

Government Efforts in Overcoming the Crime of Trafficking in People Behind Rohingya Refugees



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ABSTRACT: The crime of human trafficking is no longer an unfamiliar event to be discussed. This crime is international in scale and very difficult to detect. Even though they have to be willing to pay a high price, they often use human smuggling methods because formal ways to enter other countries are not possible. The act of *human smuggling* is a criminal offense in the Smuggling Protocol in which countries visited by Rohingya refugees such as Thailand, Bangladesh, and even Indonesia have become party countries. As a result, the Thai and Bangladeshi governments often arrest Rohingya refugees who enter their countries and even expel them to return to Myanmar. In fact, as asylum seekers who are threatened with persecution, the Rohingya are protected by human rights law, especially the principle of *non-refoulement*. This research discusses obstacles to resolution in handling the crime of human trafficking and government policies regarding Rohingya refugees who are victims of the crime of human trafficking. The conclusion of this research is that although *the Smuggling Protocol* is able to provide a balance between law enforcement of human protection crimes and protection of asylum seekers, in the end it all depends on government policy in tackling criminal acts of human trafficking in Indonesia.

KEYWORDS: criminal act of people-trafficking; Rohingya; refugess

I. INTRODUCTION

International Relations is a study that essentially covers all aspects of human life that are international in nature. In traditional international relations, the main factor in the relationship is the state. After the Cold War ended at the end of the 20th century, there was a change in understanding of where security threats and practices came from. Security in the period after the end of the cold war era remains an important thing in international life. However, international security does not only discuss state security as is often raised in traditional international relations.

Human security is an issue that began to become a concern in international relations at the end of the 20th century. When the concept of Transnationalism emerged, where humans or individuals are actors on a par with state actors, human security became a hot issue that was important to discuss. Humans play a central role in the concept of human security. In this case, researchers see that there is insecurity among humans, especially humans in Indonesia. According to the United Nations Development Program (UNDP), in the Human Development Reports created in 1994, there are seven dimensions of human security that must be met by society if it wants to be said to have achieved a sense of security. The seven dimensions are security from the economic dimension, health dimension, individual or personal dimension, food dimension, environmental dimension, community dimension and political dimension.¹ If one of these dimensions has not been achieved, then humans cannot be declared safe. There are many things that have not been fulfilled in the dimensions of the Human Development Report for the Indonesian people, so that many people have to fall into the world of transnational crime, one of which is the crime of human trafficking.

Human trafficking or generally known as human trafficking is a transnational crime and is a threat to human safety. Human trafficking includes the process of recruiting, harboring or placing people into situations of exploitation through the use of violence, fraud or coercion and forcing them to work according to the will of the trafficker.² In other words, human trafficking is the process of enslaving people, forcing them into exploited situations with no clear way out. These victims can be trafficked for various forms of exploitation such as forced prostitution, forced labor, forced begging, forced crime, domestic slavery, forced

¹ United Nations Development Programme, Human Development Report 1994, diakses pada tanggal 13 Desember 2023, h. 1. https://hdr.undp.org/content/human-development-report-1994?gad_source=1&gclid=EAIaIQobChMIIPzZvsSKgwMVWahmAh2sBwg9EAAYASAAEgLc-vD_BwE

² S Karra, 2009, *Sex Trafficking: Inside the Business Modern Slavery*, New York, Columbia University Press, p. 4.

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marriage, and forced organ harvesting. For ordinary people, things that are often encountered that are synonymous with human trafficking are prostitution activities in various localities, nightlife venues, karaoke, hotels and brothels.

Recently, Southeast Asia, especially Indonesia, has been shocked again by the news of Rohingya refugees returning on a large scale exodus out of Myanmar and the camps provided by the United Nations High Commissioner for Refugees (UNHCR). The shooting of 9 (nine) Myanmar police officers by unknown people (suspected of being a Radical Islamic group) is thought to have triggered the escalation of the situation in Myanmar's Rakhine region.³ The Myanmar government is suspected of ignoring this humanitarian tragedy and not doing anything even though this is denied by Aung San Su Kyi, leader of the largest party in Myanmar. Rohingya refugees paid a high price to human smuggling services, namely around 1.1 million Kyats (around 850 US\$) to be able to leave Myanmar and go to the rest of Southeast Asia. Even after they arrived, Thai police often arrested them on charges of entering the country's territory illegally. There are several things worth highlighting in the Rohingya refugee problem above, namely their status as asylum seekers who are threatened with persecution, their choice of method to leave the territory of Myanmar using the services of human smugglers, as well as the arrest and repatriation of these people by transit or destination countries.⁴

The Rohingya are not the only group of asylum seekers threatened with persecution. The UN Refugee Agency (UNHCR) in its Global Trends 2023 report shows that 108.4 million people in the world have been forced to leave their countries, of which 21.3 million are refugees, half of which are children under the age of 18.⁵ Every day in the world, nearly 34 thousand people per day are forced to move and migrate from their countries due to armed conflict or the threat of persecution.

