# Legal Protection Against Human Trafficking: A Dilemma in Indonesia and the ASEAN Region

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## Abstract

Human trafficking remains a major humanitarian crime problem worldwide. Indonesia has made efforts to combat human trafficking by establishing various regulations that serve as the main foundation in this fight, one of which is Law No. 21 of 2007. The framers of the law used the Palermo Protocol as the foundation for its creation. As a transnational crime, human trafficking has also prompted ASEAN, as a regional organization, to take a stand. Since the 1990s, ASEAN has included human trafficking in its agenda to be collectively eradicated. However, human trafficking practices in Indonesia and ASEAN continue to increase, with various methods of operation. Unfortunately, the majority of the victims of this crime are women and children. This article aims to examine the formalization of national law and ASEAN's role at the regional level in combating human trafficking within the framework of international law. This research employs a normative legal approach. The findings indicate a disconnection between national regulations and the fundamental norms upon which they were based, as well as disharmony with other national regulations. Meanwhile, in the ASEAN context, the formation of hard law has not yet been fully implemented, a situation further compounded by the rigid principle of non-intervention in ASEAN.

**Keywords:** Human Trafficking; Non-Intervention; ASEAN; Transnational; International Law

# Introduction

Human trafficking is an organized crime against humanity by committing slavery, violating human rights, and depriving a person of freedom (Yusitarani, 2020), practices that occur in the crime of human trafficking include coercion, threats, kidnapping, fraud, abuse of authority, prostitution, forced labor, exploitation, and various practices that take away a person's human rights (Rajwa et al., 2022). The United Nations Convention Against Transnational Organized Crime classifies trafficking as the second largest transnational organized crime in the world where the crime is committed by organized groups from various countries to gain material benefits (United Nations, 2000). In the scope of Southeast Asia, the supporting factor that makes the region a target in the practice of human trafficking is the disparate economy resulting in high levels of poverty, the existence of this illegal practice is also supported by the geographical location of Southeast Asia which is passed by many international trade routes (Sitinjak et al., 2022).

Riau Islands ("Kepri") is one of the regions in Southeast Asia, Kepri has a problem related to maritime, this is due to the geographical position of Kepri stretches from the Strait of Malacca to the South China Sea and is directly bordered by Malaysia, Cambodia, Vietnam and Singapore. The strategic position, known as the ASEAN golden triangle, is often used for human trafficking practices. In practice, these crime uses traditional fishing boats or small boats that are not registered regarding their ownership rights or nationality where the ship sails through rat harbors or ports with points that do not have legality of licensing (Zero Human Trafficking Network, 2022).

Due to the diverse modus operandi of human trafficking, each country recognizes it as a serious crime that must be eradicated. Therefore, legal efforts are needed at both national and international levels (Daud & Sopoyono, 2019). The global effort to eliminate human trafficking necessitates a comprehensive and systematic approach, including the establishment of Association of Southeast Asian Nations ("ASEAN") plays a significant role in combating

human trafficking, aligning its initiatives with the broader objective of promoting and maintaining regional security (Chua & Lim, 2017).

Indonesia has demonstrated a firm commitment to the protection of human rights, as reflected in Article 28A of the 1945 Constitution, which affirms that "every person has the right to life and to defend their existence." In alignment with this constitutional guarantee, the government introduced Law No. 21 of 2007, establishing a dedicated legal framework aimed at preventing and combating human trafficking domestically. Regionally, ASEAN recognized the threat of human trafficking as early as the 1990s, categorizing it as a transnational crime that necessitates a coordinated regional response. This recognition has led to the formulation of multiple regional legal instruments. Reinforcing its ongoing commitment, ASEAN later adopted a more structured and inclusive legal mechanism through the ASEAN Convention Against Trafficking in Persons, Especially Women and Children ("ACTIP") (Smerchuar & Madhyamapurush, 2020).

