result of crime by providing compensation to victims, peace, perpetrators doing social work or other agreements. Fair laws in restorative justice are impartial, not arbitrary, and only side with the truth in accordance with applicable laws and regulations and take into account the equality of compensation rights and balance in every aspect of life.

Children as perpetrators of TIP are protected by Law 3/1997 on the Juvenile Court which emphasizes that the principle of punishing children is the last resort (*ultimum remedium*). Meanwhile, according to Law 11/2012 on the Juvenile Justice System, children who are undergoing the judicial process can be placed in the Child Special Guidance Institution (LPKA). This is a form of restorative justice which is intended to avoid and keep children away from the judicial process so as to avoid stigmatization of child perpetrators in TIP in conflict with the law.

In particular, restorative justice is regulated in the Decree of the Director General of the General Judiciary Agency Number 1691/DJU/SK/PS.00/12/2020 dated December 22, 2020 on Guidelines for the Implementation of Restorative Justice in the General Courts and the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 22 July 2020 on the Cessation of Prosecution Based on Restorative Justice.

Sample case:

1. Decision of the Surabaya District Court No: 153/Pid.anak/2011/PN.Sby.

In the Decision of the Surabaya District Court Number: 153/Pid.anak/2011/PN.Sby it is stated that the Defendant on behalf of Zharita Wulandari bint Supriyanto was legally and convincingly proven to have committed a criminal act as referred to in Article 2 subarticle (1) in conjunction with Article 17 of the Law. No. 21 of 2007 on Eradication of the Trafficking in Persons.

2. Surabaya District Court Decision No: 116/Pid.anak/2011/PN.Sby.

Meanwhile, the Surabaya District Court Verdict Number: 116/Pid.anak/2011/PN.Sby stated that the defendant on behalf of Rizky Aditya alias Rizky bin Wijaya had been legally and convincingly proven guilty of violating Article 88 of Law No. 23 of 2002 on Child Protection by committing a criminal act of economically and sexually exploiting children with the intention of benefiting themselves or others.

b. Adult Perpetrators

In contrast to child perpetrators, adult perpetrators are those who are 18 years of age or older or those who are married even though they are not yet 18 years old. TIP often involves adult perpetrators, either individually, in organized groups or in corporation. Those involved in TIP can come from various genders and ages. Offenders who are of adult age can be punished in accordance with the TIP Law and other laws and regulations in force in Indonesia.

## CHAPTER III

### CRIMES RELATED TO TIP

TIP is not a single crime. In Law 21/2007, there are articles concerning related criminal acts, such as falsifying documents, hiding the perpetrators, disrupting the prosecution, and so on. Details can be found in Chapter 1. This chapter discuss how the TIP material actions can also be charged by other Articles, or even cannot be separated from other crimes stipulated in the law sporadically.

To assist in identifying and determining whether an event is likely to be TIP, there are fifteen indicators that can be used:

- Unable to manage the wages themselves or have to hand over most of the wages to third parties (brokers, agents, employers, in the prostitution business: brothel house managers, pimps)
- Debt bondage (to pay replacement costs for recruitment, brokerage services, travel expenses)
- Restrictions or deprivation of freedom of movement (e.g., not being allowed to leave the workplace or shelter for long periods of time, under constant supervision)
- Not allowed (by threat/violence) to stop working
- Isolation/restriction of freedom of contact with other people (family, friends)
- Withholding or not providing health services, adequate food provision
- Blackmail or threats of blackmail against victim's family or children
- Threats to use violence, signs of physical violence are found
- Required to work in very poor conditions and/or have to work for very long periods of time.
- Not paying for anything or taking care of self (travel, passport visa)
- Do not hold own identification papers or travel documents
- Use of a fake passport or identity provided by a third party
- Specific indicators for the purpose of exploitation of prostitution, among others: getting a very small share of the wages generally paid in the prostitution business, required to earn a certain amount of income per day, the brothel manager or a third party has paid the transfer fee for the potential victim and/or surrendered a part of the income potential victims to third parties, the place where the potential victims are employed varies.

#### 3.1. Labor exploitation

With regard to Victim of Trafficking (VoT) who experience work exploitation abroad, the relevant laws include Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers ("PIMW Law"). The following is a comparison table for TIP and criminal acts in the PIMW Law:

TIP Component	PIMW Law	
	Criminal Act	Criminal Threat
Document forgery	Providing incorrect data and information in filling out documents Prospective Indonesian Migrant Workers (Article 79)	Imprisonment for a maximum of 2 (two) years and/or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah)
Deployment underage workers	Placement of minors as Indonesian Migrant Workers (Article 80)	Imprisonment for a maximum of 3 (three) years and a maximum fine of IDR 500,000,000 (five hundred million rupiah)

The placement of migrant workers is not carried out by the company	Individuals placing Indonesian Migrant Workers (Article 81)	Imprisonment for a maximum of 10 (ten) years and a maximum fine of DR 15,000,000,000.00 (fifteen billion rupiah)
Recruit migrant workers for jobs that are not as promised, and even deploy them for jobs that violates the law	Placement of migrant workers in jobs that are not in accordance with the work agreement so that they are detrimental for the workers (Article 82 letter a)	
	Placement of migrant workers in jobs that are violate laws and regulations (Article 82 letter b)	
Employing minors as workers without any competence and are not fully documented	<p>Deployment of migrant workers who do not meet the requirements (Article 83)</p> <p>These conditions include:</p> <ol style="list-style-type: none"> <li>Minimum age of 18 (eighteen) years;</li> <li>Have competence</li> <li>Physically and mentally healthy</li> <li>Registered and have a Social Security membership number</li> <li>Have complete required documents</li> </ol>	
Departing workers who do not meet the document requirements, or falsify documents to be able to meet these requirements	<p>Departing Indonesian Migrant Workers who do not meet the requirements for completeness of documents (Article 84).</p> <p>The requirements for completeness of the documents in question include:</p> <ol style="list-style-type: none"> <li>Certificate of marital status for those who have attached a photocopy of the marriage book;</li> <li>Certificate of husband's or wife's permission, parental permission, or guardian's permission known by the village head or lurah;</li> <li>Work competency certificate;</li> <li>Health certificate based on the results of physical and psychological examinations;</li> <li>Passport issued by the local immigration office;</li> <li>Work visa;</li> <li>Agreement on the placement of Indonesian migrant workers;</li> <li>Employment agreement</li> </ol>	Imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 1,000,000,000 (one billion rupiah).

Employers/recruiters do not have permits, place workers not according to their abilities	<ul style="list-style-type: none"> <li>a. Placing workers not in accordance with the work agreement;</li> <li>b. Placing workers in positions that are not in accordance with their expertise, skills, talents, interests, and abilities</li> <li>c. Transferring or handing over the Indonesian Migrant Worker Placement Company Permit (SIP3MI)</li> <li>d. Transferring or handing over the Indonesian Migrant Worker Recruitment Permit (SIP2MI) (Article 85)</li> </ul>	Imprisonment for a maximum of 5 (five) years and a fine of a maximum of IDR 5,000,000,000 (five billion rupiah).
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Table 9: Comparison of TIP and criminal acts in the IMWP Law

### 3.2. Crimes against children

TIP involving child victims can also be punished by Law Number 23 of 2002 on Child Protection and Law Number 35 of 2014 on its amendments ("CP Law"). The similarity of material crimes between Law 21/2007 and CP Law has led to a clash of norms between the two laws. These similarities can be seen in the following table:

TIP Component	PA Law	
	Criminal Act	Criminal Threat
Means in TIP	Commit violence or threats of violence (Article 76C)	
Sexual exploitation	Forcing people to have intercourse with him/her or others (Article 76D).	Imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000
Sexual exploitation	Persuading children to commit or allow obscene acts to be carried out (Article 76E).	Imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of a maximum of IDR 5,000,000,000 (five billion rupiah)
Whole TIP	Kidnapping, selling and/or trafficking of children (Article 76F).	Imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of a minimum of IDR 60,000,000 (sixty million rupiah) and a maximum of IDR 300,000,000 (three hundred million rupiah)
Economic and/or sexual exploitation	Exploiting children economically and/or sexually (Article 76I).	Imprisonment for a maximum of 10 (ten) years and/or a fine of a maximum of IDR 200,000,000 (two hundred million rupiah)
Adoption of children for exploitation	Unlawful adoption of children (Article 79)	

Table 10: Similarities in material crimes between Law 21/2007 and CP Law

### 3.3. Immigration crime

TIP, which is transnational in nature, cannot be separated from immigration crimes. Although often the crime of immigration is integrated in the TIP, there are several Article in Law No. 6 of 2011 on Immigration which accommodates components of the "process" in TIP as follows:

TIP Component	Immigration Law	
	Criminal Act	Criminal Threat
Exit or enter Indonesian Territory without inspection	Deliberately entering or leaving the Indonesian Territory without going through an inspection by the Immigration Officer at the Immigration Checkpoint (Article 113)	<ul style="list-style-type: none"> <li>• Penjara paling lama 1 (satu) tahun dan/atau</li> <li>• Denda paling banyak Rp 100.000.000,00 (seratus juta rupiah)</li> </ul>
Fake Visa, Permit Entry, or Residence Permit	Any person who intentionally fakes or falsifies a Visa or Entry Sign or Stay Permit with the intention of being used by him/herself or another person to enter or leave or be in the Indonesian Territory (Article 121 letter a)	<ul style="list-style-type: none"> <li>• Imprisonment for a maximum of 5 (five) years and</li> <li>• A maximum fine of IDR 500,000,000. (five hundred million rupiah)</li> </ul>
Carrying out activities that are not in accordance with the residence permit	Every Foreigner who intentionally misuse or carries out activities that are not in accordance with the intent and purpose of granting the given Stay Permit (Article 122 letter a)	<ul style="list-style-type: none"> <li>• Imprisonment for a maximum of 5 (five) years and</li> <li>• A maximum fine of IDR 500,000,000 (five hundred million rupiah)</li> </ul>
Enter or leave the Territory of Indonesia with Fake Travel Documents	Using the Travel Document of the Republic of Indonesia to enter or leave the Territory of Indonesia, but it is known or reasonably suspected that the Travel Document of the Republic of Indonesia is fake or falsified (Article 126 letter a)	Imprisonment for a maximum of (five) years and a fine of a maximum of IDR 500,000,000 (five hundred million rupiah)
Provide incorrect data for getting Travel Documents	Provide invalid data or incorrect information to obtain a Travel Document of the Republic of Indonesia for him/herself or another person (Article 126 letter c)	
Falsifying Travel Documents /creating Fake Travel Documents	Falsifying Travel Documents of the Republic of Indonesia or make fake Republic of Indonesia Travel Documents with the intention of being used for himself or another person (Article 126 letter e)	
Keeping fake or falsified travel documents	Deliberately and unlawfully keeping a fake or falsified Travel Document of the Republic of Indonesia with the intention of being used for him/herself or another person (Article 127)	

Withholding Travel Documents	Deliberately and unlawfully withholding Travel Documents or other Immigration Documents belonging to another person (Article 130)	Imprisonment for a maximum of (five) years and a fine of a maximum of IDR 500,000,000 (five hundred million rupiah)
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Table 11: Components of “Act” in TIP Cases in the Immigration Law

**Tips:**

Provide a sense of security and protection for victims who are in danger of being detained or deported. To address victims' fears of possible detention and deportation, several steps must be taken to ensure victims are not criminalized for the crimes they committed as a result of TIP, including violations of immigration rules. In order to overcome the victim's fear of deportation, immigration policy should provide leeway for the victim to remain in the destination country so that he or she can access assistance and protection.

### 3.4. Money Laundering

Article 2 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering stipulates that one of the predicate crimes of ML is TIP. The principle of “follow the money” which prioritizes tracking the whereabouts of money, followed by tracking down the whereabouts of the perpetrators will lead law enforcement officials to the TIP series. However, it is not necessary to prove the original crime in advance.

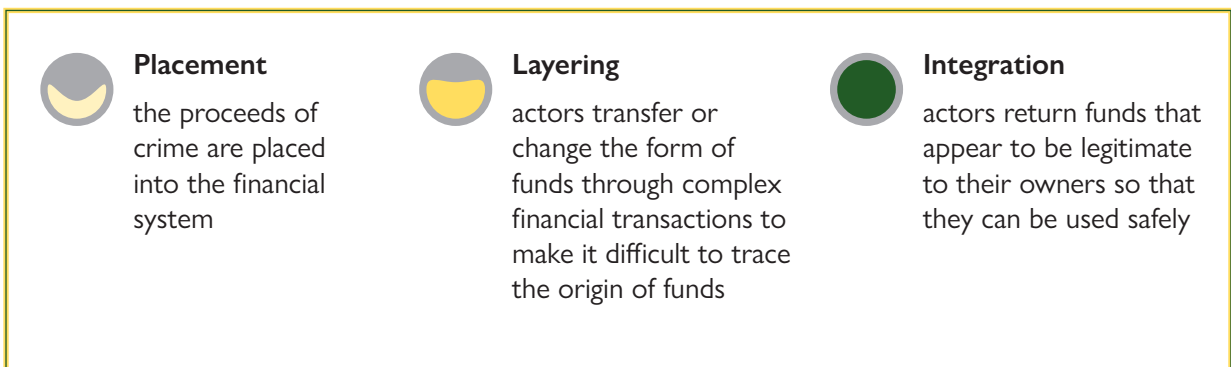


Figure 3: Stages of Money Laundering

It is necessary to pay attention to the stages of ML as follows.

For the identification of the initial stage of ML, identification of suspicious fund flows can be carried out as follows:

1. Deviating from the profile, characteristics or pattern of customer transaction habits
2. Aims to avoid reporting transactions
3. Carried out/cancelled, allegedly by using assets derived from a criminal act
4. Financial transactions requested by the Financial Transaction Reports and Analysis Center to be reported by the Reporting Party because it involves assets suspected of originating from the proceeds of crime.

### 3.5. Corruption crime

Articles 11 and 12 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on Corruption regulates the acceptance of bribes by state officials, which can be used in the event that state officials receive gifts related to TIP cases.

In Law 21/2007 itself, officials who receive bribes receive a criminal penalty of 1/3 of the penalty. This is enforced considering their role as officials who should try to prevent the occurrence of the crime,



but instead are misused for the benefit of themselves and others. In addition to being punished with imprisonment and fines, state officials can also be subject to additional penalties in the form of being dishonorably dismissed from their positions.

#### Tips:

Although Law 31/1999 in conjunction with Law 20/2001 on Corruption regulates bribery of public officials, prioritizing the use of the provisions of the Article on bribery of public officials as regulated in Law 21/2007, because the Article has been adjusted to the crime of trafficking in persons itself.

### 3.6. Information and Electronic Transaction Crime

Law Number 11 Year 2008 in conjunction with Law Number 19 of 2016 on Information and Electronic Transactions ("IET Law") regulates several criminal acts in the electronic field that often occur in TIP. The following is a description of the components of TIP whose material actions are also regulated by the IET Law:

TIP Component	Element Description	Explanation
Exploitation by offering victim services (especially female victims in the commercial sex industry) by: <ul style="list-style-type: none"> <li>Creating, accessing, using, manipulating or sharing photos, videos, information or other personal content without consent</li> <li>Exploring and disseminating someone's personal information thereby putting the victim at risk of harassment or intimidation</li> </ul>	Any person whose personal data is used without the consent of the person concerned can file a lawsuit for the resulting loss. (Article 26 subarticle (1)).	The lawsuit in question is a civil lawsuit based on Unlawful Acts in Article 1365 of the Civil Code ("Civil Code").
	Any person who, without any rights, intentionally distributes, transmits, or make electronic information or documents that have a content that violates morality that can be accessed (Article 27 subarticle (1) in conjunction with Article 45 subarticle (1))	Threatened with imprisonment for a maximum of 6 years and/or a fine of a maximum of 1 billion Rupiah.
	Any person who, without rights, in any way transfers or shift Electronic Information or Documents to the electronic system of another person who is not entitled to them (Article 32 subarticle (2) in conjunction with Article 48 subarticle (1))	Threatened with imprisonment for a maximum of 8 years and/or a fine of a maximum of 2 billion Rupiah.
Component of "Means", placing power over the victim so he/she cannot run away or report the perpetrator to the authorities by: <ul style="list-style-type: none"> <li>Harassment through unwanted messages, attention and/or contact</li> <li>Immediate threats of violence</li> <li>sexual or physical</li> <li>Rude comments</li> </ul>	Any person who, without rights sends Information or Electronic Documents that contain threats of violence or intimidation aimed at a person (Article 29 in conjunction with Article 45B)	Threatened with imprisonment for a maximum of 4 years and/or a fine of a maximum of 750 million Rupiah.

<p>Component of “Exploitation” by offering victim’s services (especially female victims in commercial sex services) through:</p> <ul style="list-style-type: none"> <li>• Online contents that portray women as a sexual object</li> <li>• Use of inappropriate images to undermine women’s dignity</li> <li>• Abuse, humiliate women for expressing non-normative opinions</li> </ul>	<p>Each person who, without any rights, intentionally distributes, transmits, or creates accessible information or electronic documents that contain contents that violate social norms (Article 27 subarticle (1) in lieu of Article 45 subarticle (1))</p>	<p>Threatened with imprisonment for a maximum of 6 years and/or a fine of a maximum of 1 billion Rupiah.</p>
<p>Component of “Means” to control Victim of Trafficking (VoT), especially female victims, through threats and sexual extortion</p>	<p>Any person who without rights distributes, transmits or makes accessible Electronic Information or Documents that contain extortion and/or threats. (Article 27 subarticle (4) jo. Article 45 subarticle (4))</p>	<p>Threatened with imprisonment for a maximum of 6 years and/or a fine of a maximum of 1 billion Rupiah.</p>
<p>Component of “Means” to control Victim of Trafficking (VoT) by accessing and modifying personal information:</p> <ul style="list-style-type: none"> <li>• Theft of identity, money or property</li> <li>• Impersonation or impersonation resulting in physical attack</li> </ul>	<p>Any Person who without rights accesses a Computer and/or Electronic System in any way with the aim of obtaining Electronic Information and/or Electronic Documents (Article 30 subarticle (2) in conjunction with Article 46 subarticle (2))</p>	<p>Threatened with imprisonment for a maximum of 6 years and/or a fine of a maximum of 1 billion Rupiah.</p>
<p>Component of “Means” to control Victim of Trafficking (VoT) by hacking certain electronic systems.</p>	<p>Any Person who without right to access a Computer and/or Electronic System in any way by violating, breaking through, exceeding, or breaking into the security system. (Article 30 subarticle (3) in conjunction with Article 46 subarticle (3))</p>	<p>Sentenced to imprisonment for a maximum of 8 years and/or a fine of a maximum of 800 million Rupiah.</p>

Table 12: Components of TIP in the IET Law

### 3.7. Shipping Crime

TIP is related to shipping crimes in the administrative aspects of the vessel crew and ship operational permits. Usually ships carrying victims of TIP do not comply with the administrative requirements of shipping activities. They also often do illegal fishing, but this is more related to criminal acts in Law No. 31 of 2004 in conjunction with Law Number 45 of 2009 on Fisheries. The following is a description of the intersection of TIP components with criminal acts in Law Number 17 of 2008 on Shipping:

TIP Component	Element Description	Explanation
The purpose of exploitation is to employ victims of TIP as crew members without prior training and without adequate recruitment requirements	Everyone who employs a Crew without meeting the qualification and competence requirements as referred to in Article 135, namely national and international provisions (Article 310)	Imprisonment for a maximum of 2 (two) years and a fine of a maximum of IDR 300,000,000 (three hundred million rupiah).
The purpose of exploitation is by employing unregistered crew members who do not meet the ship's administrative requirements, including by falsifying the Crew Book	Anyone who employs a person on a ship in any position without a certificate and without having the competencies and skills as well as the required seafaring documents (Article 312)	Imprisonment for a maximum of 2 (two) years and a fine of a maximum of IDR 300,000,000 (three hundred million rupiah).
The process is not reporting the dangerous conditions on the ship or other ships in order to allow TIP to be carried out	The captain who knows there is a danger and accident on his ship, other ship, or any person found in a dangerous condition, who does not take precautions and disseminates news about it to other parties, does not report to the harbormaster or the nearest Indonesian Representative Officer and state government officials. local authorities if the danger and accident occurs outside the territorial waters of Indonesia (Article 330)	Imprisonment for a maximum of 3 (three) years or a fine of a maximum of IDR 400,000,000 (four hundred million rupiah).
All elements of TIP are fulfilled and in the case that it is carried out by a corporation	A criminal act in the shipping sector is considered to be committed by a corporation if the crime is committed by a person acting for and/or on behalf of the corporation or for the benefit of the corporation, whether based on a work relationship or other relationship, acting within the corporate environment, either individually or jointly (Article 331)	In the event that a criminal offense in the shipping sector is carried out by a corporation, in addition to imprisonment and fines for its management, the punishment that can be imposed on the corporation is in the form of a fine with a weighting of 3 (three) times the criminal fine specified in the Criminal Act Chapter (Article 335).
All TIP is fulfilled and in the event that it is carried out by state officials	Every official who violates a special obligation from his position or at the time of committing a criminal act uses the power, opportunity, or means given to him because of his position (Article 336 subarticle (1))	Imprisonment for a maximum of 1 (one) year and a fine of a maximum of IDR 100,000,000 (one hundred million rupiah)

Table 13: Components of TIP in the Shipping Law

### 3.8. Health-related Crimes

The sale and purchase of human organs is a form of TIP which is prohibited by Law 21/2007 on Trafficking in Persons and Law 36/2009 on Health. Article 192 of Law 36/2009 on Health punishes the sale and purchase of organs or body tissues under any pretext and carries a 10-year sentence and a maximum fine of 1 billion (USD 75,000).

