

**Indonesian Experiences to Tackle Child Trafficking
Problems, Progress and Recommendations for Improvement**

By Anis Hamim^{*)}

For the past three years, the International Catholic Migration Commission (ICMC) has been implementing a program to address some of the critical issues to fight trafficking in women and children. Trafficking in Indonesia commonly takes forms of trafficking for migrant work, domestic work, arranged marriages, child pornography and commercial sex.

An overview of anti-trafficking legislation in Indonesia:¹

During the past three years the national government and civil society organizations in Indonesia have made significant strides towards implementing a framework of action to address trafficking abuses against Indonesian women and children. Of specific note in 2000, Indonesia signed the UN Protocol on human trafficking. This was followed by the enactment of a five-year National Plan of Action on the Elimination of Trafficking in Women and Children (NPA), the creation of a multi-sectoral National Task Force to implement the NPA, and the drafting of an anti-trafficking criminal bill that is currently being deliberated by the national legislature (DPR). **A full analysis of the draft anti-trafficking bill is beyond the scope of this paper.²**

Trafficking is, in fact, already criminalized by Indonesian law. Trafficking which is called as “memperdagangkan” or “making an object of trade” in Indonesia, is dealt with explicitly in both the Criminal Code and the Child Protection Act No. 23/2002 as follows:

^{*)} Program Officer of Counter Trafficking Project of ICMC Indonesia. This paper is presented in the International Conference on “Tackling the Demand for Child Sex Tourism and Sex Trafficking in East and Southeast Asia”, Singapore, 25 -27 April 2005.

¹ For thorough analysis of review of Indonesian Trafficking Legislation, please see Anis Hamim and Ruth Rosenberg, “Review of Indonesian Legislation”. The complete document of it can be downloaded through ICMC’s website: <http://www.icmc.net/docs/en/programs/cotraff>

² In 2004, ICMC and the Solidarity Center Indonesia have created a full analysis of the Proposed Indonesia’s Trafficking Bill before the Parliament (DPR). Please see the complete document which is also attached to this paper.

Article 297 of the Criminal Code asserts that trafficking in females (age not specified) and trafficking in underage males can attract a penalty of up to 6 years in jail although maximum penalties are rarely imposed, and, in most cases, traffickers are let off with a short sentence.

Article 83 of the Child Protection Act states that “anyone who trade, sell, or kidnap a child for him/herself or to be resold, shall be punished by at maximum of 15 years imprisonment and at minimum by 3 years, and fine by at maximum 300 millions rupiah and at minimum 60 million rupiah.”

Although the word trafficking is explicitly stated, and therefore criminalized, there is no official definition on trafficking included in article 297 of the Criminal Code or in the Child Protection Law, making these articles difficult to use in real life cases. For example, in many cases, for moving a girl to another province, and then trapping her into sexual exploitation, a perpetrator was prosecuted under criminal charge of deception instead of prosecuting the criminal under trafficking provision of the act.³ Contrarily, article 83 of the child protection act⁴ could be used against a “becak” man who allows his son to be adopted by a prosperous family involving money payment. Many of our colleagues in Indonesia continue to express misconceptions about trafficking under existing laws. Even with a topic which at first seems indisputable – such as trafficking – debate and confusions arise.

In addition, these articles do not provide for protection of victims or other witnesses, compensation for victims, and other important aspects of counter-trafficking legislation recommended by international standards.

Labor Law:

From a labor perspective, the child exploitation in trafficking can also be considered as a violation under article 74 of the Labor Act which prohibits anyone from involving children in the worst forms of work, including all work which utilizes, procures, or offers

³ Upon convicted, the maximum penalty of deception crime shall be 6 months imprisonment.

⁴ The penalty for trafficking crime shall be imprisonment of 3 to 15 years.

any child for prostitution, pornography products, pornography shows or gambling. To date however, labor inspectors have not made many attempts bringing to justice those who exploit children in the work place.

Legal Enforcement:

In Indonesia, there has been a number of trafficking cases. Before 2002, however, little was done by the Indonesian government to prosecute the accused. Therefore, in 2002, the US TIP Report put Indonesia in TIER III, classified as a country with serious human trafficking problems but no significant efforts to counter it.