Although legislative efforts have been made, the current legal frameworks both within Indonesia and across the ASEAN region remain insufficient in effectively addressing the widespread nature of human trafficking. As highlighted in the International Organization for Migration's ("IOM") 2023 Annual Report, Indonesia is among the five countries with the highest global incidence of trafficking and ranks second as a primary country of origin for trafficking victims. At the same time, other ASEAN nations such as Cambodia, Myanmar, the Philippines, and Malaysia are identified as major destination countries for trafficked individuals (International Organization for Migration, 2024b).

**TABLE 1.** Human Trafficking Trends in ASEAN Member States in 2023

| No | State | Number of Cases |
|---|---|---|
| 1. | Indonesia | 1,061 cases |
| 2. | Malaysia | 157 Cases |
| 3. | Thailand | 312 Cases |
| 4. | Vietnam | 147 Cases |

| | | |
|---|---|---|
| 5. | Philippines | 417 Cases |
| 6. | Cambodia | 27 Cases (The government does not have a centralized database) |
| 7. | Singapore | 23 cases |
| 8. | Myanmar | The government does not have a comprehensive database |
| 9. | Laos | 45 Cases |
| 10. | Brunei Darussalam | 123 Cases |

Source: U.S. Department of State 2024

The data presented in the table above illustrate the number of human trafficking cases reported by the respective governments of ASEAN member states. Despite these efforts, several countries still face notable challenges in collecting comprehensive and reliable data. Over the past decade, the incidence of human trafficking for the purpose of forced labor has shown a consistent upward trend.

In 2020 alone, approximately 100,000 victims were identified as having fallen into forced labor through trafficking networks. This figure appears to be relatively uniform across the region, suggesting a widespread and persistent issue that transcends national borders (United Nations Office on Drugs and Crime, 2022). The post-COVID-19 era, particularly in 2023, witnessed a dramatic rise in digital activity across Southeast Asia. While digitalization has served as a catalyst for economic advancement, it also presents significant challenges. It has become a double-edged sword on one side promoting innovation and economic resilience, and on the other, enabling the evolution of modern forms of human trafficking. One alarming trend is the increasing use of digital platforms to recruit individuals from various regions, who are later trafficked into unlawful industries such as online fraud networks, illegal gambling operations, and deceptive schemes disguised as entertainment services. These illicit ventures are believed to generate annual revenues between USD 7.5 billion and 12.5 billion. A concrete example of this criminal pattern was revealed in a case in Batam, Riau Islands, where Indonesian and Chinese authorities jointly apprehended a Chinese

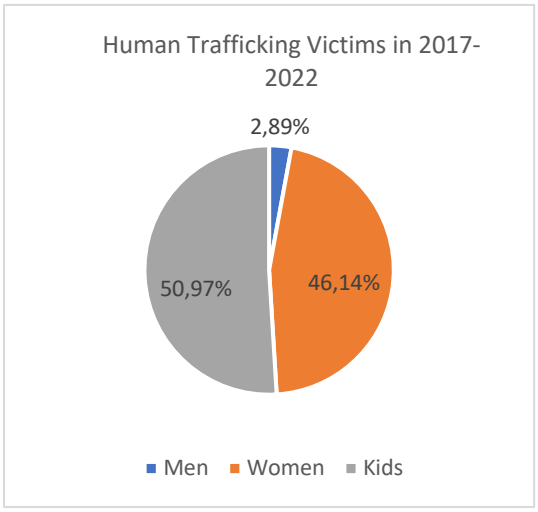
national and a homeless Indonesian woman. The woman had been coerced into participating in a romance scam commonly referred to as "love scamming" which involved making manipulative phone calls targeting individuals in China (International Organization for Migration, 2024a).

In practice, the modus operandi of human trafficking in Southeast Asia exhibits significant variation, involving a range of systematic actions, methods, and exploitative purposes. Typically, during the recruitment phase, victims are targeted through a combination of online job advertisements and direct recruitment within their countries of origin. This process often includes deceptive practices, such as promises of free or unpaid administrative arrangements, which are designed to entice and mislead potential victims (International Organization for Migration, 2024a). The top three types of employment most commonly used to target victims of human trafficking in Asia include positions in the nightlife sector such as karaoke establishments and bars as well as in massage or sauna services, and the hospitality industry (United Nations Office on Drugs and Crime, 2022).

