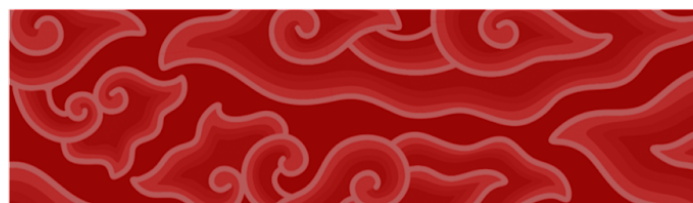




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QUO VADIS PROTECTION OF CHILDREN'S RIGHTS AND THE NEGATIVE REPERCUSSIONS OF CONTRACT MARRIAGES

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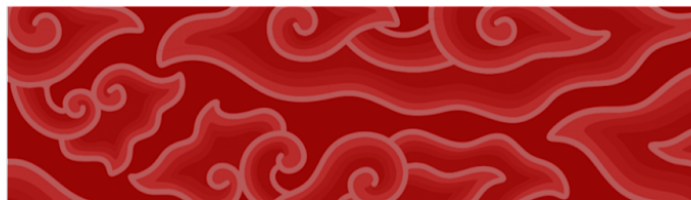
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Abstract

A contract marriage is an occurrence where a wealthy foreigner “marries” a local girl for a brief period of time for mutual benefits. The benefits here usually being sexual pleasure for the man and financial benefits for the girl. This type of “marriage” is certainly not acknowledged or recognized by the law, thus, making it a fraudulent marriage. This is a common practice around Puncak Pass in Bogor, namely “Kampung Arab”. Although having a child is nowhere on the list of conducting a contract marriage, accidental pregnancy may still occur and have serious repercussions for the conceived child. Even though the Children’s Protection Act within Indonesia’s laws have already been revised in favour of children conceived out of wedlock, the case of contract marriages are a bit more complicated. Since most of the perpetrators of contract marriages are foreigners on vacation, once the contract ends, they will return to their country of origin, never to be heard from again. This makes it nearly impossible for the contract marriage children to identify their absent father thus not receiving their inherent right to know their parents as stated in Article 7 Law No. 23 of 2002 concerning Child Protection. There are also other inherent rights that are denied for a contract marriage child which in turn will undermine the child’s development. In this paper, we will discuss the negative repercussions that fall upon children of contract marriages.

Keywords : Contract Marriage, Fraudulent Marriage, Foreigner, Child Protection, Inherent Rights



A. Introduction

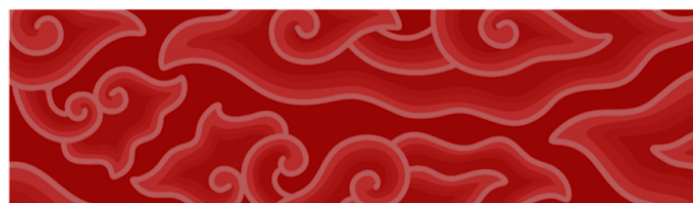
Marriage is a holy matrimony that has become part of human history for as long as humanity ever existed. It's where two human beings unite to form a family legally by law and beliefs. As Britannica put it, marriage is a legally and socially sanctioned union, usually between a man and a woman, that is regulated by laws, rules, customs, beliefs, and attitudes that prescribed the rights and duties of the partners and accords stylist to their offspring (if any).¹ Indonesian Law No. 1/1974 regarding Marriage on article 1 specifically mentioned that "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty." From these two definitions alone, we can learn and observe that marriage is done to unite two people as partners as well as to form a happy family.

²When it comes to marriage, the topic of having a child or children have always come to mind. Couples can have children by conceiving them themselves or by adoption. Commonly, children are described as human beings below the age of 18 years old. Having a child or children also means you are taking care of the future of humanity, and that's why children have specific rights that distinguish them from adults. The reason why children have specific rights than adults is because children were born into this world as dependent beings, they will serve as the future of humanity. Children's rights are available to all children and are not discriminative.

Even though marriage is supposed to be beautiful, there are misuse of this term in order to benefit certain parties. For instance, contract marriage. Contract marriage or marriage contract is a contract between a man and a woman where they have certain agreement and limitation of marriage duration. In Indonesia, it is more common to describe contract marriage as a contract between a man and an

¹Britannica. (n.d.). Marriage. In *Britannica*. Retrieved September 13, 2021, from <https://www.britannica.com/topic/marriage>

² Indonesian Law No.1 of 1974 regarding Marriage Chapter 1 on The Foundation of Marriage Article 1



unmarried woman where there is an agreement in terms of the marriage and dowry. The marriage, which is based on the agreement between a man and an unmarried woman, does not require a witness and it is not recorded by the Office of Religious Affairs.³

In Indonesia, cases of contract marriage are very common among middle to lower class women. This was done to “legally” have sexual intercourse that cannot be classified as blasphemy by religious belief – even though in reality, it is not that simple. The contract was executed by a man, commonly in Indonesia of foreign origin, and Indonesian local women. The pursuit of this contract is to fulfil the sexual desires of the men. For the women, the benefit is to gain temporary financial support from their “temporary husband” so to speak. For example, in February 2020 a marriage contract service provider in Puncak Pass, Bogor was arrested for this manner. The women who perform the contract get paid for as little as US\$40 for the duration of a few hours and can go up to US\$666 for a longer period of contract. The service provider gets 40% cut from each payment and gets to determine the rate for each client.⁴

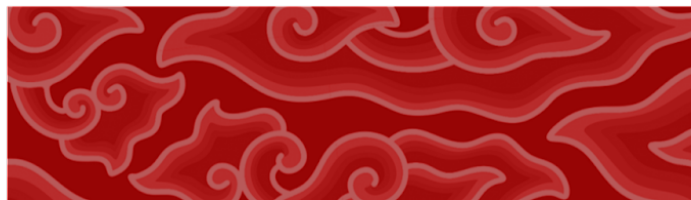
The aim of this act was just to fulfil both parties' respective needs. In some cases pregnancy can happen and the men are usually careless of the situation, which makes the women suffer even more. The children birthed from this behaviour have it harder than any other children who were born into a legally bound family by laws and beliefs, because it's a lot harder to handle the administrative manners for these children. Now, citizens and the government of Indonesia are trying to battle this issue and ponder the questions of what the government should do and how they can help the children born from this matter

B. Discussion

1. Why Are There so Many Cases in Indonesia

³ Unair News. (2020, June 26). *Javanese women under a marriage contract in Indonesia*. <http://news.unair.ac.id/en/2020/06/26/javanese-women-under-a-marriage-contract-in-indonesia/>

⁴ Zaimmatul Mufarikha, F. (2020, February 15). *Dibayar hingga Rp 10 Juta, Sindikat Kawin Kontrak di Puncak Telah Berjalan Lima*. Kompas.Com. <https://nasional.kompas.com/read/2020/02/15/11171331/dibayar-hingga-rp-10-juta-sindikata-kawin-kontrak-di-puncak-telah-berjalan>



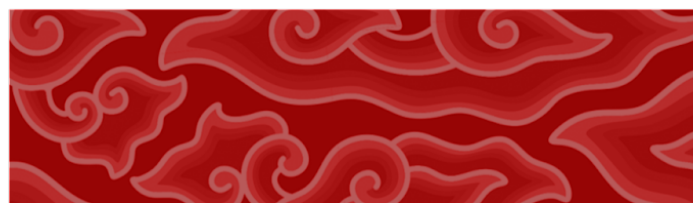
The number of Contract marriage cases in Indonesia is affected by the role of government, such as the absence of government's regulation, the lack of background checks on tourists, and also it isn't hard for the tourist to convince local girls with some seduction about money and others. Economics problems turned out to be the main reason for these girls to choose their way as contract brides for the tourists. Their low education background poverty makes it seems there's no other choice to choose. The education and economic level is an adequate reason to make them blind for the further effect that can be caused by being contract brides.

Also the lack of families and government supervision makes it easier for the contract brides to fall into contract marriages. This practice is difficult to end because there are syndicates from the local government, security forces, police, business people, politicians, thugs, and others who are united by money. All they think about is, being contract brides or the parties to make the contract marriage happen can bring them an easy and fast way to earn money.

All those opportunities open a way up to the foreign tourist with a bunch of cash in their pocket to hire a syndicate to get their contract brides. Their marriages do not need a presence of a marriage witness, and seems legit by the customary law's point of view and the communities there. And the plus point for the tourist, they are not attached by law so they don't have any mandatory responsibility. When the contract is over then the tourist can freely move their lives on without thinking about anything as their marriage never happened. As they always said, what's happened there stays in there.

2. What Course of Action Should The Government Take?

The continuously rising number of cases of children born out of contract marriages are apparent proof of the indifference our government perceives towards the situation. The factors behind these cases can be easily prevented if only the government would take action upon them. The children of contract marriages have to grow up not knowing their fathers, not receiving the love of their parents. In some cases, they are even resented by their own mothers as most

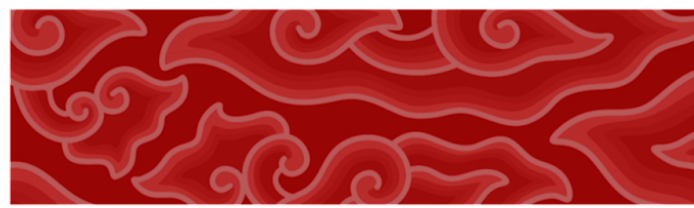


of them are considered as “mistakes” or accidental. This is clearly unacceptable as it is a violation of their human rights and the government has to do something about it.

In theory, the legal arrangement of victims has been clearly defined, but in reality the implementation cannot be enjoyed by victims. Victims who have to get the rights, but instead experience increasingly increased losses, which not only do not get the rights they should receive, but also other losses when handling compensation caused by other elements who also take advantage of these conditions. victim. This situation will increase if Trafficking in Persons of Persons is unknown or not found, because the sponsoring agent often moves and does not tell the victim or his family about a clear identity and address, or if the perpetrator is caught for a thousand reasons. free from the burden of restitution costs to victims. This situation should not be experienced by victims, especially in Article 50 of Law No. 21 of 2007, which clearly regulates the process of compensation/rehabilitation. Thus the regulation, not only prioritizes the security and order of the state and society, but there is a balance between the interests of the people, the position of the perpetrators and victims get the same attention and arrangements. The perpetrator is punished in the form of crime and action, while the victim is protected. The application of equality of positions in law is a consequence of respect and protection of human rights. This idea is in line with the concept of potential victims and actual victims, namely balance.⁵

We firmly believe that simple steps such as background checks within immigration can be implemented to further understand the purpose of visitation of foreigners. We also urge the government to implement a law which specifically concerns Marriage Fraud. This is to ensure that perpetrators of contract marriages and other forms of marital fraud can be legally prosecuted under Indonesian law, rather than referring to general laws that repeatedly unables prosecution due to “not fitting” the regulations. Furthermore, the victims of such cases, primarily the

⁵ Henny Nuraeny, K. (2019, July 15). *Legal protection for Contract MARRIAGE victims in Indonesia*. Journal of Legal, Ethical and Regulatory Issues. Retrieved September 12, 2021, from <https://www.abacademies.org/articles/legal-protection-for-contract-marriage-victims-in-indonesia-8335.html>.



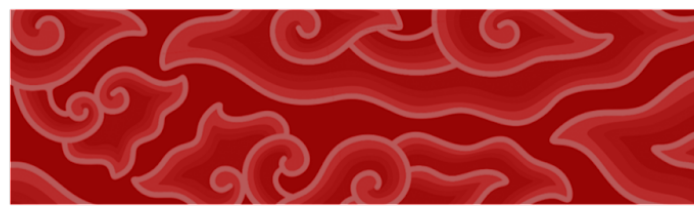
children of contract marriages, should be given extra attention in fulfilling their innate human rights. The right for a child to know their parents is not only a right by birth, but also a law regulated within Article 7 Law No. 23 of 2002 concerning Child Protection. The psychological effect to an individual of being abandoned by their parents is a continuous burden that they have to carry upon their shoulders for the rest of their lives. Yet, the government still dismisses this and has done next to nothing in ensuring that the rights of contract marriage children are fulfilled.

C. Conclusion

In conclusion, we believe it is not enough just by giving counseling and socialization about the prohibition of contract marriages. Law enforcement is difficult because there are still weaknesses in regulation. For example, the Marriage Law and its derivative rules do not stipulate sanctions for punishing contract marriages. Legal actions can only be made to intermediaries or liaisons that facilitate the practice of contract marriages, which are prosecuted with Article 296 and Article 506 of the Criminal Code which regulates the crime of prostitution. The practice of marrying this contract can also be prosecuted under Law No. 21 of 2007 concerning the Eradication of Crimes against Trafficking in Persons, Law No. 23 of 2002 concerning Child Protection when the marriage practice of this contract involves minors.⁶ In addition to national regulations, regional regulations that specifically regulate the practice of contract marriage as a covert prostitution business are needed. However, in the area of contract marriage practices such as Bogor and Cianjur regencies, there are no regional regulations that specifically regulate the practice of contract marriages.

We fully urge the government to take measures in determining the patterns that often repeat during “contract marriage” season and take extra precautions in ensuring the “tourists” are here for the “right” reasons. We also believe that it is time to initiate a regulation that specifically concerns marital fraud in hopes that prosecution can be done to perpetrators. Finally, we demand the government to

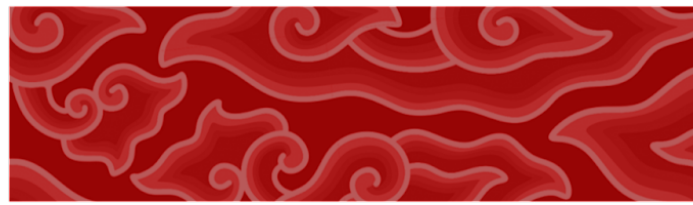
⁶ Soewondo, N. (1977). The Indonesian marriage law and its implementation regulation. *Archipel*, 13(1), 283-294



further take care of the children that are products of contract marriages, Ensuring that their human rights are fulfilled is the responsibility of the government as well and in not doing so, they are neglecting their duties. These are the steps that we have concluded to be the direction towards eradicating contract marriages and the negative repercussions that come along towards the victims.