Requested by the Indonesian government, in 2002 ICMC implemented USAID funded program to assist the Indonesian government and civil societies in creating an enabling environment to counter trafficking in Indonesian women and children. In cooperation with various international, national, and local non governmental organizations, ICMC was able to raise awareness among Indonesian officials on the trafficking issues, including how to mobilize the existing national legislation to counter trafficking.

In course of its efforts to facilitate the process, ICMC reviewed relevant national legislation that could be used to prosecute traffickers and compiled those into a document. Furthermore, ICMC developed guidelines on how to assist trafficking victim in the legal process within the framework of the existing national legislation, and has trained local NGOs and police to prosecute traffickers with taking the victim sensitivity issues into serious consideration.

The Progress:

While the intention of Indonesian government is to outlaw trafficking, practices proscribed by International conventions are allowed to be practiced (or at least not proscribed) under existing Indonesian laws despite the fact that such practices abet traffickers. I am referring specifically to the habitual practice of debt bondage and confinement in relation to migrant workers, and underpayment to domestic workers. To take this argument a step further, the existing legislation is silent to a practice where most prospective workers are locked in a holding center once recruited. It's also the case when

the recruiting agency normally claims from the workers such a amount for expenses incurred during the recruitment process, which will inevitably lead to debt-bondage.

However, although the number is relatively small, the legal enforcers made a magnificent effort during the past 2 years. In 2003 it is recorded that 84 traffickers were arrested, 27 convicted guilty and sentenced to at least 5 to 6 months' imprisonment. In 2004, 53 traffickers were arrested and 44 of them were pronounced guilty.

From the figures we can see that number of traffickers brought into justice is relatively small compared to the actual trafficking cases which I believe that Indonesian women and children are subjected to. As an eye opener, 2,112 Indonesian women and girls in 2003, and another 2,158 in 2004 were reported to have been trafficked to Malaysia, and sought protection of the Indonesian Embassy there.

Protection Provision for Child Trafficking Victim:

While the existing law doesn't clearly prescribe about the trafficked persons' rights for protection, the government of Indonesia has shown to move further ahead. Using the Presidential Decree on the National Action Plan to Eradicate Trafficking in Women and Children, the Women Empowerment Ministry and the Coordinating Ministry for People's Welfare has been actively advocating with their counterparts within relevant national and provincial governmental agencies to provide appropriate protection services for victims. For example in Riau Islands Province, which is a transit and a destination for trafficked persons, the local government has started a shelter with its own funds. Similar initiatives were taken by local self governments in Manado, North Sulawesi—a sending area, and Pontianak in West Kalimantan, which is both a transit as well as a sending area. The local governments in both provinces have established a system through which its agencies assist trafficked persons to recovery and reintegration.

No less important are the Police Special Assistance Units, managed by police to provide special services for women/girls involved in legal proceedings. Now there are 226 units spread over 26 provincial police stations and more will be set up in other provincial police stations and resort (district/city) police stations nationwide.

International Catholic Migration Commission

In abroad, the Indonesian government dedicates Embassy compounds in receiving countries such as Malaysia, Singapore, Saudi Arabia to be used as a safe house for Indonesian women/girls escaping from their traffickers. In those countries, in order to provide greater protection, Indonesia deploys a Senior Police Liason Officer or a Labor Attachee.

The gaps:

Although those government initiatives should be appreciated, there are however many gaps in areas where improvements can be made.

Accessibility:

Indonesian bureaucracy is neither efficient nor effective. Its performance affects how the government provides protection services to trafficked persons. For example, local government and NGOs in Riau province feel that they are only capable of providing trafficked persons temporary shelter. For more services such as returning and reintegration for them should be provided by the national government. Unfortunately, although it is well recognized that the national Social Department is responsible for both returning and reintegration, both local government and NGOs are hardly able to access those funds. It forces both local government and NGOs to look for alternative sources to return and reintegrate trafficked persons. Furthermore, sometimes it also generates a great deal of frustration among the local government and NGOs in transit and receiving areas, who say that since most trafficking victims are not their local people, they are not interested in doing such anything until the national government provides them fund for such services.