### 3.9. Other crimes in the Criminal Code

In addition to criminal acts regulated by certain laws, TIP also shows the character of criminal acts related to criminal acts regulated in the Criminal Code (KUHP). Some of these crimes include:

Article 263	Falsification of letters
Article 277	Obscuring one's origins
Article 278	False confession of other people's children
Articles 285, 286, 287, 288	Forcing someone who is not his/her wife to have sex when the woman who is the victim is: <ol style="list-style-type: none"> <li>In a conscious state</li> <li>In a state of helplessness</li> <li>Presumably underage</li> <li>Not eligible to marry</li> </ol>
Article 289, 290, 292, 293, 294, 295	Forcing, facilitating, or allowing sexual abuse to occur when the victim is: <ol style="list-style-type: none"> <li>In a conscious state</li> <li>In a state of helplessness</li> <li>Presumably underage</li> <li>Is an immature child/person who is entrusted to be his/her dependent</li> </ol>
Article 296	Make obscenity as a livelihood
Article 301	Employing minors for work that is not good for them
Article 304	Abandoning someone under his/her care
Article 328	Kidnapping adults/minors
Article 329	Bringing workers to other workplaces that are not in accordance with what was promised
Article 330, 332	Elope with underage girls
Article 331	Hiding children from their guardians/from the investigation process
Articles 333, 334	Capturing someone
Article 335	Forcing others to do something because of coercion or an unpleasant act
Article 351, 352, 353, 354, 355	Persecuting someone
Articles 362, 363, 364, 365	Stealing other people's belongings
Article 368	Blackmailing someone
Article 369	Threatening someone
Article 378	Deceiving someone
Article 506	Making money through prostitution

Table 14: Criminal acts related to criminal acts regulated in the Criminal Code

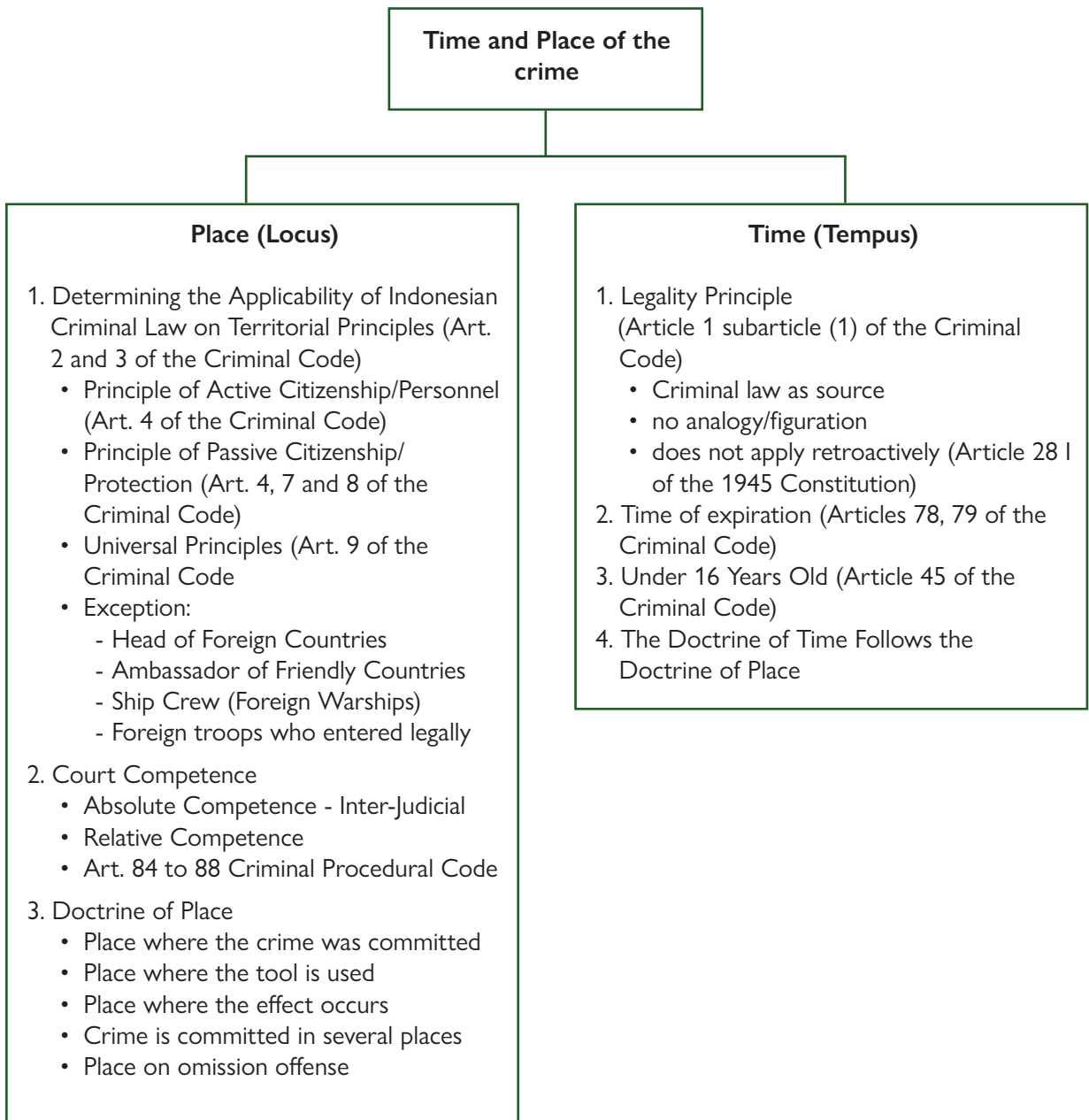
## CHAPTER IV

### DOCTRINES OF CRIMINAL LAW

#### 4.1. Principle of applicability of criminal law

Basically, the application of criminal law or criminal legislation is based on the time and place of the act. In addition, criminal law also applies according to the time of application of the criminal law. That is, if someone commits a criminal act but the act has not been regulated or has no provisions at that time, then that person cannot be prosecuted for his actions.

Principles of Applicability of Criminal Law



##### 4.1.1 Territorial Principle

This principle is regulated in Article 2 of the Criminal Code which states: "criminal provisions in Indonesian law apply to everyone who, within the territory of Indonesia, commits a crime." That is, the criminal provisions in Indonesian legislation are applied to everyone who commits a crime in Indonesia. This principle is related to the locus delicti. Some aspects to note regarding the territorial principle are:

- Perpetrators are in Indonesian territory
- Crimes committed in the territory of Indonesia
- Without any regard to the nationality status of the perpetrator

The territorial principle is divided into 2 (two):

- Subjective territory  
The country that has jurisdiction is the country where the criminal act is initiated
- Objective territory  
The country that has jurisdiction is the country where the criminal act is resolved

Examples TIP Case practices:

1. Decision Number 27/Pid.Sus/2019/PN Kpg dated 20 May 2019, a criminal act by an Indonesian citizen took place in Kupang and tried at the Kupang District Court.
2. Decision Number 313/Pid.Sus/2019/PN Bgl dated 2 September 2019, a criminal act by an Indonesian citizen took place in Bengkulu and was tried in the Bengkulu District Court.
3. Decision Number 105/PID.SUS/2015/PN Tul dated March 8, 2016, a criminal act by Thailand citizen took place in Aru Island and was tried in Tual District Court.

#### 4.1.2. Principle of Universality/Principle of Equality

The principle of universality or the principle of equality protects the interests between countries regardless of the nationality status of the perpetrators but also pays attention to the interests of other countries where the crime is committed. The principles stated in Articles 2-5 and 8 of the Criminal Code are limited by Article 9 that there are some exceptions in international law. International interests must be based on the idea that every state must participate in implementing international law. Some of these exceptions apply to:

- a. Heads of state of friendly countries and their family members
- b. Ambassadors of foreign countries and their family members
- c. Foreign warship crew visiting a country
- d. A foreign country's army that is inside the country's territory with that country's approval

Examples of practice in the case of TIP:

A country, whether it is the country of origin or the country where TIP occurs, as long as it ratifies international law, has the right to apply the international law in handling TIP cases in order to protect the interests of other countries where the crime is committed.

#### 4.1.3. Principle of Active Nationality/Personal Principle

Article 5 of the Criminal Code stated:

1. *Criminal provisions in Indonesian law apply to Indonesian citizens who commit crime outside Indonesia:*
  - a. One of the crimes mentioned in Chapters I and II of the Second Book, and in Article - Articles 160,161,240,279,450, and 451;
  - b. An act against something that is considered a crime according to the criminal provisions in the law of the country where the act was committed.
2. *Prosecution of an act referred to in letter b may also be carried out, if the suspect has just become an Indonesian citizen after committing the act.*

Article 5 of the Criminal Code is the basis for the implementation of this principle of national interest or the principle of personality. The national interest protected in this principle is that Indonesian citizens who are perpetrators of criminal acts are not prosecuted and subject to the laws of the country where the incident occurred, but are prosecuted according to Indonesian criminal rules by the Indonesian Courts when it comes to the following matters:

- a. National security
- b. Head of state position
- c. Incitement to commit a crime
- d. Not fulfilling military obligations
- e. Marriage exceeds the specified number
- f. Piracy

The provisions of Article 5 of the Criminal Code can be enforced on the following conditions:

1. The act committed by an Indonesian citizen must constitute a crime according to Indonesian law and the substance of the act also tends to lead to a threat to Indonesia's national interests; and
2. The act he/she commits must also constitute a criminal offense according to the law in the country where the act was committed by an Indonesian citizen.

The principle of active nationality can be waived by Article 8 of Law Number 1 of 1979 if the country where the crime was committed refuses the request for extradition, provided that the other country also recognizes the act as a crime.

Example of practice in criminal cases:

Supreme Court Verdict Number 150K/Kr/1972

Bob Liem (Roy Manaff), a case that occurred between Indonesia and Hong Kong where Bob Liem was an Indonesian citizen living in Hong Kong. He killed his wife and a daughter, then he went into hiding in Indonesia. Bob Liem was arrested by the Indonesian police, and then brought before the Greater Jakarta District Court. Prior to being brought to court, the Hong Kong government had submitted a request for the surrender of Bob Liem to Indonesia, because the crime was committed in Hong Kong as a *locus delicti*. However, Indonesia refused the request to surrender the case to Hong Kong, not because Indonesia and Hong Kong were not yet bound by an extradition treaty, but because Bob Liem was an Indonesian citizen.

#### 4.1.4. Principle of Passive Nationality/Principle of Protection

This principle is also known as the principle of protection (*Bescherming-Beginsel*). The purpose of the Passive Nationality Principle is to protect the prestige and dignity of the Indonesian State from the actions done by bad people, both by Indonesian citizens and foreigners, that threaten Indonesia's national interests. This principle does not look at the nationality status of the perpetrator, but the impact of the crime on the national interest. This is in accordance with Article 4 of the Criminal Code which applies Indonesian criminal legislation to anyone who is outside the territory of Indonesia but commits an act that threatens the national interest, such as crimes against:

- a. National security
- b. The dignity and honor of the President and Vice President of the Republic of Indonesia
- c. Counterfeiting of Indonesian government currency and seals
- d. Counterfeiting of debt securities and debt certificates issued by Indonesia
- e. Piracy of Indonesian ships and aircraft

Examples of practice in the case of TIP:

If there is a TIP case committed by Indonesian citizens or foreigners but threatens the national interest, they are entitled to be tried under national law in order to protect the authority and dignity of the Indonesian State.

## 4.2. Principle of applicability of laws and regulation

### 4.2.1. Principle of *lex specialist derogat legi generali*

The principle of *lex specialist derogat legi generali* implies that special legal rules will override general legal rules. There are several basic principles that need to be considered, including:



- a. The provisions contained in the general law rules still apply, except those specifically regulated in the special legal rules;
- b. The provisions of the *lex specialis* must be equal to the provisions of the *lex generalis* (law with law);
- c. The provisions of the *lex specialis* must be in the same legal environment (regime) as the *lex generalis*.

#### 4.2.2. Principle of *lex superior derogat legi inferior*

This principle means that a higher norm or rule of law will take precedence over the enforcement of a lower norm or rule of law. This is observed from the hierarchical position of the existing laws and regulations. In the Indonesian legal system, Law Number 12 of 2011 Article 7 and Article 8 have regulated the hierarchical position of laws and regulations in its constitution.

Examples of laws and regulations:

To implement Law 21/2007, the Government issued Government Regulation Number 9 of 2008 on Procedures and Mechanisms for Integrated Services for Witnesses and/or Victims of TIP. Hierarchically, PP 9/2008 as a legal norm is under Law 21/2007, so they should not conflict with each other. If there are differences or contradictions, then Law 21/2007 is used.

#### 4.2.3. Principle of *lex posterior derogat legi priori*

*Lex posterior derogat legi priori* is a principle which assumes that new legal norms will nullify the old legal norms. This principle can be applied if the new legal norms have a position that is equal to or higher than the old legal norms.

There are several provisions that need to be considered in the preparation of laws and regulations related to the principle of *lex posterior derogat legi priori*, including:

1. The content material in the new laws and regulations causes a change or replacement of all or part of the material in the old Laws and Regulations
2. In the new laws and regulations, it must be explicitly regulated regarding the revocation of all or part of the material contained in the old laws and regulations.
3. For the sake of legal certainty, the revocation of the Legislative Regulations is not formulated in general but the revocation of the Laws is explicitly stated.

Examples of laws and regulations:

1. Article 82 of Law Number 23 of 2002 on Child Protection has been declared no longer valid and has been replaced by the provisions of Article 82 subarticle (1) and Article 82 subarticle (2) of Law Number 35 of 2014 on Amendments to the Law Number 23 of 2002 on Child Protection.
2. Article 332 subarticle (1) of the 1st Criminal Code is set aside by Article 83 of Law of the Republic of Indonesia Number: 23 of 2002 on Child Protection.

### 4.3. Doctrine of Participation (*Deelneming*)

However, the Criminal Code provides an overview of the forms of participation either from the doer (*dader*) or accomplice (*medeplchtig*).

Article 55 of the Criminal Code:

- 1) *Sentenced as the doer (dader) of a criminal act:*
  - a. Those who do, who order to do, and those who participate in doing the deed;
  - b. Those who, by giving or promising something, by abusing their power or dignity, by force, threats or



*misdirection, or by providing opportunities, means or information, intentionally encourage others to take action.*

- 2) *With regard to advocating, only actions that are intentionally recommended are taken into account, along with their consequences.*

Article 56 of the Criminal Code states that being convicted of being an accomplice or accessory (*medeplichtige*) to a crime:

- 1) *Those who intentionally provide assistance at the time the crime is committed;*
- 2) *Those who intentionally provide opportunities, facilities, or information to commit crimes.*

The classification of participation according to Articles 55 and 56 of the Criminal Code are:

1. Doer (*dader*), consisting of those who:
  - a. Do (*plegen*)
  - b. Ordered to do (*doen plegen*)
  - c. Participate in doing (*medeplegen*)
  - d. Advise to do (*uitlokken*)
2. Crime accessory (*medeplichtige*) (Article 56), assists in committing an offense (*overtreding*) is not punished (Article 60)

Criminal sanctions for someone involved in participating in a criminal act are as follows:

1. Participating (*medepleger*), is the same as the criminal sanction of the perpetrator.
2. Ordering (*doenpleger*), the same as the criminal sanction of the perpetrator.
3. Persuading (*uitlokker*), the same as the criminal sanction of the perpetrator.
4. Assisting (*medeplichtige*), the criminal sanction is lighter than the perpetrator, which is reduced by one third.

#### 4.3.1. Doing (*Plegen*)

The perpetrator (*pleger*) is mentioned in Article 55 of the Criminal Code because other parties who participate or are involved in the crime he/she commits, will be punished together with him/her as the perpetrator (*dader*). Meanwhile, according to Remmelink, how the participation is carried out and the related accountability is also determined by its relationship with the criminal act committed by the perpetrator. So, referring to AZ Abidin and Andi Hamzah, the perpetrator is anyone who fulfils all the elements contained in the formulation of the offense, including if it is carried out through other people or their subordinates.

#### 4.3.2. Ordering to do (*doenplegen*)

The definition of the ordering-to-do perpetrator is someone who orders another person to commit a criminal act when, legally, the person who is finally ordered to commit the criminal act must be a person who cannot be held criminally accountable. Lamintang cites Simons' opinion that to fulfill the *doenplegen*, the person who is ordered to do the crime must meet the following requirements:<sup>10</sup>

- a) If the person who is ordered to commit a criminal act is someone who is *ontoerekeningsvatbaar* (can be accounted for) as referred to in Article 44 of the Criminal Code;
- b) If the person who is ordered to commit a criminal act has a *dwaling* or a misunderstanding regarding one of the elements of the crime concerned;
- c) If the person who is ordered to commit a criminal act does not have an element of *schuld* (error), either *dolus* or *culpa* (intentional or negligent), or even if the person does not fulfil the element of *opzet* as required by law for a criminal act. the;

<sup>10</sup> Lamintang, *Dasar-dasar untuk Mempelajari Hukum Pidana yang Baru di Indonesia*, (Bandung: Sinar Baru), 1984, hal. 583.

- d) If the person who is ordered to commit a criminal act does not fulfil the *oogmerk* element (intention), even though the element has been required in the formulation of the law regarding the crime mentioned above;
- e) If the person who is ordered to commit a criminal act has committed it under the influence of an overmacht (coercive power), and against which that person is unable to resist;
- f) If a person who is ordered to commit a criminal act in good faith has carried out an order even though the order for the position was given by a superior who is not authorized to give such an order;
- g) If the person who is ordered to commit a criminal act does not have a hoedanigheid or certain character as required by law, namely as a trait that must be possessed by the perpetrator himself;

Important features:

1. Involving a minimum of two people, one party acts as an intellectual actor (a person who orders another person to commit a crime), and the other party acts as a materialist actor (a person who commits a crime on the orders of an intellectual actor).
2. Juridically, a materialist actor is a person who cannot be held criminally responsible for the crime.

Sample case:

Verdict Number 124/PID.SUS/2012/PN.RUT dated August 7, 2012

Herman Jebarus ordered Alosius Danggut to recruit workers to be sent to Jakarta to work as housemaids, take kindergarten children to school and care for the elderly. Alosius Danggut offered to the victims who were underage (aged 15 -16 years) that later the three of them would be given a large salary, bonuses, food, drink and transportation costs and the costs for taking care of administrative documents would be borne by Alosius Danggut. For this incident, Herman Jebarus was ruled by the Panel of Judges as having been proven legally and convincingly guilty of committing a criminal act of trafficking in persons violating Article 9 of Law 21/2007.

#### 4.3.3. Participating (*Medeplegen*)

Basically, participating in criminal act is the action of more than 1 (one) person, in which, without the help of the other person, the crime will not occur. The conditions for participating are as follows:

- a. There is conscious cooperation  
To say that there is a *medeplegen* (participation), it is implied that there is a conscious cooperation. In other words, there is the intention to cooperate even though there is no need for an agreement between two or more people. That such cooperation does not need to be promised and planned by the participants in advance, it is sufficient that there is mutual understanding at the time the action concerned is executed where there is perfect and close cooperation aimed at the same goal. As a result, according to *Remmelink*, there are two forms of intentionality that need to be proven: the intention to cause the offense and the intention to cooperate.
- b. There is a joint physical execution  
In *medeplegen*, there needs to be a physical co-execution. If the crime is not executed jointly, it is necessary to examine whether there are other forms of participation. In general, criminal acts, it can take the form of assistance before and after the offense is committed. In TIP, it can be referred to as "assistance", which is an act of providing assistance at any stage: process, method, and/or purpose, as well as providing assistance after the crime has occurred.

#### 4.3.4. Persuading

An act is classified as persuasion if the *uitlokker* (advocate/persuader) uses the measures mentioned in Article 56 subarticle (1) point 2 of the Criminal Code. This is one of the differences between the forms of ordering to do (*doenplegen*) and advocating to do (*uitlokken*). The difference between ordering to do and recommending/persuading include:

1. In ordering to do the crime, the person who is ordered cannot be held responsible for his/her actions, so that only the ordering-to-do actor can be punished while the one who is ordered is not subject to punishment.
2. In advocating/persuading, both the person who encourages/persuades and those who are encouraged/persuaded can be punished;
3. The advocate/persuader can only be punished if he/she uses the means and methods regulated in Article 55 subarticle (1) of the Criminal Code.

According to Article 55 subarticle (1), methods or efforts to mobilize other people to commit criminal acts can be carried out by:

1. Giving (*Giften*)  
Giving must be interpreted not only in money but also in the form of goods.
2. Promise/Commitment (*Beloften*)  
For example, a promise to give money, goods or other benefits, such as providing assistance to hide.
3. Abusing authority (power/*gezag*)  
Between the persuader and the persuaded there must be a power relationship at the time the act is executed. Here, the reason for giving orders to his subordinates to do something is included in his/her work environment.

In general, there are 4 (four) conditions that must be met so that persuasion can be said to have occurred and can be subject to criminal sanctions:

- a) Intention to mobilize other people to do an action prohibited by law by giving facilities, as stipulated by law;
- b) The decision to will on the other party must be raised, where this condition relates to psychological causality;
- c) The person who is persuaded (triggered or provoked) execute the plan implanted by the persuader or the provocator to commit a criminal act or at least carry out an attempt at the intended crime. The bad faith of the persuader is not enough; his/her efforts must be manifested in action;
- d) People who are persuaded or provoked must be able to be held criminally responsible, if it does not appear as an ordering-to-do act (*doen plegen*).

#### 4.3.5. Assisting (*Medeplichtigheid*)

Assisting occurs when a crime is committed by more than one person, meaning that there is someone who commits a crime and there are other people who play a role in helping to commit the crime. Based on Article 56 of the Criminal Code, assistance is divided into two types:

- a. Providing assistance before the execution of a crime  
Characteristics: assistance is given at the same time or at the time the crime is committed, the effort of assistance can be in any form (tangible or not).
- b. Providing assistance during the execution of a crime  
Characteristics: assistance is given before the crime is committed, the efforts given are limited or certain, such as opportunities, facilities or information.