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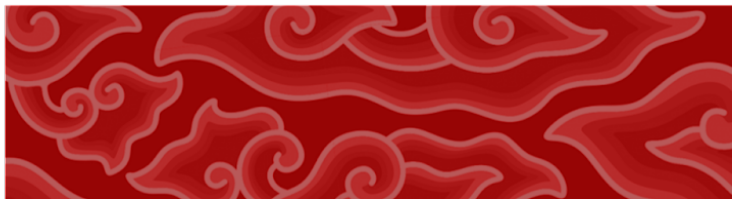
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Legal and Social Aspects of Indonesia's Underage Forced Marriage Cultural Paradigm

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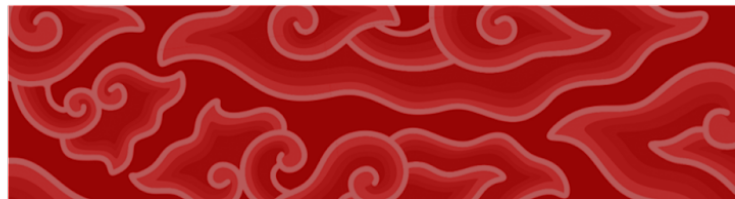
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ABSTRACT

Cases of fraudulent marriages bear a different motive altogether. While most of the general motives are to obtain an immigration advantage, perpetrators of marriage fraud in Indonesia tend to seek economic and or social advantage. The longing for economical advantage will oftentimes lead to families marrying off their child in hopes that the family will gain an economical boost, despite their child's consent or willingness. This paper will discuss how Indonesian Marriage law accommodates and protects the rights of underage forced marriage victims. This study used literature research with qualitative descriptive methods, through a normative legal approach. This paper primarily discusses the legal status of underage persons, also the social and economical aspects of this cultural paradigm. The solution is that there are several legal options that can be taken. One of them is that we could review the contents of Indonesian marriage law. Moreover, the government could give a moral education about underage marriage, especially in remote areas.

Keywords: *Indonesian Underage Marriage, Indonesian Forced Marriage, Marriage Fraud in Indonesia.*



Introduction

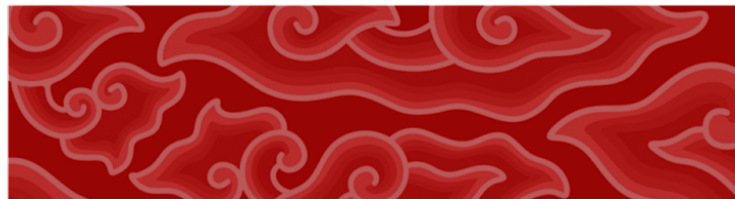
I. Background

Forced child marriage is a life-changing reality for many girls in the world. Some as young as 8 or 9 are forced to trade their childhoods for a life that can be defined by isolation, violence, and illness. It is a practice rooted more in tradition than religious custom, and one that spans the globe, from Asia to Africa to the Americas. The number of girls who are married as children is astounding.

Forced marriage, which is generally viewed as encompassing child marriage because minors are deemed incapable of giving informed consent, is specifically recognized as an abuse of human rights in a number of UN treaties and other international instruments. However, different instruments employ differentiation of the term 'forced marriage'. The 2005 Council of Europe study *Forced Marriages in Council of Europe Member States* uses a broad definition according to which forced marriage constitutes an umbrella term covering marriage as slavery, arranged marriage, fictitious, bogus or shame marriage, the marriage of convenience, unconsummated marriage, putative marriage, marriage to acquire a nationality and undesirable marriage - in all of which the concept of consent to marriage is at issue.

Forced marriage is commonly seen as a violation of women's and children's human rights as well as a form of violence against women and children on a national and worldwide scale. Underage marriage is a marriage where the girl or the boy is underage or usually under the legal age in the country. In Indonesia itself, the legal age of a girl to marry a man is 19 years old.

According to United Nations Human Rights, child marriage is a human rights violation and a harmful practice that disproportionately affects young children globally, preventing them from living their lives free from all forms of violence and many other consequences. Children under the age of 21 are considered unfit for marriage. The



unpreparedness of the child could be seen from 5 aspects, namely physically, cognitively, linguistically, socially, and emotionally. Child and forced marriage are highly exacerbated in humanitarian settings.

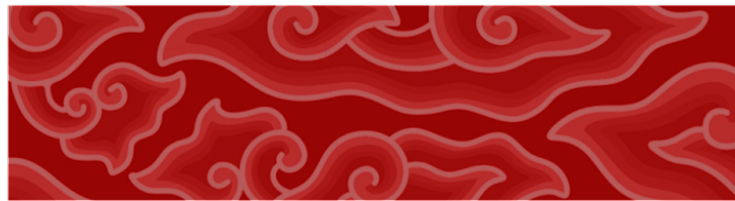
Child marriage has been a common traditional community. And negative impacts of underage marriage include economics. Child marriage is a global problem and is compounded by poverty. Some families believe that marrying their child could ease financial burdens on the family. Singh as an activist already saw children get married for the reason of money being offered or some kind of assistance in return, without realizing the repercussions for young women. And many families didn't know or understand the concept of marriage fraud or trafficking. And these cases got worse because of the pandemic happening. The sad thing about child marriage, it's actually a common phenomenon happening. Some people think lowly about the consequences of having a married life at such a young age. Especially when the children are being forced to do so.

II. Identification of the Problems

1. How is the reality of the forced marriage cultural paradigm in Indonesia?
2. How is the social impact of this forced marriage phenomenon in Indonesia?
3. How is the legal protection of this forced marriage cultural paradigm in Indonesia?

III. Regulations

On Article 1 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962 explained that "No marriage shall be legally entered into without the full and free consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law". We could conclude that marriage should be done without any force by any aspects and sides. And according to the Convention on the Rights of the Child, a child is anyone under the age of 18, unless, under the law applicable to the child, the majority is attained earlier. Thus, individual States have the possibility to prescribe a lower legal age limit as a condition for acquiring adulthood.



The Indonesian law itself still has not defined what a fraud marriage is, while Singapore has well-regulated provisions regarding it, this issue has been regulated under Section 57C of the Immigration Act where fraud marriage is defined as 'marriage of convenience' where a person who enters into a contract knowing or having reason to believe the purpose of marriage is to assist one of the parties in obtaining an immigration advantage, and one in which gratuities are offered, granted or accepted as a result. This unlawful act can be sentenced to a maximum fine of S\$10.000 or imprisonment with a maximum of 10 years, or both.

Pursuant to Indonesia's law, marriage is regulated in various laws and regulations. Law No. 1 of 1974 concerning the Principles of Marriage regulates the terms and methods of marriage. Marriage is generally based on compassion to form a family based on the agreement of the two parties. The legal protection for victims of unregistered marriage, including in contract marriage mode, that mostly are women can be done by referring to the perspective of the victim through a humanistic approach. General criminal fraud is governed by Article 378 of the Indonesian Penal Code, which covers fraud committed by a person with a maximum imprisonment of 4 years.

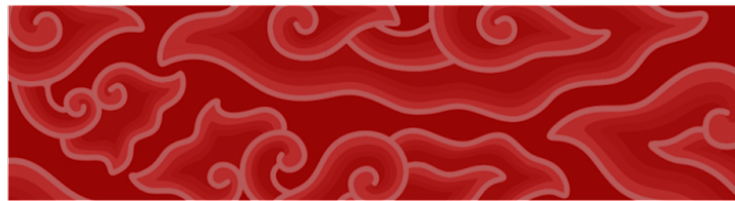
Unfortunately, since the investigation of marriage fraud cases in Indonesia refers to fraud offenses within Article 378 Indonesian Penal Code, the act of marriage fraud cannot be tried legally because it does not classify as a fraud offense. Meanwhile, there are more elements in play surrounding fraudulent marriages in Indonesia. For example, coercion in the case of forced marriages. Hence, the legal vacuum within Indonesia's law simply causes the aforementioned cases to happen freely and cannot be tried under Indonesian Law.

Analysis

I. Main Causes of Child Forced Marriage

A. Poverty

For many poor families, marrying their daughter at an early age essentially is a strategy for economic survival; it means one less person to feed, clothe and



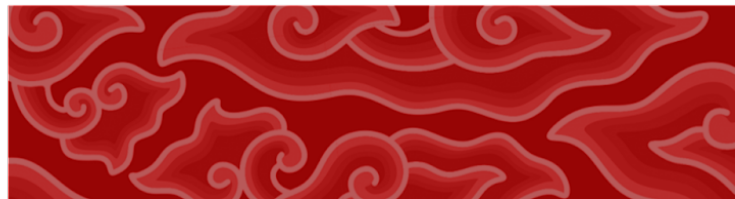
educate. In Asia and Africa, the importance of financial transactions at the time of marriage also tends to push families to marry their daughters early. For example, in many sub-Saharan cultures, parents get a high bride price for a daughter who is married. For example, in many sub-Saharan cultures, parents get a high bride price for a daughter who is married near puberty.

B. Limited education and economic options

Little or no schooling strongly correlates with being married at a young age. Conversely, attending school and having higher levels of education protect girls from the possibility of early marriage. In many countries, educating girls often is less of a priority than educating boys. When a woman's most important role is considered to be that of a wife, mother, and homemaker, schooling girls and preparing them for the jobs may be given short shrift. And even when poor families want to send their daughters to school, they often lack access to nearby, quality schools and the ability to pay school fees. It is usually safer and economically more rewarding to spend limited resources on educating sons than daughters. This boxes family into early marriage as the only viable option for girls.

C. Tradition and Religion

In many societies, parents are under pressure to marry off their daughters as early as possible in an effort to prevent them from becoming sexually active before marriage; a woman who does so brings dishonor to her family and community. Because marriage often determines a woman's status in many societies, parents also worry that if they don't marry their daughters according to social expectations, they will not be able to marry them at all. Forced child marriage also is a route to cementing family, clan, and tribal connections or settling obligations. At its core, forced child marriage is rooted in tradition. A 2007 ICRW study found that no one religious affiliation was associated with the practice. Rather, a variety of religions were associated with a high prevalence of forced child marriage, in a diversity of countries throughout the world. However, customs and traditions do



change. In fact, forced child marriage has nearly disappeared in several countries where it used to be an entrenched cultural practice only a generation or two ago. These countries include China, Taiwan, Korea, Thailand, and Indonesia. There is no reason why this harmful traditional practice can't also become a thing of the past in the countries where it remains common today.

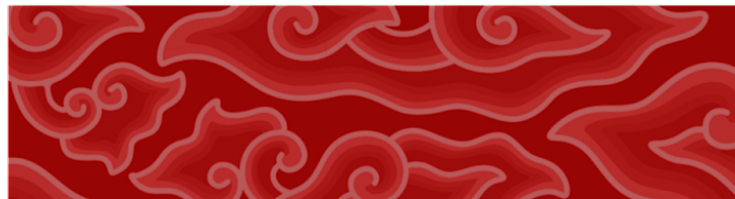
II. Legal Consequences

Every year, almost 15 million girls under the age of 18 are married throughout the world. Around 750 million women alive today were married in childhood, and unless progress is accelerated, that number will remain at least as high through to 2030. This shows that early marriage is a human rights violation on a vast scale and a major obstacle to sustainable development.

In Indonesia, marriage fraud plays a significant role since it is one of the quickest ways of achieving a highly desirable social and economical status. Although the apparent number of active cases continues to grow, there is still no litmus test to indicate whether a marriage is genuine. As a result, courts have increasingly found themselves playing the role of the “marriage police” trying to determine whether a couple is “genuinely” married or whether, instead, the couple has only married solely for the extensive benefits attached to marriage.

An example of marriage fraud in Indonesia is families marrying off daughters to wealthy individuals to obtain financial benefits for the family. Specifically the abundant number of said cases in Puncak, Bogor, where there are quite a number of wealthy foreigners that seek to “marry” local girls solely for sexual pleasure. In exchange, they will provide for the girl's immediate family as they have the means to do so.

Why we believe that such cases can be classified as fraudulent marriage is due to the fact that the elements surrounding the marriage do not align with what our laws define as marriage. Even though the marriage itself is recognized and acknowledged by law, we believe that there is more in play when evaluating a genuine marriage. In most of these cases, the girls being married off to wealthy men are often reluctant yet forced to do so for their family's benefit. This implies that there is coercion at play and consent is not



present, therefore contradicting the Indonesian law No. 1 the Year 1974 Regarding Marriage in which, stated in Article 6 Chapter II, states “Marriage must be based on the mutual agreement of both parties”.

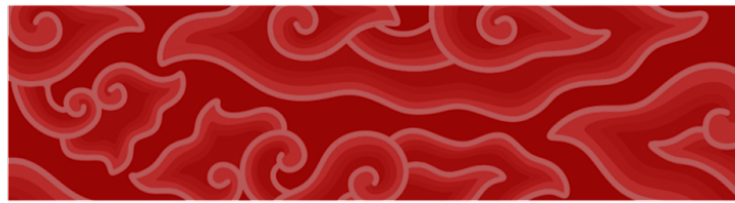
Indonesia has one of the highest rates of child marriage in the world according to Unicef. And other cases involved not only young women but also girls under the legal age in their own country. And most of the children are forced to marry. Although cases of child marriage have decreased over the past few years, the numbers we saw are still quite large. In Article 7 particle 1 of Law Number 16 of 2019 about amendments to Law Number 1 of 1974 about marriage, it explains that marriage is only permitted if the male and female parties have reached the age of 19 years. Based on research, even though there are some cases where the child comes from a wealthy family, still most of the children from poor families have a high percentage.

Unfortunately, due to the inability of Indonesia's government to carefully evaluate subjective elements, these cases often go unresolved or even dismissed. This is also due to the fact that Indonesia has yet to pass a law regarding marriage fraud itself and cases like these are solely investigated referring to Article 378 Indonesian Penal Code.