Various situations in the world, such as conflicts or differences in views between the people and the government, have an impact on the security situation in a country which also has an impact on individuals living in that region. In order to obtain a more decent and safe living and personal security, they migrate to other countries as refugees or asylum seekers. For example, the wars taking place in Ukraine and Russia,⁶ including the expulsion of the Rohingya in Myanmar, who were declared by the UNHCR to be the most persecuted minority group in the world. The Association of South East Asian Nations (ASEAN) region, for example Indonesia, Thailand and Malaysia, is often used as a transit point or destination for refugees and asylum seekers.⁷

The problem of asylum seekers is often linked to the problem of human smuggling because they often use the services of smugglers to leave their country and enter another country. Based on international law, human smuggling is a form of transnational organized crime and is regulated in Article 3 (a) of the *Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime 2000 (Smuggling Protocol)*.

This protocol explains that human smuggling is the procurement of human transportation to gain profit from illegally entering a country. Human smuggling is a serious problem that must be addressed and requires special attention from all countries. This is because human smuggling is a dangerous "trade" not only because the money collected from smuggling is usually used for criminal acts such as narcotics or weapons trafficking, but smuggling is an activity that endangers human lives themselves.

In addition, people who are smuggled often suffer either from torture or rape by their smugglers, or they even have a very bad journey, being imprisoned in the destination country until being deported back to their country of origin.⁸ Asylum seekers who use the services of human smugglers seriously demand their right to asylum in a country to avoid criminal liability. Sometimes asylum seekers also become criminals as the impact of their association with smugglers, for example, becomes beggars and drug dealers, because their debt to the smugglers has not been paid off.

There are 2 (two) aspects to consider in relation to the crime of human smuggling and the protection of asylum seekers. First, it is the right of every person guaranteed in the Universal Declaration of Human Rights (UDHR) to seek asylum in another country due to threats/acts of persecution from their country as well as the right to a decent living. This means that asylum seekers have rights that are protected under Human Rights law. Especially if the recipient country is a party to various related instruments such as the *International Covenant on Civil and Political Rights (ICCPR)*, the *Convention Relating to the Status of Refugees 1951 (Refugee Convention 1951)*, or the *Convention against Torture and other Cruel Inhuman Treatment or Punishment 1984 (CAT)*. Then the second aspect, the international community agrees that human smuggling is a form of transnational crime that must be prevented and eradicated where law enforcement against the perpetrators is crucial.

³ UNHCR, "Burma: Study: Rohingya Among World's Most Persecuted", <http://www.unhcr.org/Cgi-Bin/Texis/Vtx/Refdaily?Pass=52fc6fbd5&Id=5445f0238>, diakses 13 Desember 2023, p. 3.

⁴ Ameerah, "Menjadi Korban Perdagangan Manusia, 5 Muslim Rohingya kini Malah Dipenjara di Myanmar", <https://www.arrahmah.com/news/2016/10/29/Menjadi-Korban-Perdagangan-Manusia-5-Muslim-Rohingya-Kini-Malah-Dipenjara-Di-Myanmar.html>, diakses 13 Desember 2023.

⁵ UNHCR, Data dan Statistik Tren Global, diakses pada tanggal 13 Desember 2023, <https://www.unhcr.org/global-trends>.

⁶ Dewan Uni Eropa, Infografis - Pengungsi dari Ukraina di UE, diakses pada tanggal 13 Desember 2023, <https://www.consilium.europa.eu/en/infographics/ukraine-refugees-eu/>

⁷ Antonietta Pagano, "The Rohingyas Refugee Crisis: A Regional and International Issue?", Middle East Intitute, 2016, p. 4. <https://www.mei.edu/publications/rohingyas-refugee-crisis-regional-and-international-issue>.

⁸ "Migrant Smuggling and Trafficking in Persons", Canadian Refugee Council, 20 Feb. 2000, <http://ccrweb.ca/sites/ccrweb.ca/files/static-files/traffick.html>, diakses 23 Desember 2023.

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The definition of people smuggling in Article 3 of the Protocol above does not clearly exclude asylum seekers as a form of people smuggling. The article broadly uses the term 'person' in describing 'illegal entry' while all asylum seekers on average as a result of protracted armed conflicts in their countries do not have sufficient documents to enter a country. People who are smuggled in the context of this crime vary in terms of economic and educational backgrounds, including vulnerable groups which include women, children, and asylum seekers and refugees. If you look at the provisions in Article 5 of the Smuggling Protocol above, people who are smuggled cannot be held criminally responsible just based on the fact that they were smuggled under Article 6. However, in practice, often those who are smuggled turn out to be smugglers on their way to the destination country. Thus, further analysis is needed regarding the protection of asylum seekers who use the services of smugglers so that the criminalization of this crime does not conflict with the international protection guaranteed to asylum seekers under international law.

Recently many Rohingya refugees have flocked to Indonesia for refugee reasons and are given protection by the UNHCR, but there are allegations of the Crime of Human Trafficking (TPPO) related to the influx of Rohingya refugees in Aceh. The Coordinating Minister for Political, Legal and Security Affairs stated that there were also internal parties in Indonesia who were part of the TPPO team, but this was not explained in detail. To date, 1,487 Rohingya refugees have arrived on the coast of Aceh Province. To address the needs of Rohingya refugees, the government will coordinate with the international organization that handles refugees, UNHCR. Previously, the Pidie Police arrested an agent who was smuggling Rohingya ethnic residents into Indonesia. The agent made a profit of up to IDR 3.3 billion from immigrants brought to the coastal waters of Pidie Regency.