From the formulation of Article 56 of the Criminal Code, it can be described that:<sup>11</sup>

- 1) Accomplice is anyone who intentionally provides assistance when the crime is committed by the doer. Such assistants can be called material accomplice where the intentionality can be of three types: intentionally as an intention, deliberately with the realization of certainty, and deliberately with the realization of possibility (*dolus eventualis*). The assistance is carried out simultaneously with the execution of act by the doer.

<sup>11</sup> A.Z.Abidin dan Andi Hamzah, *Op Cit*, hal. 233-234.

- 2) Accessory is anyone who intentionally provides opportunities, efforts (means) or information to execute a crime. These accessories are often referred to as intellectual assistants. Intellectual assistants intentionally use one of the three measures mentioned in a limitative manner in Article 56, the second point of the Criminal Code.

Assistance with intention is also dual in nature:

- 1) Deliberately aimed at the time the offense is executed, or is intended to assist the commission of a crime by providing opportunities, means or information.
- 2) The assistance must know the specific part of the crime he/she is helping to execute.

Example of a participation case:

Verdict Number 1498/Pid.Sus/2015/PN.Mks

Wahyu Bongka alias Rezky and Suaib alias Aida jointly committed TIP by sexually exploiting women who were then sold as sex workers and profited from these actions. Among the victims are minors (17-18 years), so the judge later charged him with multiple Articles. Both were charged with violating Article 12 of Law Number 21 of 2007 on Eradication of Trafficking in Persons in conjunction with Article 55 subarticle (1), 1st point, of Criminal Code and Article 83 of the Law Number 35 of 2014 of the Republic of Indonesia on Child Protection. Wahyu Bongka alias Rezky did not commit TIP alone but was assisted/together with the defendant Suaib alias Aida. The existence of this TIP assistance element made the Public Prosecutor imposed Article 12 of Law Number 21 of 2007 on the Eradication of TIP as well as Article 55 subarticle (1), first point of the Criminal Code.

#### 4.3.6. Conspiracy

Conspiracy or participation in committing is an act of participating in committing a crime by negotiating and jointly executing the criminal offense. The conditions for participating in a criminal act are:

- a. Conscious cooperation between actors
- b. The cooperation for performing the act is a mutual between them
- c. They must jointly execute that act

Moeljatno said that the *medeplegers* means that at least all of them committed elements of a criminal act, and this did not mean that each of them has to do, even what the participants do not/cannot be done because this depends on each situation. What needs to be emphasized here is that in **medepleger** there is a conspiracy for doing bad deeds as explained as below:

- What referred to as conspiracy in Article 88 of the Criminal Code is "if two or more people have agreed to commit a crime"
- Referring to the Constitutional Court Decision Number 21/PUU-XIV/2016 dated June 23, 2016, conspiracy in the common law system, or what is often referred to as a conspiracy, is as follows: "agreement is the basic element in conspiracy. The idea of agreement seems to involve a meeting of minds, and there is no need for a physical meeting of the persons involved so long as they reach a mutual understanding of what is to be done. Whether the understanding amounts to an agreement may be a matter of degree: if the parties are still at the stage of negotiation, without having decided what to do, no criminal conspiracy has yet come into being."
- Prof. Mr. Roeslan Saleh stated that criminal conspiracy is a conspiracy that is concluded from the statements of people who make a conspiracy. Agreement is a sign that can be seen regarding the conformity of the will which is the basis of the conspiracy.
- Prof. Dr. Andi Hamzah, SH. MH. described that conspiracy (Semenspaning) is regulated in Article 88 of the Criminal Code. The original term of the Criminal Code in Dutch is Semenspaning, in English it is called conspiracy. In everyday Indonesian it is called permufakatan. Article 88 of the Criminal Code is copied from Article 80 Ned. Van Straafrecht's Wetboek, which reads "Semenspaning bestaat zodra twee of meer person everenkomenzijn om hetmisdijf te plegen". The wording of Article 88 is exactly the same as Article 80 Ned. VvS it. Translated by

Moelyatno and Roeslan Saleh in their translation of the Criminal Code, "it is said that there is a criminal conspiracy, if two or more people have agreed to commit a crime". Article 88 is an authentic interpretation, which can be seen as a definition.

- Conspiracy is not a crime that stands alone but is part of the preparation for the participation in a crime, a criminal act, to make an agreement to commit a crime that is expressly stated in the law. It must be clear which crime will be committed. In the crime of conspiracy, there must be a meeting of mind or mens rea (guilty mind) because criminal conspiracy is a crime of conspiracy, so there must be a similarity of will or intention between the people who carry out the conspiracy or criminal conspiracy. With regard to the meeting of mind, it is necessary to have an action, either behavior or causing consequences, that are prohibited by law. Conspiracy is an act (actus reus) that requires a wrongdoing or prohibited act so that it can be legally accounted for.

Sample case:

Verdict Number 146/PID.SUS/2020/PT BDG dated May 6, 2020, Shao Dongdong and his wife Erlin Martiningsih negotiated to jointly conduct matchmaking business. This business facilitated matchmaking and mail-order brides for Chinese men who are looking for Indonesian women in exchange for a certain amount of money. Shao Dongdong was found guilty by the panel of judges and sentenced to the TIP case on the basis of Article 120 subarticle (2) of Law Number 6 of 2011 on Immigration In conjunction with Article 55 subarticle (1), 1st point, of the Criminal Code.

#### 4.4. Doctrine of Concurrent Crime (*Concursus*)

The offense of concurrent action is included in a special form of criminal act. Concurrent is the occurrence of two or more crimes by one person in which the crime committed for the first time has not been sentenced, or between the first crime and the subsequent crime has not been limited by a judge's decision.

In criminal law, this concurrent offense consists of three things, including:

- a. concurrent rules (*concurcus idealis*),
- b. concurrent action (*concurcus realis*),
- c. concurrent actions (*vorgezette handelings*).

The three concurrent forms above aim to facilitate the imposition and calculation of sanctions for several criminal acts committed by one person. There are four methods to calculate the concurrent crime depending on the type of concurrence:

1. The method of pure of absorption for the concurrent regulation and continuous action.
2. The method of absorption is sharpened for concurrent crimes that are punishable by the same principal punishment.
3. The method of accumulation (summation) that is softened for the concurrent crimes that are punishable by a different principal punishment.
4. The method to accumulate pure for violations (*overtredingen*)

##### 4.4.1. Concursus Idealis

###### 4.4.1.1. Definition and examples

Continuous Actions (*delictum Continuatum/Vortgezette handling*):

Article 64 of the Criminal Code reads:

- (1) If between several acts, even though each of them is a crime or violation, there is a relationship in such a way that it must be considered as a continuous act (*voortgezette handling*), then only one criminal law is imposed; if they are different, the one imposed is the one that contains the most severe principal criminal sanction.
- (2) Likewise, only one criminal code is imposed, if a person is found guilty of counterfeiting or destroying currency, and using the counterfeit or damaged goods.
- (3) However, if the person who commits the crimes referred to in Articles 364, 373, 379, and 407 subarticle 1, as a continuous act and the value of the resulting loss is more than Rp. 25, then he/she is subject to the criminal rules referred to in Articles 362, 373, 378 and 406.

#### 4.4.1.2. Criminal System

If faced with two choices between two different principal crimes, then the determination of the heaviest punishment is based on the sequence of types of crimes as stated in Article 10 (see Article 69 subarticle 1 in conjunction with Article 10). For example, choosing between 1 week in prison, 1 year of confinement, and a fine of 5 million rupiah, then the most severe punishment is 1 week in prison. In Article 63, subarticle 2 sets special conditions that deviate from the general principle in subarticle 1, applying the adage "lex specialis". For example, a mother kills her own child when her child is born. This mother's actions can be included in Article 338 (15 years in prison) and Article 341 (7 years in prison). The maximum imprisonment imposed is contained in Article 341 (lex specialis), which is 7 years in prison.

### 4.4.2. Continuous Actions

#### 4.4.2.1. Definition and examples

Continuous Actions (*delictum Continuatum/Vortgezette handling*):

Article 64 of the Criminal Code reads:

- (1) *If between several acts, even though each of them is a crime or violation, there is a relationship in such a way that it must be considered as a continuous act (voortgezette handling), then only one criminal law is imposed; if they are different, the one imposed is the one that contains the most severe principal criminal sanction.*
- (2) *Likewise, only one criminal code is imposed, if a person is found guilty of counterfeiting or destroying currency, and using the counterfeit or damaged goods.*
- (3) *However, if the person who commits the crimes referred to in Articles 364, 373, 379, and 407 subarticle 1, as a continuous act and the value of the resulting loss is more than Rp. 25, then he/she is subject to the criminal rules referred to in Articles 362, 373, 378 and 406.*

#### 4.4.2.2. Criminal System

According to Article 64 subarticle (1), in principle, the participation in this joint application applies an absorption system, namely, only one criminal rule is imposed and, if different, it is subject to provisions containing the most severe principal criminal sanctions.

### 4.4.3. Concursus Realis

Joint action (***concursum realis***) is regulated in Article 65 to Article 71.

Article 65 of the Criminal Code:

- (1) *In the case of several acts which must be considered as independent acts, so that they constitute several crimes, which are punishable by the same principal punishment, then only one sentence shall be imposed.*
- (2) *The maximum punishment imposed is the maximum amount of punishment that is threatened for the act, but it cannot be more than the maximum of the heaviest punishment plus a third.*

#### 4.4.3.1. Criminal System

In the *realist concursus* in Article 65 of the Criminal Code, the Criminal Code recognizes 3 (three) measures in determining the severity of the sentence:

##### 1. Absorption system

If there are several criminal provisions that must be applied in this system, the most severe one will be applied, and other provisions will be ignored. Thus, only the maximum principal penalty is imposed with the understanding that the other maximum penalties (of the same type or not) are absorbed by the higher one. Example: If a person commits



several crimes and one crime carries the highest punishment, for example the death penalty, life imprisonment, or a maximum temporary imprisonment of 20 years, the most severe punishment will be imposed.

## 2. Accumulation system

Setiap perbuatan pidana dapat dijatuhkan pidana secara tersendiri. Namun, semua pidana itu dijumlah dan diolah menjadi satu pidana.

Example: If a person commits 3 criminal acts, each of which carries a maximum penalty of 4 months, 3 months and 2 months, then the maximum accumulated penalty is 8 months.

## 3. Limited accumulation system

The limited accumulation system is a system with restrictions, namely that all penalties that are added up may not reach the maximum limit of the most severe criminal sanction with a certain percentage.

Example: If a person commits 2 criminal acts, each punishable by a maximum of 6 and 4 years. If it is determined that the maximum addition of one third of the highest, then the maximum penalty for the two crimes is 6 years + one third  $\times$  6 years = 8 years.

### 4.4.4. Principal of Double Criminality

The principle of double crime means that acts committed by both the requesting country and the requested country are considered as crimes or criminal acts. This principle is contained in Article 4 subarticle (1) of Law Number 1 of 1979 on Extradition which states that if extradition is performed for the crimes mentioned in the list of crimes attached to the law, Article 3, subarticle (1) confirms about who may be extradited or requests extradition.

In the case of TIP with *double criminality*, the country of origin of the TIP perpetrator can ask the country where the TIP occurs to have the criminal proceedings in their country by extradition. This is based on the Extradition Law and the ACTIP (Against Trafficking in Persons, Especially Women and Children) Convention which regulates cooperation in the field of extradition between the parties.

The provisions of Article 5 of the ACTIP Convention stated that a crime may be extradited provided that the offense is punishable under the domestic law of the requesting State Party and the requested State Party. If a State Party that requires extradition through a treaty receives a request for extradition from another State Party, but that country does not have an extradition treaty, that country may consider the ACTIP Convention as a legal basis for extradition by considering the crime in question.

## 4.5. Criminal liability theory

Criminal liability is referred to as *criminal responsibility or liability*. The concept of criminal liability does not only concern legal matters but also concerns the moral values or general decency adopted by a society or groups in society.

In criminal liability, a person can only be held accountable if the act has been regulated. A person cannot be punished or held accountable if the regulation appears after a crime has been committed. In addition, the rules of criminal law also do not apply retroactively.

In criminal law, a crime is formed by two important elements:

- a. The objective/physical element is *actus reus*  
*Actus reus* is an act that violates the criminal law.

b. Subjective/mental elements, or *mens rea*

*Mens rea* is the mental attitude of the perpetrator when committing a crime.

A person cannot be punished only because he has committed an act that is against the law or contrary to the law. Thus, even though the act has fulfilled the definition of an offense in the laws and regulations and is not justified (*an objective breach of a penal provision*), it cannot be said as has fulfilled the requirements for punishment. This is because of the inner attitude (intention or purpose) of the perpetrator of the act when committing an act that is against the law or contrary to the law should be considered. For this reason, the fulfilment of the *actus reus* and *mens area* in the manner and process of criminal acts is important.

There are two elements of Criminal Liability to determine whether a person will be released or convicted of a crime:

a. A crime has been executed

Criminal act was executed according to the laws and regulations in Indonesia in the form of positive law. Criminal acts can be in the form of unlawful acts and acts that violate the law.

b. Element of wrongdoings

The basis of criminal liability is the wrongdoings contained in the psychological aspect of the perpetrator. This is associated with mental conditions and actions that are punishable. There are several things that must be considered in determining the mental condition of the perpetrator:

1. Ability to be responsible (*toerekeningsvatbaarheid*).
2. Psychological relationship (*psychologische betrekking*) between the perpetrator and the consequences.
3. A psychological attitude of the doer related to his behavior: intentional behavior (intentional factors), and less careful or negligent behavior (negligence factors) or carelessness (*schuld in enge zin*).
4. There is no reason to remove the criminal liability of the doer (*anasir toerekeningsvatbaarheid*).



## CHAPTER V

### PROSECUTION

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#### 5.1. Discussion of TIP Article Elements

##### 5.1.1. Article Elements

Article 1 subarticle (1) of Law Number 21 of 2007 on the Crime of Trafficking in Persons (TIP):

*Trafficking in Persons is an act of recruiting, transporting, sheltering, sending, transferring or receiving a person accompanied by threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage, giving payments/benefits, so as to obtain the consent of the person having control over the other person, whether carried out within a country or between countries, for the purpose of exploitation or causing the person to be exploited.*

According to the article, there are 3 elements of the criminal act of trafficking in persons that must be fulfilled. The 3 elements include:

##### a. Process

According to the Great Indonesian Dictionary (KBBI), the word process is defined as a sequence of changes (events) in developing something. The TIP process involves recruiting, transporting, sheltering, sending, transferring or receiving a person, accompanied by threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage, giving payments/benefits, so as to obtain approval from person who has control over the other person.

##### 1) Recruitment

Recruitment is an action that includes inviting, gathering, bringing, or separating someone from their family or community (Article 1 point 9 of Law Number 21 of 2007).

##### 2) Transportation

According to Law no. 22 of 2009 in Article 1 point 3 which confirms that: "Transportation is the movement of people and/or goods from one place to another by using vehicles in road traffic spaces."

##### 3) Sheltering

Sheltering according to the KBBI is the process, method, act of accommodating; fencing; The reception in this case relates to TIP, either directly or indirectly.

##### 4) Sending

Sending is the act of dispatching or anchoring someone from one place to another (Article 1 point 10 of Law Number 21 of 2007).

##### b. Method

KBBI defines the word method as a way (rules, system) to do (do and so on) something. Various ways can be used to commit TIP include threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage, giving payments/benefits, so as to obtain approval from the person who has control over the other person. .

##### 1) Transfer or acceptance of a person accompanied by threats of violence

The threat of violence is any unlawful act in the form of speech, writing, figures, symbols, or body movements, either with or without using means that cause fear or restrict a person's essential freedom (Article 1 number 12 of Law Number 21 of 2007). akiki seseorang (Pasal

2) Use of Violence

Violence is any act against the law, with or without the use of physical and psychological means that poses a danger to life, body, or results in the deprivation of a person's independence (Article 1 point 11 of Law Number 21 of 2007).

3) Kidnapping

The definition of kidnapping is stated in Article 328 of the Criminal Code which reads:

*"Whoever takes someone away from his/her place of residence or temporary residence with the intention of placing that person unlawfully under his/her control or the power of another person, or to place him/her in a state of misery, is threatened with kidnapping with a maximum imprisonment of twelve years."*

4) Confinement

*"Anyone who intentionally and unlawfully deprives someone of their liberty, or continues such deprivation of liberty, shall be punished by a maximum imprisonment of eight years"* (Article 328 of the Criminal Code).

5) Counterfeit

*"Anyone who makes a forged letter or falsifies a letter which can give rise to a right, an agreement or debt relief, or which is intended as evidence of something with the intention of using or ordering other people to use the letter as if the contents are true and not falsified, threatened if such use may result in loss, due to forgery of documents, the maximum imprisonment is six years"* (Article 328 of the Criminal Code).

6) Fraud

*"Whoever with the intention of benefiting himself/herself or another person against their rights, either by using a false name or false circumstances, either by reason and deceit, or by making up false words, persuades people to give something, makes debts or write off debts, are punished for fraud with a maximum imprisonment of 4 (four) years."* (Article 378 of the Criminal Code).

7) Abuse of Power or Vulnerability

*"That anyone with the aim of benefiting himself/herself or another person or a corporation, abusing the authority, opportunities or facilities available to him/her because of his/her title or position can harm the state finances or the state economy, shall be punished with life imprisonment or imprisonment for a minimum of one year and a maximum of twenty years and/or a fine of at least Rp. 50,000,000.00 and a maximum of Rp. 1,000,000,000.00."* (Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001).

8) Debt Bondage

*"Debt entrapment is the act of placing people in the status or condition of pledging or being forced to pledge themselves or their families or those who are their responsibility, or their personal services as a form of debt repayment."* (Article 1 number 12 of Law Number 21 of 2007).

9) Payment/Benefit

According to the linguistic definition, to give a payment/benefit is to give up a certain amount of money or give the benefit of an object to another person in exchange for a payment.

c. Exploitation

Law 21/2007 explains the meaning of exploitation in Article 1 point 8 which reads:

*Exploitation is an act with or without the consent of the victim which includes but is not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, physical, sexual, reproductive organ use, or unlawfully removing or transplanting organs and/or body tissue or exploiting one's energy or ability by another party to gain material or immaterial benefits.*

Exploitation in this case can be in the form of actions with or without the victim's consent which include various means such as prostitution, forced labor or services, slavery or slavery practices, oppression, extortion, use of physical, sexual, reproductive organs, or unlawfully removing or transplanting organs and or body tissue, utilizing one's energy or ability by another party to gain material or immaterial benefits.

## 5.1.2. Evidence

### 5.1.2.1 Evidence at the prosecution stage

Types of evidence and their evidentiary value:

#### A. Witness testimony

Witness testimony is one of the evidence in a criminal case in the form of testimony from a witness regarding a criminal event that he himself heard, saw, and experienced by mentioning the reasons for his knowledge. The Constitutional Court's decision 65/PUUVIII/2010 expands this definition to also include everyone who has direct knowledge related to the occurrence of a criminal act must be heard as a witness. This decision must be obeyed and followed by everyone, especially investigators, public prosecutors and judges.

Witness whose testimony is required during the trial comes under the following conditions:

#### 1. Formal Conditions

Witnesses must be sworn in before giving their testimony.

#### 2. Material Conditions

Witnesses must have certain qualifications, such as:

- See with his/her own eyes
- Hear with his/her own ears
- Experience himself/herself
- State the reasons for his/her knowledge.

There are 3 types of witnesses, namely:

1. Witnesses who incriminate the defendant (*a charge*) and witnesses who relieve the defendant (*a de charge*)
2. Witnesses who are taken and are on the side of the defendant in the case
3. Witnesses assigned by the investigator to conduct an examination of the defendant.

#### Principles of Evidence

The principle of evidence in criminal procedural law can be described as follows:

#### a. What is generally known does not need to be proven (*notoire feiten*)

This principle is regulated in Article 184 subarticle (2) of the Criminal Procedural Code. This principle means that a condition, situation, or event that is already common knowledge that the situation, condition, or event will always happen that way or will always have that result. In other words, *notoire feiten* is a general conclusion based on general experience that a situation or event will cause an event or result that is always the same. This principle also applies at the investigation level and at the prosecution stage. Example: The defendant lit his victim with fire causing burns to the victim, so there is no need to prove that the fire was hot. *Notoire feiten* is only one piece of evidence or proof, meaning that it must be supported by other evidence/evidence.

#### b. One witness is not a witness (*unus testis nullus testis*)

This principle is regulated in Article 185 subarticle (2) of the Criminal Procedural

Code, namely that the testimony of a witness alone is not sufficient to prove that the suspect/accused is guilty of committing the crime that is alleged/accused of him. However, if the testimony of a witness is justified or supported by another witness, then two pieces of evidence/proof from one type of evidence/proof or the testimony of a witness are accompanied by one other valid evidence/proof, then it is no longer *unus testis nullus testis*.

Actually, the principle of one witness is not a witness is a logical consequence of the evidentiary system adopted by the Criminal Procedural Code, that in order to make sure that a criminal act has occurred it must be supported by at least two valid pieces of evidence. The public prosecutor and judge can only be sure if at least two valid pieces of evidence have been obtained. According to the Supreme Court, two witness statements that are in agreement with each other are considered as two valid pieces of evidence.

**For the TIP case, the requirement for 2 (two) initial evidence is sufficient with the testimony of a victim witness and one piece of evidence—it can be in any form as previously mentioned.**

A similar spirit can be found in the provisions of Article 185 subarticles (2) and (3) of the Criminal Procedural Code which regulates the following:

- (2) The testimony of a witness alone is not sufficient to prove that the defendant is guilty of the act he/she is accused of.
- (3) The provisions as referred to in subarticle (2) shall not apply if accompanied by other valid evidence.

- c. The confession of the suspect/defendant alone does not eliminate the obligation of the investigator/public prosecutor to prove the guilt of the suspect/defendant.