III. Social Consequences

In many countries, young married girls move away from their parent's home to live with their husband and his family, where they have no friends, no support, and little say in their own lives or in household matters. Research shows that young married girls often are isolated and powerless. They are unable to negotiate or obtain support for issues in their own interest. And they're frequently exposed to violence and threats of abandonment and divorce. Outside the family, the doors to schooling are usually closed to young married girls in most countries. This means that they have little chance to prosper later in jobs or as entrepreneurs. Often dependent and with little knowledge and income to support or invest in their children, child brides also end up raising daughters who face the same challenges as their mothers.

Conclusion

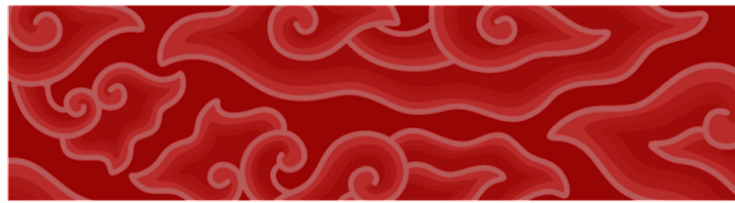


Reflecting on the legal conditions in Indonesia which have yet to properly regulate marriage fraud, even though this issue is a common occurrence in Indonesia. We, therefore, initiate the government to regulate marriage fraud properly in a form of an act which at least consists of the definition, the elements, the prohibition, and the threats of punishment of fraudulent marriage.

Furthermore, we also believe that the government should prepare a litmus test to evaluate the genuinity of a marriage. The purpose of this is to accurately determine whether a marriage is fraudulent and also avoid wrongful accusations of a fraudulent marriage. Within these aspirations, we urge Indonesia's government to pass a law concerning marriage fraud, so that legal certainty can be implemented to reduce the high rate of marriage fraud cases within Indonesia and also prepare complimentary tools to further assist in marriage fraud investigations.

We know the problem is forced child marriage. We know the causes and consequences are terrible. But the good news is that we also know solutions. We know that before launching any new program, it's critical to first talk to girls. They are the starting point for any solution to ending forced child marriage. Girls acutely understand the obstacles that bar them from opportunities, and they have clear ideas about what needs to change in their lives in order to succeed. It's also important to support parents who support their daughters' decision to continue their studies and enjoy their childhood – delaying the choice to become a wife and mother. These parents who are bold enough to go against what tradition dictates can be stigmatized by and ostracized from their community.

To conclude, we firmly believe that the Indonesian government should quickly take action in passing the aforementioned law if they hope to eradicate marriage fraud cases in Indonesia soon. Other than that, the government could focus more on supporting laws and policies about gender equality, education, and sexual and health rights. The government should also make efforts to provide education about child marriage. especially in areas with high child marriage data. Sometimes people don't know in detail the effects on their children. These cases surely take a toll on the well-being of Indonesian citizens which further obligates the government to act upon the cases to reach a safer and better environment for its citizens.



Bibliography

Regulation

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962

The Convention on the Rights of the Child

Indonesia Law No. 1 the Year 1974 Regarding Marriage

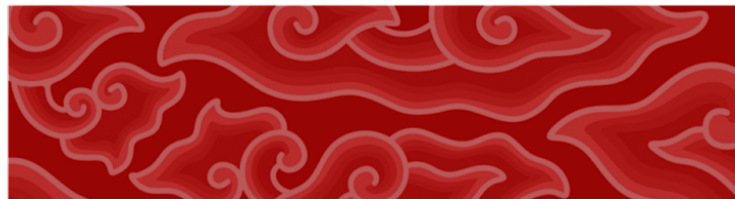
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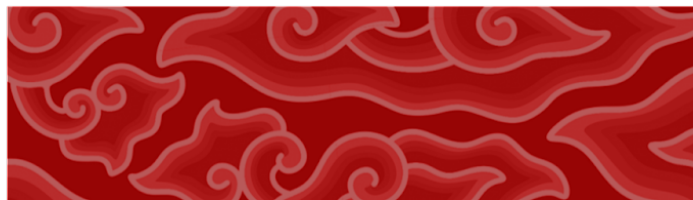
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MAIL-ORDER-BRIDE: THE UNCERTAINTY OF LAW ENFORCEMENT IN INDONESIA

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Abstract

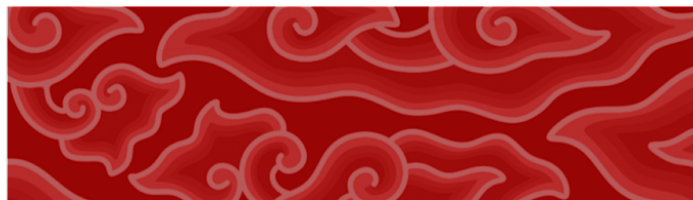
These days, human trafficking is a worldwide problem. The increasing number of human trafficking is positively related to the more diverse types of actions. One of them that occurs commonly in Indonesia is 'mail-order bride', which causes Indonesian citizens especially women to be the victims. We found out that Indonesian Law is not enough to regulate this issue and we believe law interpretation theory will fit to discuss this further. Methodologically, this research employs two methods: juridical and qualitative analysis sourced from books, journals, and articles. The findings indicate that Mail-Order-Bride is more than just a phenomenon since it violates many rights which are caused by the weak law enforcement in Indonesia.

Keywords: human trafficking, bride trafficking, Mail-Order-Bride.

I. BACKGROUND

Human trafficking emerged on the world stage as a new form of slavery (modern slavery) 140 years after slavery was legally abolished and has been threatening the world ever since. Federal legislation in the United States in 2000 defined human trafficking as the illicit enslavement of individuals into labor or commercial sex through means of force, fraud, or coercion.¹ There are many forms of trafficking, one of them is sexual exploitation. In Indonesia, sexual exploitation is one of the things that must be considered because it is quite widespread as the data shows that there is an estimate of 40,000 to 70,000 are estimated to be involved in

¹ Farrell, A. and Fahy, S., 2009. The problem of human trafficking in the U.S.: Public frames and policy responses. *Journal of Criminal Justice*, 37(6), pp.617-626.



prostitution children victims of sexual exploitation throughout Indonesia.² Most of the victims of sexual exploitation in Indonesia are women and children. According to 2003 data from the International Labour Organisation, however, an estimated 100,000 women and children are trafficked each year in Indonesia.³ One of the modes of sexual exploitation that occurs is the Mail-Order-Bride.

Mail-Order-Bride is where women from one country are ordered to be wives by men from other countries without the woman knowing who the man will marry. One of the main objectives for the brides is to lighten the burden on their families.⁴ Where in reality, these women is being trafficked by being used as housemaids and sex helpers. In addition, the practice of Mail-Order-Bride is most often accompanied by various violations such as fraud, giving false promises, forgery of identity, possession of multiple passports, coercion of will, minors, deceit, and debt traps. The marriage that occurs is not aimed at finding a life partner and being independent, but rather the exploitation of certain parties to make profits. This is the opposite of the actual definition of marriage where it is defined as an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead.⁵

Mail-Order-Bride occurs in Indonesia as one of the most prevalent forms of sexual exploitation. The brokers are looking for beautiful women to be married to a foreign male, in Taiwan, Hong Kong, and Singapore. As a result of marrying the order, not a few women who ecome displaced in

² Female Child Labour in Indonesia. *ILO Jakarta Newsletter: Give Girls a Chance End Child Labour*, September 2009, p. 7. Available at <from: http://www.ilo.org/jakarta/whatwedo/publications/lang--en/docName--WCM_041799/index.htm> [Accessed on September 11 2021]

³ ILO, 2021. [online] Available at: <http://www.ilo.org/jakarta/whatwedo/publications/lang--en/docName--WCM_041799/index.htm> [Accessed 12 September 2021].

⁴ Novianti, 2014. *TINJAUAN YURIDIS KEJAHATAN PERDAGANGAN MANUSIA (HUMAN TRAFFICKING) SEBAGAI KEJAHATAN LINTAS BATAS NEGARA*, 2014. p.51.

⁵ Indonesia, Undang-Undang Perkawinan, Law Number 1 of 1974, Article 1 (1).



other countries and deceived, until there were employed as commercial sex workers or others⁶ The factors causing the Mail-Order-Bride are poverty and unavailability of jobs so that women who live in Indonesia contract marriage to change their standard of living. The next factor is the low level of education so often they are forced to accept exploratory work. Another factor is the level of consumerism. Women tend to want to have the luxury and live a good life, so they think that Mail-Order-Bride is an alternative to get their will. This condition is used by brokers/marriage brokers as targets for prospective brides to hunt for potential brides to easily capture their victims to make a profit.⁷

In the past they did this activity secretly and went to the one victim who would be made a Mail-Order-Bride. But now acts of Mail-Order-Bride are done openly now over the web on the internet. In the site clearly stated Mail-Order-Bride activity that is filled with photographs of women who will be in the message, the age and origin. Photos of them actually show that they are proud to do a Mail-Order-Bride.⁸ It makes Mail-Order-Bride more widespread, so rigid regulations and strict law enforcement regarding this matter is urgently needed to prevent any more victims of this trafficking.

II. ANALYSIS

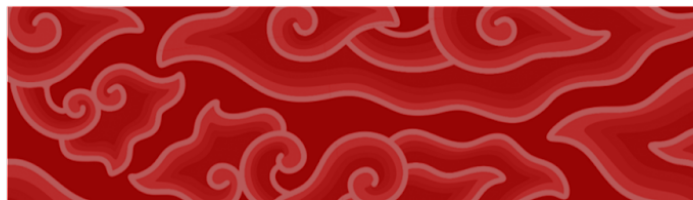
A. Mail-Order Bride and Its Regulations in Indonesia

Mail-Order Bride is defined as a series of actions of a woman who solicits or accepts a contractual marriage arranged by an agency or brokerage after a

⁶ Triana, E., Rochayanti, C. and Isbandi, I., 2014. POLA KOMUNIKASI INTERPERSONAL KORBAN TRAFFICKING PENGANTIN PESANAN DI SINGKAWANG KALIMANTAN BARAT. *Jurnal Ilmu Komunikasi*, 7(1), pp.29-37.

⁷ *Ibid.*

⁸ AS, Y., Yulastini, A. and Setiawati, R., 2020. THE HANDLING OF HUMAN TRAFFICKING WITH MAIL ORDER BRIDE MODE IN WEST KALIMANTAN. *International Journal of Law Reconstruction*, 4(2), p.69.



period of long-distance courtship, traditionally by written correspondence.⁹ Therefore, it can be said that Mail-Order Bride is another type of human trafficking in this modern world. It is a belief that it might increase in this whole new century where technology is more accessible to society. In Indonesia, Mail-Order Bride is also a problem for the country, especially for Borneo. Where the Mail-Order Bride cases occur a lot involving Indonesian women and foreigner men - especially Chinese - and facilitated by certain mediators or matchmaking agents.¹⁰

One of the specific places that we are going to bring up as an example is Nunukan District in North Borneo, Indonesia. A short background story, Nunukan is a place for Indonesian abroad workers to transit before they are going to be placed into several destination countries. Still took the same Island, Mail-Order Bride also used to happen in Singkawang, West Borneo. There are a lot of Chinese ethnic girls - economically vulnerable - in the age around fourteen up to twenty recruited to be the Mail-Order Bride to be married by some men foreigners that usually came from Taiwan, Hong Kong, or Singapore. Nevertheless, after getting married, those men turned out to treat those girls as servants, slaves, or even sex slaves.

According to Indonesian positive laws, there is no specific law governing such fraudulent marriage, especially Mail-Order Bride. Therefore, if such things happened in Indonesia, then it will be prosecuted under the criminal act of human trafficking and separated from its marriage status. Where the Mail-Order Bride have to meet any of these elements in Article 1(1) Law No. 21 of 2007 that stated :

“The act of recruiting, transporting, harboring, sending, transferring or receiving a person by means of the threat of force,

⁹ www.dictionary.com. 2021. *Definition of mail-order bride* | Dictionary.com. [online] Available at: <<https://www.dictionary.com/browse/Mail-Order-Bride>> [Accessed 12 September 2021].

¹⁰ Kemlu.go.id. 2021. *Fm Marsudi Effective Preventive Action Is Imperative To Combat Mail Order Bride Cases* | Portal Kementerian Luar Negeri Republik Indonesia. [online] Available at: <<https://kemlu.go.id/portal/en/read/488/berita/fm-marsudi-effective-preventive-action-is-imperativ-e-to-combat-Mail-Order-Bride-cases>> [Accessed 12 September 2021].



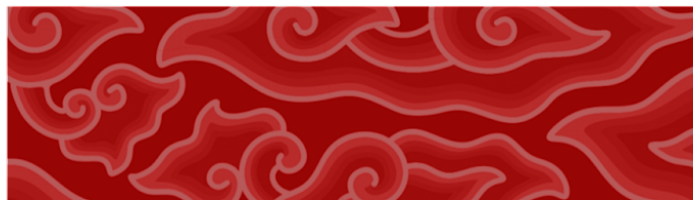
use of force, abduction, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage or payment or benefit, so as to obtain the consent of a person who has control over another person, whether carried out within a country or between countries, for the purpose of exploitation or causing people to be exploited.”

Where if a Mail-Order Bride case happened, based on the provision of the Ministry of Foreign Affairs, the perpetrator will be prosecuted under the human trafficking offense using Law No. 21 of 2007 concerning the Criminal Act of Human Trafficking. As regulated in Article Article 2 (1) that stated :

“Everyone who recruits, transports, holding, sending, transferring, or receiving someone with threats of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or position of vulnerability, entrapment debts or giving payments or benefits even though the consent of the person in control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia, shall be punished with a criminal imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine Rp 120,000,000 (one hundred and twenty million rupiahs) up to Rp 600,000,000 (six hundred million rupiahs).”

In fact, particular policies regarding human trafficking especially women have been established by West Borneo Provincial Government such as :

1. Regional Regulation Number 7 of 2017 concerning Prevention and Eradication of Trafficking in Persons, Especially Women and Children;
2. West Kalimantan Governor Regulation Number 5 of 2010 concerning Regional Action Plans for the Elimination of Trafficking of Women and Children;
3. Decree of the Governor of West Kalimantan Number 289 of 2006 concerning the Establishment of the Task Force (Task Force) and the



Secretariat of the Implementing Task Force. Placement and Protection of Troubled Indonesian Workers Abroad in West Kalimantan Province;

Followed by a lot of other regulations. However, all of those provisions mentioned above are still unable to combat or even suppress the cases of Mail-Order Bride there.