The Indonesian police arrested the perpetrator of the crime of human trafficking, namely Husson Muktar, a man with Sokoreya Bangladeshi citizenship who is domiciled in Corg Bazer, Moloi Para Word Bangladesh and has UNHCR card number B020162. Immigrant smugglers or Rohingya refugees charge children 50,000 Taka or if converted to 7 million rupiah. However, for adults it is 100,000 Taka or 14 million rupiah.⁹ The refugees or smugglers were transported facilitated by the perpetrators using wooden boats from the Bangladesh, Myanmar, to Indonesia, Malaysia and Thailand.

The Rohingya case shows that the regulation of human smuggling crimes both at the international and national levels has the potential to impact (or harm) the international protection that should be guaranteed to these asylum seekers. On the one hand, smuggling can provide a way for asylum seekers to escape the threat of persecution from their own country and obtain asylum from another country. However, on the other hand, human smuggling can weaken asylum seekers and potentially violate the principle of non-refoulement if the person being smuggled is intercepted and immediately returned to their country of origin where they have the potential to be persecuted.

II. FORMULATION OF THE PROBLEM

1. Factors that become obstacles in resolving the problem of the crime of human trafficking.
2. The Government's Role in Relation to Rohingya Refugees Who Are Victims of Human Trafficking Crimes.

III. RESEARCH METHODS

The legal research used by researchers uses a problem approach in the form of a statutory approach, conceptual approach. The statutory approach is carried out by examining the material content contained in the statutory regulations as well as studying the ontological basis, philosophical basis and legal ratio of the statutory regulations.¹⁰ Meanwhile, the conceptual approach is carried out by studying the views and doctrines of scholars which give rise to relevant and thorough understanding, concepts and legal principles.¹¹

IV. DISCUSSION

Obstacles to Resolution in Handling the Crime of Human Trafficking

The problem of human trafficking is very complex, not only related to limited understanding of the dangers or threats of the criminal act of human trafficking itself, but also related to the urgent needs of someone who wants to improve their fate by working elsewhere. The choice to improve economic conditions is the main goal of Indonesian workers going abroad, which is due to limited employment opportunities in the country and offers of work abroad are considered better. Even though sometimes some of them already know the risks and have even become victims of human trafficking, they still make this choice simply because there are no other options in their area of origin.

Legal protection for criminal acts of human trafficking experiences several obstacles. One of the obstacles faced by legal officials is the reluctance of victims of the criminal act of human trafficking to report to legal officials or the authorities when they have become one of the victims of this criminal act of human trafficking. This is because the victims of the criminal act of human

⁹ Kompas.tv, Ada Jaringan Perdagangan Orang di Balik Pengungsi Rohingya, Jokowi Minta Tindak Tegas Pelaku TPPO, diakses 13 Desember 2023, <https://www.kompas.tv/nasional/467532/ada-jaringan-perdagangan-orang-di-balik-pengungsi-rohingya-jokowi-minta-tindak-tegas-pelaku-tpo?page=all>

¹⁰ Peter Mahmud Marzuki, 2019, *Penelitian Hukum*, Cetakan ke-14, Kencana Prenada Media, Jakarta, p. 142 .

¹¹ *Ibid.*, p. 135-136.

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trafficking feel embarrassed if they report it because that way the public will know that they are victims of this criminal act of human trafficking so that their names will be tarnished in the environment around where they live.

The crime of human trafficking does not occur spontaneously, but through careful consideration by the perpetrators and victims, so that the perpetrators are willing to carry out this act. Such considerations are generally known as rational considerations for a person to choose to act or not to act by assessing whether his decision brings more benefits or not to him. In fact, the use of *Rational Choice Theory* to explain the role of a person's judgment in carrying out an activity not only applies to trafficking perpetrators, but can explain why potential victims can be trapped in human trafficking activities. Strengthening this statement, we can refer to the opinions of Heath (1976), Carling (1992) and Coleman (1973) who explain *Rational Choice Theory* in its role in explaining a person's considerations in determining their actions,¹² namely in rational choice theory, individuals are seen as people who are motivated by goals or desires that express their preferences. They act within specific constraints, given and on the basis of the information they have about the conditions under which they are acting. At its simplest, the relationship between constraints or constraints and choices can be seen as purely technical in nature, involving the relationship of a means to an end. Because it is not possible for individuals to achieve all the things they want. They have to make various choices in relation to achieving their goals. Rational choice theory argues that individuals must anticipate the outcomes of various alternative actions and calculate what is best for them. Individuals rationally choose alternatives that might provide the greatest satisfaction for themselves.