According to Article 189 subarticle (4) of the Criminal Procedural Code, the defendant's statement alone is not sufficient to prove that he/she is guilty of the act he/she is accused of, but must be accompanied by other evidence. On the other hand, the denial of the suspect/defendant alone is not sufficient to prove that he/she is innocent unless the investigator/ public prosecutor cannot present evidence/other evidence that refutes the denial of the suspect/accused.

This principle applies at the investigation stage as well as at the prosecution stage. This principle is the opposite of the principle of proof in corruption and money laundering, which adheres to the principle of reverse proof. This principle is excluded in the event of an expedited examination with one piece of evidence, meaning that only with the defendant's confession the judge is convinced that the defendant has done the deed.

- d. The statement of the suspect/defendant is only binding on himself

According to Article 189 subarticle (3) of the Criminal Procedural Code that the defendant's statement can only be used for himself/herself, everything that is conveyed by the suspect/defendant may only be accepted and acknowledged as valid evidence/proof that binds him/her and cannot be used to prove the guilt of another suspect. This principle applies at the investigation stage as well as at the prosecution stage.

In practice, at the investigation stage, if several people commit a crime together (participation, Article 55 subarticle (1) 1 of the Criminal Code), the investigator separates/splits them into several case files, so that one perpetrator becomes a witness against the other perpetrator and vice versa. Such practice is contrary to the provisions of Article 142 of the Criminal Procedural Code, in which case files can only be divided if one case file contains several criminal acts committed by several suspects and is not included in the provisions of Article 141 of the Criminal Procedural Code.

- e. The suspect/defendant is not burdened with the obligation to prove  
According to Article 66 of the Criminal Procedural Code, the suspect or defendant is not burdened with the obligation of proving. This means that it is the investigator who proves the guilt of the suspect in the investigation, and the public prosecutor who proves the guilt of the defendant in the court trial.

This is the reason why the suspect/defendant is examined at the last opportunity after other evidence/proof has been examined first. The objective of examining the suspect/defendant is not to prove he is guilty, but to provide an opportunity for him to defend himself, by providing, among others, an opportunity to seek witnesses, experts or other evidence that may benefit him.

## B. Expert Description

Expert testimony is information given by someone who has special expertise and is very much needed to bring the light upon of a criminal case for the purpose of the examination being carried out (Article 1 point 28 of the Criminal Procedural Code).

According to M. Yahya Harahap, the difference between a witness and an expert is *"The testimony of a witness is expressed based on the things experienced by the witness himself/herself, while the testimony of an expert is based on knowledge or expertise in a particular field and not based on what he/she saw, heard, or experience it personally."*

Example:

*Visum et repertum* made by a doctor or forensic specialist. Judges, prosecutors, and public advisors are considered to have good knowledge of the law, but from a technical point of view, information or opinions from experts in the field are needed to make things clear.

## C. Letters

In the Criminal Code, there is no clear definition related to documentary evidence. However, according to Sudikno Metrokusumo, *"Letters are things that contain symbols that can be read to pour out one's heart or convey one's thoughts and are used as evidence"*.

The documentary evidence is divided into 3 types as stated in Article 187 of the Criminal Procedural Code:

1. Ordinary letter  
A letter originally intended to prove something
2. Privately made letter  
Made for the purpose of evidence
3. Authentic letter  
Official letters made by public officials (investigators, notaries, judges) which can be broken down into two groups.

In Article 184 subarticle (1), a letter is considered as valid evidence if the letter is considered to meet the qualification standards according to the Law:

1. A letter made under the oath of an official position (*Acte ambtelijk*).
2. A letter confirmed by oath (*Acte partij*).

In order for the official letter to be valid as evidence in court later, the official letter must contain information about events or circumstances that were heard, seen, and experienced by the official and explain clearly the reason why the statement is made.

Example: ID card, Driving License, Passport, Birth Certificate, etc.

## D. Clues

According to Article 188 of the Criminal Procedural Code subarticle (1) letter d, there are several things that need to be considered in using clues as evidence:

1. Clues are actions, events or circumstances which due to conformity between one and

the other as well as the crime itself indicate that a crime has occurred and who the perpetrator is.

2. The clues as referred to in subarticle (1) can only be obtained from witness statements, letters and statements from the defendant.
3. An assessment of the evidentiary strength of a clue in each particular situation is made by the judge after he has conducted a thorough and comprehensive examination based on his conscience.

#### E. Defendant's Statement

Based on Article 184 subarticle (1) letter e of the Criminal Procedural Code, the defendant's statement does not need to be treated as a confession. This is because the defendant's statement can be in the form of denial, confession or partial confession of an act or condition. Recognition as evidence has to meet the following conditions:

- a. Admit that he/she commits the offense charged
- b. Admits he/she is guilty

Furthermore, the statement of the defendant is limitedly regulated by Article 189 of the Criminal Procedural Code, which reads:

1. *The defendant's statement is what the defendant stated in court about the actions he/she committed, or he/she knew or experienced himself/herself.*
2. *Information given by the accused outside the trial may be used to assist in finding evidence at trial, provided that the information is supported by valid evidence as long as it relates to the thing he/she is accused of.*
3. *The defendant's statement can only be used against himself/herself*

In addition to the provisions in the Criminal Procedural Code, Article 29 of Law 21/2007 stipulates that evidence also includes:

- a. information that is spoken, transmitted, received, or stored electronically by optical or similar devices; and
- b. data, recordings, or information that can be seen, read, and/or heard, which can be issued with or without a device, whether written on paper, any physical object other than paper, or recorded electronically, including but not limited to:
  - text, sound, or figure;
  - maps, designs, photographs, or the like; or
  - letters, signs, numbers, symbols, or perforations that have meaning or can be understood by people who are able to read or understand them.

It is also emphasized by Judge Sudharmawatiningsih, that electronic information and/or electronic documents and/or printouts are an extension of the evidence regulated in procedural law as regulated in Article 5 subarticle (1) and subarticle (2) and Article 44 letter b of Law Number 11 of 2008 on Information and Electronic Transactions which has been amended by Law Number 19 of 2016 (IET Law).

Electronic evidence requires special handling since it is found at the crime scene until it is presented in court. This handling is divided into 4 (four) stages as illustrated in the following diagram:

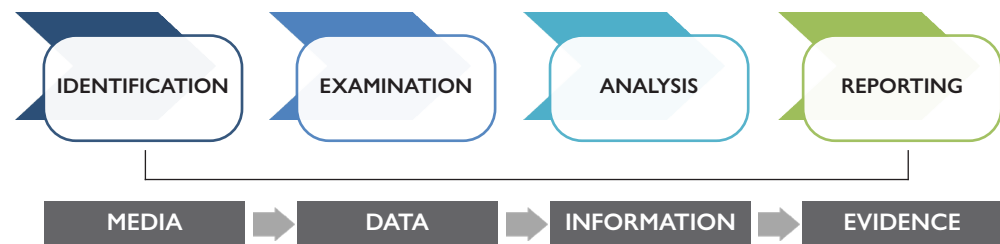


Figure 4: Stages of Electronic Evidence Handling

The upper part of the diagram describes the stages of the electronic evidence handling process while the lower part shows the outputs of the evidence handled at each stage.

#### 1) Identification Stage

The identification stage is the initial stage of the process of handling evidence at the crime scene which plays a very important and crucial role, due to the characteristics of electronic evidence that are volatile (easily changed, lost, or damaged). If the initial handling of electronic evidence at the crime scene is wrong and not procedural, it is very possible that important and supposed electronic evidence will be changed or even lost and may become invalid later. The identification stage consists of 4 (four) interrelated activity processes:

- a. Media Identification Process or commonly called Electronically Stored Information (ESI) which is considered to be a source of data.

Activities in identifying various media can include but are not limited to data storage media (such as hard disks, USB flash drives, CDs, memory cards, etc.), electronic devices (computers, mobile phones, cameras, etc.), and network activity logs from the internet provider. At this stage, the responsible personnel must be able to map the owner of the media to be collected in order to obtain consent from the appropriate party.

The identification stage also includes activities carried out by investigators to ensure that the collected data does not change, taking into account the evidentiary value contained in each media, the volatile data that may be involved, and the complexity of data acquisition.

- b. Collection Activities (collection)

The collection process is a series of activities to collect as much data as possible to support the investigation process in the search for evidence. Personnel must perform:

- Verification of data integrity to prove that the data collected has not been altered or tampered with.
- Equipment in the data collection process needs to be prepared and paid attention to, especially the use of gloves, avoid tampering with latent evidence (fingerprints, DNA, etc.) including documentation and records of every action against electronic evidence



#### c. Data Acquisition Activities (acquisition)

In the acquisition process, it is mandatory to consider the right forensic tools before making an acquisition. Personnel must have special competence in addition to the authority in handling non-volatile, volatile, and network data.

Appropriate acquisition methods regarding the state of electronic data can consist of **physical** and **logical** acquisitions. For example, if the computer is on or off, the handling is different. Some methods that can be done include matching message digest or hashing between the original data and the copied data; checking mobile phone number to confirm username; identification of unique media numbers such as IMEI, pin, and SIM ID; and checking the registry.

#### d. Preservation Process

Preservation or security of electronic evidence is carried out in every process and stage including the packaging process of electronic evidence which must be packaged in tamper-evident bags and labeled, numbered according to the evidence label, the name of the responsible DEFR, date of collection, and evidence specifications. It is mandatory to avoid extreme temperatures, large magnets, water, humid environments, and other conditions that might affect electronic evidence being changed or damaged.

### 2) Examination Stage

The stage of examination or examination of electronic evidence involves the process of analyzing the data contained in the media or electronic devices. This step should be carried out by personnel who understand specific forensic data analysis techniques.

The method of analysis can take the form of:

- a) identification of electronic documents containing certain keywords
- b) operating system analysis
- c) compressed and encrypted data
- d) analysis of computer and network activity logs
- e) other analysis that can reduce the number of documents that may be evidence of a crime.

The data are then extracted for further analysis. In general, the results of the examination stage are related to data recovery and analysis of electronic device systems.

### 3) Analysis Stage

The analysis process is carried out by mapping the extracted data. But before the data can be analyzed, the data must be indexed first. Indexing is the process of categorizing each word in the data so that it becomes searchable information. Examples of analysis of digital data are data on the flow of funds, data on traveling or displacement, data on purchases of dangerous or explosive materials, etc.

Stages of analysis must be carried out by personnel who understand the chronology of case events. The results of the analysis can show the parties involved, the location, objects that are likely to be the proceeds of crime or instruments of crime, and the sequence of events. The results of the analysis of the digital data are referred to hereinafter as electronic evidence which must be technically and scientifically



accountable and legally valid before the court.

#### 4) Reporting Stage

Reports are made based on the entire series of activities and outputs obtained from the electronic evidence handling process. Considerations that must be considered in reporting are:

- a) Users who will read the report
- b) Easy-to-understand delivery method
- c) Explanation of the role and relevance of the evidence submitted as the case evidence
- d) Follow-ups to respond to the data obtained.

In general, reports made in the process of handling electronic evidence contain:

- a) title
- b) examination number
- c) personnel who is involved in the process along with the date, time and place,
- d) number and types of electronic evidence received for examination and analysis
- e) technical specification data for each specific electronic evidence.
- f) the purpose of inspection of related electronic devices and their inspection procedures.
- g) Attachments: (i) Forensic reports (acquisition, examination, data extraction); (ii) Table of contents in attachments; (iii) Metadata of any electronic evidence

#### F. Evidence

In addition, there are also pieces of evidence as stated in the Article 39 subarticle (1) of the Criminal Procedural Code:

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

For the TIP case, the requirement for 2 (two) initial evidence is sufficient with the testimony of a victim witness and one piece of evidence—it can be in any form as previously mentioned.

### **Compile a matrix of indictments and evidence**

The preparation of the indictment must refer to the Circular Letter of the Attorney General of the Republic of Indonesia Number SE-004/JA/11/1993 dated November 16, 1994 on the Preparation of the Indictment. In preparing the indictment, the following formal and material requirements for the preparation of the indictment must be taken into account:

- Formal requirements (Article 143 subarticle (2) letter a of the Criminal Procedural code)
  - a. The indictment must be dated and signed by the Public Prosecutor who made the indictment;
  - b. The indictment must contain the full identity of the defendant which includes: full name, place of birth, age/date of birth, gender, nationality, place of residence, religion and occupation.
- Material requirements (Article 143 subarticle (2) letter b the Criminal Procedural code)
  - a. A careful, clear and complete description of the crime that is being charged;
  - b. A careful, clear and complete description of the time and place where the crime was committed.

A careful description demands the accuracy of the Public Prosecutor in preparing the indictment that will be applied to the defendant. By placing the word “carefully” at the forefront of the formulation of Article 143 (2) letter b of the Criminal Procedural Code, the legislators require that the Public Prosecutor to be attentive in making the indictment.

A clear description means a clear description of the incident or facts of the incident in the indictment, so that the defendant can easily understand what is being charged against him and can prepare his defense as well as possible. A complete description means that the indictment contains all the elements of the crime being charged. These elements must be described in the description of the facts of the incident as outlined in the indictment.

Materially, an indictment is deemed to have met the requirements if the indictment has given a complete and thorough description of:

- 1) The crime committed;
- 2) Who commits the crime;
- 3) Where the crime was committed;
- 4) When a crime was committed;
- 5) How the crime was committed;
- 6) The consequences of the crime (material offense).
- 7) What prompted the defendant to commit the crime (certain offenses);
- 8) Criminal provisions applied.

### Forms of Indictment Letter

The law does not stipulate the form of the indictment letter and the various well-known forms of indictment letter is developed in practice. The followings are several forms of indictment letter:

1. Single  
Only one crime is charged in the indictment, because there is no possibility to propose alternatives or other substitute charges. For example, only a charge of TIP is made but there has not been any exploitation yet (Article 2 subarticle (1) of Law 21/2007).

2. Alternative  
In the indictment letter, there are several indictments that are arranged in layers, one layer is an alternative and excludes the charges in the other layers. This form of indictment letter is used when there is no certainty about which crime can be proven most appropriately. Although the charges consist of several layers, only one charge will be proven. Proof of the indictment does not need to be carried out sequentially according to the layers of indictment, but directly to the indictment that is deemed proven. If one of them has been proven, the charges on the other layers do not need to be proven again.

For example, in the first indictment: TIP which causes the victim's exploitation (Article 2 subarticle (2) of Law 21/2007) or Second: economic and/or sexual exploitation of children (Article 76I of Law 35/2014 on Child Protection).

3. Subsidiarity  
Similar to the alternative charges, the subsidiarity indictment letter also consists of several layers of indictments which are arranged in layers with the intention that one layer serves as a substitute for the previous layer. Systematic layers are arranged sequentially starting from crime that is threatened with the highest punishment to the crimes that is threatened with the lowest. The proof is done sequentially starting from the top layer to the layer that is considered proven.

The layers that are not proven must be stated clearly and demanded that the accused be acquitted of the layers of charge in question. For example, the accused is charged with:

Primary : TIP that causes victims being exploited (Article 2 subarticle (2) of Law 21/2007)

Subsidiary : TIP that does not cause victims to be exploited (Article 2 subarticle (1) of Law 21/2007)

More subsidiary : falsifying documents, causing TIP (Article 19 of Law 21/2007)

#### 4. Cumulative

In the cumulative indictment letter, several crimes are charged at once, all charges must be proven one by one. Indictments that are not proven must be stated clearly and demanded the defendant to be acquitted of these charges. This indictment is used in the event that the defendant commits several criminal acts, each of which is an independent crime. For example, the defendant is charged with:

First : Murder (Article 338 of the Criminal Code), and

Second : Theft with weighting (Article 363 of the Criminal Code), and

Third : Rape (Article 285 of the Criminal Code)

#### 5. Combination

This letter of indictment is referred to as a combination indictment letter because in this form of letter is a combination of/combines cumulative indictments and alternative or subsidiary charges. The emergence of this form is in line with developments in the field of crime which are increasingly varied both in form/type and in the modus operandi used. For example, the defendant is charged with:

##### First

Primary : Premeditated murder (Article 340 of the Criminal Code),

Subsidiary : Non-premeditated murder (Article 338 of the Criminal Code)

More Subsidiary : Persecution that results in the death of a person (Article 351 (3) of the Criminal Code) and (for a combination) or (for an alternative)

##### Second

Primary : Theft by weight (Article 363 of the Criminal Code)

Subsidiary : Theft (Article 362 of the Criminal Code)

Third : Rape (Article 285 of the Criminal Code)

### **Indictment Letter Formulation Techniques**

The technique of making the indictment relates to the selection of the form of the indictment and the editorial used in formulating the indicted criminal act.

#### 1. Selecting Form

The form of the indictment letter is adjusted to the type of crime committed by the defendant. If the defendant only commits one crime, then a single charge is used. In the event that the defendant commits a crime that touches several formulations of a crime in the law and the qualifications and criminal provisions that have been violated are not certain, alternative or subsidiary charges are used. In the event that the defendant commits several criminal acts, each of which is an independent crime, the cumulative indictment letter is used.

#### 2. Writing Technique

This relates to how to formulate the facts and actions of the defendant which are combined with the elements of a criminal act according to the formulation of the criminal provisions that have been violated, so that it is clear that the facts of the defendant's actions fulfil all the elements of a criminal act as formulated in the relevant criminal provisions. The formulation in question must be accompanied by a description of the time and place of the crime being committed. The description of the two components is carried out systematically using simple language and effective sentences.

## Indictment Letter Matrix Sample

### 1. Example of Subsidiarity indictment Letter

Sudiman Laksono Alias Mr. Irma recruited several people to register to work as domestic helpers in Malaysia. However, the recruitment and departure process for workers was carried out non-procedurally. The suspect ordered Ermelinda Tati Kondo Alias Lita to accompany the victims who were about to depart from Waingapu Airport for a fee of Rp. 2,000,000. Finally, the vehicle carrying Ermelinda Tati Kondo Alias Lita and the victims was stopped and they were arrested by officers while on the way. Sudiman Laksono Alias Mr. Irma was charged with the Primary indictment of Article 2 subarticle 1 of Law Number 21 of 2007 on the Eradication of Trafficking in Persons for carrying out non-procedural recruitment and sending of workers for the purpose of exploitation in the territory of the Republic of Indonesia, subsidiary Article 9 subarticle 1 Law Number 21 of 2007 on Eradication of the Crime of Trafficking in Persons for bringing Indonesian citizens outside the territory of the Republic of Indonesia with the intention of being exploited outside the territory of the Republic of Indonesia (Malaysia).

#### Matrix for Primary Indictment Letter

Defendant's name : Sudiman Laksono

Time/place of incident : Wamena, Papua

Article of indictment : Article 2 subarticle 1 of Law Number 21 of 2007 on Eradication of Trafficking in Persons

	Offense	Facts	Evidence	Remarks
Act	Recruitment	Sudiman Laksono Alias Mr. Irma recruited several people to register to work as domestic helpers in Malaysia.	Witness Yohana Bulu	I have registered with Sudiman Laksono Alias Mr. Irma by submitting my husband's and my ID cards as a requirement.
			Witness Omiana Blli	Sudiman Laksono Alias Mr. Irma came to my house on September 5, 2016 and said if any of your relatives want to work in Malaysia, please register with Sudiman laksono Alias Mr. Irma.



			<p>Witness Ermelinda Tati Kondo Alias Lita</p> <p>Lion Air flight ticket booking code via cellphone using the number of 081337071693 by sending a short message to Ermelinda Tati Kondo via cellphone with a number of 082247210291.</p> <p>Suspect Sudiman Laksono Alias Mr Irma</p>	<p>I received a payment of IDR 2,000,000 (two million rupiah) from Sudiman Laksono Alias Mr. Irma on 9 September 2016 to accompany three prospective workers who were about to depart for Malaysia.</p> <p>The prospective workers will be dispatched by airplane through Waingapu airport in a non-procedural way.</p> <p>I ordered Ermelinda Tati Kondo to accompany prospective workers who were going to depart through Waingapu airport and handed over Rp 2,000,000 (two million rupiah) as payment on 9 September 2016.</p>
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Table 15: Matrix of Primary Indictment Letter

### Subsidiarity indictment Matrix

Defendant's name : Sudiman Laksono

Time/place of incident : Wamena, Papua

Article of indictment : Article 4 subarticle 1 of Law Number 21 of 2007 on Eradication of Trafficking in Persons

	Offense	Facts	Evidence	Remarks
Act	Recruitment	Sudiman Laksono Alias Mr. Irma recruited several people to register to work as domestic helpers in Malaysia.	Witness Yohana Bulu	I have registered with Sudiman Laksono Alias Mr. Irma by submitting my husband's and my ID cards as a requirement.
			Witness Omiana Blli	Sudiman Laksono Alias Mr. Irma came to my house on September 5, 2016 and said if any of your relatives want to work in Malaysia, please register with Sudiman laksono Alias Mr. Irma.
			Suspect Sudiman Laksono Alias Mr. Irma	I received Yohana Bulu and Omiana Blli who registered as prospective domestic helpers in Malaysia by asking for their ID cards and their husbands' ID card as a condition on 28 August 2016 and 6 September 2016 at my residence.
Means	Fraud	Suspect Sudiman Laksono Alias Mr. Irma lured potential victims with the lure of a large pay, wage or salary if they work in Malaysia.	Witness Omiana Bli	On 5 September 2016 Sudiman Laksono Alias Mr. Irma came to my house and told me about the high wage and salary of working in Malaysia.