B. Law Enforcement Regarding Mail-Order Bride In Indonesia

United States Department of Justice 2021 Report (Trafficking in Persons Report) that the Indonesian government has not been well aware to prioritize the funding and staffing to oversight Indonesian migrants within the Mail-Order Bride issue. The Indonesian government also lacks well-structured victim identification procedures, which become an obstacle to the identification of victims as a whole. Another obstacle also comes from a lack of coordination between the national anti-trafficking task force and the government - either at the central, provincial, and local level, so that is insufficient to implement the central government policies regarding this issue nation-widely.¹¹

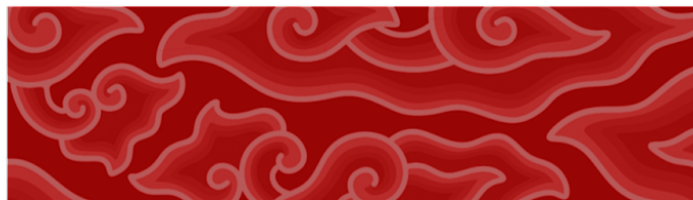
Based on the report from the Indonesian government through the Ministry of Foreign Affairs and its representatives in China, there are 32 cases of Mail-Order Bride being reported and handled from January to July 2019.¹² Supporting this, The United States Department of Justice 2021 Report (Trafficking in Persons Report) that Indonesia is qualified as the Tier 2 State. It means that Indonesia indeed does not optimally meet the minimum standards to combat trafficking.¹³

This is also agreed by Prakoso and Nurmalinda, where they found Indonesian Law Enforcement against the crime of trafficking is still not optimal, which we can see through media news stated that a lot of cases of human trafficking are identified as trafficking victims, but the government finds it hard to

¹¹ U. S. Department of State. 2021. *2021 Trafficking in Persons Report : Indonesia*. [online] Available at: <<https://www.state.gov/reports/2021-trafficking-in-persons-report/indonesia/>> [Accessed 12 September 2021].

¹² Kemlu.go.id. 2021. *Op cit*.

¹³ U. S. Department of State. 2021. *Op cit*.



ensnare the trafficker because the action is corporate in nature and is an organized crime.¹⁴

Although as mentioned above that there are a lot of provisions have been set concerning this issue, however, in fact, the cases of human trafficking are still high. This happened because Mail-Order Bride occurred as a syndicate of transnational crime and organized crime where there is not only a single perpetrator, so even if this case is revealed to the surface and proven right to the court, it is still difficult for the criminal justice system to prosecute.¹⁵

Instead of the Indonesian Government, the one that in fact can be said as instrumental in handling this Mail-Order Bride is a Non-Governmental Organization. Hyperpro stands on behalf of the Indonesian and Women's Crisis that represents Taiwan. They have done several agreements to combat this Mail-Order Bride issue, one of which is to investigate the Indonesian women in Taiwan who are victims of Mail-Order Bride.

The investigation contained Indonesian women data collection by asking them to attach an official marriage certificate to prove their marriage is done legally. In consequence, if they failed to prove the legality of their marriage, then they have to be sent back to Indonesia. This action successfully sent more than 200 Mail-Order Bride victims.¹⁶

With this successful combat made by Hiperpro and Women's Crisis, this can be expected that the Indonesian Government would like to improve their law enforcement regarding human trafficking - especially Mail-Order Bride so that we can eliminate this issue from Indonesian soil.

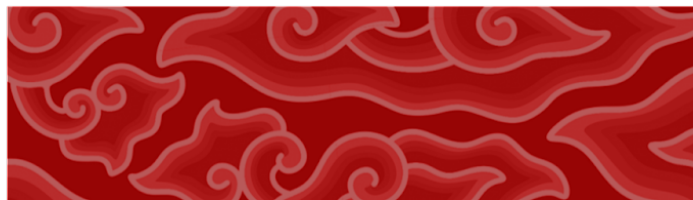
III. CONCLUSION

Based on the analysis that have mentioned above, it can be said that in fact there have been several regulations regarding Mail-Order-Bride, but the rampant

¹⁴ Prakoso and Nurmawati, 2014. cited from; Ika Paramita Karuniawati. 2014 Kebijakan Hukum Terhadap Tindak Pidana Perdagangan Orang. *Mimbar Keadilan*, p. 121 - 128.

¹⁵ AS, Y., Yulastini, Op cit. p. 78

¹⁶ Ika Paramita Karuniawati, Penegakkan Hukum di Indonesia Terhadap Masalah "Mail-Order Bride" (studi atas penyelesaian masalah kawin pesanan di Nunukan, Kalimantan Timur), *Mimbar Keadilan*, hal 126



Mail-Order-Bride in Indonesia proves that law enforcement regarding this matter is still weak. Regarding this matter, it would be better if the public was given the awareness about the dangers of human trafficking, especially Mail-order bride, also the government could create a new strategy to prevent MOB from happening.

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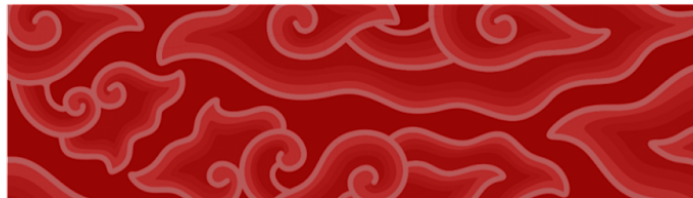
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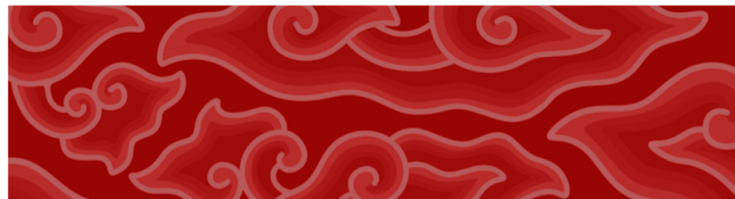
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TINJAUAN YURIDIS KEJAHATAN PERDAGANGAN MANUSIA (HUMAN TRAFFICKING)

SEBAGAI KEJAHATAN LINTAS BATAS NEGARA, 2014. p.51.



Triana, E., Rochayanti, C. and Isbandi, I., 2014. POLA KOMUNIKASI
INTERPERSONAL
KORBAN TRAFFICKING PENGANTIN PESANAN DI
SINGKAWANG KALIMANTAN BARAT. *Jurnal Ilmu Komunikasi*, 7(1),
pp.29-37.



Indonesian Law's Perspective in Illegal Child Adoption Regulation in the Best Interest of the Child

By: Gusti Aditya and Iqbal Fauzurrahman

Abstract

Till these days, child adoption still remains to be the first option for couples who can't have children on their own. As an attempt on combating illegal adoption in Indonesia, the government regulates steps on how to adopt a child in Government Regulation 54 of 2007 regarding Procedures and Mechanism on Child Adoption in order to ensure the rights of the child. Unfortunately, people kept going against the rule due to the long-time period process and also a plenty of files that must be completed by the parties that are regulated in the law. The situation gets more complex when it comes to the best interest of the child itself as adoptive parents have an important role in fulfilling the child's needs, especially in giving them affection. The method that the authors apply for this research is through the qualitative and case study method. Sourcing from relevant cases in Indonesia and providing comprehensive analysis based on descriptive data. According to the authors' findings, in the Indonesian jurisdiction, regulations regarding illegal adoption emphasize its focus on the aspects of child protection, legal procedure mechanism, and sanctions. Although it is considered sufficient and quite thorough, those aspects are seen from a different perspective in the cases provided.

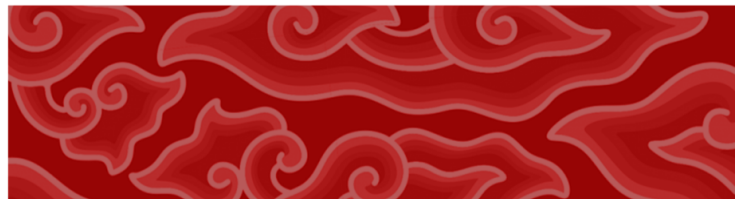
Key Words: Adoption, Indonesian Law, Child Interest

Issues

In this paper, the authors would like to raise the issues that Indonesian law about child protection has been constructed severely to accommodate the principles of non - discrimination, the best interest of the child, rights of the child, the continuance of their life, and their development, and the appreciation of the child's thoughts. While the implication of unadministered birth will impact how the basis of rights can only be obtained under registered identity as proof for further administration requirements. Hence, illegal child adoption shall be of great jeopardy for the fulfillment of the rights that bear each individual child.

Basic Regulation

The regulation under Indonesian jurisdiction that applies in this context are:



1. the Law No. 23 of 2002 about Child Protection which was derived from the Convention on the Rights of the Child,
2. the Law No. 4 of 1979 about the Prosperity of Child which regulates its basic rights, the responsibility of parents, and efforts to support them,
3. the Government Regulation No. 54 of 2007 about Implementation of Child Adoption, which stipulates child adoption in its detailed technical terms.

Analysis

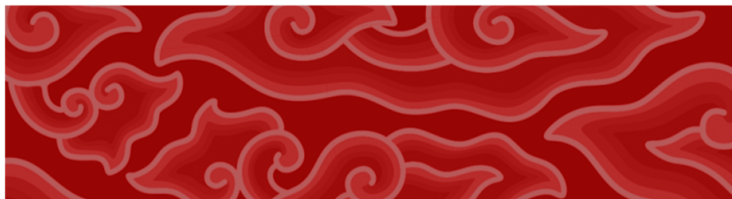
Based on the issue that the authors face, regulations and procedures on child protection have been known to have a minimum protection for the child. According to Article 1 Number 2 on the Law no. 23 of 2002 on Child Protection, child protection is an act to ensure and protect the child and their rights to live, grow, develop and participate optimally in accordance with human dignity, also protection against violence and discrimination. This stated that people around the child have the obligation to protect the child's right from being harmed.¹ This includes the action that must be taken to fulfill the child's best interest, knowing that they were still underage or below 18 years old based on Article 1 Number 1 to take any lawful act. Basically, child adoption is such a common thing done by many biological parents and the adoptive parents, and to protect the children's right with principles stated in Article 2, consist of non-discrimination, child's best interest, right to live, life sustainability, development, and appreciation on child's thoughts.²

Referring to Law No. 4 of 1979 on Child's Prosperity, on Article 2 Section 1, a child has the right for prosperity, care and guidance based on proper affection in a family or sanctions to grow and develop as a normal child. This strengthens the previous paragraph, where a child's right needs to be protected by the biological parents, adoptive parents, sanctions and even the government. Although the government had several regulations regarding child protection, the implementation on child adoptions still brings trouble for the child and the adoptive parents.

In Government Regulation No. 54 of 2007 on Implementation of Child Adoption which consist of the procedures on child adoption. In Article 2, child adoption has a purpose for the best interest of the child to fulfill the prosperity and protection for the child done by community custom and regulations. There are plenty of terms and conditions that must be fulfilled in this regulation by the adoptive parents, in Article 13, which consist of 13 (thirteen) requirements where adoptive parents are obliged to fulfill. Requirements are such as age from 30 - 55 years old, having the same faith with the adoptive child, in a marriage for at least 5 years, not having a child or having only a child, social report from local social worker, had been taking care the adoptive child for at least 6 months after the permission was given by the authorized. Also, in

¹ Topan Yuniarto, 'Hak, Perlindungan, dan Persoalan Anak di Indonesia', <https://kompaspedia.kompas.id/baca/paparan-topik/hak-perlindungan-dan-persoalan-anak-di-indonesia>, visited on 11 October 2021

² Article 2 Law No. 23 of 2002 on Child Protection



Article 21 Section 1, where adoptive parents have a maximum of 2 adoptive children and at least a gap of 2 (two) years between them.³

Conclusion

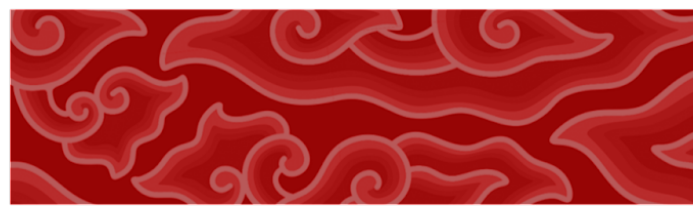
Basically having rigid regulations could prevent any possible act of illegal child adoption in Indonesia, especially cases where illegal child adoption hit Indonesia in the past. The Indonesian Government has done their job on preventing such cases by regulating procedures and terms & conditions that must be fulfilled by the adoptive parents and the adoptive child. In the previous paragraph, those requirements obstruct the child to have their best interest getting affected by their adoptive parents due to the long procedures that were stated in the regulation.⁴ Even though it was done for the prevention of illegal child adoption, the child needs to wait a bit long, hanging alone without any affection by the adoptive parents. Surely, these things were not in accordance with the child protection that were given in the previous paragraph such as Law no. 23 of 2004 on Child Protection and Law No. 4 of 1979 on Child's Prosperity.

There were things that could be done by the Indonesian Government such as simplifying the requirements and conditions for the adoptive parents and also the adoptive child⁵, so that they could get along together and the adoptive child can receive the affection that they needed from their adoptive parents. It was never a bad idea to have more than 2 (two) adoptive children for parents to take care of, as long as it's for the child's best interest.