Based on *Rational Choice Theory*, individuals are seen as people who are motivated by goals or desires that express their choices. In this case, the large number of Indonesian workers who go abroad, including some of them, have learned information about the dangers of human trafficking crimes due to rational choice factors, with the aim of improving the economy. Therefore, efforts to open employment opportunities are expected to help efforts to prevent trafficking of people abroad.

The rise in criminal cases of human trafficking cannot be separated from the government's own policy which opens the way for sending migrant workers abroad, especially the informal sector by issuing the Law on the Placement and Protection of Migrant Workers Abroad. In its implementation, this policy had many irregularities, including many acts of fraud, coercion and forgery in the recruitment process, because in general workers were not properly prepared with their knowledge and abilities and exploitation often occurred while waiting in shelters. This policy actually further encourages criminal acts human trafficking and hinder efforts to prevent human trafficking. Many of these irregularities involve the private companies sending migrant workers themselves as well as related government officials. This is inseparable from the Law on the Placement and Protection of Indonesian Migrant Workers Abroad which regulates the placement side more than the protection side. The placement of migrant workers is indeed a lucrative business where a lot of money circulates, either from employers or from workers' salaries, which on average are partially or completely deducted from PPTKIS in Indonesia, so that many government officials are involved in it.

The Law on the Placement and Protection of TKI Abroad is not in line with the TPPO Law because the Law on the Placement and Protection of TKI Abroad should refer to the TPPO Law so that it does not become an obstacle to preventing and handling criminal acts of human trafficking, as stated by Soekanto, that the effectiveness of a law depends on the law itself where there are no inconsistencies with other laws because the law will be effective if it is supported by other related laws.¹³ In other words, harmonization of rules is needed in order to facilitate the implementation of prevention of human trafficking.

In efforts to prevent human trafficking, empowerment policies are also needed for prospective job seekers and society in general. According to Wrihatnolo and Nugroho, empowerment is a comprehensive process, an active process between motivators, facilitators and community groups that need to be empowered through increasing knowledge, skills, providing convenience and opportunities to achieve access to resources to improve community welfare.¹⁴

In reality, human trafficking is caused by the low quality of human resources who come from backgrounds that lack education, do not have expertise or skills and are vulnerable to fraud and are far from being independent. Indonesian workers abroad should be empowered with mental preparation and skills before being sent so that they can be independent and avoid potential exploitation by human trafficking. However, PJTKI, which should be properly prepared in accordance with the provisions of the Law on Placement and Protection of TKI, is not being carried out enough by PJTKI so that many Job Training Centers for prospective TKI are neglected due to not being utilized optimally.

Institutionally, this Task Force has weaknesses because it is not supported by adequate budget and human resources and does not have the authority to operationalize it. Thus, the main objective of the Presidential Decree regarding the formation of a Task Force to ensure that the eradication of human trafficking crimes is more effective has not been implemented properly. As stated by Soekanto, the effectiveness of the law also depends on the organization of infrastructure and human resources. This is also inseparable from the current mindset which tends to be reactive rather than anticipatory, such as emphasizing the public service

¹² Wubbolding, R.E., "Answering Objections to Choice Theory/Reality Therapy", Vol. 31 1. *International Journal of Choice Theory and Reality Theory*, 2011, p. 42.

¹³ Soerjono Soekanto, 2011, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, Cet. 10, Jakarta, Raja Grafindo Persada, p. 9.

¹⁴ Randy. R. Wrihatnolo dan Riant Dwidjowijoto Nugroho, 2013, *Manajemen Perencanaan Pembangunan*, Jakarta, Elex Media Komputindo, p. 9.

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side and social treatment for victims, while the prevention side which is strong in security aspects such as deterring law enforcement and also the economic factors that underlie human trafficking are given less place, which is significant.

Apart from that, there are also several supporting factors that become obstacles in legal protection for victims of criminal acts of human trafficking, namely:

1. Non Juridical Factors

The non-juridical factors that become obstacles in legal protection for victims of criminal acts of human trafficking are influenced by several factors, namely:

a) Economic Factors

Economic factors are one of the causes of the emergence of crime as an illustration, for example in the current economic development, when free competition grows between one company and another or one person and another, then to get interest from consumers these companies or individuals must compete. -competition to place the best advertisement so that many people are interested. Based on this, desires arise to be able to have as many goods or money as possible, so that a person has the desire to prepare themselves for various methods of fraud or other methods to fulfill their desires. Economic factors are one of the factors that become obstacles in legal protection for victims of criminal acts of human trafficking, where these economic factors are motivated by poverty and lack of employment opportunities. This situation makes the victim feel that the needs of life are not always met so that the victim is reluctant to report what has happened to the victim who is a victim of the criminal act of human trafficking because the victim still has to fulfill the victim's needs for life rather than reporting the incident that has been experienced, which takes the victim's time.

b) Poverty Factor

Poverty is the main driver of crime, such as poverty which has reached a structural level or can be called structural poverty. Structural poverty is poverty experienced by a group of people because of a social structure in society that cannot use the sources of income that are actually available to them.¹⁵ The poverty factor is one of the factors behind obstacles to legal protection for victims of criminal acts of human trafficking, where many people, because they are constrained by poverty factors, are reluctant to report incidents that happen to themselves because they are always influenced by the perspective that reporting costs money, which is quite large considering that they have to go back and forth to the police station to be witnesses, while the income they earn is very minimal.