			Suspect Sudiman Laksono Alias Mr Irma	I deliberately went to Omiana Blli's house and told her about the high pay and salary when working in Malaysia so that they became interested in registering to work as domestic helpers in Malaysia.
<b>Eksplotation</b>	Work exploitation	Suspect Sudiman Laksono Alias Mr. Irma used the labor of his victims as domestic helpers in Malaysia for personal gain.	<p>Witness Yonas Botha</p> <p>Witness Ermelinda Tati Kondo Alias Lita</p>	<p>When I was conducting an investigation and patrolling the highway at the intersection of South Wewewa and Kalem buweri, I checked a car which turned out to be sending three prospective workers to Malaysia in an unprocedural manner.</p> <p>I received a payment of IDR 2,000,000 (two million rupiah) from Sudiman Laksono Alias Mr. Irma on 9 September 2016 to accompany three prospective workers who were about to depart for Malaysia.</p>



			<p>Lion Air flight ticket booking code via cellphone using the number of 081337071693 by sending a short message to Ermelinda Tati Kondo via cellphone with a number of 082247210291</p> <p>Suspect Sudiman Laksono Alias Mr Irma</p>	<p>Para calon pekerja tersebut akan diberangkatkan dengan pesawat terbang melalui bandara Waingapu dengan cara non prosedural.</p> <p>I ordered Ermelinda Tati Kondo to accompany prospective workers who were going to depart through Waingapu airport and handed over Rp 2,000,000 (two million rupiah) as payment on 9 September 2016.</p>
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Table 16: Matrix of Subsidiarity indictment Letter

## 2. Example of Single Indictment Letter

Herman Jebarus alias Herman commits trafficking in persons by recruiting workers to be sent to Jakarta to work as housemaids, taking kindergarten children to school and caring for the elderly. This recruitment was carried out by Alosius Dangut for which he was paid Rp. 150,000 for each worker who was successfully registered. These recruited workers are underage workers so that the recruitment and departure process was carried out non-procedurally.

### Single Indictment Matrix

Defendant's full name : Herman Jebarus alias Herman

Article of indictment : Article 9 of Law of the Republic of Indonesia No. 21 of 2007 on Eradication of Trafficking in Persons

	Offense	Facts	Evidence	Remarks
Act	Recruitment	Herman Jebarus alias Herman as the person who commits, who orders to do or participate in the act of trafficking in persons by recruiting workers who will be sent to Jakarta to work as a housemaid, taking Kindergarten children to school and caring for the elderly.	Witness Alosius Dangut  Suspect Herman Jebarus	I helped recruiting prospective workers with a salary of IDR 150,000 from Herman Jebarus for every person I manage to recruit.  I told Alosius Dangut to recruit prospective workers and promised a commission of IDR 150,000 for each person he managed to recruit.
Means	Fraud	Alosius Dangut lures potential victims with the lure of pay, wages or salaries and bonuses to attract child labor.	Witness Elisebeth Elsi  Witness Alosius Dangut	On March 5, 2012 Alosius Dangut came to my house and offered me and my friends to work in Jakarta as housemaids, taking kindergarten children to school and taking care of the elderly with a large salary.  I deliberately went to Elisebeth Elsi's house to offer her a job in Jakarta.

<b>Eksplotation</b>	Exploitation of children for work	Herman Jebarus alias Herman ordered Alosius Dangut to recruit child laborers to exploit them by making them working in Jakarta.	Witness Alosius Dangdut	I never asked the age of prospective workers even though they were still under the appropriate age to be a worker.
			Suspect Herman Jebarus alias Herman	During lunch at the port, I told the prospective child laborers that I would cover the entire cost of the trip.
			Witness Elisebeth Elsi	Herman Jebarus promised us that he would bear the entire cost of the trip, but after having lunch, the police arrested him.
<b>Article 55 subarticle (1) of the Criminal Code</b>	Order to do	Herman Jebarus alias Herman ordered Alosius Dangut to recruit child laborers to exploit them by making them working in Jakarta.	Witness Alosius Dangdut	I never asked the age of prospective workers even though they were still under the appropriate age to be a worker.
			Suspect Herman Jebarus alias Herman	During lunch at the port, I told the prospective child laborers that I would cover the entire cost of the trip.
			Witness Elisebeth Elsi	Herman Jebarus promised us that he would bear the entire cost of the trip, but after having lunch, the police arrested him.

Table 17: Matrix of Single Indictment Letter

### 3. Example of Alternative Indictment Letter

Triono Edi Santoso alias Dawir Bin Sukri committed trafficking in persons by recruiting the victim, Ms. Frenti, to work as a Sex Worker in a brothel complex. The incident began when the victim intended to borrow IDR 500,000 from the suspect, but the suspect refused because he did not have that amount of money. The suspect then advised the victim to become a prostitute in the brothel complex with the help of the suspect. The suspect was then arrested and charged with Article 2 subarticle (1) of Law Number 21 of 2007 on the Eradication of Trafficking in Persons in conjunction with Article 55 subarticle (1) 1 of the Criminal Code for committing acts of recruiting people to become sex workers with the aim of sexual exploitation and the lure of payment, as well as alternative charges of Article 297 of the Criminal Code in conjunction with Article 55 subarticle (1) to 1 of the Criminal Code because it is indicated to cause or facilitate the trafficking of minors.

### Primary Indictment Letter Matrix

Defendant full name : Triono Edi Santoso alias Dawir Bin Sukri

Article of indictment : Article 2 subarticle (1) of Law Number 21 of 2007 on Eradication of Trafficking in Persons in conjunction with Article 155 subarticle (1) 1 of the Criminal Code.

	Offense	Facts	Evidence	Remarks
Act	Recruitment	Triono Edi Santoso Alias. Dawir Bin Sukri as the defendant ordered to commit acts of trafficking in persons by recruiting the victim, Ms. Frenti. to work as a prostitute in the brothel complex	<p>Victim Mr. Frenti Neva Valentine</p> <p>Suspect Triono Edi Santoso Alias. Dawir Bin Sukri</p>	<p>I wanted to borrow IDR 500,000 from the defendant to pay for the collateral in the form of a motorcycle ownership certificate which was used as the collateral of a loan in a cooperatives, but because he had no money, I asked him for a job.</p> <p>I told Ms. Frenti to work as a prostitute in the brothel complex because I could not lend her money.</p>
Means	Fraud, abuse of power or vulnerable position, pay/benefit	The suspect, Triono Edi Santoso Alias. Dawir Bin Sukri lured potential victims with a lure of payment of prostitutes by saying that when there were many customers, the victim would get a payment of approximately IDR 1,000,000 (one million rupiah) in one week.	Korban Sdri. Frenti Neva Valentin	At that time, the suspect offered me some money that I could earn by working as a prostitute. Because I really needed it, I finally accepted the offer.

			Suspect Triono Edi Santoso Alias Dawir Bin Sukri	I deliberately offered the victim, Ms. Franti Neva Valentin, a job as a prostitute in the localization to help her make money and at the same time seek personal gain.
<b>Eksplotation</b>	Prostitution	The suspect, Triono Edi Santoso Alias. Dawir Bin Sukri ordered the victim, Ms.Frenti Neva Valentin, to say to her mother that she was leaving to work as a waitress in a clothes shop in Rogojampi, even though the victim, Ms. Franti Neva Valentin, was about to become a prostitute in a localization.	Witness Mr. Widowati (Mother Victims of Frenti	I let my daughter go because he and Triono said that my daughter would work at a clothing store in Rogojampi
			Suspect Triono Edi Santoso Alias. Dawir Bin Sukri	I deliberately ordered Ms. Frenti Neva Valentin to lie she was saying goodbye to his mother so that she was allowed to go to work.
			Ms. Frenti Neva Valentine	I had to lie to my mother so that our plan would not be discovered and I would be allowed to go.
<b>Article 55 subarticle (1) of the Criminal Code</b>	Order to do	The suspect, Triono Edi Santoso Alias. Dawir Bin Sukri ordered Ms. Frenti Neva Valentin to work as a prostitute in the brothel complex.	Victim Mr. Frenti Neva Valentine	I wanted to borrow IDR 500,000 from the defendant to pay for the collateral in the form of a motorcycle ownership certificate which was made collateral for the loan in cooperative, but because he had no money, I asked him for a job.
			Suspect Triono Edi Santoso Alias. Dawir Bin Sukri	I asked Ms.FRENTI to work as a prostitute in the brothel complex because I could not lend her money.

Table 18: Matrix for Primary Indictment Letter

### Matrix for Alternative Indictment Letter

Article of indictment : Article 297 of the Criminal Code in conjunction with Article 55 subarticle (1) 1 of the Criminal Code

	Offense	Facts	Evidence	Remarks
Article 297 Criminal Code	Whoever intentionally cause or facilitate the trafficking of immature boys are punishable by a maximum imprisonment of six years.	Triono Edi Santoso Alias. Dawir Bin Sukri as the defendant offered the victim Ms. Frenti who is still a minor to work as a prostitute in a brothel complex	Victim Mr. Frenti Neva Valentine	I wanted to borrow IDR 500,000 from the defendant to pay for the collateral in the form of a motorcycle ownership certificate which was made collateral for the loan in cooperative, but because he had no money, I asked him for a job.
			Suspect Triono Edi Santoso Alias. Dawir Bin Sukri	I asked Ms.Frenti to work as a prostitute in the brothel complex because I could not lend her money.
Article 55 subarticle (1) Criminal Code	Order to do	The suspect, Triono Edi Santoso Alias. Dawir Bin Sukri ordered Ms. Frenti Neva Valentin to work as a prostitute in the brothel complex.	Victim Mr. Frenti Neva Valentine	I wanted to borrow IDR 500,000 from the defendant to pay for the collateral in the form of a motorcycle ownership certificate which was made collateral for the loan in cooperative, but because he had no money, I asked him for a job.
			Suspect Triono Edi Santoso Alias. Dawir Bin Sukri	I asked Ms.Frenti to work as a prostitute in the brothel complex because I could not lend her money.

Table 19: Matrix of Alternative Indictment Letter

#### 4. Contoh Dakwaan Kumulatif

Jerry Rolanda alias OM 2 Bin Jainudin and Abdul Rasid Mantiro alias Om 1 bin Joni Mantiro committed theft at the house belonging to Nada Faizah Binti Izma Alchoir's parents. After taking some items, the suspect saw Nada Faizah Binti Izma Alchoir sleeping. The suspect then kidnapped Nada Faizah Binti Izma Alchoir for the purpose of exploiting or trafficking children.

The suspect was charged with a combination of charges on the grounds of:

- 1) First, **Article 83 in conjunction with Article 76 F of Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection**, which has the main element of "placing, letting, doing, ordering to do, or participating in kidnapping, selling, and/or trafficking Children"; and,
- 2) Second Primary, **Article 81 subarticle (1) in conjunction with Article 76 D Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection in conjunction with Article 55 subarticle (1) 1 of the Criminal Code**, which has the main elements "those who commit, who order to do, and who participate in committing violence or threats of violence to force a child to have intercourse with him or with other people";
- 3) Second Subsidiary, **Article 82 subarticle (1) of Law Number 35 of 2014 in conjunction with Article 76 E of Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection in conjunction with Article 55 subarticle (1) 1 of the Criminal Code**, which has the main element "those who commit, who order to do, and who participate in committing violence or threats of violence, coercing, committing deception, committing a series of lies, or persuading children to commit acts of violence or allow obscene acts to be performed";

### Matrix of the First Indictment

Defendant's full name : Jerry Yolanda

Article of indictment : Article 83 In conjunction with Article 76 F of Law No. 35 of 2014 of the Republic of Indonesia on Amendments to the Law of the Republic of Indonesia No. 23 of 2002 on Child Protection in conjunction with Article 55 subarticle (1) 1st of the Criminal Code.

	Offense	Facts	Evidence	Remarks
<b>Article 83 Law of the Republic of Indonesia No. 35 of 2014 on Amendments to the Law of the Republic of Indonesia No. 23 of 2002 on Child Protection</b>	Anyone who violates the provisions as referred to in Article 76F shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of a minimum of IDR 60,000,000.00 (sixty million rupiah) and a maximum of IDR 300. 000,000.00 (three hundred million rupiah).	Jerry Rolanda Alias Om 2 Bin Jainudin as the defendant in the kidnapping of Nada Faizah Bint Izma Alchoir	Witness Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro          Suspect Jerry Rolanda Alias Om 2 Bin Jainudin	I and Jerry Rolanda Alias Om 2 Bin Jainudin were riding a motorbike and we stopped at a house to steal, but I was only assigned to wait for him outside.          I told Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro to wait while I was stealing in a house, then I brought along the child named .. who was sleeping in the living room.

<b>Article 76 F of Law of the Republic of Indonesia No. 35 of 2014 on Amendments to the Law of the Republic of Indonesia No. 23 of 2002 on Child Protection</b>	Suspect Jerry Rolanda aka Om 2 Bin Jainudin brought a child named Nada Faizah Binti Izma Alchoir who was sleeping in the living room	Tersangka Jerry Rolanda Alias Om 2 Bin Jainudin membawa seorang anak bernama Nada Faizah Binti Izma Alchoir yang sedang tertidur di ruang tamu	Witness Udi Istiani Binti Rusdiansyah  Suspect Jerry Rolanda Alias Om 2 Bin Jainudin	I was sleeping in the living room with Nada Faizah Binti Izma Alchoir, but when I woke up, the child was gone.  I told Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro to wait while I was stealing in a house, then I also brought a child named .. who was sleeping in the living room to be kidnapped.
	Order to do	Suspect Jerry Rolanda aka Om 2 Bin Jainudin brought a child named Nada Faizah Binti Izma Alchoir sleeping in the living room	Witness Udi Istiani Binti Rusdiansyah  Suspect Jerry Rolanda Alias Om 2 Bin Jainudin	I was sleeping in the living room with Nada Faizah Binti Izma Alchoir, but when I woke up, the child was gone.  I told Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro to wait while I was stealing in a house, then I also brought a child named .. who was sleeping in the living room to be kidnapped.

Table 20: Matrix of the First Indictment Letter



### Matrix of the Second Primary Indictment Letter

Article of indictment : Article 81 subarticle (1) in conjunction with Article 76 D of Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection in conjunction with Article 55 subarticle (1) first point of the Criminal Code

	Offense	Facts	Evidence	Remarks
Article 81 Law of the Republic of Indonesia No. 35 of 2014 on Amendments to the Law of the Republic of Indonesia No. 23 of 2002 on Child Protection	Any person who intentionally commits violence or threats of violence forcing a child to have intercourse with him or with another person, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of IDR 300,000,000 (three hundred million rupiah) and a minimum of IDR 60,000,000.00 (sixty million rupiah).	Jerry Rolanda Alias Om 2 Bin Jainudin as the defendant in the kidnapping of Nada Faizah Bint Izma Alchoir	Witness Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro	I and Jerry Rolanda Alias Om 2 Bin Jainudin were riding a motorbike and we stopped at a house to steal, but I was only assigned to wait for him outside.
			Suspect Jerry Rolanda Alias Om 2 Bin Jainudin	I told Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro to wait while I was stealing in a house, then I brought along the child named .. who was sleeping in the living room.
Article 76 D of Law of the Republic of Indonesia No. 35 of 2014 on Amendments to the Law of the Republic of Indonesia No. 23 of 2002 on Child Protection	Everyone is prohibited from committing violence or threats of violence to force a child to have intercourse with him or with other people.	Suspect Jerry Rolanda aka Om 2 Bin Jainudin brought a child named Nada Faizah Binti Izma Alchoir who was sleeping in the living room	Witness Udi Istiani Binti Rusdiansyah	I was sleeping in the living room with Nada Faizah Binti Izma Alchoir, but when I woke up, the child was gone.
			Suspect Jerry Rolanda Alias Om 2 Bin Jainudin	I told Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro to wait while I was stealing in a house, then I also brought a child named .. who was sleeping in the living room to be kidnapped.

<b>Pasal 55 ayat (1) KUHP</b>	Order to do	Suspect Jerry Rolanda aka Om 2 Bin Jainudin and Witness Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro kidnapped a child named Nada Faizah Binti Izma Alchoir	Witness Udi Istiani Binti Rusdiansyah  Suspect Jerry Rolanda Alias Om 2 Bin Jainudin	I was sleeping in the living room with Nada Faizah Binti Izma Alchoir, but when I woke up, the child was gone.  I told Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro to wait while I was stealing in a house, then I also brought a child named .. who was sleeping in the living room to be kidnapped.
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Table 21: Matrix of Second Primary Indictment Letter

**Matrix of the Second Subsidiary Indictment Letter**

Article of indictment: Article 82 subarticle (1) of Law Number 35 of 2014 in conjunction with Article 76 E of Law Number 35 of 2014 on Amendments to Law Number 23 of 2002 on Child Protection in Conjunction with Article 55 subarticle (1) first point of the Criminal Code

	<b>Offense</b>	<b>Facts</b>	<b>Evidence</b>	<b>Remarks</b>
<b>Article 82 Law of the Republic of Indonesia No. 35 of 2014 on Amendments to the Law of the Republic of Indonesia No. 23 of 2002 on Child Protection</b>	Any person who intentionally commits violence or threats of violence forcing a child to have intercourse with him or with another person, shall be punished with imprisonment for a maximum of 15 (fifteen) years and a minimum of 3 (three) years and a maximum fine of IDR 300,000,000 (three hundred million rupiah) and a minimum of IDR 60,000,000.00 (sixty million rupiah).	Jerry Rolanda Alias Om 2 Bin Jainudin as the defendant in the kidnapping of Nada Faizah Bint Izma Alchoir	Witness Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro  Suspect Jerry Rolanda Alias Om 2 Bin Jainudin	I and Jerry Rolanda Alias Om 2 Bin Jainudin were riding a motorbike and we stopped at a house to steal, but I was only assigned to wait for him outside.  I told Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro to wait while I was stealing in a house, then I brought along a child named .. who was sleeping in the living room.

<b>Article 76 E of Law of the Republic of Indonesia No. 35 of 2014 on Amendments to the Law of the Republic of Indonesia No. 23 of 2002 on Child Protection</b>	Everyone is prohibited from committing violence or threats of violence, coercing, deceiving, committing a series of lies, or persuading children to commit or allow obscene acts to be conducted.	Suspect Jerry Rolanda aka Om 2 Bin Jainudin brought a child named Nada Faizah Binti Izma Alchoir who was sleeping in the living room	Witness Udi Istiani Binti Rusdiansyah  Suspect Jerry Rolanda Alias Om 2 Bin Jainudin	I was sleeping in the living room with Nada Faizah Binti Izma Alchoir, but when I woke up, the child was gone.  I told Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro to wait while I was stealing in a house, then I also brought a child named .. who was sleeping in the living room to be kidnapped.
<b>Article 55 subarticle (1) of the Criminal Code</b>	Order to do	Suspect Jerry Rolanda aka Om 2 Bin Jainudin and Witness Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro kidnapped a child named Nada Faizah Binti Izma Alchoir	Witness Udi Istiani Binti Rusdiansyah  Suspect Jerry Rolanda Alias Om 2 Bin Jainudin	I was sleeping in the living room with Nada Faizah Binti Izma Alchoir, but when I woke up, the child was gone.  I told Abdul Rasid Mantiro Alias Om 1 Bin Joni Mantiro to wait while I was stealing in a house, then I also brought a child named .. who was sleeping in the living room to be kidnapped.

Table 22: Matrix of the Second Subsidiary Indictment Letter

## 5.1.2.2 Evidence in court

## 1. Theory of Evidence

- The theory of evidence based on the judge's conviction (conviction intime)  
This theory implies that the evidence of defendant's guilt or innocence is determined based on the judge's conviction.

Characteristic features:

- Judges are not bound by various kinds of evidence regulated by law.
- Judges can use or ignore evidence to gain confidence in the guilt of the defendant.
- The evidence used by the judge is the conclusion from the testimony of the witness and the confession of the defendant.

- The theory of evidence, according to positive law (*positive wettelijk bewijstheorie*).  
This theory stated that the only evidence that is true is the evidence based on the law.  
Characteristic features:
  - The law is considered the most correct evidence.
  - Judges have the authority to judge evidence based solely on statutory considerations.

- c. The judge's subjective considerations outside the law can be removed by proving the law.
- Theory of evidence that is based on the judge's conviction on logical grounds (*conviction raisonnee*).  
The *conviction raisonnee* theory system is based on the proof from judge based on clear or rational reasons.  
Characteristic features:
  - a. Judges have an immensity without limitation from where the conviction arises.
  - b. The judge's conviction must be based on clear reasons.
  - c. The judge must explain every reason that underlies his belief in the guilt of the person.
- Theory of Evidence according to negative statutory (*negatief wettelijk bewijs theotrie*).  
This theory is a mixture of *conviction raisonnee* and *positive wettelijk bewijstheorie*. That is, whether or not someone is wrong is based on the judge's conviction in accordance with methods and evidence that are valid according to law.

Yahya Harahap argues that the prevailing evidentiary system tends to shift to a positive evidence system approach. It is rare to find a description of considerations that systematically and argumentatively link and combine the evidence of the defendant's guilt with the judge's conviction. The point is that as long as the defendant's guilt has been legally proven according to the provisions of the method and with the evidence referred in the law, without expressing the motivation of the judge's conviction in the evidence, judges in general feel that it is enough to "reply" the evidence with a sentence formulation that has been modelled and standard: "the defendant's guilt has been proven and believed."

However, the provisions of Article 183 of the Criminal Procedural Code stated that a judge may not impose a sentence on a person unless the judge, with a minimum of two valid evidence, obtains a conviction that a criminal act has actually occurred and the defendant is guilty of committing it. It can be concluded that the evidentiary system in Indonesia uses the theory of negative evidentiary law (*negatief wettelijk bewijstheori*). Thus, based on the two pieces of evidence, the judge obtained his/her conviction.