³ Article 13 Government Regulation No. 54 of 2007 on Implementation of Child Adoption

⁴ Carlos Roy Fajarta, 'Kasus Adopsi Bayi di Cilincing, Keluarga: Kami Berniat Mengadopsi, Bukan Membeli', <https://www.beritasatu.com/megapolitan/307180/kasus-adopsi-bayi-di-cilincing-keluarga-kami-berniat-mengadopsi-bukan-membeli>, visited on 11 October 2021

⁵ Dini Eka Wahyuni, 'Adopsi Anak Dalam Perspektif Administrasi Kependudukan dan Pencatatan Sipil', <https://disdukcapil.pontianakkota.go.id/adopsi-anak-dalam-perspektif-administrasi-kependudukan-dan-pencatatan-sipil-ditulis-oleh-dini-eka-wahyuni>, visited on 11 October 2021



**POSSIBILITY TO IMPROVE ILLEGAL ADOPTION SYSTEM :
COMPARISON BETWEEN UNITED STATES LAW AND INDONESIAN
LAW ON ADOPTING CHILD**

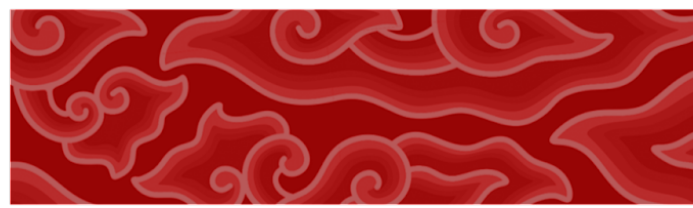
By Fadhlan Husni Ramadhan, Muhammad Aulia Fathan, and Vivi Tri Meidiani
Putri

University of Diponegoro and University of Brawijaya

ABSTRACT

Illegal adoption is one of the unresolved problems in Indonesia. The lack of legal substance in Indonesian law, especially in terms of the child adoption process which are the main causes of the illegal adoption occurrence. Those deficiencies take form in some articles that don't accommodate in certain circumstances and are not thoroughly explained. Acknowledging these issues, the authors aim to improve Indonesian regulation regarding the illegal adoption with evaluation and comparison methods with the legal system in the United States of America. This legal review also analyzes how to structure the ideal law by studying the regulations that are being applied successfully in other countries. Considering the situational differences between each child that is being adopted, the American laws are proven to be more insuring on the welfare of the adopted child. Despite the already existing law concerning these issues, there is still an urgency to revise the law in order to put an end to the illegal adoption cycle for the well-being of the child itself.

Keyword : Illegal Adoption, Law Comparison, Child Welfare



LEGAL ISSUES

1. How about The Law of Adopting Child and Illegal Adoption Case in Indonesia?
2. How about The Law of Adopting Child and Illegal Adoption Case in the United States?
3. Is there a comparison of two Adopting Child Systems between Indonesia and the United States?

REGULATIONS

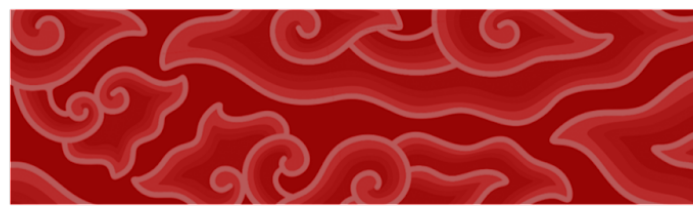
1. UU No. 35 of 2014 about Child Protection.
2. Government Regulation No. 54 of 2007 concerning the Implementation of Child Adoption.
3. Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 110/HUK/2009 concerning Requirements for Adoption of Children.
4. Omnibus Budget Act
5. Adoption Assistance and Child Welfare Act
6. State Laws on Post Adoption Contact Agreements Between Birth and Adoptive Families

ANALYSIS

1. The Law of Adopting Child and Illegal Adoption Case in Indonesia

Child adoption is a legal act that diverts a child from the sphere of authority of the parents, legal guardian, or other person who is responsible for the care, education and raising the child, into the environment of the adoptive parents families (Article 1 Paragraph (2) UU No. 35 of 2014).¹

¹ Look Article 1 Paragraph (2) Undang-Undang Republik Indonesia Number 35 of 2014 about *Child Protection*.



In Indonesia, there are several regulations about the child adoption system. At first, the regulation regarding adoption was regulated in UU No. 23 of 2002 on child protection. However, it was further refined through UU No.35 of 2014 concerning amendments to UU No. 23 of 2002 about Child Protection. These changes are intended to reinforce some criminal sanctions for perpetrators of child crimes.

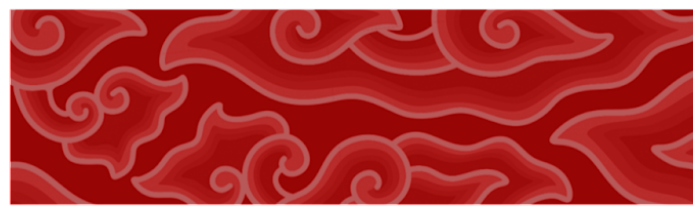
In UU No.35 of 2014, child adoption is regulated in article 39. This article regulates many things, one of which is the adoption of children which must aim for the best interests of the child.² In addition, there is also Government Regulation No. 54 of 2007 concerning the Implementation of Child Adoption. The regulation discusses, among other things, the types of child adoption, the adoption of children among Indonesian citizens, Adoption of Children Between Indonesian Citizens and Foreign Citizens, the requirements for child adoption, procedures for child adoption, guidance on child adoption, supervision of the implementation of child adoption, etc.³ Not only that, there is also the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 110/HUK/2009 concerning Requirements for Adoption of Children, which regulates several requirements that prospective adoptive parents must meet in the adoption process.⁴

All of the above regulations have a very long mechanism and process in regulating the process of child adoption in Indonesia. However, because of the difficulty and length of the legal process, many people take advantage of it by carrying out an illegal adoption. Parents who are unable to provide a decent life, children born out of wedlock, and child abduction cases are rampant in the illegal adoption process. Some cases that occur in Indonesia are usually carried out by unscrupulous midwives who sell babies even

² Look Undang-Undang Republik Indonesia Number 35 of 2014 about *Child Protection*.

³ Look Government Regulation N 54 of 2007 concerning *the Implementation of Child Adoption*.

⁴ Look Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 110/HUK/2009 concerning *Requirements for Adoption of Children*.



through social media such as Facebook, Instagram, and so on. The midwife took advantage of the baby's weak mother's situation to carry out illegal adoption activities that benefited her financially.

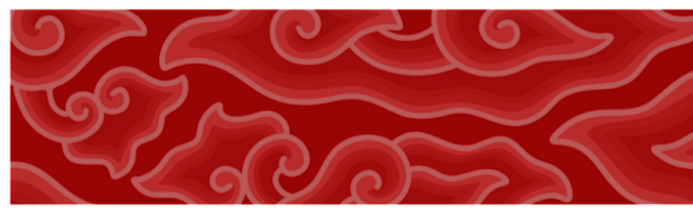
In Indonesia itself, child protection is already available in the form of the Criminal Provisions for Adoption of Children in UU no. 35 of 2014 concerning Child Protection, one of which is Article 79 which is a criminal act against the law in the form of an administrative violation, namely a crime for those who adopt children who are not in accordance with the provisions of the legislation in this case UU no. 35 of 2014 concerning Child Protection and Government Regulation no. 54 of 2007 concerning the Implementation of Child Adoption and the Minister of Social Affairs Regulation Number 110 of 2009 concerning the requirements for child adoption. However, even so, the crime of illegal adoption is still common even today. This proves that the existing law in Indonesia is not sufficient to handle the case. Several revisions and additions are needed in certain articles to fully protect children.

2. The Law of Adopting Child and Illegal Adoption Case in United States

Child adoptions are widely practised in the world, including in the United States of America. About 135,000 children are adopted in the United States each year. Of non- stepparent adoptions, about 59% are from the child welfare (or foster) system, 26% are from other countries, and 15% are voluntarily relinquished American babies. This massive child adoption practice clearly affects the law in the USA itself. Despite the ratification of International Law, in this part of analysis we want to take a closer look at the federal laws regarding child adoption in the USA.⁵

⁵Adoption Network, 2021. US Adoption Statistics.

<https://adoptionnetwork.com/adoption-myths-facts/domestic-us-statistics/#:~:text=About%20135%2C000%20children%20are%20adopted,are%20voluntarily%20relinquished%20American%20babies.> September 11th 2021 (20.24).



In The United States of America itself there are many regulations including from federal laws and state laws. These federal laws are the primary laws in the USA while the state laws are complementary to the federal laws. In this legal review the authors want to highlight the laws which include the omnibus budget act and Adoption Assistance and Child Welfare Act.

The Omnibus budget act is a set of rules that consist of 14 titles. One of the title that is being regulated is on title IV that Amends the Higher Education Act of 1965 (HEA) to replace the Federal Family Education Loan Program, under which loans made by private lenders are guaranteed by the Government with a Federal Direct Student Loan Program, to be partially phased in over a five-year transition period.⁶ This specific chapter moots the problems of health group plans which aims to establish a better standard on the above mentioned problems. Other than that, this chapter also regulates the participants of medical aid who are eligible for the medical aid itself. Regarding the adoption which requires group health plan coverage of dependent children in cases of adoption.

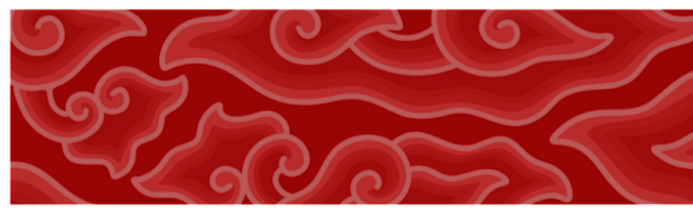
Besides the previous mentioned regulations, The Adoption Assistance and Child Welfare Act was enacted by the US Government in 1980.⁷ The main purpose is to establish a program of adoption assistance; strengthen the program of foster care assistance for needy and dependent children; and improve child welfare, social services, and aid to families with dependent children. The Adoption Assistance and Child Welfare Act regulates state agencies to be responsible for a thorough plan on the child which is to be approved by the Secretary of Health, Education and Welfare. This also

⁶ Child Adoption Law.com, 2021. Omnibus Budget Act.

https://www.childadoptionlaws.com/child_adoption_laws/adoption_laws_omnibus_act.htm.
September 12th 2021 (19.30).

⁷ Wikipedia, 2021. Adoption Assistance and Child Welfare Act of 1980 P.L. 96-272.

https://en.wikipedia.org/wiki/Adoption_Assistance_and_Child_Welfare_Act_of_1980_P.L._96-272.
2. September 12th 2021 (19.51).



assists the adoption and foster care by financial aid to improve both the child and the foster care.

After we examine the federal law, in this part the explanation will be highlighted on the state law which is Post Adoption Contact Agreements Between Birth and Adoptive Families.⁸ This state law is structured to make arrangements that allow contact or communication between a child, his or her adoptive family, and members of the child's birth family or other persons with whom the child has an established relationship, such as a foster parent, after the child's adoption has been finalized. These arrangements are meant to understand and ensure that the child doesn't have a traumatic flashback by meeting someone the child won't meet.

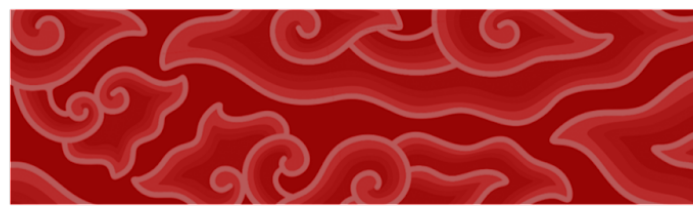
In general illegal adoptions are still happening quite frequently in the USA, however the upholding of the above mentioned laws are proven to solve and prevent illegal adoption from even happening. The legal system that has existed in the USA has proven to be effective in regulating legal adoption and reducing the illegal one. Therefore, there are a lot of things we can learn and adapt from this pre existing laws in the USA.

3. Comparative Studies Regarding Two Adopting Child System Between Indonesia and United States

a. Post-Adoption Contact Between Birth and Adoptive Families

In the Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 110/HUK/2009 concerning Requirements for Adoption of Children, it only discusses the prohibition of severing the relationship between adopted children and their biological parents but without a rigid explanation. Article 2 Paragraph (1) Letter B only reads, "Appointment of a child does not break the

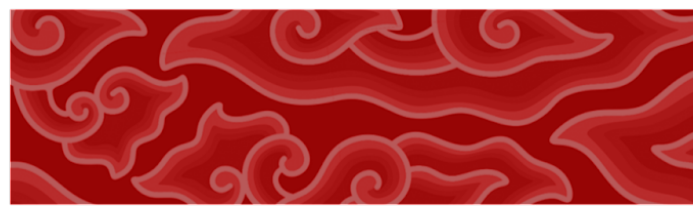
⁸ Child Welfare Information Gateway. State Laws on Postadoption.
<https://www.childwelfare.gov/topics/adoption/laws/laws-state/postadoption/>. September 12th 2021 (21.43).



blood relationship between the adopted child and his biological parents". There are also many adoptive parents who deliberately detain their adopted children to have contact with their biological parents. In addition, it is not explained in detail at what age a child has the right to be considered in his decision in court which actually causes the meaning of the best interests of the child to be obscured.

While state law in the United States, has clearly provides for an agreement for contact after adoption is allowed for any adopted child during the period and frequency of contact is considered by the courts to be in the best interests of the child and designed to protect the safety of the child and the rights of all parties to the agreement. However, there are some states that limit the validity of the agreement. For treaties to be enforceable, they must be approved by the court that owns the adoption. Generally, all parties to be included in the agreement must agree in writing all the terms prior to finalization of adoption. The court can agree only if all parties agree to the agreement, and the court agrees that the agreement is in the best interests of the child. In Arizona and Louisiana, courts must obtain and consider a child's wishes if he or she is 12 years of age or older. In New Mexico, courts must consider the wishes of a child who is 14 years of age or older. Disputes over compliance and requests for modification of the requirements should also be taken to court. Any party to the agreement can petition the court to change, comply with, or promise to promise. The court may do so only if the parties agree or the circumstances have changed, and the action is determined to be in the best interests of the child.

b. Access to Health Insurance

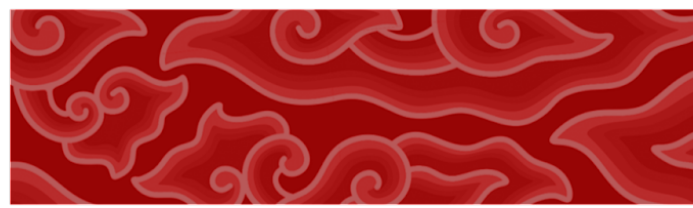


In Indonesia there are no rules that regulate the Access To Health Insurance with thorough explanations. Even as high as Government Regulation No. 54 of 2007 Article 13 concerning the Implementation of Child Adoption only regulates the requirements of the adoptive parents, applicants such as the applicants do not or haven't had a child or only have one child and in the financial and social state. These requirements are meant to prevent the abandonment of the child and treat the child not as an adopted child but as the same level as the birth child. This is contradictory to what is being regulated in the Omnibus Budget Act that regulates the rights on Access to Health Insurance the adopted children have.