Confusion about what is trafficking and who is a child

The Indonesian government service doesn't have specific services for trafficked children. In other words, service provided is supposed to be applicable to a trafficked person, irrespective of whether she is an adult or a child. At a basic level there is confusion about who is a child. Indonesian law is not unclear on this point. The Labor Law, Marriage Law, Penal Code and Child Protection Law, all offer different cut off ages which impact

on the legality of a child working in prostitution. According to the Penal Code having consensual sex with a person who is over 15 years of age is legal. According to one local NGO in Batam, the police commonly still believe that a child is anyone under 15 years of age who has never been married, as defined by the penal code. As a consequence, consensual sex with children over 15 years old is often overlooked as an offence.

In Indonesia, it is also legal to marry a girl, with special permission, before she turns 15. Once married, Indonesian law recognizes a person as an adult. Therefore, can a man engage in consensual sex with a 14 year old girl who has previously been married? Is it trafficking if a 14 year old girl, who has already been married, is recruited to work in a brothel? Even if legal, is it still the commercial sexual exploitation of a child? This lack of clarity impacts on the ability of government to fight cases of trafficking.

The authorities frequently do not consider the prostitution of wives', widows' or divorced girls aged below 18 in any way as a manifestation of child prostitution. However another crucial problem is actual age identification. Most existing documents regarding age verification in Indonesia are not reliable. Corrupt practices in Indonesia mean it is very easy to obtain an identity card with falsified information. It is not uncommon for traffickers to provide under-age girls with identity cards stating that they are over 18 years old thus making the job of the police even more difficult and confusing.

GOVERNMENT SERVICES FOR INDONESIAN TRAFFICKED PERSON ABROAD:

Indonesian law No. 37/1999 on foreign relation assigns a legal responsibility to every Indonesian representative abroad to provide protection and legal aid for Indonesian citizen abroad. Beyond the legal issue, however, some receiving countries who do not welcome migrants tend to treat trafficked persons as criminals because of immigration violations committed by them. It causes NGOs in those countries to face serious dilemmas; on one hand as a humanitarian aid organization they want to help the victim; in the other hand, they are threatened to be prosecuted under Immigration laws, for providing shelter for undocumented migrants. Due to this constraint, practically the

International Catholic Migration Commission

Indonesian embassy becomes the most realistic choice for Indonesian trafficking victims where to seek help and protection.

Based on my visit in 2003 to a country to which many Indonesian are trafficked, I found that trafficked Indonesian women and children could get from the embassy shelter (including meals); document necessary for them to return to Indonesia, and transportation to the nearest harbour in Indonesia territory. In addition to this, in many cases, but not all, some Consulates also try to assist trafficked person to claim the unpaid salaries, or to assist them in reporting local police.

Yet, the condition of embassy's shelter provided for victims to stay temporarily is appalling. It's because of at any moment, a shelter with trafficked persons normally for only 50 people, may have to lodge more than 150 people. The trafficked person normally stays to 1 to 3 months—the duration needed to process her documents. There is no special staff who manage the shelter. Almost always there is a constant number of 100-150 women/girls who seek protection for the embassy any time. As a consequence, many of the victims have to sleep on the floor, often without any mattresses. The condition becomes more pathetic because their movement are restricted to the backyard of the embassy's compound.

Furthermore, waiting between 1-3 months without any meaningful activity surely causes them stressed. The condition would be more terrible for those who being with psychological trauma from their exploitative workplace experiences. So far, the Embassy has not been providing necessary intervention both in form of counseling service provision for those who get psychological problems and activities to occupy their time while waiting for their documentation process.

Ideally, during this waiting period, empowerment activities such as how to increase their self esteem, orientation on safe migration (including how to become a migrant worker), English short course, or other *life skill training* would be very helpful to strengthen their future capacity, especially for those who will choose to become migrant workers again.

Some victims intend to make claims for their unpaid wages against their employers. In many cases, an embassy staff tries to assist the victims to claim their dues. However, Embassy staff have limited training on these matters, and even little time follow up every case. Therefore, the Embassy, in order to provide these services, should seek professional assistance in the country. Agreeing to work with a local NGO can be a good idea as well.

As far as child trafficking victims are concerned, there is no special procedure or service applied for a child trafficking victims who seek protection to the embassy.