## 2. Evidence and Examination Stage

As mentioned, according to the law, evidence plays a very important role and is the central point of criminal procedural law. This can be seen in all stages, starting from initial investigation, investigation, pre-prosecution, additional examination, prosecution, examination at trial in court, and court decisions and legal remedies that prioritize evidence. Detailed explanation for each stage of the examination is given below:

- a. Initial Investigation Stage  
Initial investigators because of their obligations have the authority as regulated in Article 5 of the Criminal Procedural Code to:
  - 1) Look for information and evidence.
  - 2) Order the suspect to stop and ask and check his identity.
  - 3) By order of an investigator, he/she may make arrests, search, and confiscate.
  - 4) Take fingerprints and photograph people.
  - 5) This authority is intended to seek preliminary evidence, and with this preliminary evidence determine whether or not an investigation can be carried out because it is suspected that a crime has occurred.

b. Investigation Stage

Investigators, because of their obligations, have the authority according to Article 7 subarticle (1) of the Criminal Procedural Code to:

- 1) Summon people to have their statements heard as witnesses, in order to obtain evidence of witness statements.
- 2) Bring in an expert to be heard as an expert, in order to obtain evidence of expert testimony.
- 3) Examine and confiscate letters, in order to obtain letter evidence.
- 4) Seize evidence in order to obtain evidence from proof.
- 5) Summon and examine the suspect to obtain evidence of the suspect's statement.

The purpose of the investigation is to obtain at least two pieces of evidence that are mutually compatible in order to shed light on a criminal case and find the suspect.

c. Pre-Prosecution Stage

- The public prosecutor, after receiving the case file as a result of the investigation from the investigator, immediately reviews the completeness of the case file which includes formal and material completeness.
- Formal completeness includes, among others, minutes of examination of witnesses, experts and suspects that have met the legal requirements for an official minute and minutes of confiscation of letters and evidence that are valid with permission/determination of the head of the local district court.
- Material completeness includes, among others, evidence of witness testimony, expert testimony, suspect testimony, legally obtained letters, and whether or not at least two supporting evidence have been obtained which from their conformity prove the elements of the alleged criminal act and the alleged perpetrator.

d. Additional Inspection Stage

- In the event that the investigator cannot fulfil the instructions of the public prosecutor, the public prosecutor may take over to complete the case file by conducting additional examinations, either by examining witnesses and experts or confiscating letters and evidence but he/she is not allowed to examine suspects. This is done by the public prosecutor to complete the evidence before it is submitted to the Court.
- Additional examinations are only carried out on cases which are difficult to prove, and/or which can disturb the public, and/or may endanger the safety of the state. Must be completed within 14 days after the implementation of Article 110 and Article 138 (2) of the Criminal Procedural Code. The deadline is 14 days from the time the physical examination begins.

e. Prosecution Stage

- The public prosecutor, after receiving or re-accepting the completed case file or after conducting additional examinations, determines whether the case file has met the requirements to be submitted to the Court.
- If all the facts supporting the elements of the offense are obtained from valid evidence, the Public Prosecutor shall immediately write an indictment letter. However, if he/she is of the opinion that there is insufficient evidence in the case, the prosecution will terminate the case.
- The public prosecutor also has the power to make arrests;

f. Examination Stage in Court Sessions

- The peak of the evidentiary process occurs at the time of examination in court, because all witnesses, experts, letters, suspects and evidence presented by the public prosecutor and those submitted by the defendant are re-examined to

obtain valid evidence.

- All examination processes in court are essentially looking for evidence, because only with at least two valid pieces of evidence that are compatible with each other, the public prosecutor and the judge can be sure that the crime accused is really proven and the defendant is guilty of committing it.

g. Court ruling

- Is a judge's decision or statement pronounced in an open court session as specified in Article 1 point 11 of the Criminal Procedural Code.
- The judge's conviction on whether or not the criminal act that has been accused is proven rests with the ability of the public prosecutor to submit valid evidence and from legal evidence. The public prosecutor obtains legal facts that support the element of the offense charged with the crime.
- In the event that the court is of the opinion that the defendant is proven guilty of committing the crime he is accused of, the court shall impose a sentence.
- In the event that the court is of the opinion that the criminal act accused has not been legally and convincingly proven, the defendant is acquitted.
- If the court is of the opinion that the alleged act is proven but the defendant cannot be accounted for, the defendant is dismissed from all legal charges.

h. Legal Remedy Stage

- Legal remedy is the right of the defendant or the public prosecutor when they do not to accept the court's decision in the form of resistance or appeal or cassation or the right of the convict to submit a request for reconsideration in matters and according to the method regulated by the Criminal Procedural Code (Article 1 Point 12).
- In the Criminal Procedural code, legal remedies are regulated in Chapter XVII and Chapter XVIII. Taking into account the legal systematics, legal remedies can be categorized into ordinary legal remedies (appeal and cassation) and extraordinary legal remedies (cassation for legal purposes and review).
- According to Dr. Andi Hamzah, who quoted Van Bemmelen's opinion, conveyed that the appeal examination was actually a new assessment (*judicium novum*), so that new witnesses, experts and documents could be submitted. Meanwhile, in the stage of reviewing court decisions that already have permanent legal force, one of the requirements for a judicial review request (PK) is that a new situation has been obtained (*novum*).

From all stages of criminal procedural law from the investigation stage to the legal remedies stage, it can be concluded that the role and nature of the law of evidence plays an important role in the criminal procedural law process; therefore it absolutely must be controlled by officials at all levels of examination, especially the public prosecutor who has the authority and is burdened with the obligation to prove the criminal offense being charged.

According to Article 8 subarticle (3) of Law Number 16 of 2004 on the Attorney's Office of the Republic of Indonesia, *"For the sake of justice and truth based on the One God, the Prosecutor conducts prosecution with conviction based on valid evidence."* Meanwhile, judges, according to Article 197 subarticle (1) letter a of the Criminal Procedural Code; *"The judge only decides for the sake of justice based on the One God."*

## 5.2. Prosecution Administration

### 5.2.1 Instructions for Investigation

- A. In the context of handling TIP cases, the Attorney's Office issues several policies regarding technical guidelines for handling TIP cases in the handling pattern, including:
  - 1) Instruction of the Attorney General of the Republic of Indonesia Number INS 004/JA/1994 on Important Case Control in General Crimes dated March 9, 1994;
  - 2) Assistance Attorney General for General Crimes Letter Number B-16/E/EJP/3/2002 on Control of Important General Crime Cases dated March 11, 2002;  
Assistance Attorney General for General Crimes Letter Number B-185/EJP/03/2005 on Patterns for Handling Criminal Cases of Trafficking in Persons dated March 10, 2005.
- B. The preparation of the indictment is based on the Circular Letter of the Attorney General of the Republic of Indonesia Number SE004/JA/1993 on the Preparation of the Indictment dated November 16, 1994.
- C. In handling cases with children as victims/witnesses, the Attorney General's Office issues:
  - 1) Assistance Attorney General for General Crimes Letter Number B-363/E/EJP/02/2010 on Technical Guideline for Handling Children in Conflict with the Law dated February 25, 2010;
  - 2) Joint Decree of the Chairperson of MARI, JARI, Chief of Indonesian National Police, Minister of Law and Human Rights, Minister of Social Affairs, Minister of Women's Empowerment and Child Protection Number 148/A/JA/12/2009 on Handling Children in Conflict with the Law dated 22 December 2009.
  - 3) Guideline Number 1 of 2021 on Access to Justice for Women and Children in Handling Criminal Cases
- D. Another effort made by the Attorney's Office includes publishing the "Guideline for Criminal Prosecutions" through:
  - 1) Circular Letter of the Attorney General of the Republic of Indonesia Number SE-013/A/JA/2011 on Guideline for Criminal Prosecutions in General Crime Cases dated December 29, 2011;
  - 2) Guidelines for the restitution of victims of TIP through the Assistance Attorney General for General Crimes Letter Number 3718/E/EJP/11/2012 on Restitution in the Criminal Case of Trafficking in Persons dated November 28, 2012.
- E. The pattern of handling TIP cases through the Case Handling Program or Special Program (PEKATING). The report management (form and material) following the PEKATING procedure is based on the Assistance Attorney General for General Crimes Letter Number B-185/EJP/03/2005 which refers to the Palermo Convention to identify and analyze the existence of a TIP.

In order for an incident to be categorized as a TIP, the incident must meet at least one element of each of the criteria (Act, Means, and Purpose), for example:

**Recruitment + Fraud + Prostitution = Trafficking in Persons.**

(Act)                      (Means)                      (Purpose)

The victim's consent is irrelevant if one of the ways/methods above already exist. Intensified coordination and integration with Investigators to direct the Investigation in order to present all data and facts is required at the prosecution stage. This is also based on the Instruction of the Attorney General of the Republic of Indonesia Number INS-004/JA/1994 dated March 9, 1994.





## CHAPTER VI

### RESTITUTION APPLICATION

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#### 6.1. Theoretical Framework

Restitution is the payment of compensation charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs.

Elucidation of Article 48 of Law no. 21/2007 stipulates that when receiving a report on the occurrence of a TIP case, the investigator must notify the Reporting Party/Witness of the TIP Victim of their right to obtain restitution. The compensation in question includes:

- a. loss of wealth or income;
- b. suffering;
- c. costs for medical and/or psychological treatments; and/or
- d. other losses suffered by the victim as a result of TIP (loss of property, basic transportation costs, attorney's fees or other costs related to legal processes, loss of income promised by the perpetrator)

Restitution is also regulated in Law no. 13/2006 in conjunction with Law 31/2014 with its derivative rules, PP No. 7 of 2018 in conjunction with PP No. 35 of 2020 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. In addition, there is also Government Regulation Number 43 of 2017 on the Implementation of Restitution for Children who are Victims of Crime.

#### 6.2. Procedure for Applying for Restitution

A request for compensation in the form of restitution can be proposed by the victim in 2 ways:

- a. The victim applied for restitution since the victim reported the criminal case to the local Police
- b. Victims can apply for restitution by filing a civil suit for their loss to the local District Court.

To be able to claim restitution, the applicant must submit an application for restitution that contains at least:

- a) Identity of the applicant;
- b) Description of the criminal act;
- c) Identity of the perpetrator of the crime;
- d) A description of the actual loss suffered; and
- e) The form of restitution requested

Along with the application, the following documents must be attached:

- a. Photocopy of Victim's identity which is legalized by the authorized official;
- b. Evidence of actual loss suffered by the Victim or his family made or legalized by the authorized official;
- c. Evidence of costs that will be or have been incurred during treatment and/or care which is legalized by the agency or party performing the treatment or care;
- d. Photocopy of death certificate in the event that the victim died;
- e. Information from the Indonesian National Police showing the applicant as a victim of a crime;
- f. Certificate of family relationship, if the application is submitted by the family; and
- g. Special power of attorney, if the request for restitution is submitted by the victim's attorney or family attorney.
- h. Quotation of court decision, if the case has been decided by the court and has obtained permanent legal force.

More details, PP No. 7 of 2018 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims regulates the requirements for applying for restitution as follows:

- a. The request for restitution can be submitted by the victim, his family and/or his proxy;
- b. If the application is submitted other than by the victim and it is based on a power of attorney, a special power of attorney is attached and if the application is submitted by his family, a certificate of family relations is attached;
- c. LPSK submits a request for restitution along with its decisions and considerations to the public prosecutor;
- d. The public prosecutor as referred to in subarticle (1) in his claim shall include a request for restitution along with the decision of the LPSK and its considerations;
- e. The application for restitution can be made before or after a court decision that has obtained permanent legal force through LPSK;
- f. In the event that the application for Restitution is filed before the court's decision obtains permanent legal force, the LPSK may apply for Restitution to the Public Prosecutor to be included in his claim;
- g. In the event that the application for restitution is filed after a court decision that has obtained permanent legal force has been read out, LPSK may apply for restitution to the court for a determination.

In submitting a request for restitution, law enforcement officers, especially investigators and public prosecutors have the following roles:

- **The Role of the Investigator**  
In this provision, the mechanism for applying for restitution is carried out since the victim reports the case he/she experienced to the local police and is handled by the investigator together with the handling of the crime committed. Investigators must immediately inform the victim about how the victim obtains compensation rights from the perpetrator, for example: that the victim must attach evidence to be submitted as a basis for obtaining restitution (expenditures, treatment in the form of receipts/invoices). In addition, investigators can block assets if needed.
- **The Role of the Witness and Victim Protection Agency (LPSK)**  
In the event that the victim is under the protection of the LPSK, the information on restitution will be given by the LPSK. However, for victims who submit their own restitution without applying for LPSK protection, LPSK does not have an obligation to inform the victim, LPSK only arrives at calculating the loss of victim restitution.

Requests for restitution can be submitted to investigators, public prosecutors, or courts through LPSK. LPSK is tasked with checking the completeness of the restitution application as stipulated in Article 22 subarticle (1) of the Government Regulation (PP) 7/2018. In the event that the application in question has been declared complete, the LPSK will conduct a substantive examination, the results of which are stipulated in the LPSK Decree accompanied by a recommendation to grant or reject the request for restitution. Later, it will be the public prosecutor who carries out the court's decision which contains the provision of restitution by submitting a copy of the decision to the LPSK. LPSK can deliver a copy of the decision to the victim, family, or their proxies, and to the perpetrator of the crime.

In the event that the perpetrator has paid restitution based on a court decision as referred to in Article 30 of the Government Regulation (PP) 7/2018, LPSK will submit a report on the implementation of restitution to the public prosecutor. Then, in the event that the victim, family, or their proxies are not present to provide information 3 (three) times in a row without a valid reason, the application submitted is considered withdrawn. This withdrawal is submitted to the applicant by the LPSK. In the event that the application is incomplete, the LPSK shall notify the applicant in writing to complete the application. If the application is not completed within the stipulated time period, the applicant is deemed to have withdrawn his application.

In the event that the applicant/victim decides to withdraw the request for restitution, LPSK recommends that the victim applicant/victim make a written statement signed on sufficient stamp duty regarding the revocation/rejection of the request for restitution, and then the Public Prosecutor can follow up by not including the request for restitution in the prosecution based on the statement.

- Role of the Prosecutor

Through the Attorney General's Regulation Number 7 of 2020 on Asset Recovery, several stages are needed to perform asset recovery:

- a. Asset Tracking

At this stage, planning for asset recovery is carried out, carrying out asset tracing with the intelligence work unit of the Prosecutor's Office, reporting on the results of asset tracing activities, and evaluating tracing activities.

- b. Asset Protection

Asset security is carried out since the assets are physically controlled by the Attorney General's Office.

- c. Asset Maintenance

Maintenance is carried out since the assets are confiscated by the Prosecutor's Office in accordance with the character of each object. This maintenance can be done with a competent agency.

- d. Asset Forfeiture

The confiscation of assets originating from a criminal act/used to commit a criminal act must be carried out since the perpetrator is designated as a suspect. In addition, if the court's decision decides on the payment of replacement money, fines, restitution, or the implementation of other additional crimes, but previously no assets have been confiscated, the prosecutor's office can confiscate the assets of the convict/convict's family. The confiscated goods are then auctioned off. If the amount obtained from the auction exceeds the amount of the obligation to be paid, the excess is given to a third party who has a valid legal basis.

- e. Asset Return

The return of assets can be made to the state or to the victim in the context of paying restitution. The return to the victim must be made 7 (seven) days after the court's decision which has permanent legal force is received by the Prosecutor's Office.

In order to determine the amount of assets to be confiscated and recovered by the public prosecutor, the public prosecutor informs the victim of his/her right to apply for restitution in the form of compensation for:

- a. Loss of wealth or income;
  - b. Suffering;
  - c. Medical treatment costs;
  - d. Other losses suffered by victims due to trafficking in persons.

In criminal charges, the public prosecutor conveys the amount of losses suffered by the victim as a result of trafficking in persons.

- Pre-prosecution

- The research prosecutor, related to the TIP file which does not include restitution, has given instructions so that restitution is used as the substance of the examination of victim and suspect witnesses.
  - Asking investigators to conduct "mediation" (not in order to stop the case), but in order to try to find an agreement on the amount of restitution requested by the victim with the suspect's ability to pay restitution.

- Prosecution

- If an agreement is not reached at the investigation level, then progressively the Public Prosecutor at the time of the Phase II Submission will again try to mediate on the restitution requested by the victim with the ability of the suspect/defendant to pay restitution. The requisitor includes the amount of restitution requested by the victim.

NO	RESTITUTION (COMPENSATION)	PROSECUTOR INVOLVEMENT	DESCRIPTION
1.	Article 14 letter c of the Criminal Code	Along with the prosecution letter	
2.	Article 98-101 KUHAP	Along with the prosecution letter	
3.	Article 48-50 of Law 21/2007	Along with the letter of claim	
4.	Law no. 13 of 2006 in conjunction with Law no. 31 of 2014 on the Protection of Witnesses and Victims: <ul style="list-style-type: none"> <li>• Before the court's decision</li> <li>• After the court's decision</li> </ul>	Along with the prosecution letter PP Number: 35 of 2020 on Amendments to Government Regulation Number 7 of 2018 on Granting Compensation, Restitution and Assistance to Witnesses and Victims.	1. Severe human right crimes 2. Corruption 3. Money laundering crimes 4. TP. Terrorism 5. TIP 6. TP. Narcotics 7. TP. Psychotropic 8. Crimes that are very dangerous for the life of the witness/victim.

Table 23: Involvement of the Public Prosecutor in Restitution

The evidence needed to support the claim for restitution can be collected from the investigation stage. Therefore, it is important for investigators to understand that restitution is the right of the victim and the fulfilment process must begin at the investigation stage. Some of the evidence that can be used to support claims for restitution include:

- Employment agreement
- Payslips
- Proof of payment of medical expenses
- Proof of payment for psychological/psychiatric services
- Proof of payment of treatment expenses
- Proof of transportation costs

#### 6.2.1. Asset Blocking Authority

Article 32 of Law 21/2007 stipulates that either investigators, public prosecutors, or judges are authorized to order financial service providers to block the assets of any person suspected of committing TIP. The service providers in question include banks, securities companies, mutual funds, custodians, and foreign exchange traders. Until now there is no mechanism for blocking assets in Law 21/2007, but this blocking can adopt the provisions contained in Law Number 8 of 2010 on Money Laundering. The following is the blocking procedure in question:

- State clearly the names and positions of investigators, public prosecutors or judges
- Identity of the person being reported
- State the reasons for blocking, criminal acts suspected or indicted
- Mention the place of wealth
- Blocking is done no later than 30 (thirty) working days

#### 6.2.2. Authority to Give Asset Tracing Instruction

In the event that the public prosecutor feels that the investigation must be complemented by data regarding the number of assets owned by the perpetrator, the public prosecutor can provide instructions to the investigator to trace for assets at the time of submission of the file in the first phase. This asset tracing becomes an inseparable act in the blocking of wealth as regulated in Article 32 of Law 21/2007.

Asset tracking can adopt the mechanism used in handling Corruption Crimes cases. At the investigation stage, the suspect can be asked for information about the parties involved in TIP and

the possibility of enjoying the proceeds of the crime. Article 28 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 on the Eradication of Criminal Acts of Corruption (Law PTPK) stipulates that:

*"For the purposes of the investigation, the suspect is obliged to provide information regarding all of his property and the property of his wife or husband, children and property of any corporation that is known and or suspected of having a relationship with a criminal act of corruption committed by the suspect."*

Article 26 (1) A financial service provider may delay a Transaction no later than 5 (five) working days as of the postponement of the Transaction. The conditions for a transaction to be postponed, as regulated in Article 26 subarticle (2), are: 1. Conducting a transaction which is reasonably suspected of using Assets originating from the proceeds of a criminal act; 2. Have an account to accommodate Assets originating from the proceeds of criminal acts; or 3. It is known and/or suspected of using forged documents.

In providing file instructions to investigators, the public prosecutor may also request that the claim for restitution be included in the case file. Asset tracking is intended to determine the economic capacity of the defendant so that the public prosecutor can estimate from the beginning whether the defendant is able to pay restitution or not.

### 6.2.3. Auction by Court or Consignment

The provision of compensation in the form of restitution has been carried out since the first-level court decision was imposed on the TIP case. Restitution can be deposited in advance at the court where the case was decided or on consignment. The consignment is regulated in Article 1404 to Article 1412 of the Civil Code with the following principles:

- a. It is a civil relationship between the debtor and creditor which may be carried out **before the case or while the case is ongoing before it is decided**;
- b. If the creditor refuses payment, then the debtor makes an offer for cash payment or delivery of goods as payment of debt to the creditor. If the creditor refuses, the debtor can entrust it to the court.
- c. For a consignment to be valid, there is no need for power of attorney. It is enough for the judge to leave it in the treasury/storage at the Court Registrar who will handle the case.
- d. Custody by the debtor, can be in the form of goods or cash (all principal and interest debt). In the context of TIP, the safekeeping must be in the form of money.
- e. The offer can be made by a notary or court bailiff with each accompanied by 2 witnesses. Custody can be made in a cash depository or in custody at the court clerk who will hear the case.

In the provisions of Article 48 of Law 21/2007, the deposit of restitution in court in the form of money is carried out in accordance with statutory regulations. Restitution is a real (factual) payment of the amount of restitution decided by the court. The payment is made 14 (fourteen) days after the notification of the final and binding decision to the defendant and the victim. Regarding this provision, Article 49 of Law 21/2007 stipulates as follows:

- (1) The implementation of the granting of restitution is reported to the chairman of the court that decides the case, accompanied by evidence of the implementation of the granting of the restitution.
- (2) After the chairman of the court receives the evidence as referred to in subarticle (1), the chairman of the court announces the implementation on the notice board of the court concerned.
- (3) A copy of the proof of the implementation of the provision of restitution as referred to in subarticle (1) shall be submitted by the court to the victim or his/her heirs.

If after 14 days have passed, the restitution has not been paid, the court is required to give a warning to the convict and at the same time order the prosecutor to confiscate the assets of the convict. If the convict does not want to pay restitution, the prosecutor's office will ask the convict to sign a

statement of inability to pay restitution. With the signing of the letter, the claim for restitution that is not paid is replaced with a maximum imprisonment of 1 year.

In addition to the consignment mechanism, restitution payments can also be made through court auctions. The auction in question is an execution auction, namely an auction to implement a court decision or decision, other documents that are equivalent to it, and/or implement the provisions in the laws and regulations. The implementation of the auction is described in the Regulation of the Minister of Finance Number 27/PMK.06/2016 Year 2016 on Instructions for Implementation of Auctions.