The data presented above clearly demonstrates that women and children represent the primary victims of human trafficking. Simultaneously, the presence of global digital platforms such as Pornhub which generate profit through the dissemination of adult visual content can be interpreted as a modern expression of neo-capitalist practices that contribute to the commodification and systemic exploitation of women. Considering these intersecting dynamics, this research aims to critically assess the substantive role of both Indonesia and ASEAN in preventing and eliminating trafficking in persons, through national legislative measures and regional cooperative frameworks.

The presentation of reports and field data indicating the relatively high incidence of human trafficking in Indonesia and across ASEAN reveals an analytical gap concerning the application of Law No. 21 of 2007 and the ASEAN Convention Against Trafficking in Persons (ACTIP). These instruments, which are intended to guide the prevention and prosecution of human trafficking, appear to be implemented suboptimally. This gap underscores the insufficient

operationalization of legal frameworks in addressing the evolving dynamics of human trafficking within both national and regional contexts.

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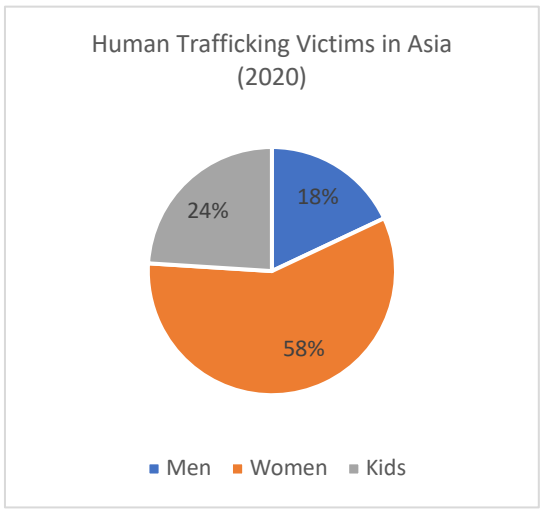


Source UNODC, 2022

In terms of originality, this research can be compared to previous studies on similar phenomena. *First,* research by Naufal Fikhri Khairi with the scope of research on ASEAN's action plan and legal documents in the concept of sustainable development goals (SDGs), the results of the study show that ASEAN has made efforts to fight trafficking in persons through all its sustainable policies, but has not achieved significant results due to the economy, weak law enforcement and corruption (Khairi, 2021). *Secondly*, by Numtip Smerchuar and Warach Madhyammapurush with the scope of research on ASEAN's mechanism in dealing with trafficking in persons, the results of the study stated that ASEAN has shown progress in the formation of legal instruments but is not in line with the pace of trafficking in persons due to the lack of cooperation between countries and the principle of non-intervention (Smerchuar & Madhyamapurush, 2020). Ananda Chrisna D. Panjaitan has also conducted research with the same theme, the scope of this research is focused on Law 21 of 2007 and the Palermo Protocol with the results of research on the Palermo Protocol which was used as the basis for the formation of Law 21 of 2007 is not binding, the ratification of the protocol has not been effective so that it results in

misinterpretation which leads to disharmony between the Palermo Protocol and Law 21 of 2007 (Panjaitan, 2022).

The three studies collectively emphasize deficiencies in the implementation of policies aimed at combating human trafficking, both at the national and regional levels within ASEAN. In addition, prior scholarly work has identified structural impediments within law enforcement, weak intergovernmental coordination, and the ineffectiveness of existing regulations as contributing factors to the inadequate response to human trafficking crimes. In relation to previous studies, this research shares a common theme in examining both national and ASEAN legal instruments in addressing trafficking in persons. However, this study further analyzes the harmonization between national legislation and international legal frameworks, particularly the Palermo Protocol and the ACTIP (ACTIP Moreover, this research utilizes the legal protection theory to analyze the extent to which ACTIP has been implemented, while also considering its position and relevance under international legal norms).