In Omnibus Budget Act Title 1V, Subtitle D-Group Health Plans, Section 4301, Standards for Group Health Plan Coverage, is "a provision that guarantees adopted children the same access to health insurance as birth children." For families faced with insurance denials, legal wording, and citations as signed into law are provided. This is an extremely important resource for adopting persons since many insurance carriers try to avoid paying adoption-related expenses that may be covered under this law. From this article we can see that this specific article ensures that the adopted child is treated the same as the birth child and also rules the insurance policy to treat the adopted child. The length of expansion in this article spanned the insurance companies and regulated them in treating the adopted child and granted them the same level of health insurance as a birth child.

c. Adoption Assistance

In Indonesia itself, there are no certain regulations on the aid of the adopted child in any form. Adopted children only receive aid or livelihood from the adoptive parents. Therefore, the parents are



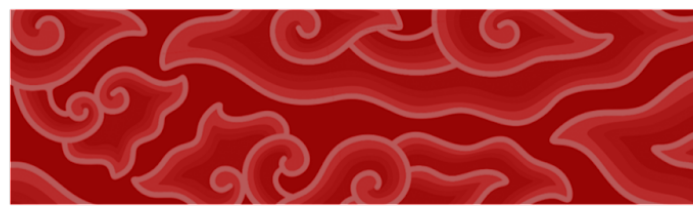
required to be financially stable. For the child that hasn't got an adoptive family, then all responsibility falls to the foster care that is involved in the child's well-being.

Meanwhile, The Adoption Assistance and Child Welfare Act of 1980 regulates and requires states to enact plans that have been approved to execute the financial aid by the government. This financial aid is being funneled to buy food, clothings, shelter, daily supervision, school equipment, unexpected expenses, child insurance, and etc. This law also regulate the aid which are going to be received by children with special needs, which categorized by: (1) Cannot be returned to the parents house, (2) Have special needs that are reasonable to be put in adoptive parents without adoption aid, and (3) Cannot be put on other places without help.

However, the aid itself has limitations; this aid is regulated to be funneled until the children reach 18 years of age under the title of XIX (Medicaid) and XX (Grants to States for Services) from this article. This aid is only to be received if the adopted children have gone through several steps of checking and statistical reports that prove that the adopted child is eligible for the given aid.

CONCLUSION

Understanding all of the exposure of both Indonesia and United States of America laws regarding the adoption regulations which can reduce the illegal adoption that were raised as our title in this legal review. We can understand and conclude that Indonesian adoption laws are not as rigid as the United States of America laws. USA adoption laws included assistance to foster care which funneled into many needs of the child itself to preserve their well-being. Indonesian laws are explicitly thorough by the requirements of the adoptive

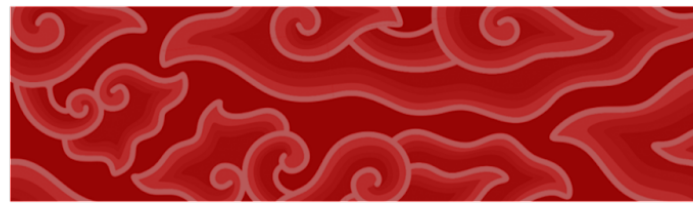


parents applicants but overall the inclusion of all affairs of the child are not regulated thoroughly.

SUGGESTION

With all the previous explanation above, the authors want to express our suggestions to the Indonesian Government to imitate the legal system regarding child adoption in the United States of America. The urgency of a more thorough legal system in handling the adoption process that involves the well being of the child itself. In our opinion it would be better if the Indonesian Government added more requirements to be implemented in the articles that have been previously stated.

1. To be more thoroughly regulated regarding the severance of blood relation between the adopted child and the biological parents in accordance with Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 110/HUK/2009 concerning Requirements for Adoption of Children. Therefore, the rights of the adopted child, adoptive parents, and the biological parents will be fulfilled and maintain good relations between them. These sets of rules could be in the form of regulating the contact frequencies with the biological parents and also acknowledging the adopted child's rights to request in the courtroom. We are certain that this will reduce the possibilities of the child trafficking or illegal adoption process, because generally those processes cut off the relation between the child and the biological parents.
2. Provide aid in food, clothings, shelter, daily supervision, school equipment, unexpected expenses, child insurance, etc. for the adoptive child that has special needs or hasn't been adopted from anyone. We can see from the abundance of neglected children in Indonesia, it would be better if the childrens receive prosperity and decent life.



3. Facilitate more thorough explanation on what the adoptive parents do to fulfill the life of the adopted child. Because a stable financial status does not guarantee the prosperity of the child, there must be some sets of rules that will guarantee the same treatment for the adopted child and birth child.

In accordance with the suggestions that have been stated, we believe that there has to be a structured law system regarding child adoption that will reduce the crimes and illegal adoption.

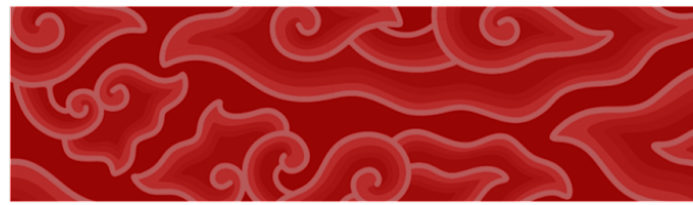
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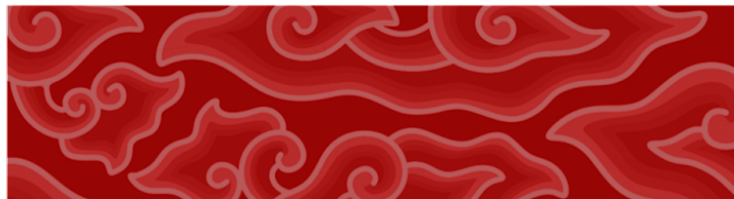


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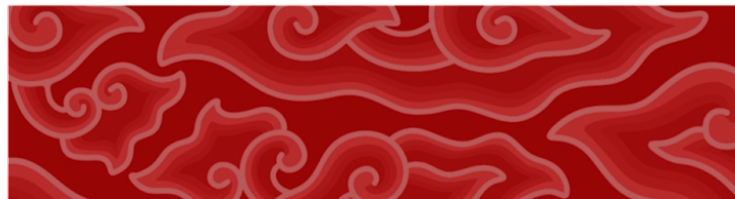
Complexity of Globalization: Precipitate the Globalized Prostitution Industry in Indonesia

Ahmad Adib Karami, Amanda Vania Damayanti, Hanna Aulia Azzahra

ABSTRACT

Globalization has become a form of a world system that affects every part of mankind. Automatically, globalization will affect and shape the world community into a single major system. Globalization indeed has had an effect on the world in various aspects, one of them is being sex work. The increased world population triggers economic activities to evolve, meaning more fields of work need to be made to accommodate the increased number of job seekers. However, the ever increasing world population seeking for jobs could not be fitted into the available job opportunities. The unfulfilled demand for jobs results in unemployment and poverty. In Indonesia, sex work industry are divided into traditional and contemporary types which have distinguishing characteristics. Factors that contribute to the practice of prostitution in Indonesia include demands, supplies, and catalysts associated with social, economic, political, cultural conditions, developments in information technology and globalization. Therefore, this research will further analyze on the relations between globalization with prostitution industry in Indonesia. This research will use the method of qualitative analysis from international as well as Indonesian legal grounds, books, journals, and articles. Based on the findings, the effects of globalization, such as the ease of communication and a high mobility rate, do contribute to the development of prostitution industry, including in Indonesia.

Keywords: Globalization; sex work; prostitution



I. BACKGROUND

Prostitution has been a long-standing problem in Indonesia. Prostitution developed along with the history of Indonesia as it has existed since the kingdom era.¹ In the kingdom era, prostitution existed in the form of concubines whom provided sexual services for the king. Prostitution was still in service throughout the Dutch and Japanese colonization era. Women were paid to satisfy the sexual desires of soldiers.² During the colonization era until after Indonesia's independence, prostitution was rapidly evolving and could be seen through the growing number of brothels and pimps.³ The development of prostitution industry in Indonesia continues until present day.

Despite having a long history of the prostitution industry, Indonesia, until this day, does not legalize sex work. It is constituted in Indonesia's Criminal Code Article 296 and 506 regarding the prohibition of making a living through organizing the selling of sex (becoming a pimp).⁴ However, Indonesian law does not explicitly criminalized a person selling sex or becoming a sex worker. The criminalization of sex work in Indonesia may vary based on the regulation in each region. Even though prostitution has long existed in Indonesia as well as becoming part of Indonesia's history, prostitution is still deemed as taboo and an inappropriate way of making a living. One of the reasons for this is that Indonesia is a religious country and prostitution is clearly against the religious values. Other than that, through a health perspective, prostitution or sex work is deemed a threat because of the risk of transmitting sexual disease such as HIV increase.⁵ The expanding market of sex work also makes people, mainly women and young girls, prone to sex

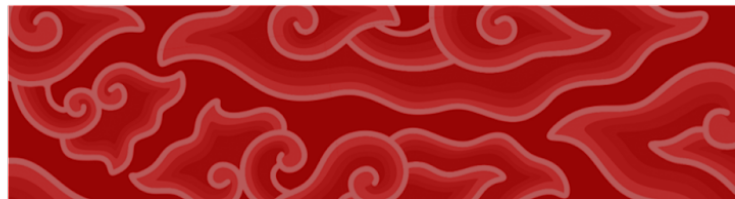
¹ Hull, T. H. (2017), "From Concubines to Prostitutes: A Partial History of Trade in Sexual Services in Indonesia," *Sexual Trade in Southeast Asia. Multidisciplinary Approaches*, 65-93.

² *Ibid.*

³ *Ibid.*

⁴ *Indonesian Criminal Code*, 1946, Art. 296 and 506, Indonesia.

⁵ Centers for Disease Control and Prevention, "HIV Risk Among Persons Who Exchange Sex for Money or Nonmonetary Items," <https://www.cdc.gov/hiv/group/sexworkers.html>, accessed September 12 2021.



trafficking and experience violence.⁶ In addition to that, the risks of prostitution industry worsens because of globalization.

In this globalization era, the world seemingly becomes borderless. The increasing number of world population and the limited availability for jobs make people move or migrate in search of work. Desperate people needing to fulfill their needs but do not succeed in finding available jobs will go for extra measures just to earn a living, such as moving to another country in the hopes of a brighter future. Some of them fall into sex work voluntarily as they see it as a golden opportunity to make a living, while some might be sex-trafficked and being forced to provide sex service.⁷ High rate of migration, not only affects the supply factor that is the service provider, but also the demand factor which is the customer. High mobilization and the increased number of the tourism industry makes sex tourism becoming more famous, thus increasing the demand of sex workers to provide the service.⁸

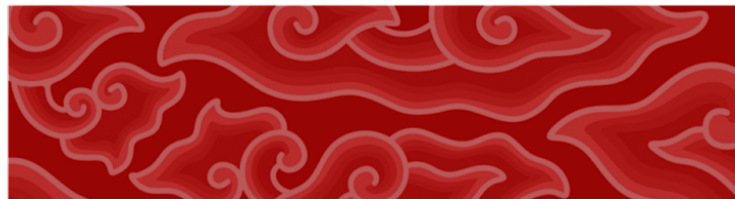
Another effect of globalization is that it makes communicating easier because of technology development. Prostitution industry surely adapted to the globalization era and utilizes technology to ease the communication between the prostitute and customer. This means the sexual service range is widened because now communications and transactions can be done regardless of the differences of time and place. Ease of communication not only affects the communication on the reservation for the service, but also the platform of prostitution. Because the usage of internet has become very common all around the world, prostitution industry has also moved its way into the digital platforms. Websites that provide porn and porn videos can be found when browsing the internet.

II. ANALYSIS

⁶ UKessays, "The Impact of Globalization of Sex Trade," <https://www.ukessays.com/essays/criminology/the-impact-of-globalization-of-sex-trade.php#citethis>, accessed on September 12 2021.

⁷ H. Ward and S.O. Aral, "Globalisation, The Sex Industry, and Health," *Sexually Transmitted Infections* vol. 82.

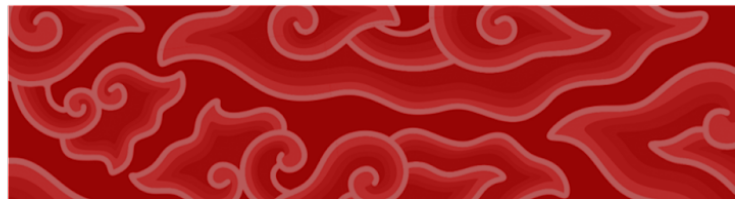
⁸ International Association for Medical Assistance to Travelers, "Implications of Sexual Tourism," <https://www.iamat.org/blog/implications-of-sexual-tourism/>, accessed September 12 2021.



Globalization has brought a huge impact on various aspects of human life. The existence of the practice of prostitution which is considered normal in everyday life is a very controversial change in society. Indonesia is a state of law, and the Indonesian legal system originating from Europe is a colonial law that is positivist, resulting in a meeting of contemporary law with pre-existing local law. The modern legal framework and local law are two different legal systems. Since we are a civilization that wants to study modern laws, the conference was very emotional because there was a separation between the two. In terms of the rule of law, we see Indonesia since the impact of contemporary law is now more accepting the notion of positivism, which means that we already have a Criminal Code in connection to prostitution in Indonesia, which we know as the Indonesian Criminal Code.