#### 6.2.4. Civil lawsuit

In addition to claiming compensation through the payment of restitution, compensation can also be obtained through a civil lawsuit. In the context of a civil lawsuit, the victim or his/her heirs can file a lawsuit against the law based on the provisions of Article 1365 of the Civil Code:

*"Every act against the law, which brings harm to another person, obliges the person who because of his fault published the loss, compensates for the loss."*

In a lawsuit against unlawful deed, the Plaintiff can file for compensation for material and immaterial losses. Material losses are losses that can be calculated, while immaterial losses are losses that are abstract in nature. A lawsuit against unlawful deed can be carried out independently by the victim and/or his/her heirs.

### 6.3. Judge's Attitude towards Restitution Claim

In the trial the judge can grant or reject the claim for restitution, depending on the examination. In the event that the judge rejects the claim for restitution, the reason that is often found is because the request for restitution is not submitted according to the procedure. The following will describe examples of cases where restitution is rejected or accepted.

#### 6.3.1 Rejecting Claims for Restitution

An example of a decision refusing a request for restitution is Court Decision No. 1501 K/PIDSUS/2008 case on behalf of Sanidi binti Basro. The reasons for this rejection are as follows:

- The claim for restitution is submitted together with the prosecution letter from the Public Prosecutor. This is not in accordance with the procedure for submitting a request for restitution based on the authentic interpretation of Article 48 subarticle (1) of Law no. 21 of 2007 as formulated in the explanation of the article which should have been submitted since the Investigation stage.
- It is proven that the crime of Trafficking in Persons does not automatically grant the victim's request for restitution, this depends on the material facts revealed in court regarding the defendant's actions that caused harm to the victim. In this case, the defendant's modus operandi only recruited victims and did not cause direct harm as referred to in Article 48 subarticle (2) of Law no. 21 of 2007.

#### 6.3.2. Granting Claims for Restitution

Some examples of restitution claims that are granted are listed below:

- Tanjung Karang District Court Decision No. Reg. 1663/PID/B/2008/PN.TK. on behalf of the Defendant Fitriyani Binti Muradi, who granted the claim/demand for restitution even though the amount was not as large as the one demanded, namely IDR 10,000,000, - (ten million rupiah).
- The decision of the Medan District Court on behalf of the Defendant Andreas Ginting (Boss Kafe Pesona) Medan, which has been proven to have violated Article 2 subarticle (1) of Law no. 21 of 2007. The rulings include:
  - 3 Years Imprisonment
  - Fine of IDR 120,000,000 in lieu of 2 months confinement.
  - Refund of IDR 64,700,000 (sixty-four million seven hundred thousand rupiah).
- South Jakarta District Court Verdict Number: 550/Pid/Sus/2012/PN.JKT.Sel dated June 13, 2013, on behalf of Defendant I Omi als. Om Als. Mami Bt Enggul and Defendant II Rumpang Als. Papi.

Claim for Restitution of IDR 150,000,000 (one hundred and fifty million rupiah) subsidiary of 6 (six) months in confinement. Judge's Decision granted restitution amounting to IDR 60,000,000 (sixty million rupiah) subsidiary of 6 (six) months in confinement.

- West Jakarta District Court Verdict Number: 2044/Pid.Sus/2013/PN. Jkt.Bar dated March 6, 2014, on behalf of the defendant Willy.
  - Charges: 1 year and 6 months in prison, a fine of IDR 80,000,000 (eighty million rupiah) subsidiary 8 (eight) months of confinement, Restitution of IDR 1.100,000,000 (one billion one hundred million rupiah) subsidiary 8 (eight) months of confinement.
  - Verdict: 1 year in prison, fine of IDR 40,000,000 (forty million rupiah) subsidiary 5 (five) months confinement, Restitution of IDR 1.100,000,000 (one billion one hundred million rupiah) subsidiary of 5 (five) months of confinement.
- Decision of the Tual District Court in the TP Case. Trafficking in Persons:
  - Number: 105/PID.SUS/2015/PN. TUL on behalf of the Defendant Youngyut Nitiwongchaeron Als. Yut Als. Tai Yut IDR 129.900.000 (one hundred twenty-nine million nine hundred thousand rupiah).
  - Number: 107/PID.SUS/2015/PN. TUL on behalf of the Defendant Boonsom Jiaka Als. Yud Als. Tai Yud IDR 335.300.000 (three hundred thirty-five million three hundred thousand rupiah).
  - Number: 108/PID.SUS/2015/PN. TUL on behalf of the Defendant Surachai Maneephong Als. Tai Kee Als. Kee of IDR 49,800,000 (forty-nine million eight hundred thousand rupiah).
  - Number: 109/PID.SUS/2015/PN. TUL on behalf of the Defendant Hatsaphon Phaetjakreng Als. Tai At Als. At IDR 239.900.000 (two hundred thirty-nine million nine hundred thousand rupiah).
  - Number: 110/PID.SUS/2015/PN. TUL on behalf of the Defendant Somchit Korraneesuk Als. Tai Wau Als. Wow IDR 18,400,000 (eighteen million four hundred thousand rupiah).



## CHAPTER VII

### COOPERATION IN HANDLING TIP

#### 7.1. Case Handling Coordination

Given the complexity of TIP and the importance of inter-institutional cooperation, Law no. 21/2007 on the Eradication of TIP regulates cooperation in a special chapter.

##### 7.1.1. Anti-Trafficking Task Force

The main coordinating agency in efforts to deal with TIP is the Task Force for the Prevention and Handling of Trafficking in Persons or the Anti-Trafficking Task Force (ATTF), which was established based on Presidential Regulation no. 69 of 2008 in conjunction with Presidential Regulation Number 22 of 2021 on its Amendment. Members of this Task Force are ministries and law enforcement agencies. This institution is responsible for the followings:

- coordinating efforts to prevent and handle TIP problems;
- conducting advocacy, socialization, training and cooperation both in national and international cooperation;
- monitoring the progress of the implementation of victim protection which includes rehabilitation, repatriation, and social reintegration;
- monitoring the progress of law enforcement implementation;
- reporting and evaluation

Task Force Membership		
<b>Chairman I: Coordinating Minister for Human Development and Culture</b>		
<b>Chair II: Coordinating Minister for Political, Legal and Security</b>		
<b>Daily Chair: Minister of Women's Empowerment and Child Protection</b>		
Member:		
1. Ministry of Home Affairs	13. Ministry of Planning	19. Head of the Central
2. Ministry of Foreign Affairs	Development/Planning	Statistics Agency (BPS)
3. Ministry of Finance	Agency National	20. Maritime Security Agency
4. Ministry of Religion	Development (Bappenas)	21. Indonesian National Army
5. Ministry of Law and	14. Ministry of Youth and	22. Reporting Center and
Human Rights	Sports	Transaction Analysis
6. Ministry of Transportation	15. Indonesian National Police	Finance
7. Ministry of Manpower	(Kapolri)	23. Witness and Victim
8. Ministry of Social Affairs	16. Prosecutor	Protection Agency
9. Ministry of Health	17. Indonesian Migrant	24. Ministry of Rural Affairs
10. Ministry of Education	Workers Protection	25. Head of the Indonesian
11. Ministry of Culture and	Agency (BP2MI)	Migrant Protection
Tourism	18. National Intelligence	Agency
12. Ministry of	Service	
Communication and		
Information		

Table 24: Membership of the Task Force

##### 7.1.2. Coordination of Case Handling in Border Areas

At the regional level, task forces are formed at the provincial, city, and/or district levels. According to the results of the Research Report: The Profile of Trafficking in Persons in Border Areas of Kalimantan (Studies of the Districts of Sanggau, Sambas, Kapuas Hulu, and Nunukan), Task Forces in border areas such as in Sanggau District are not active enough. In addition, there is also a One-Stop Service Agency for Placement and Protection of Indonesian Migrant Workers/LPTSA-P2TKI where its formation is formalized by a local regional head regulation. This institution oversees the Manpower



and Transmigration Office, the Health Service, the Civil Registry Office, the West Kalimantan Police Station, the West Kalimantan Ministry of Law and Human Rights Office and the Service, Placement and Protection Agency for Indonesian Migrant Workers. In addition to regulating the placement of Indonesian migrant workers, this institution is also tasked with providing protection, workforce capacity development, empowerment, and repatriation of migrant workers to their areas of origin. However, many of these institutions are also inactive.

In addition to LPTSA-P2TKI, there is also a Service Post, Placement and Protection of Indonesian Migrant Workers (P4TKI), namely the representative office of the National Agency for Placement and Protection of Indonesian Migrant Workers (BNP2TKI) (now the Indonesian Migrant Worker Protection Agency/BP2MI) located at the district level. This post is tasked with strengthening the function of returning migrant workers to their areas of origin. All of these agencies/units/institutions work closely with the immigration office, which serves as the frontline of traffic crossing national borders. The immigration office issues a circular containing guidance to all immigration offices regarding passport issuance and immigration checks at border checkpoints. The Immigration Office is given the authority to delay or refuse the issuance of passports for Indonesian citizens who are indicated as illegal workers.

As a representative of the Indonesian government in a foreign country, the Consulate General of the Republic of Indonesia (KJRI) has a very crucial role. The Consulate General is actively identifying victims of TIP and providing shelter while the case is legally processed and/or the victim is repatriated to Indonesia. The Consulate General also cooperates with law enforcement officers, including the police and the prosecutor's office, in encouraging the settlement of cases. Non-governmental organizations and international organizations also often provide support for inter-agency coordination work.

## 7.2. Inter-Countries Mutual Assistance

Coordination and cooperation of inter-state government agencies is often required in transnational TIP cases. Coordination and cooperation are crucial in cases where the victim is an Indonesian citizen (WNI) living abroad, or a foreign citizen (WNA) living in Indonesia. Assistance from the government of other countries is also needed in the event that the perpetrators of the crime or the evidence are outside the territory of Indonesia. There are two types of cooperation at the international level: **mutual legal assistance and extradition**.

- **Requests for mutual legal assistance (MLA):** **Mutual legal assistance** enables government-to-government law enforcement officials to provide mutual assistance in criminal investigations, prosecutions, and litigation of related cases. The mutual legal aid process can also be used for a variety of other things, including helping to obtain evidence; prepare the completeness of the court documents; carry out searches and confiscations; identify and trace the proceeds of crime.
- **Extradition:** Extradition is a formal process in which one country surrenders a person at the request of another country because the person is suspected of having committed a crime in the jurisdiction of the requesting country.

In Indonesia, mutual assistance is regulated in Law no. 1 of 2006 on Mutual Legal Aid in Criminal Matters and Extradition is regulated in Law no. 1 of 1979 on Extradition. On the other hand, various bilateral and multilateral agreements also provide a legal framework for countries to obtain mutual legal assistance and extradition.

Prior to submitting a request for mutual legal assistance or extradition, informal coordination of law enforcement officials can be carried out between countries. Examples of informal coordination in handling TIP are the Heads of Specialist Trafficking Units (HSU) forum and the ASEAN forum which specifically discusses the eradication of TIP.

At the initial investigation and investigation stage, informal coordination becomes a more profitable option than requests for mutual legal assistance because it is faster and more flexible. Informal coordination also opens the opportunity to examine the benefits of cooperation before entering the formal cooperation stage, which is a more complicated and lengthy process. Assistance obtained at the inter-agency level (agency-to-agency) can be used to make requests for mutual assistance.

**Note:** Use multiple channels of information **at the start of an** investigation to get as much information as possible. This can help clarify whether the information and assistance needed can actually be obtained, the benefits generated, and to identify legal issues early on.

### 7.2.1 Applying requests for mutual legal assistance and extradition

Before deciding to submit a request for mutual legal assistance or extradition, it is important to consult with **the Indonesian Central Authority**, which is responsible for the request for assistance from other countries.

Ensure that requests for mutual legal assistance include the following details:

- objective of the request
- all related information and facts
- subject of investigation/prosecution
- assistance requested and why
- information on previous informal coordination with relevant foreign countries
- special procedures to be followed to provide the requested assistance (e.g. submitting a dossier of witness statements admissible in Indonesian courts)
- confidentiality requirements, and
- time limit.

Extradition requests can be complex. It is important to remember that extradition can only take place if the perpetrator has committed a crime recognized by Indonesian law and the laws of the country concerned. This means that a person can only be prosecuted or sanctioned for a crime whose extradition is granted. It is also important to ensure that there are no barriers to extradition, such as double jeopardy.

### 7.2.2 If the Victim Lives Abroad

- Usually, the victim will go to the Embassy of the Republic of Indonesia (KBRI) or the Consulate General of the Republic of Indonesia (KJRI) to request legal protection. At the Indonesian Embassy/KJRI, the victim will be assisted by Citizen Service Officer<sup>12</sup> together with the Senior Liaison Officer (SLO) assigned by the POLRI to be the contact person in handling cases.
- Victims who ask for protection from the Indonesian Embassy/KJRI are interviewed by the Indonesian National Police's SLO and should be listened to with full attention and treated in a friendly and courteous manner.
- The SLO will then contact the National Police Headquarters and the Regional Police in the area where the victim's passport was made, so that the victim's complaint report can be followed up immediately.
- Police who receive referrals are required to cooperate with law enforcement agencies in the country concerned and Interpol, as well as with other agencies providing assistance to victims.
- In the event that the victim is returned to Indonesia, the victim should receive adequate escort to a safe place. This is to anticipate the existence of a trafficking network that monitors the movement of victims.

### 7.2.3 If the Victim Lives in Indonesia

- Usually the victim contacts the local police station or NGO to seek legal protection.
- As a first step, as far as possible, the victim is accepted and served by the police according to the gender of the victim.
- Interviews must be conducted in a closed room. If the victims are women and children, as far as possible they are served by policewomen and received in the Special Service Room.

<sup>12</sup> Pasal 4, Peraturan Menteri Luar Negeri Nomor 4 Tahun 2008 tentang Pelayanan Warga pada Perwakilan Republik Indonesia di Luar Negeri.

## CHAPTER VIII

### CASE STUDIES

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#### 1. Verdict Number 105/Pid.Sus/2015/PN. Tul March 8, 2016 (Trafficking in Persons in Fishery Industry)

##### a. Chronology:

- Defendant Mr. Youngyut Nitiwongchaeron alias Yut alias Tai Yut was charged with recruiting, transporting, sheltering, transporting, transferring or receiving a person by means of threat of force, use of force, abduction, confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage, or payment or benefits despite obtaining approval from a person who has control over another person and results in exploitation of that person in the territory of the Republic of Indonesia (Article 2 subarticle (1) of Law 21/2007 as a primary indictment).
- L. Sotrisman on behalf of PT. Pusaka Benjina Resources (PT. PBR) and Torsak Pirungapourah acting on behalf of Silver Sea Fishery Co. made an agreement with Chokchai Dhanapak as the labor provider.
- Based on the agreement, Chokchai Dhanapak through his subordinates recruited Min Htike, A Tun alias Sanit Noywan, Myat Thu Win alias Wisai Janpa, and Aung Thein Tu alias Panat Noklue. They had lived in a shelter.
- The recruited crew members (ABK) never received basic training in marine work.
- The identity and seafarers' books of crews are falsified by recruiters.
- There has never been a sea work agreement between PT. PBR with crew members.
- ABK departed for Aru waters with KM Antasena 838 and was led by the Defendant. Previously, the crew was informed that they would work in Thai waters. While sailing to Indonesia, the crew were still not informed of their destination.
- The crews do fishing for 20-24 hours per day without rest time.
- The crew members who are considered lazy to work are isolated in the company area for several days so that the crew members are forced to obey work orders.
- The crew members did not receive the promised salary, which was IDR 3,000,000/month but IDR 1,000,000/month. Even though the money given by PT. PBR to the Defendant to pay the crew members is IDR 3,000,000/month.

##### b. Verdict

###### District Court Verdict:

1. Stating the Defendant Mr. Youngyut Nitiwongchaeron alias Yut alias Tai Yut has been legally and convincingly proven guilty of committing the Crime of Trafficking in Persons as stipulated in the primary indictment;
2. Sentencing the Defendant Mr. Youngyut Nitiwongchaeron alias Yut alias Tai Yut is sentenced to 3 (three) years in prison and a fine of IDR 160,000,000 (one hundred and sixty million rupiah) with the condition that if the fine is not paid, it will be replaced with imprisonment for 3 (three months);
3. Obligated the Silversea Fishery Co Company through the Defendant Mr. Youngyut Nitiwongchaeron alias Yut alias Tai Yut to pay restitution to the victims, namely Aung Thein Tun and Min Htike in the total amount of IDR 129,000,000 (one hundred and twenty-nine million rupiah) if within 14 (fourteen) days from the date this Verdict has been enforced permanent law, no restitution is carried out, then the court orders the public prosecutor to confiscate the assets of the convict and auction the assets for the payment of restitution and if he is unable to pay, he is subject to a substitute imprisonment for 1 (one) year.

##### c. Judge's Consideration Analysis

1. The judge in his consideration mentions matters that have been summarized as follows:
  - The defendant is a legal subject who is physically and mentally healthy
  - The defendant fulfilled the elements of recruiting, transporting, sheltering, sending, transferring, or receiving because the Defendant led the Antasena Ship where the Defendant ordered the victims to

work non-stop, isolated the victims who were unable to work, and did not provide work agreements to the crew members.

- The defendant fulfils the element of causing people to be exploited in the territory of the Republic of Indonesia which is defined as the result of the activity of transferring a person to the "step of a method that ensures the process can be carried out". In this case, while the crew worked, the crew did not get the salary as promised, which was IDR 3,000,000/month. Even though PT. HBWs routinely provide salaries in the amount promised to be paid to crew members (this salary is managed by the Defendant). In addition to being given salaries that are not as promised, crew members are employed with very long working hours.

2. In its consideration, the panel of judges stated the following matters:

a. Act or Process

- Actions in the "process" element are alternative so that only one of them needs to be proven
- In their consideration, the panel of judges concluded that:
  - There was recruitment of a Myanmar citizen named Aung Thein Tun by other actors in Myanmar and Thailand;
  - Aung Thein Tun was accommodated, sent, or transferred, or received by Youngyut Nitiwongchaeron alias Yut alias Tai Yut from the Thai port until the arrival of the crew at PT. PBR Benjina Indonesia;
  - At PT. PBR Benjina, accepted by Hermanwir Martino;
  - The actions of Youngyut Nitiwongchaeron and Hermanwir Martino are an integral part of a person's transfer activity stage;
- In considering the "process" element, the judge through his description showed that mens rea and actus reus were found in Youngyut Nitiwongchaeron and Hermanwir Martino, but in his conclusion stated that the element "recruiting, transporting, sheltering, sending, transferring, or receiving" was found in the Defendant.
- The panel of judges did not explain how the elements of the "process" carried out by Youngyut Nitiwongchaeron and Hermanwir Martino could be considered as one unit with the actions of the Defendant which fulfilled other elements.

b. Means

- Actions in the "means" element are alternative so that only one of them needs to be proven, namely "by threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power, or a position of vulnerability, debt bondage, or providing payments or benefits despite obtaining the consent of a person having control over another person";
- In the opinion of the judge, the element of "means" was fulfilled due to the Defendant's abuse of the vulnerable position of the victim, by: 1) Not providing a work agreement for the victim as a form of legal protection; 2) employing the victim for up to 20-24 hours without adequate rest and torturing the victim by applying isolation if the victim is unable to work;
- The judge's legal considerations are correct;

c. Purpose

- Actions in the "purpose" element are the result of the activity of moving a person until the activity ensures the process is carried out. The purpose referred to in this case is exploitation as referred to in Article 1 point 7 of Law 21/2007: "actions with or without the consent of the victim which include but are not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, the use of physical, sexual, reproductive organs, or unlawfully transferring or transplanting organs and/or body tissues or utilizing one's energy or ability by another party to obtain material or immaterial benefits";
- The judge is of the opinion that exploitation occurs against the victim in the form of 1) working 20-24 hours every day without adequate rest; 2) the victim did not receive the promised salary,

which was IDR 3,000,000 even though the Silver Sea Fishery Co. in Thailand always pay the salary as promised to PT. PBR cq. Defendant.

d. Cooperation between Law Enforcement Officials

In the case of ship crew TIP in Benjina, the Anti-Terrorism and Transnational Crime Task Force of the Attorney General of the Republic of Indonesia coordinated with the Tual District Attorney, the Immigration Office, the Task Force for Prevention and Eradication of Illegal, Unreported, and Unregulated (IUU) Fishing, together with the International Organization for Migration (IOM) Indonesia and the Myanmar Embassy to the Republic of Indonesia.