c) Social and Cultural Factors

Factors that encourage someone to commit crime are currently changing in a society's environment. This has a negative impact on society at large, such as the existence of a social gap between the rich and the poor, which results in social jealousy. Therefore, a person is motivated to commit crimes in order to have a good social position and an attitude has emerged within him that wants to achieve a desire for which only small sacrifices are made and often does not pay attention to the social rules of the society around him. This reflects an attitude that often excludes responsibility as a social community. Therefore, people who have become victims of the crime of human trafficking do not have much access to legal protection and compensation for what happened to them.

d) Low education

Education is a process to shape a person or society to be good or moral, because with the knowledge gained, a person or society can have good thinking power and have intelligence in thinking. But if a person or community has low education, it causes this person or community to live in ignorance. This ignorance causes many people to not understand and know about the law and there is no legal awareness in society, based on this, people are very vulnerable to committing criminal acts or crimes. Due to his low level of education, the victim does not understand how to get legal protection when he becomes a victim of this criminal act of human trafficking and does not understand how to report to legal authorities when he becomes a victim of this criminal act of human trafficking.

2. Juridical Factors

One of the obstacles experienced in implementing legal protection for victims of criminal acts of human trafficking, in this case, is that law enforcement for perpetrators of criminal acts of human trafficking, the sanctions are still too light or not too strict in their implementation. Law enforcement officers have a very important role in the implementation of law enforcement, starting from the level of investigation, prosecution, to trial. Based on this, it is hoped that law enforcement officers will be professional and understand the law, but unfortunately there are still many legal officers who do not clearly understand the existing laws and regulations. So, in handling a case, especially a criminal case of human trafficking, the legal apparatus has not implemented it optimally based on the existing law on human trafficking, namely the TIP Law. For example, it is known that the victims of criminal acts of human trafficking are generally children and women under 18 (eighteen) years of age, so they are still classified as children, so the law that is often used is the TIP Law.

¹⁵ Selo Soemardjan, 1984, *Suatu Bunga Rampai*, Sangkala Pulsar, p. 29.

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Law enforcement officers have a role and position. Position in social terms is a certain position in the structure of society, whether higher, mediocre or low. This position is generally a place that contains certain rights and obligations. These rights and obligations are called roles. Apart from having a role and position, legal officers are also role models for society, therefore legal officers should have certain abilities that are in accordance with the aspirations of the community. Legal officers are required to be able to communicate and gain understanding from the target group of people, besides that, legal officers can also carry out the roles they have received. In running legal regulations legal authorities experience several obstacles in enforcing statutory regulations. We can encounter obstacles from legal authorities in their implementation, both from themselves and from the surrounding environment. The obstacles we can encounter include:¹⁶

- a) Limited ability to put oneself in the role of other parties with whom one interacts;
- b) The aspiration level is not relatively high;
- c) Very limited enthusiasm for thinking about the future, so it is very difficult to make projections;
- d) There is no ability to postpone certain needs, especially material needs;
- e) Lack of innovative power which is actually a conservative partner

Apart from the obstacles that exist within law enforcement officers, there are also other obstacles faced by law enforcement officers, including:

- a) The legal factor itself;
- b) In this case, the laws and regulations are not appropriate or there are no legal regulations in handling criminal cases;
- c) Facilities or facilities that do not support law enforcement
- d) Community factors, namely the environment in which the law applies or can be applied;
- e) Cultural factors, namely as a result of work, creativity and feelings that are based on human intention in social life.¹⁷

The factors that become obstacles are generally closely related to each other, because they are the essence of law enforcement, and are a benchmark for the effectiveness of law enforcement so that if one of the obstacle factors does not support it, it can hamper law enforcement that can be carried out by law enforcement officials.

Alternative solutions to obstacles resulting from criminal acts of human trafficking are based on individual factors, for example as follows:

- a. In the context of the poverty factor, the solution that can be implemented by the government or law enforcement officials is by improving community welfare, in this case increasing the number of labor-intensive projects in villages or areas where most of the people come from poor communities. Increasing production development in the industrial sector in various factories in the city. In this case, although the influence of poverty and prosperity is one of the factors in the occurrence of human trafficking, it cannot be denied that poverty is not the only indicator of a person's vulnerability to human trafficking. Because there are still millions of Indonesians who live in poverty who are not victims of human trafficking, but there are residents who are relatively better off and who do not live in poverty who instead become victims of human trafficking. This is because they migrate to look for work to improve their economic situation and increase their material wealth.
- b. In the case of social and cultural factors, the solution that can be carried out by the government or law enforcement officers is by providing continuous counseling to the community so that they are aware and not trapped in human trafficking. This counseling can be carried out by legal officers in the sub-district. -ward. In terms of tackling several modes of human trafficking, integral and comprehensive prevention, response and response efforts are needed.
- c. In the case of low educational factors, the solution that can be done by the government or law enforcement officials is by improving the quality of education in society, in this case it can be done by holding outreach about the importance of education and by holding package A and B exams to the community.
- d. In the context of the poverty factor, the solution that can be implemented by the government or law enforcement officials is by improving community welfare, in this case increasing the number of labor-intensive projects in villages or areas where most of the people come from poor communities. Increase production development in the industrial sector in various factories in the city. In this case, although the influence of poverty and prosperity is one of the factors in the occurrence of human trafficking, it cannot be denied that poverty is not the only indicator of a person's vulnerability to human trafficking. Because there are still millions of Indonesians who live in poverty who are not victims of human trafficking, but there are residents who are relatively better off and who do not live in poverty who instead become victims of human trafficking. This is because they migrate to look for work to improve their economic situation and increase their material wealth.
- e. In the context of social and cultural factors, the solution that can be carried out by the government or law enforcement officials is by providing continuous education to the community so that they are aware and not trapped in human trafficking, in this counseling can be carried out by legal officers in sub-districts. In terms of tackling several modes of human trafficking, integral and comprehensive prevention, response and response efforts are needed.