Criminal law is a remnant of Dutch colonial law; the Criminal Code contains rules against prostitution, such as those who offer facilities for sexual intercourse (Article 296 of the Criminal Code), and those who recruit customers for prostitutes (Article 297 of the Criminal Code) (Article 506 of the Criminal Code), and those who sell underage women and men to become prostitutes (Article 297 of the Criminal Code), however this regulation has several flaws, including the fact that it only applies to underage persons. Entrepreneurs take advantage of this flaw. Prostitution will continue to spread throughout the world. Several cities in Indonesia have adopted Regional Regulations outlawing all kinds of prostitution in response to the rising incidence of prostitution in the country's major cities. This is a significant step forward for communities who do not want to be identified as a prostitution hub.

Along with the development of the times, and the process of globalization that is taking place very quickly affects various aspects of people's lives in Indonesia. One of them is the practice of prostitution. The impact of the rapid flow of globalization has made the practice of prostitution in Indonesia increasingly widespread. This is due to the inclusion of cultures that come from outside, where most of these cultures are inversely proportional to the culture that we have and which we have adhered to since ancient times. At this time, sex workers are not only from Indonesia, but there are also many who



come from other countries. Call it such countries as Uzbekistan, China, and Morocco. This phenomenon is one of the negative impacts of globalization which is happening very fast. In addition to that, of course, the practice of prostitution by using workers from outside countries violates the laws in force in Indonesia.

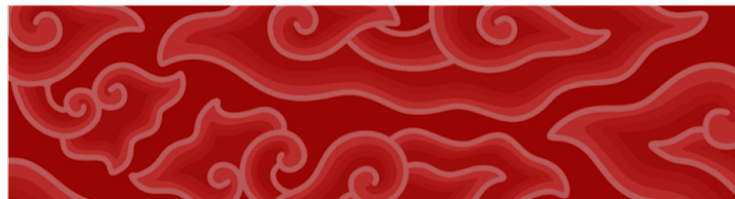
From what has happened, the author takes an example with an incident that occurred in one of the hotels in Jakarta, namely Hotel Alexis. In the raids found by the Indonesian Police, that there are not only sex workers who come from Indonesia, but there are also prostitutes who come from foreign countries. In these findings, it is known that sex workers who come from foreign countries enter the territory of Indonesia illegally. This of course violates the immigration law contained in Article 48 paragraph (1) of Law Number 6 of 2011 which states that they (foreigners) are required to have a residence permit.⁹ Since these sex workers do not have a residence permit in Indonesia, then according to applicable law they must be deported from Indonesia.¹⁰

According to the evidence presented in the case, human trafficking does exist in the realm of prostitution in Indonesia. Aside from these instances, the author provides another case study, this one including sex tourism in the Puncak Bogor region of West Java. There are a lot of stores having a Middle Eastern vibe to them. The locals refer to Middle Eastern visitors as "Arabs," and the company flourishes and expands as a result. The Arab region is located in Bogor Regency, West Java, in the Cisarua area. The Arab Village is the name given to this region. In this cool air location, Arab visitors engage in a variety of oblique behavior. One of them had a taste of the West Javan girls' attractiveness.

Prostitution also develops following the times, the era of Information and Communication Technology (ICT) also affects prostitution itself. Information and communication technology has become an inseparable part of life. Even for some people, ICT has become a major part of the implementation of activities. Like the real world, in

⁹ Indonesia, *Undang-Undang tentang Keimigrasian*, Law Number 6 of 2011, LN No. 52 Year. 2011, TLN No. 5216.

¹⁰ *Ibid.*



the world of ICT, apart from good things, there are also bad things that lurk.¹¹ Online prostitution is an activity of prostitution or an activity that makes a person an object to be traded through electronic or online media, the media used such as Mi Chat, WhatsApp, Facebook, and Twitter. Online prostitution is carried out with the media because it is easier, cheaper, more practical and safer than raids officers rather than prostitution which is done in the conventional way.¹² Those who become users of online prostitution services cannot be subject to criminal sanctions because there are no regulations that can be used as a legal basis to punish users of sexual services with online prostitution modes. Unless the sexual relationship with the prostitute is carried out by coercion either by force or threat of violence or by deceit or if he does so with a minor (whether with his consent or not) or if he sends or redistributes information or electronic documents containing decency sent by the CSWs to other parties. If it is proven that the party redistributes the immoral content sent by the CSWs to him, he can be subject to the provisions of Article 27 paragraph (1) of the ICT Law.

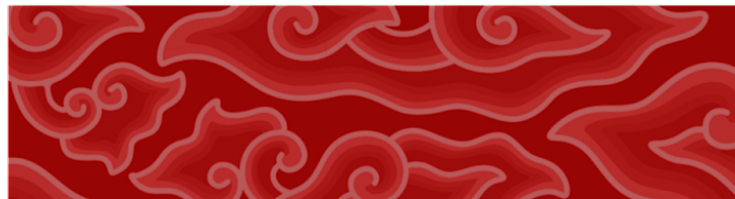
This online prostitution case is a decency offense, thus reporting on the examination process should be limited and even closed because the characteristics of the examination process and trial of decency cases are closed to the public according to the applicable law. This is in order to respect the rights of each party involved, especially to ensure the protection of the rights of the perpetrator as a suspect until his guilt can be proven, namely what crime he has committed. Widespread coverage in the mass media can make parties who appear vulnerable to be judged by the public, which can violate the principle of presumption of innocence guaranteed by the Criminal Procedure Code.

From the perspective of international law, Indonesia has ratified the Convention on the Rights of the Child by Decision on Child Prostitution and Child Pornography (hereinafter referred to as the Optional Protocol).¹³ The Optional Protocol is a form of

¹¹ Terence H. Hull, Endang Sulistyaningsih dan Gavin W, *Pelacuran di Indonesia Sejarah dan Perkembangannya*, Pustaka Sinar Harapan (Jakarta: Pustaka Sinar Harapan, 1997).

¹² Venny Humairah, "Penegakan Hukum Tindak Pidana Prostitusi Secara Online di Wilayah Hukum Polisi Resor Kota Pekanbaru", JOM Fakultas Hukum, Vol III, No 2, October 2016.

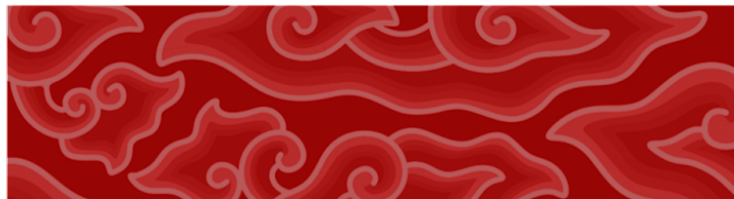
¹³ United Nations Treaty Collection (n.d.). Multilateral Treaties Deposited with the Secretary General Chapter IV Human Rights.



state commitment to the international community to prohibit other forms of child sexual exploitation including child trafficking, child prostitution and child pornography.¹⁴ The Government of Indonesia has signed the Optional Protocol, it takes 11 years for the Government of Indonesia to ratify the optional protocol through Law No. 12 of 2012. Indonesia is the 148th country to ratify the optional protocol. The Indonesian government must also immediately transform and harmonize this optional protocol in national laws and regulations, in particular to criminalize perpetrators, rehabilitate victims, and have definitions and elements of criminal acts against cases of selling children, child prostitution and child pornography in Indonesia. This is important because Indonesia adheres to the principle of non-self executing, meaning that the ratification of the optional protocol through law does not automatically implement the optional protocol. The government still requires the formulation of a special law regarding the implementation of the Optional Protocol in Indonesia. Indonesia ratified the Convention on the Rights of the Child on August 25, 1990 through Presidential Decree No. 36/1990. On September 24, 2001, Indonesia signed the Optional Protocol to the Convention on the Rights of the Child concerning the Sale of Children, Child Prostitution and Child Pornography. However, Indonesia only ratified the Optional Protocol after 11 years of signing it, namely in 2012 through Law Number 10 of 2012 concerning Ratification of the Optional Protocol to the Convention on the Rights of the Child Regarding the Sale of Children, Child Prostitution and Child Pornography. In the Optional Protocol, articles related to the prohibition of violations as well as criminal elements related to the prohibition are mentioned in Articles 1 to 3. This article and other agreements in the optional protocol have actually been ratified through Law Number 10 of 2012. Unfortunately, the results of the ratification of this Optional Protocol have not been used as a basis for conducting regulations or revising laws and regulations in the following years.

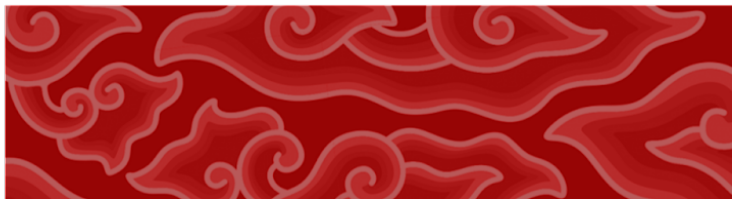
III. CONCLUSION

¹⁴ ECPAT International. (2008). Strengthening Laws addressing child sexual exploitation : A Practical Guide.



From the analysis above, it can be seen that globalization does have an impact in promoting the growth of prostitution industry in Indonesia. Prostitution before the effect of globalization would be mostly done by locals, in brothels, with service hours. However, globalization changed that system and now it has become easier to access because of the diminishing communication barriers. Globalization also makes the sex workers in a certain country do not necessarily mean the locals. Migrant sex workers from various countries is not a new sight in Indonesia, especially in big cities like Jakarta. Not only the workers that is migrating, customers also come from different countries as sex tourism also took a rise in the midst of globalization. In addition to that, prostitution has also come to the online platform seeing the rise of the websites and videos consisting of porn.

The rise of prostitution industry in Indonesia surely needed to be handled as soon as possible, in order to not aggravate the situation further. As elucidated in the analysis, Indonesia does have a few national laws criminalizing on becoming pimps and Indonesia also ratified conventions concerning prostitution. What could be done in handling the situation in Indonesia is that we have to provide a clear provision on sex work or prostitution, as Indonesia's regulations regarding this matter are still vague. Next, Indonesia should also tighten its borders in order to keep guard for sex traffickers and illegal migrants that come to Indonesia to become sex workers. The closing of brothels and red light district in Indonesia could also help decrease and limit the number of sex services available.



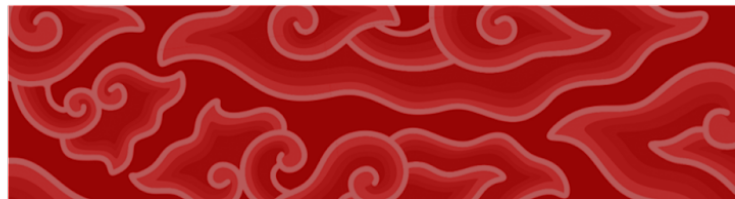
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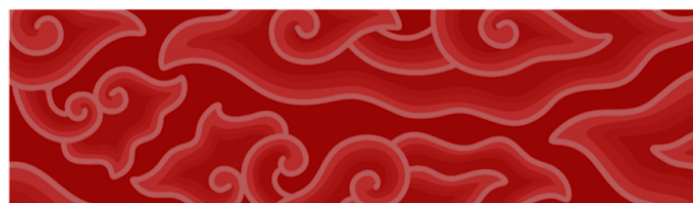
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LINKAGE OF NATIONAL INDONESIAN LAW AND INTERNATIONAL LAW ON CASES OF HUMAN TRAFFICKING UNDER SEXUAL WORK IN WEST KALIMANTAN

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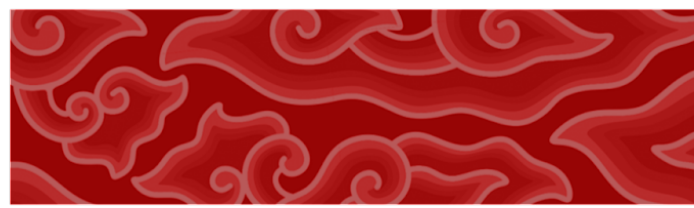
The mobilization of workers has been rampant along with the increase of globalization in recent years. Whilst it relieves unemployment pressures and contributes to development through remittances and knowledge transfer,¹ such mobilization contributes also to raging international crimes that breaches the enjoyment of human rights and safety of many citizens, such as human trafficking. This legal review is written with the intent of identifying the linkage and causal factor of human trafficking under methods of forced marriage and migrant workers, followed by a case study of several cases in the area of West Kalimantan, whilst also analyzing the Indonesian government's responsibility in handling cases of human trafficking and cases against human rights.

Keywords: Human trafficking, national law, international law, sexual work.

Human trafficking transcends state boundaries, constitutes a major challenge to the world community, and encompasses many diverse forms of exploitation (Shelley 2010:2). It is an issue with domestic and international components, resembling other criminal activities that warrant study from the field of foreign policy analysis (Bartilow and EOM 2009).² The International Labour Organisation (ILO) has indicated a recent dramatic rise in persons being trafficked for the purpose of labour exploitation. Trafficking is an international phenomenon, and looking at its definitions by the United

¹ International Organization for Migration, "Labour Migration & Health." <https://www.iom.int/labour-migration-health>, accessed 7 September 2021

² Nadejda K. Marinova and Patrick James, "The Tragedy of Human Trafficking: Competing Theories and European Evidence1," *Foreign Policy Analysis* Vol. 8 No. 3 (2012), p. 231-53.



Nations as ‘*the recruitment, transportation, transfer, harboring or receipt of persons by improper means (such as force, abduction, fraud or coercion) for an improper purpose including forced labor or sexual exploitation,*’³ can be considered as modern slavery. Human trafficking itself is most prevalent in Asia, according to the ILO some 12 million people are enslaved worldwide for the purpose of forced labour. Of this 12 million, 55% are in Southeast Asia, and 40% - 50% are children.⁴

In Indonesia itself, sex work stems from historical Indonesian empires, where several acts of loyalty towards kings and the monarch was acted in the form of presenting noble women, historically called *selir*, for pleasure. Other types of *selir* can also be seen from families that sell their daughters in hopes of increasing their social hierarchy.⁵ These acts show how women are objectified and sold for men who have power.⁶ In the Indonesian era of Dutch and Japanese colonization, the development of sex industry fluctuated as Javanese and Dutch women were forced to be sex workers. Adding to that, the Japanese also deported women from Malaysia, Hongkong and Singapore to fulfill the needs of the Japanese (Hull, Sulistyaningsih and Jones, 1997).