REGIONAL IMPACTS OF THE NATIONAL COUNTER TRAFFICKING EFFORTS

Indonesian government is fully aware that they should cooperate closely with the receiving countries in order to successfully able to curb trafficking related crimes. In 2004, leaders of the 10 Member countries of the Association of Southeast Asian Nations (ASEAN) have made a commitment for greater cooperation in combating human trafficking. This commitment was embodied in a declaration signed by the ASEAN leaders on 29 November 2004 at the opening of their 10th summit in Laos. Among the measures contained in the declaration are the establishment of an Anti-Trafficking Regional Focal Network, enhanced coercive action against trafficking syndicates, and better protection for trafficked persons. The declaration also called for stronger cooperation among the immigration and law enforcement authorities of all ASEAN countries and the adoption of measures to protect the integrity of their respective passports and official travel documents from fraud.

To enhance such cooperation, Indonesia deploys a senior police to play a role as a focal point for any legal cooperation between the countries. It includes mutual legal assistance, information exchange, and joint investigation. Lately, cooperation with the closest neighboring countries such as Malaysia and Singapore seem to have improved. Some conferences involving police from those three countries to counter human trafficking are held. One of those was the Conference of International Law Enforcement on Trafficking in Persons in Batam, February 2004. It was attended by 50 investigators from Malaysia,

Singapore, and Indonesia. The conference is summed up by a joint commitment among law enforcement officers from Indonesia, Malaysia and Singapore to tackle trafficking in persons.

LEGAL OBSTACLE FOR BETTER PRACTICAL PROTECTION SERVICES

As far as the legal process is concerned, there are no appropriate procedures for child victims or witnesses within court proceedings, making child victims vulnerable to being re-traumatized during their involvement in the prosecution process. Additionally, victims and witnesses are not provided services to assist them before and after legal proceedings, such as assistance to help them understand their rights, protection of their privacy (including protection from exposure of their identity to the public), a guardian to provide a safe place or shelter, or a counselor to provide psychological support.

As a further consequence, the cooperation level of the victim to be involved in prosecution of trafficking crimes is still weak. It means that many traffickers continue to work with impunity. Corruption also contributes to law enforcement problems. Corruption in Indonesia is rampant and corruption within the judiciary is also very well documented. According to a prominent NGO operating in Batam (YMKK) there are many categories of corrupt practices. Charges against violators are commonly reduced or dropped for a fee and the police are reluctant to raid places of prostitution as this will lead to protest from businesses. Anecdotal evidence indicates that some police officers find brothels as a lucrative resource for their 'side income', taking bribes from the owners. Meanwhile, people who pay for sex with a child and those who facilitate this action commonly escape punishment due to corrupt police officers. In addition to weak enforcement of existing laws, the lack of explicit laws targeting people who buy sex with children means that many children continue to be exploited.

KEY ROLE OF NGOS AND CIVIL SOCIETY

Although legally trafficking is criminalized under Indonesian law, there are still some significant gaps IN THE LAWS—and in fact, just criminalizing trafficking is not enough. It needs building capacity in the legal enforcers to prosecute all those who are allegedly

involved in the crimes, including those who facilitate child prostitution such as brothel owners or pimps and those who buy sex with children.

At the same time, legal enforcers may need support from other government agencies or organizations to deal with the victims following any raid taken to effectively crack down on trafficking practices.

Currently, NGOs and other civil society organizations need to key role in filling this gap. This may include providing support to victims, such as shelter, counseling, assistance within legal proceedings, and legal advice to ensure that the victim's rights are well-protected. NGOs and civil society can also play a role in pressuring legal enforcers to investigate trafficking cases properly and to press charges.

THE ANTI TRAFFICKING BILL; THE PROCESS & STATUS

To create stronger basis for counter trafficking, Indonesia has been deliberating a bill so called "the Bill on Suppressing Trafficking in Person". The bill was developed by the Women Empowerment Ministry's drafting team, in which ICMC played an important part. Now, the National House of Representative (DPR) has put the bill into the list of top priority for its passage.

The bill's contents are in compliance with the international standards.⁵ It is very thorough, delineating all of the myriad forms of trafficking which take place in Indonesia. It increases significantly the sanctions against traffickers and those who are complicit in the act of trafficking which are liable for both natural and legal person. It also provides for victim protection, services, and compensation.

PROCESS OF THE BILL:

On March 2003, the women empowerment ministry proposed a draft of the bill to the President for approval. January 2004, the president approved to have the bill submitted to the House of Representative with the instruction that the Ministry should incorporate the Presidential Team's inputs into the bill.