¹⁶ Soerjono Soekanto, *Op.Cit.*, p. 25.

¹⁷ *Ibid.*, p. 31.

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- f. In the case of low educational factors, the solution that can be done by the government or law enforcement officials is by improving the quality of education in society, in this case it can be done by holding outreach about the importance of education and by holding package A and B exams to the community.
- g. In terms of constraints on law enforcement officers' understanding of Law no. 21 of 2007 which is still lacking, this can be done by continuously disseminating information regarding Law no. 21 of 2007, especially to investigators, police and prosecutors, as well as by establishing a workshop discussion forum regarding Law no. 21 of 2007 concerning Eradication of the Crime of Human Trafficking.

Government Policy Regarding Rohingya Refugees Who Are Victims of Human Trafficking Crimes

The surrounding government In 2004, ratified Law no. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad (UU PPTKILN). On April 19 2007, the national anti-trafficking policy was passed through Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (UU PTPPO). This national policy was then implemented into various regional regulations, the Elimination of Trafficking in Women and Children by Regional Governments in their respective regions throughout the archipelago.

The implementation of the PTPPO Law can be said to be a major achievement because the policy is considered comprehensive and reflects the provisions stipulated in the Palermo Protocol. Indonesia, as one of the countries that signed the Palermo Protocol, has an agreement with the international community on how to view human trafficking as a multi-complex case and must be handled quickly and appropriately. Handling human trafficking cases can take five important steps, namely: prosecution, prevention, social rehabilitation, protection for victims, cooperation and participation from the community. Apart from that, in accordance with the mandate contained in Article 45 of the PTPPO Law, National Police Chief Regulation Number 10 of 2007 concerning the Organization of the Work Procedures of the Women and Children Service Unit (UPPA) within the Indonesian National Police is also stipulated, where in this service a Special Service Room is provided as a place for UPPA services. the.

The PTPPO Law is quite difficult to implement, this is due to the process of proving human exploitation as stated in the relevant articles therein. Although the rules are quite strict, such as a minimum prison sentence of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least IDR 120,000,000,- and a maximum of IDR 600,000,000,-. As a result, because many human trafficking cases are difficult to prove, these human trafficking cases are only subject to Article 296 of the Criminal Code (KUHP), which carries a lighter sentence than the punishment provisions in the PTPPO Law. In Article 296 of the Criminal Code, the penalty is only one year and four months in prison.

The complexity of implementing the PTPPO Law also faces obstacles when victims of human trafficking are abroad and in remote places that are difficult to reach, so it is quite difficult to gather testimonies from these victims. Even though the government has tried to establish 123 Integrated Service Centers (PPT) as service institutions for victims of violence, victims of human trafficking do not have good information about this matter. This is due to a lack of outreach regarding these services to the community and a lack of response from the services provided.

In 2008, in accordance with the mandate of Article 58 of the PTPPO Law, Government Regulation no. 9 of 2008 concerning Procedures and Mechanisms for Integrated Service Centers for Witnesses and/or Victims of Human Trafficking Crimes. Other things have also been stipulated in the Presidential Regulation of the Republic of Indonesia no. 69 of 2008 concerning the Task Force for the Prevention and Handling of Human Trafficking Crimes. For the police environment, National Police Chief Regulation Number 3 of 2008 concerning the Establishment of Special Service Rooms and Procedures for Examining Witnesses and/or Victims of Human Trafficking Crimes has also been stipulated.

In accordance with the mandate of Government Regulation no. 9 of 2008, the Republic of Indonesia Minister of State for Women's Empowerment Regulation No. 1 of 2009 concerning Minimum Service Standards for Integrated Services for Witnesses and/or Victims of Human Trafficking Crimes. Decree of the President of the Republic of Indonesia No. 87 and 88 of 2002 were subsequently re-evaluated and a Regulation of the Coordinating Minister for Welfare was issued People's Raan No. 25 of 2009 concerning the National Action Plan for Eradicating the Crime of Human Trafficking (PTPPO) and Child Sexual Exploitation (ESA) 2009-2014.