## 2. Verdict Number 359/Pid.Sus/2014/PN.Bks (Trafficking in Persons by Corporations aimed at exploiting potential migrant workers)

a. Chronology

- The defendant PT. Mahkota Ulfa Sejahtera, which was led by Jamilah and Riansyah (separate case file) carried out the recruitment and placement of workers. After obtaining a deployment permit from the Indonesian Ministry of Manpower and Transmigration, the defendants recruited 162 prospective migrant workers from West Nusa Tenggara, West Java, and Lampung, and many were under the age of 18;
- Because they were promised a large salary, the victims were attracted by the jobs offered and applied to PT. Ulfa Prosperous Crown, but they were asked to falsify their age to make them older;
- Riansyah as the president director of PT. Mahkota Ulfa Sejahtera ordered Jamilah to falsify ID cards, family cards, and birth certificates and to make passports for the victims based on these documents;
- The victims took a medical test and then received a fit money of IDR 1,000,000 to IDR 2,500,000;
- The defendant recruited the victims. The victim was promised to work abroad as a Domestic Helper with the lure of a lot of income.
- Victims are accommodated in houses owned by the company and receive job training in these shelters. The defendant falsified the job training certificate as if the prospective migrant workers received training at the Job Training Center (BLK);
- At the shelter, migrant workers could not leave the place, and if they wanted to leave, they were required to pay Rp 20,000,000;
- When the Ministry of Manpower issued a decree temporarily suspending activities at the shelter owned by PT. Crown of Ulfa Sejahtera, the victims had a chance to escape.

b. Verdict

1. Stating the Defendant PT. Mahkota Ulfa Sejahtera is proven legally and convincingly guilty of committing a criminal act of trying to send a child abroad resulting in the child being exploited jointly and recruiting Indonesian Workers Candidates who did not meet the requirements, placing Indonesian Workers abroad without insurance and treating the Candidates Indonesian Migrant Workers were unreasonably held together in shelters as stated in the first and second indictments;
2. Sentencing the Defendant PT. Mahkota Ulfa Sejahtera with a fine of Rp 350,000,000 provided that the fine is deducted entirely from the total amount of BRI deposits on behalf of the Minister of Manpower and Transmigration qq PT. Mahkota Ulfa Sejahtera and BNI deposits in the name of the Minister of Manpower and Transmigration qq PT. Akbar Insani Prima;
3. Imposing additional penalties against the Defendant PT. Mahkota Ulfa Sejahtera in the form of revocation of Business License and Revocation of Legal Entity Status of PT. Mahkota Ulfa Sejahtera based on the deed of limited liability company PT. Akbar Insan Prima No. 2 dated November 4, the Deed of Statement of Meeting Resolutions of PT. Akbar Insan Prima Number 7 dated June 19, 2002 and the Deed of Statement of Meeting Resolutions of PT. Akbar insan Prima Number 37 dated February 28, 2003 and the Deed of Statement of Decision of the General Meeting of Shareholders of PT. Mahkota Ulfa Sejahtera Number 134 dated October 20, 2009 and the Decree of the Minister of Manpower and Transmigration Number 310 of 2012;

### c. Judge's Consideration Analysis

In this case, the public prosecutor charged the Defendant with Article 6 in conjunction with Article 10 in conjunction with Article 15 subarticle (1), (2), Law 21/2007 in conjunction with Article 55 subarticle (1) of the 1st KUHP regarding jointly conducting an attempted criminal act of sending children to be exploited. Meanwhile, the second indictment is Article 103 letters c, g, and h, in conjunction with Article 1 number 15 of Law 39/2004 on the Placement and Protection of Indonesian Migrant Workers Abroad in conjunction with Article 55 subarticle (1) 1st point of the Criminal Code. The panel of judges considered that these two charges were met, but only the first indictment will be discussed as follows:

#### **Corporate crime**

1. The existence of a corporation  
PT. Mahkota Ulfa Sejahtera is declared as a corporation with evidence in the form of a Deed of Decision of the General Meeting of Shareholders, Decree of the Minister of Manpower and Transmigration, Deed of Limited Liability Company, and so on;
2. There are criminal acts committed by people either individually or together  
Riansyah as the President Director of PT. Mahkota Ulfa Sejahtera and Jamilah as the Director of Operations have jointly carried out TIP, so that this element is fulfilled;
3. The crime is committed on behalf of the corporation or for the benefit of the corporation  
The crimes committed by Riansyah and Jamilah are aimed at the interests and profits of the corporation;
4. Actions are based on work relationships or other relationships acting within the corporate environment  
Riansyah and Jamilah have a relationship with PT. Mahkota Ulfa Sejahtera as the management of PT. Ulfa Prosperous Crown;

#### **Experiment Element**

1. There is an intention  
The intention is evident from the prospective Indonesian migrant workers (CTKI) recruitment and placement agreement documents, as well as the fact that the Defendant recruited minors and deliberately falsified the documents to carry out his actions;
2. There is a start of implementation  
The defendant provided fit money for the victims who passed the health check. This money amounts to IDR 1,500,000 to IDR 2,500,000 for each person. The defendant also ordered Witness Dewi Rumiatus to process the passports of the victims by increasing their age to more than 18 years;
3. The action stopped not because of the will of the perpetrator  
The shelter was raided by the police who received a report of alleged TIP so that the victims who were still being accommodated could be rescued;
4. Sending children abroad in any way that results in the child being exploited  
The defendant has made agreements with many parties to recruit and place CTKI underage. The defendant gave the fit money which was actually intended as an effort to debt bondage. If the victim resigns, the victim is threatened with paying compensation of IDR 20,000,000. In addition, the Defendant falsified the ages of the victims and was involved in falsifying passports.
5. Jointly  
The defendant made an agreement with an agent abroad, while witness Jamilah also ordered his subordinates to falsify the passports of the victims. It is clear that this action is a collective action.

### d. Cooperation between Law Enforcement Officials

The police are working closely with the Ministry of Manpower.

## **3. Verdict No. 8/Pid.B/2018/PN.Cjr (Trafficking in Persons in the Form of Sexual Exploitation)**

### a. Chronology:

- The defendant Dede Heru Maulana drove a car to take Siti Nuraidah (acting as a sex service distributor) to pick up victims Dilla and Endah, to Kota Bunga to look for customers to be escorted, which involved drinking, dancing, or having sex;
- Siti Nuraidah looks for customer victims and negotiates prices. After agreeing, the Defendant took Siti



Nuraidah and the victims to the villa along with their customers. The defendant received a salary of IDR 100,000 to IDR 150,000 from Siti.

b. Verdict:

1. To declare that the Defendant is legally and convincingly proven guilty of committing the crime of “participating in transportation for the purpose of exploiting people” as stated in the First alternative indictment;
2. Sentence the Defendant to imprisonment for 3 (three) years and 6 (six) months and a fine of IDR 120,000,000.00 (one hundred and twenty million rupiah) provided that if the fine is not paid, it will be replaced with imprisonment for 4 (four) months.

c. Judge's Consideration Analysis:

1. Act, Means, Purpose

The judge did not break down the legal considerations for each element in TIP. The judge in his deliberations explained matters that have been summarized as follows:

- All elements in the act and means elements are alternative, so only one element needs to be proven;
- Judges defined recruitment as an act that includes inviting, gathering, bringing, or separating a person from his family or community;
- The judge defined sexual exploitation as any form of using sexual organs or other organs of the victim for profit including but not limited to prostitution and obscene activities;
- The judge did not break down how each of the defendant's actions met the above elements. The defendant's action of taking Siti and the victims to Kota Bunga and to the villa was deemed to have fulfilled the elements of recruitment (carrying) and exploitation (sexual exploitation), without explaining how the defendant's actions met the elements of method.
- A description of the fulfilment of all elements of the act, means and purpose of exploitation is mandatory. The absence of a description of the elements of means has made the judge's legal considerations incomplete.

2. Participation

The public prosecutor alleged the participation can be in the form of doing, ordering to do, or participating in doing (Article 55 subarticle (1) 1st of the Criminal Code). To be said to fulfill the above actions, it is required that there is:

- An act committed by two or more people;
- A conscious cooperation between the perpetrators/defendants;
- A role for each actor, either as one who does or participates in doing the act.

The action of the Defendant who complied with Siti's order to drive a rental car in order to take Siti and the victims to Kota Bunga, and then to the villa, was judged by the panel of judges to have fulfilled the participation element, although the judge's consideration did not specifically explain what form of participation was fulfilled by the Defendant's actions.

d. Cooperation between Law Enforcement Officials

The cooperation between law enforcement officers was not broken down, except for the role of the police in arresting the accused and the role of the prosecutor's office in carrying out prosecutions.

#### 4. Verdict Number 333/Pid.Sus/2017/PN. Pya (Child Trafficking)

a. Chronology

- Witness Fatmawati alias Umi asked Witness Sanusi alias Simon to recruit people to be employed in Saudi Arabia with the promise of a commission of IDR 5,000,000;

- Sanusi recruited Nopi as the victim, but Nopi still has doubts. Sanusi went to Nopi's house and brought a parental consent letter and Rp 1,000,000 in cash. Nopi's parents gave their daughter permission to work after being seduced by Sanusi;
- Sanusi contacted the civil office in Dompu and asked for an ID card for Nopi with a falsified age of 21 years (originally 18 years old) but the civil office refused;
- Sanusi brought the victim to Sumbawa, where he was accommodated together with other prospective migrant workers. Performed the management of travel documents;
- The victim was dispatched by plane from Central Lombok to Batam, accommodated at the house of witness Baiq Mahnim alias Umi Kuripan, then taken by ship to Malaysia, accommodated at the house of witness Evi (the defendant's daughter), and continued the journey to Syria;
- Arriving in Syria, the victim was not given food and water for 3 days;
- The victim was then taken to her employer's house and worked for 6 months, but was returned to the agency because she was accused of stealing, then picked up again by another employer and worked for 6 months;
- While taking out the trash, the victim ran away because she was often abused and accused of stealing. The victim went to the Indonesian Embassy in Syria in Damascus and was accommodated by the Indonesian Embassy until her return to her home in Indonesia;
- In another case, the defendant Baiq Hafizahara alias Evi has dispatched victims Joharni and Ria Febriani who were 14 years and 9 months old to Damascus, Syria, to work as domestic workers;
- Previously the victims were accommodated by an acquaintance of the Defendant named Karlina Efendi;
- When recruited, the victim and her family were reluctant because the victim was still underage. However, the victim was given an advance of IDR 2,000,000 and will be given a salary of IDR 4,000,000/month for a period of work for 2 years;
- Witness Karlina Efendi went to the victim's house, Joharni, and persuaded the victim's grandfather to allow the victim to work abroad. If they refuse, they were required to pay compensation and out of fear the victim finally agrees to leave;
- Conducted a medical check-up on the victim Joharni;
- Joharni's age and residence documents and passport were falsified—the age was made older to appear 21 years;
- The next day the victim left via Lombok Airport, transited to Surabaya, and continued to Batam Airport. Then they continued their trip via sea journey by ferry to Malaysia. At Kuala Lumpur Airport, the victim continued his journey to Syria;
- Arriving in Syria, the victim was taken to the agency's office, then transferred to the employer's house. Just a week later, the victim was returned to the agency's office because the employer did not like the victim's small body. Then, the victim worked for her second employer for a year but was never paid and was even accused of stealing her employer's money;
- The victim managed to escape but was found again by her employer and returned to the agency's office. While at the agency's office, the victim was abused. A few days later, the victim was picked up again by the second employer and the same story was repeated;
- Victims who could not stand the situation, fled and made a report to the Indonesian Embassy in Damascus via Facebook. The Indonesian Embassy contacted the employer and was finally given a salary of USD 200 for 5 months of work. After that, the victim was accommodated at the Indonesian Embassy before being returned to Indonesia.

b. Verdict:

1. To declare that the Defendant Baiq Hafizahara alias Evi above has been legally and convincingly proven guilty of committing a criminal act of *sending a child into or out of the country in any way that results in the child being exploited* as stated in the First Alternative indictment by the Public Prosecutor;
2. Sentencing the defendant Baiq Hafizahara alias Evi with imprisonment for 4 (four) years deducted with the time when the defendant was in detention with an order that the defendant remains detained in the detention center and a fine of IDR 120,000,000 (One hundred and twenty million) if the fine is not paid, it will be replaced with imprisonment for 1 (one) month;
3. Paying the restitution jointly with Hj. Fatmawati alias Mr. Johor Binti Bakar, Sanusi alias Simon alias Lisi and Hj. Baiq Mahnim alias Umi Kuripan to Victim Noviyanti amounting to IDR Pariati Binti H. Buhari and Hj. Baiq Mahnim alias Umi Kuripan to Victim Joharni alias Ria Febriani in the amount of IDR 97,900,000



(ninety-seven million nine hundred thousand rupiah) with the provision that if the restitution is not paid, it is replaced with imprisonment for 3 (three) months.

c. Judge's Consideration Analysis

The public prosecutor charged the defendant with alternative charges, namely Law no. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad (already replaced by Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers) and Law no. 21 of 2007 on Eradication of the Crime of Trafficking in Persons. The judge has to consider Law 21/2007, namely Article 6 in conjunction with Article 48 of Law 21/2007 in conjunction with Article 55 subarticle 1 1 of the Criminal Code with a description of the following elements:

1. The element of each person;
2. Elements of sending children out of the territory of the Republic of Indonesia;  
This element was fulfilled by sending Nopi witnesses, starting from recruitment, transfer, and delivery. It's just that the judge's considerations did not specifically mention which actions the Defendant took that met this element, considering that the submissions were carried out by several parties with different roles;
3. Elements with the intention of exploiting outside the territory of the Republic of Indonesia;  
The judge considered the definition of exploitation as regulated in Article 1 point 7 of Law 21/2007. This element was fulfilled by the departure of the victim Nopi and the victim Joharni until they were employed in Syria, subjected to torture, and their salaries were not paid so that the victims suffered a loss of IDR 10,000,000;
4. Elements of those who do, order to do, and who participate in doing the deed  
The panel of judges emphasized that the Defendant's actions that met these elements were when he accommodated the victim Nopi in Malaysia, in addition to his actions that met the elements of TIP in the case of victim Joharni. Because of the first case, the Defendant was declared as 'participating', together with Sanusi as the sponsor, Fatmawati alias Umi as the victim's host, Baiq Mahnim alias Umi Kuripan as the victim's host, and Mr. Rice as the party that sent the victims to Syria.

d. Cooperation between Law Enforcement Officials

Law Enforcement Officials, in this case the police and public prosecutors are collaborating with the Indonesian Embassy in Syria, the Ministry of Social Affairs, the Witness and Victim Protection Agency, the Ministry of Foreign Affairs for the Protection of Indonesian Citizens.

## 5. Verdict Number 400/Pid.Sus/2019/PN.Ktp (Trafficking in Persons with Exploitation of Mail-Order Brides)

a. Chronology

- The defendant named Kintim asked the victim Fufika whether he wanted to marry a Chinese person with a guarantee of a stable life, her parents would be given regular money, and given a dowry of IDR 20,000,000, so that the victim was persuaded to marry Yang Guangtai;
- The victim was brought to Pontianak to meet someone who would assist in the delivery of the victim, and the victim was accommodated at the house of Witness Atai alias Kiem Lan;
- To convince the victim and her family about the marriage, the victim's family was brought to Pontianak to witness the engagement. In addition, the victim's brother was given money amounting to IDR 3,000,000;
- The defendant together with the victim's future husband brought the victim to China to get married. At that time, the victim's brother received IDR 20,000,000 as a temporary dowry
- The defendant made a profit of IDR 2,000,000 from the parents of the prospective husband in China;
- All costs of recruiting and transporting victims to China were financed by Akian;
- Victim was employed as housemaid in the mornings and evenings and were required to look for animals to sell in the desert at night. If the victim did not work, then she was not fed. The profits from the victim's work were taken by her parents and husband.

b. Verdict

1. To declare that the Defendant KINTIM, the son of (late) SAMPER mentioned above, is legally and convincingly proven guilty of committing a crime of helping to commit the crime of trafficking in persons, as referred to in the second alternative indictment of the public prosecutor;
2. Sentencing the defendant KINTIM, the son of (late) SAMPER with imprisonment for 4 (Four) Years and a fine of IDR 120,000,000 (One Hundred Twenty Million Rupiah). If the fine is not paid, it will be replaced with imprisonment for 6 (six) months;

c. Judge's Consideration Analysis

The judge considered the second indictment, namely Article 10 in conjunction with Article 4 of Law 21/2007 on assistance to bring Indonesian citizens outside the territory of the Republic of Indonesia with the intention of exploiting them outside the territory of the Republic of Indonesia. In addition, the judge emphasized that the condition for the occurrence of an experiment (Article 56 2 of the Criminal Code) is that there is an intention to commit a crime and has manifested that intention into a form of initial act of implementation. The description of the fulfilment of the above elements is as follows:

1. Act

The Defendant's action offered the victim to marry a Chinese person with the lure of a comfortable life and the Defendant's action took the victim to Pontianak to meet the other perpetrators, namely Akian and Atai alias Kiem Lan. The defendant also took care of and paid for the departure of the victim's brother, Antonius Lansi and several other family members to witness the victim's engagement. Antonius Lansi was given IDR 3,000,000 by the Defendant and when the victim was going to get married, Antonisu was given IDR 20,000,000. For this action, the Defendant gained IDR 2,000,000 from the victim's husband's parents;

2. Means

The method used by the Defendant was to persuade and convince the victim and her family members. His own family members were given money so they would give up the victim;

3. Purpose

The purpose of the Defendant's action was to assist the marriage so that the Defendant would benefit from his services.

In his judgment, the judge stated that the accused guilty of violating Article 10 of Law 21/2007, which stated that those participating in TIP shall be punished with the provisions of Article 4 of Law 21/2007 on bringing Indonesian citizen outside the territory of Indonesia to be exploited.

## 6. Verdict Number 1015/Pid.B/PN.Jkt.Pst/2016 (Organ Transplant)

a. Chronology

- The Defendants Dedi Supriadi bin Oman Rahman and the Defendants Yana Priatna alias Amang together with Kwok Herry Susanto alias Herri have recruited, transported, sheltered, sent, transferred, or received witnesses, namely Ipan Sopian, Jajang Jumara, Edi Midun, Pery Jayanto and Dasep by means of fraud or abuse of the range position so as to obtain the approval of the person who has control over the person so as to cause the loss of the kidney that has been traded;
- Dedi Supriadi and Yana Priatna came to Pery Jayanto and told him that he had just sold his kidney. Pery Jayanto, who was in debt, asked for help to sell his kidney. Dedi Supriadi explained the risk of selling his kidney and Pery Jayanto agreed to sell his kidney for Rp 90,000,000;
- Two months later, Dedi came to Pery and took him to the Bandung Biotes clinic for a medical check-up. Three days later Pery was declared healthy. A few days later, Pery was introduced to Kwok Herry Susanto alias Herri. Herri asked Pery to sign an ID card in Pery's own name, but the information had been changed;
- Pery's kidney was sold by Dedi and Yana to Andri Thamrin for IDR 300,000,000 (three hundred million rupiah). Subsequently, an organ transplant was carried out at Cipto Mangunkusumo Hospital. Pery

received Rp 90,000,000 from Dedi;

- Apart from Pery, Dedi also approached Dasep, Ipan Sopian, Edi Midun, and Jajang Jumara regarding organ sales. The four of them sold their organs through Dedi's intermediary and earned IDR 75,000,000-90,000,000, while the selling price that Dedi proposed to the buyer was IDR 300,000,000-375,000,000.

#### b. Verdict

The two defendants were charged with Article 7 subarticle (1) of Law 21/2007 in conjunction with Article 55 subarticle (1) of the 1st Criminal Code in conjunction with Article 65 subarticle (1) of the Criminal Code and its subsidiary Article 2 subarticle (2) of Law 21/2007 in conjunction with Article 55 subarticle (1) of the 1st Criminal Code in conjunction with Article 65 subarticle (1) of the Criminal Code, and its subsidiary Article 192 of Law 36/2009 in conjunction with Article 55 subarticle (1) first point of the Criminal Code in conjunction with Article 65 subarticle (1) of the Criminal Code. However, the panel of judges stated that the Defendant was not guilty with the following verdict:

1. Stating Defendant I. DEDI SUPRIADI bin OMAN RAHMAN and Defendant II. YANA PRIATNA alias AMANG has not been legally and convincingly proven guilty of committing a crime as stated in the Primary indictment;
2. To acquit the Defendants therefore from the Primary charges;
3. Stating Defendant I. DEDI SUPRIADI bin OMAN RAHMAN and Defendant II. YANA PRIATNA has been proven legally and convincingly guilty of the crime of "jointly recruiting a person by paying a fee for the purpose of exploiting that person";
4. Sentencing the defendants with imprisonment for 5 (five) years and 6 (six) months respectively and a fine of IDR200,000,000; (two hundred million rupiahs) provided that if the fine is not paid, it is replaced with imprisonment for 1 (one) month;
5. Determine that the period of detention that has been served by the Defendants is deducted entirely from the sentence imposed.

#### c. Verdict Analysis

In his consideration, the judge stated that the element of "causing the victim to suffer serious injuries, severe mental disorders, other infectious diseases that endangered his/her life, pregnancy, or disturbed or lost reproductive function" in the primary indictment, namely Article 7 subarticle (1) of Law 21/2007 because according to the testimony of the defendant and the victim, the condition of the victim after the surgery was fine. This consideration is very odd because in addition to the health effects of kidney transplant surgery it takes several years to show indications of weakening of the body, the judge also did not consider the safety and cleanliness of the operation process itself. After that, the judge considered the subsidiary charges, namely Article 2 subarticle (2) of Law 21/2007 as follows:

1. Everyone  
Everyone is a legally capable legal subject. The defendants fulfil this element.
2. Who recruits, transports, shelters, delivers, transfers or receives persons by means of the threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or position of vulnerability, debt bondage or providing payments or benefits despite obtaining the consent of the person holding control over another person for the purpose of exploiting that person in the territory of the Republic of Indonesia.  
The defendant told several parties that he had sold his kidney for a lucrative price. The victims who were also in need of funds finally contacted the Defendant, asking for help selling their kidneys. For this action, the panel of judges considered that this element had been fulfilled.
3. Those who do, those who order to do and those who participate in doing the deed  
In his consideration, the judge stated that the Defendants Dedi and Yana were recruiting together so that this element is fulfilled.
4. Some acts that must be considered as stand-alone acts so that they constitute several crimes that are punishable by the same principal punishment.

In his judgment, the judge explained that the recruitment of several victims was carried out at different

times. In order for the donor to be eligible, the donor's personal data has been changed. These actions are considered as stand-alone acts so that they constitute several crimes that are punishable by the same principal punishment.

The consideration of the Panel of Judges, especially with regard to the last 2 (two) elements, namely the element of joint recruitment and independent actions, has not been comprehensively described. Especially for the fourth element, it is also not explained which actions are referred to as "stand-alone acts" and "some crimes".

d. Coordination between Law Enforcement Officials

In this case, the police cooperated closely with the prosecutor's office.





# **GUIDELINE FOR HANDLING TRAFFICKING IN PERSONS**

**2021**