# Research Method

This research is studied with a normative legal research method to examine the synchronization of the Anti-Trafficking Law with the Palermo protocol as the basis of its norms and the concept of ACTIP legal protection according to international law (Soekanto & Mamudji, 2015). Accordingly, this study investigates the legal provisions governing the crime of trafficking in persons in order to evaluate the substantive dimension of legal protection. The research employs a combination of conceptual, statutory, and historical approaches. The conceptual approach is applied to examine the problem formulation at both the theoretical and legal-dogmatic levels. The statutory (or legislative) approach is utilized to analyze the formulation of legal issues based on the existing body of positive law. Meanwhile, the historical approach serves to explore the development of legal norms and legislation over time, tracing their evolution and contextual significance (D. Tan, 2021). Particular focus is given to assessing the legal weight of ACTIP as an instrument of international law in addressing the crime of trafficking in persons particularly involving women and children within

the ASEAN region. The findings of this research are presented descriptively through the application of qualitative methodology (Irwansyah, 2021). The data utilized in this study consists of secondary sources, primarily drawn from Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons and from ACTIP. This normative legal research is based on secondary data, including primary legal materials, such as Law No. 21 of 2007 and ACTIP, and secondary legal materials, including relevant academic journals and official ASEAN publications or websites. The legal material collection technique employed in this research is literature review, through which the researcher gathers and examines legal instruments, scholarly books, and journal articles related to the subject matter (Marzuki, 2019).

# Results and Discussions

## Construction of the National Law on the Crime of Trafficking in Persons in Indonesia

Trafficking in persons constitutes a serious human rights violation and remains a major concern for countries worldwide, including Indonesia. The persistence of this crime is difficult to curb due to numerous challenges in practice, such as limited access to accurate information, the complexity of trafficking typologies, and the wide range of modus operandi employed by traffickers (Mikhael & Ginting, 2022). Weak supervision, particularly in border areas of Indonesia, contributes to the growing difficulty in halting this crime (Burhanuddin, 2023). The concrete steps taken by Indonesia to prevent and reduce the incidence of trafficking in persons include: 1) the establishment and ratification of both domestic laws (national legislation) and international treaties; 2) the formation of a team dedicated to overseeing the departure and repatriation of Indonesian migrant workers, as part of regional and international efforts to combat human trafficking; and 3) the optimization of cooperation between provinces and cities in monitoring both official and unofficial entry points into Indonesia (Yunda, 2020).

Indonesia's commitment to combating trafficking in persons began with its ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, which was formalized through Law No. 7 of 1984. The legal foundation for addressing human trafficking at the national level is reflected in Article 297 of the Indonesian Criminal Code (KUHP), Law No. 23 of 2002 on Child Protection, and Law No. 39 of 1999 on Human Rights. However, these legal provisions are still considered insufficient in effectively addressing the complexity of trafficking crimes, with existing penalties viewed as disproportionately lenient in relation to the severity of the offense (Lubis et al., 2020). In line with its efforts to combat human trafficking, Indonesia signed the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, which is an extension of the United Nations Convention against Transnational Organized Crime (the Palermo Protocol) on December 12, 2000, and officially ratified it on September 28, 2009. As a nation committed to the principle of *pacta sunt servanda* in international law, Indonesia is legally bound to honor and comply with all international treaties it has ratified in good faith (Farida, 2020). In alignment with the Palermo Protocol, Indonesia introduced Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons (commonly referred to as the Trafficking in Persons Law), which serves as a comprehensive domestic legal instrument consistent with the protocol's standards. Since the law was enacted in accordance with the Palermo Protocol, particular attention was given to the protection of women and children as victims of trafficking, as outlined in the considerations section (letter b) and the General Explanations in Paragraphs 3, 5, and 6 of the law.

The Anti-Trafficking Law is structured into 9 chapters and 67 articles, encompassing provisions on the concept of trafficking, definitions of victims and perpetrators, elements of the criminal offenses, related crimes, restitution, cooperation in handling trafficking cases, Standard Operating Procedures (SOP), and associated policies. The law addresses various forms of trafficking, both domestic and transnational, and provides protection for witnesses and victims, including the right to restitution as well as medical and social rehabilitation.