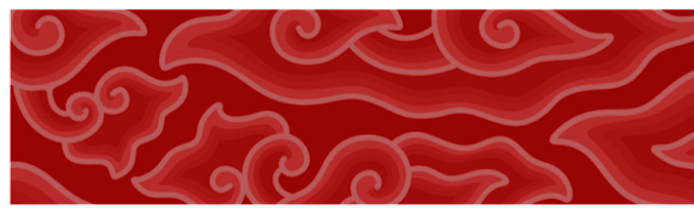
Modern day Indonesia shows education, socialization and policies regarding human trafficking itself is sub-par. Cases of human trafficking are still widely unknown, as human trafficking rings prey on the vulnerable, the economically disadvantaged, children without parental protection, or girls who believe themselves to be a burden on their families. Once trafficked, the victim loses control over himself/herself. They often have their personal identification (passports) confiscated and are financially bonded into exploitative activities. Seeking assistance from government authorities or civil society is difficult as most individuals are trafficked from one jurisdiction to another outside the

³Human Trafficking' (United Nations Office on Drugs and Crime, 2019)<<https://www.unodc.org/unodc/en/human-trafficking/human-trafficking.html>> accessed 24 June 2021.

⁴ World Vision Australia, “Human Trafficking in Asia,” <https://www.worldvision.com.au/docs/default-source/publications/human-rights-and-trafficking/people-trafficking-in-the-asia-region.pdf>, accessed 7 September 2021.

⁵ Widayatun, “Trafficking di Wilayah Perbatasan,” *Jurnal Masyarakat dan Budaya* 10 (2008), page 81-102.

⁶ *Ibid.*



legitimate migration policies of that state, making them 'illegal' in their destination country.⁷

Cases of international human trafficking are commonly found in provinces that border another country directly,⁸ like the town of Kupang, East Nusa Tenggara which borders Timor Leste and Singkawang in Kalimantan that borders Malaysia. Kalimantan, the island object of this legal review, is Indonesia's largest mainland island, with a population of 5,069,127 in West Kalimantan only.⁹ Kalimantan's wealth of culture, endemic species, and natural resources made the island one of the main targets of foreign investment in Indonesia. This resulted in the rise of economy from natural resource extraction in the region that created a catalyst to several crimes that breach the enjoyment of human rights, such as human trafficking. In West Kalimantan itself, victims of human trafficking are mostly from districts of Sambas, Sanggau and Pontianak City.¹⁰ In these districts, the act of human trafficking is a crime that has not yet gained comprehensive awareness. The act itself brings many advantages towards the perpetrator and victim, whilst having little chances of being caught by police forces. Such responses from the central and local government reflects exactly the governments' ability in responding to cases of human trafficking, making the authorities' actions imperative in handling cases of the sort.

International law is a powerful conduit for combating human trafficking.¹¹ Indonesia as a country has ratified several international conventions regarding human trafficking and its branches, such as; The Palermo Protocol, a supplement to the UN Convention against Transnational Organized Crime, The 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, The International Covenant on Civil and Political Rights (ICCPR), and The

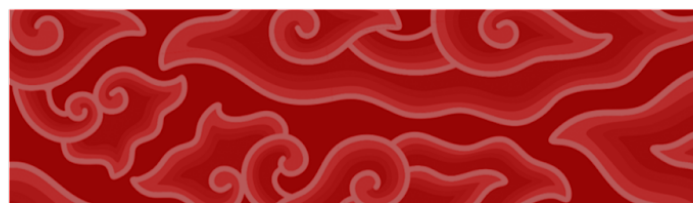
⁷ World Vision Australia, "Human Trafficking in Asia," *World Vision Australia Policy Brief* (2007).

⁸ Yulianti and others, "Perdagangan (Trafficking) Perempuan Etnis Tionghoa Melalui Perkawinan Pesanan di Kota Singkawang," *Jurnal Tesis PMIS-UNTAN-PSS* (2013).

⁹ Badan Pusat Statistik Provinsi Kalimantan Barat, "Provinsi Kalimantan Barat dalam Angka," (2020), p. 105.

¹⁰ Evida Kartini and Meidi Kosandi, "Masalah Identifikasi dan Karakteristik Perdagangan Orang di Kalimantan Barat," *Jurnal HAM* Vol 11 No. 3 (December 2020), p. 333-52.

¹¹ Lindsey King, "Topical Research Digest: Human Rights and Human Trafficking," *Human Rights and Human Welfare* (2013), p. 88-103.



2000 Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography.

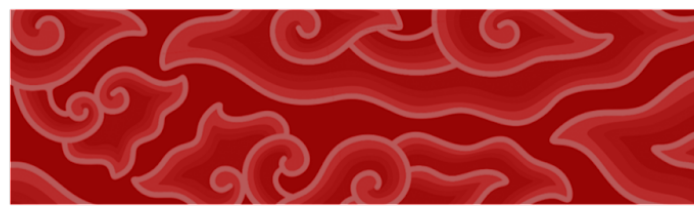
The issue of human trafficking have become so potent that the United Nations through the Office of the High Commissioner of Human Rights issued Fact Sheet No. 14 with '*Contemporary Forms of Slavery*', includes:

- a. Child Trafficking,
- b. Child Prostitution,
- c. Child Pornography,
- d. Child Workers Exploitation,
- e. Sexual mutilation on young girls,
- f. Child's involvement in armed conflict,
- g. Slavery,
- h. Human Trafficking,**
- i. Human organ's trafficking,
- j. Exploitation for prostitution, and
- k. Some activities under apartheid regime and colonialism.¹²

Whilst in National regulations, provisions of human trafficking is identified in The Indonesian Criminal Code, National Law No. 21 Year 2007 regarding the Criminal Act of Human Trafficking, National Law No. 26 Year 2000 regarding Human Rights, National Law No. 23 Year 2002, on The Protection of Children and Government Regulation No. 9 Year 2008, regarding The Procedure and Mechanism Service for Witness and/or Victims of the Criminal Act of Human Trafficking. In West Kalimantan, the local government also provides the Local Regulation No. 7 Year 2007 regarding Preventions and Eradication of Human Trafficking in People Especially Women and Children.

In West Kalimantan, regulations regarding human trafficking is found in Local Regulation No. 7 2007 regarding Preventions and Eradication of Human Trafficking in People Especially Women and Children. Article 5 of this regulation consists of provisions regarding the formation of a Regional Task Force that is membered by the

¹² United Nations, United Nations Human Rights Fact Sheet No.14: Contemporary Forms of Slavery, 1996, p. 1.



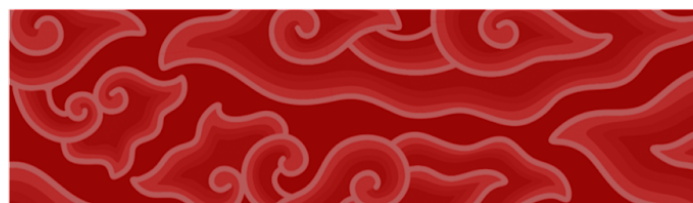
local government, law enforcement, community organizations, and non-governmental organizations (NGO's), professional organizations, and academicians. Article 5.2. specifically states that this Regional Task force is obliged to:

- a. Coordinate efforts to prevent and eradicate the criminal acts of trafficking in persons, especially women and children;
- b. Carry out advocacy, socialization, training, and economic empowerment and cooperation;
- c. Monitor the progress of law enforcement implementation; and
- d. Carry out reporting and evaluation.

Despite the existence of the linkage of national Indonesian law and international law regarding human trafficking, several critiques still arise regarding the effectiveness of these international conventions alone. A 2003 study by Kara Abramson evaluates the weaknesses of the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The paper claims that the Trafficking Protocol fails to reconcile the debate of consenting adults who may be involved in trafficking. Section II sets this piece apart from other trafficking articles, as it concisely illustrates the autonomy arguments of consent to trafficking. A considerable piece of the article focuses on sex workers, consent, and human trafficking. The article is a useful source for evaluating various criticisms of the Trafficking Protocol as an effective tool for eliminating the practice of trafficking.¹³

The crime of trafficking in persons, especially women and children in West Kalimantan handled by *Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak* in numbers amount to 37 cases in 2008, 69 cases in 2009, 32 cases in 2010, 9 cases in 2011, and 8 cases in 2012. Meanwhile, cases handled by the West Kalimantan Police amounted to 17 cases in 2009, 7 cases in 2010, and 15 cases in 2011. Based on the development of cases of trafficking in persons, especially women and children that occurred in West Kalimantan as mentioned before, it appears that the role of the Task Force is still not optimal in preventing and eradicating trafficking in persons, especially women and children in West Kalimantan, so that in the future more efforts are needed to

¹³ Kara Abramson, "Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol," *Harvard International Law Journal* Vol. 44 No. 2 (Summer 2003), p. 473-502.



optimally increasing the role of the Task Force to prevent and eradicate trafficking in persons, especially women and children in West Kalimantan.

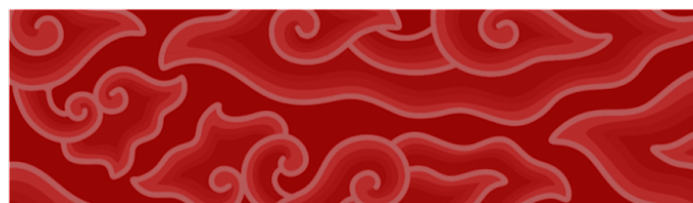
Based on Singkawang Class II Immigration Office (2006), the January-December period of 2005, have identified 1.050 *amois* (a name for young Chinese women), managing administrative matters under an agent, that is suspected to be a human trafficking business¹⁴. *Amois* are often transported from Singkawang to mainly Taiwan or Hongkong undercover as wife of Taiwanese/Hongkong men to then work as a prostitute under rough and inhumane conditions.

The Indonesian government under the Department of Manpower has appointed a policy mechanism regarding overseas workers in aim to protect overseas workers under the Manpower Ministry Regulation No. 02/MEN/1994 on Placement of Workers Abroad. This policy is part of strategic employment planning to decrease national unemployment, increase prosperity of migrants, and increase national deficit. Other policies include the Ministry of Manpower Regulation No. 44 1994, and National Law No. 1 1974 still proves to be ineffective reflected by the increase of mistreatment of *Amois* in East Asia.

Whilst there is an evident decrease of numbers of trafficking in persons in West Kalimantan throughout the years, it is not fully proven that the decrease of such acts resulted from the Regional Task Force. In the future, it is ideal for the Local Government of West Kalimantan to actively, efficiently, and effectively use the Regional Task Force as the main way to eradicate the crime. Using methods of socialization and strengthening each actor in the Regional Task Force, will optimize the decrease acts of human trafficking with permanence.

Internationally, The Finance and Development article of the International Monetary Fund cites that there are several preventive and repressive ways to combat the fluctuating numbers of human trafficking acts. The core of international conventions that touch on the subject of border patrol and immigration officers is Article 11 of the Palermo Protocol that requires states to strengthen border controls to prevent and detect trafficking in persons, and to enact legislation to prevent commercial carriers from

¹⁴ Agus Sikwan, 'Jurnal Kependudukan dan Kebijakan Universitas Gadjah Mada' [2006] 17(2) Perdagangan Amoi di Kota Singkawang, Kalimantan Barat.



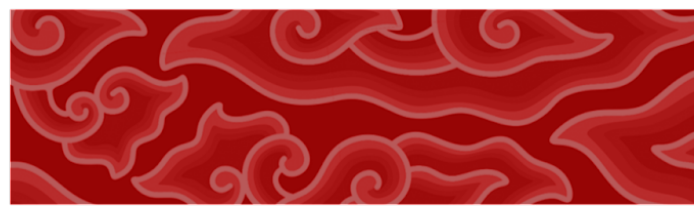
being used for trafficking. Protecting states' security against human trafficking is also about helping them fight other associated crimes, including smuggling, prostitution, organ trafficking, and money laundering.

Whilst in Southeast Asia, the ASEAN Convention Against Trafficking in Persons, Especially Women and Children was also adopted in 2015. At the subregional level, the Coordinated Mekong Ministerial Initiative Against Trafficking also closely follows the Palermo Protocol framework and has led to several bilateral agreements aimed at greater cooperation between states in the Greater Mekong region.

As Indonesia has ratified the Palermo Convention, it is important to reflect aspects of the Palermo Convention with added national security policies to be implemented in future policies. Whilst national regulations like National Law No. 21 2007, regarding the Criminal Act of Human Trafficking, National Law No. 26 of 2000 regarding Human Rights, National Law No. 23 of 2002, on The Protection of Children, Government Regulation No. 9 Year 2008, regarding The Procedure and Mechanism Service for Witness and/or Victims of the Criminal Act of Human Trafficking exist as a stepping stone to combat human trafficking, there needs to be a comprehensive and real application towards many unsolved cases of human trafficking in Indonesia.

Aside from a stronger push from the policy and legal sector, the live socialization and reassurance from the Government for the victims and those currently under human trafficking acts, need to be voiced out. According to the 2016 Global Report on Trafficking in Persons, victims and traffickers often have the same background, meaning the government and non-governmental organizations have a distinct role to educate those extra vulnerable to human trafficking like:

1. Persons of political instability,
2. Person of poverty,
3. Persons victims of racism,
4. Gender inequality,
5. Persons of addiction,
6. Persons with mental health issues,
7. Persons involved with gangs,

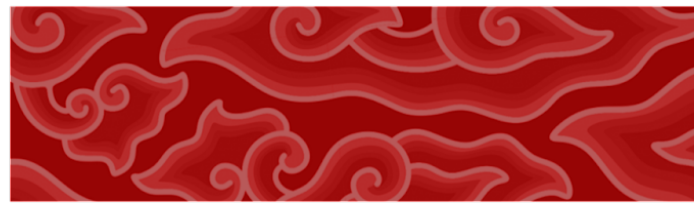


8. Persons with online vulnerability¹⁵.

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¹⁵What Makes Someone Vulnerable to Human Trafficking? (British Columbia)<<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/human-trafficking/human-trafficking-training/module-1/vulnerabilities>> accessed 24 June 2021.



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