In the same year, namely 2009, the Indonesian government also ratified the United Nations Convention against Transnational Organized Crime with Republic of Indonesia Law no. 5 of 2009. This was then followed up by ratifying the Protocol to Prevent, Take Action and Punish Trafficking in Persons, especially Women and Children, with Republic of Indonesia Law no. 14 of 2009 concerning Ratification of the Protocol to Prevent, Take Action and Punish Human Trafficking. There is also Law no. 15 of 2009 concerning Ratification of the Protocol against the Smuggling of Migrants by Land, Sea and Air. The legalization that has been attempted by the government must of course be supported by law enforcement components such as the police, prosecutor's office, courts and correctional institutions. Where the existence of these legal components is needed significantly to support legal firmness for Indonesia in carrying out the law enforcement process to eradicate human trafficking. Various signing activities, ratification processes of legal instruments, and international human rights agreements carried out by the Indonesian government,

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show that the Indonesian government has agreed and is trying to fulfill its responsibilities in protecting and fulfilling the human rights of its citizens.

The whole concept of asylum seekers and refugees and immigrants is related to the concept of migration. Migration is a form of movement of a person or group of people from one geographical area to outside the borders of their country with the aim of living in a place that is not their area of origin.¹⁸ Someone has officially moved, but there is a previous intention to return to their original place, so it must be considered circular mobility, not migration. People or groups of people who immigrate are known as 'immigrants'. David Coleman states that "*The most commonly used definition of 'immigrant' is a person born outside a given country who has moved to live in that country*".¹⁹

Immigrants can be divided into 2 (two) categories, namely legal immigrants and illegal immigrants. Legal immigrants migrate in a legal manner according to the rules of a country. In contrast to official immigrants, illegal immigrants migrate without following a country's immigration regulations. There are several situations where someone can be called an illegal immigrant, including immigrants who enter clandestinely with fake documents, immigrants who stay longer than the permitted time (overstay), and victims of human smuggling (people smuggling).²⁰

Another problematic issue in the case of refugees is the thin line between refugees and migrants for economic reasons (hereinafter referred to as economic migrants). Migrants voluntarily leave their territory for better economic reasons that they do not get in their country. Countries sometimes find it difficult to distinguish between those who have truly left their country because of the threat of persecution or because of poverty in their country. Like most asylum seekers, economic migrants leave their country due to economic failure, unstable political conditions, persecution and poverty. Thus, both 'genuine' refugees and 'economic migrants' have various motives that make them leave their country which triggers persecution.

Thus, categorizing who can be categorized as a 'refugee' in today's modern situation is very difficult. Of course, positivists will be guided by Article 1 letter A paragraph (2) of the 1951 Refugee Convention as the legal basis for determining this status. However, the current development of the migration situation in the world has resulted in many migrants finding it increasingly difficult to fall within the definition of refugee in Article 1 letter A paragraph (2) of the 1951 Refugee Convention. As a result, those who do not fall into this category will not be included in the category of 'protected persons' internationally'. In fact, according to Harding, even immigrants for economic reasons (economic migrants) also have reasons for persecution.²¹

Kirchner and Schiano Pepe support this statement by saying that nowadays more and more migrants fall into the categories of 'grey area', 'undefined', 'unprotected', thus becoming the subject of violations of their rights.²² This also shows that human rights law and international humanitarian law are not always able to guarantee their protection. Thus, this article continues to use the term 'asylum seekers' to include those who fall into this 'grey area' category.

In an effort to prevent and handle criminal acts of human trafficking, a number of regulations have been issued including Presidential Regulation (PERPRES) Number 19 of 2023 concerning Plans National Action for the Prevention and Handling of Human Trafficking Crimes 2020-2024. This Presidential Decree regulates the National Action Plan for the Prevention and Handling of Human Trafficking Crimes (RAN PPTPPO). RAN PPTPPO is a national level action plan which contains a series of activities, which are carried out systematically and planned to prevent and deal with criminal acts of human trafficking. Ministries/agencies implement the PPTPPO NAP in accordance with their respective duties and functions.

The government issued a policy to eradicate human trafficking as an effort to combat human trafficking which could threaten Indonesia's Human Security. The reason for the Indonesian government to issue a policy to eradicate human trafficking is to see the changes that have occurred regarding human trafficking which has become a crime against humanity and as a form of protecting Indonesia from the threat of human trafficking and as a concrete form that Indonesia opposes the crime of human trafficking.

The Indonesian Government's efforts to eradicate human trafficking are not only limited to passing laws but also establishing a national coordinating institution, namely the TASK GROUP, which is tasked with coordinating efforts to prevent and handle criminal acts of human trafficking at the National, Provincial, Regency/City Level. This is stated in Presidential Regulation Number 69 of 2009.

In Article 58 paragraph (2) in the Prevention and Handling Chapter of Law Number 21 of 2007, the Indonesian Government formed a Task Force consisting of representatives from the government, law enforcement, community organizations, non-governmental organizations, professional organizations and researchers or academics. The task force is led by a minister or ministerial-level official appointed based on presidential regulations.