⁵ Victoria, analysis on the proposed anti trafficking bill, 2003

Upon revision, August 2004, the ministry submitted the revised bill to the House Representative for passing. On September 2005, the House of Representative states that it is ready to discuss the bill and take it as one of prioritized bill to be within one year.

TOPIC RAISING DEBATE:

Topics below are issues in the bill raising long debate:

1. Definition of Trafficking:

The bill adopts trafficking definition as stipulated in the 2000's UN protocol on Trafficking. Reacting to this, some commentators warn that adopting trafficking definition from UN Protocol, which looks good on paper, can create complexity in collecting evidence during prosecution.

In responding to this, the government drafting team argues that using appropriate formulation of the definition in compliance with international standard is better than just compressing it. By using this definition, the drafting team believes that legal enforcers will be able to apply the wording as it is in the current draft in their prosecution.

2. Type of protection provided for the victim.

The bill provides types protection for the victim as the UN protocol recommends, among the protection provided are, (1) the consent of the victim is not relevant for any exploitation they are exposed to.⁶ (2) right to have a legal representation during participating into legal proceeding⁷, (3) right to request the absence of the defendant in the court when testifying⁸, (4) State protection for both victims/witnesses and their families in the event that they are threatened⁹ (5) medical and rehabilitation assistances,¹⁰

⁶ Art. 1 par. 6 of the bill: Exploitation shall mean an act whether committed with or without consent of a victim that includes but not limited to prostitution, forced labor or services, slavery or practices similar to slavery, removal or transplantation of organs and or body tissues, or all acts that involve oppression, extortion and physical, sexual, labor, and/or ability abuse against a person by another party arbitrarily in order to gain both material and nonmaterial benefits.

⁷ Art. 33 par. 1 of the bill.

⁸ art. 33 par. 3

⁹ art. 37 par 1, 2 and 3.

¹⁰ Art. 39 par 1 and 2.

and right of a restitution and a compensation.¹¹ However, the bill doesn't provide right to housing, material assistances, and employment, education and training opportunities as recommended internationally.

To this issue, the drafting team argues that the government of Indonesia will not be able to fulfill an obligation related to the above services. It will be better to take out any obligation which the government will not be able to fulfill. However, the drafting team recommends that those protection services can be provided to the victims as a government political will.

3. Criminalization of Trafficking Acts and Type of Punishment

The Bill contains 22 punitive provisions where all elements of the crime of trafficking are outlined and afforded a penalty. Penalties are split into two sections, those acts which constitute trafficking and acts related to the crime of trafficking. The basic punishment for the trafficking crime is at minimum 3 years and at maximum 15 years imprisonment. The gravity is given to the crime resulted in injury by at maximum of 20 years, in death by at maximum life sentence, trafficking by an organized group by at maximum 15 plus 5 years imprisonment.

However, the gravity given shall not be limited with those variables. Some commentators suggest on expanding the gravity to also any one who traffics more than 2 people, or any one who traffic children, or when the victim is a child, and if trafficking committed by a government official.

CONCLUDING REMARKS

Indonesian authorities have made a good effort in order to provide child trafficking victims a protection. The police, prosecutors and judges all need higher-quality training on child rights issues, trafficking, sexual violence against children and the Child Protection Act.

¹¹ Art. 38 of the bill.

International Catholic Migration Commission

Specifically for fighting the commercial sexual exploitation of children, it needs to be made incontrovertibly clear that it is illegal for any person under 18 years of age, regardless of their marital status, to work in prostitution. Law enforcers need to be given clear instructions about what is a child according to the law, and about how to investigate and prosecute cases of CSEC.

Indonesia urgently needs to pass the anti-trafficking draft bill to allow for the prosecution of traffickers and compensation for victims. Currently there is no definition of trafficking in Indonesia and traffickers continue to exploit children.

Overall, stronger laws and procedures to help law enforcement and legal officers take tougher action against trafficking and the commercial sexual exploitation of children is required. Reforms to address ambiguities about the definition of a child under Indonesian law, stronger measures to ensure the identity and age of all children should be properly established. Further measures to ensure child-friendly legal procedures are more widely adopted within the legal system, and the strengthening and establishment of special units for cases involving children is recommended.