¹⁸ Guy S. Goodwin-Gill dan Jane McAdam, 2007, *The Refugee in International Law*, New York, Oxford University Press, p. 201

¹⁹ David Coleman, 2013, *Immigration, Population and Ethnicity: The UK in International Perspective*, Migrant Observatory Briefing: University of Oxford, p. 3.

²⁰ *Ibid.*

²¹ J. Harding, "The Uninvited: The Refugee at the Richman's Gate", *London Review Books*, Volume 22 Nomor 3, 3 Januari 2000 diakses dari <http://www.lrb.co.uk/v22/n03/jeremy-harding/the-uninvited> 20 Desember 2023.

²² A. Kirchner and L. Schiano Di Pepe, "International Attempts to Conclude a Convention to Combat Illegal Migration", 10 *IJRL* 673, 1998 dikutip dari Claire Brolan, *op.cit.*, p. 571.

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Guidelines regarding the formation and strengthening of the Task Force are contained in the Regulation of the Minister of State for Women's Empowerment and Child Protection of the Republic of Indonesia Number 10 of 2012. The Task Force for Preventing and Handling Crimes of Human Trafficking, hereinafter referred to as GT-PPTPPO, has the following tasks:

- 1) Coordinate efforts to prevent and handle the problem of criminal acts of human trafficking;
- 2) Carry out advocacy, outreach, training and cooperation, both national and international;
- 3) Monitor the development of the implementation of victim protection which includes rehabilitation, repatriation and reintegration;
- 4) Monitoring developments in the implementation of law enforcement.
- 5) Carry out reporting and evaluation.

In accordance with Article 6 in Presidential Regulation Number 69 of 2008 GT-PPTPPO is led by the Coordinating Minister for People's Welfare of the Republic of Indonesia and the Daily Chair is the State Minister for Women's Empowerment and Child Protection. GT-PPTPPO members consist of the Government, Law Enforcement, Community Organizations, Non-Governmental Organizations, Professional Organizations and Researchers or Academics where Ministries and Institutions are coordinators in the Central Task Force Sub-sector, including the Minister of Home Affairs of the Republic of Indonesia, the Minister of Foreign Affairs of the Republic of Indonesia, the Minister Indonesian Finance, Indonesian Minister of Law and Human Rights, Indonesian Minister of Transportation, Indonesian Minister of Manpower and Transmigration, Indonesian Minister of Social Affairs, Indonesian Minister of Health, Indonesian Minister of Education and Culture, Chief of the Indonesian Police. The GT-PPTPPO institutional structure consists of a Chairman, Daily Chair, Secretariat and 6 Sub-GTPPTPPOs, each of which has its duties and authorities, although they are related to each other.

The efforts of the Task Force to Prevent and Handle Criminal Acts of Trafficking in Persons (GT-PPTPPO) in eradicating human trafficking are not only carried out at the central level but also at the provincial and district/city levels. The Task Force for the Prevention and Handling of Human Trafficking Crimes has also formed a Provincial Task Force. Task Forces have been formed in 31 Provinces in Indonesia with a total of 191 Regencies/Cities which have Sub-Task Forces and their duties and authority are the same as the central Sub-Task Forces.

V. CLOSING

Conclusion

1. Obstacles in legal protection for victims of criminal acts of human trafficking, namely even though the government has issued Law no. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, in its implementation this law has not been able to be implemented effectively, due to several obstacles faced by both non-judicial and judicial factors. Apart from that, the facilities and infrastructure factors are still not very supportive in enforcing Law Number 21 of 2007.
2. The incident of Rohingya refugees entering Indonesian territory is a form of illegal migration problem which must be handled appropriately at that time. The Rohingya refugee problem is a problem that can be said to be complex. Thus, handling this problem must use interrelated methods, starting from the national order to the level of international cooperation. The lack of attention and handling of the Rohingya refugee problem also stems from internal factors originating from the Indonesian government itself, such as the lack of complete legal regulations regarding refugees. Meanwhile, the external factor is that the 1951 Vienna Convention has not been ratified by the Indonesian Government at that time until now. Finally, the handling was carried out through two factors, namely by linking it to the 1951 convention on refugees. Indonesia is also obliged to take an active role in resolving this problem so that the flow of refugees, especially those who were already in Aceh at that time, must be resolved immediately. All parties concerned are also obliged to participate in resolving this problem to its roots because as long as the problems in Arakan are not resolved, the flow of refugees will continue to increase all the time.

Suggestion

1. The government should strengthen cooperative relations with domestic institutions, friendly countries and international institutions so that stronger resources can be created to combat human trafficking which has become an organized transnational crime. The government is paying particular attention to protecting victims, through coaching officials and the community, taking stricter legal action against traffickers to create a deterrent effect. Carrying out various outreach efforts, campaigns and increasing public awareness is also ongoing to prevent vulnerable groups from becoming entangled in human trafficking.
2. There needs to be a settlement effort between various countries regarding efforts to find a third country for Rohingya refugees. The United Nation High Commissioner for Refugees (UNHCR) must immediately patriate the Rohingya refugees to implement a long-term solution to the return of refugees to third countries. Rohingya refugees can return to a decent life in Rakhine Myanmar.

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