Additionally, the Anti-Trafficking Law establishes a comprehensive law enforcement mechanism, involving institutions such as the police, the prosecutor's office, and child protection agencies (Putri et al., 2022). However, when reviewed systematically, the substance of the Anti-Trafficking Law still contains weaknesses, including:

**a. Complex article construction**

The plurality of elements makes it difficult to prove a formal offense. Article 2 of the Anti-Trafficking Law defines the crime of trafficking as "*The act of recruiting, transporting, sheltering, sending, transferring, or receiving a person accompanied by threats of violence, use of force, kidnapping, detention, forgery, fraud, and abuse of power or vulnerable position, entrapment of money or providing payment or benefits, despite obtaining the consent of the person in control of such other person, committed within the state for the purpose of obtaining the consent of the person in charge of the other person. the purpose of exploitation or resulting in the person being exploited with a minimum prison sentence of 3 (three) years and a maximum of 15 (fifteen) years*". This article looks more comprehensive when compared to the definition and sanctions of the crime of trafficking in persons in article 297 of the Criminal Code which states that *"trafficking in women and underage boys is threatened with a maximum prison sentence of 6 (six) years"*. However, this definition has implications for the difficulty of law enforcement officials to interpret the plurality of elements of the article (Sekretariat Jenderal DPR RI, 2023).

Article 2 of the Anti-Trafficking Law is a formal offense that contains the following elements: a) Act/process: intended as a series of recruitment, shelter process, delivery process, acceptance process, and transfer process; b) Means: intended as a concrete form of threat of violence, kidnapping, detention, forgery, fraud, abuse of power, vulnerable position, debt entrapment, or providing payment or benefits so as to place the victim in a bargaining position or powerless to defend himself; c) Purpose: intended as an action that occurs without the consent and refusal of the victim so as to put the victim in a position of exploitation (Susanti et al., 2022)**.** The plurality of these elements has implications for the difficulty of proving it as a criminal act of trafficking in

persons because it must meet the elements as a whole. Then the scope content in Article 2 of the Anti-Trafficking Law only covers acts that aim for exploitation in the country. Meanwhile, the Palermo Protocol has affirmed that trafficking in persons is a transnational crime. Although other articles of the Anti-Trafficking Law still contain acts that have the purpose of exploitation outside Indonesia, these articles are not as comprehensive as regulating the elements of the process as in Article 2 of the Anti-Trafficking Law.

**b. Doesn't align with the established norms for its formation**

The construction of articles 3 and 4 of the Anti-Trafficking Law does not contain elements of methods and only contains elements of acts/processes that are not in accordance with the 3 elements/elements intended as the crime of trafficking in persons (TPPO). The absence of an element of method in this article results in the loss of its unlawful nature, in this case the element of the act by the perpetrator and as if the act was approved by the victim. Furthermore, in article 4, the limitation of the formulation of the element of acts/processes in the form of bringing Indonesian citizens out of Indonesian territory becomes narrow because the phrase "bring" can only be proven if there has been a transfer of victims, in addition to the *various modus operandi* of human trafficking crimes, one of which is remote control which has implications for the difficulty of law enforcement to prove these elements (Sekretariat Jenderal DPR RI, 2023).

Article 5 of the Anti-Trafficking Law incorporates the three core components of trafficking in persons as outlined in the Palermo Protocol: the act (actus reus), the means (modus operandi), and the purpose (mens rea). Nonetheless, the procedural formulation within the article diverges from the Palermo Protocol's framework. Specifically, it categorizes all actions directed toward the exploitation of children as trafficking offenses, regardless of whether the defined "means" element typically required for adult trafficking is present, thereby creating a potential misalignment with the international standard (United Nations, 2000). Furthermore, the regulation concerning child exploitation in Article 6 of the Anti-Trafficking Law is also inconsistent with the foundational norm upon which it is based, namely the Palermo Protocol. The use of the term delivery in the article creates a restrictive interpretation that hinges

on the existence of an actual act, and the requirement that exploitation must have occurred. In contrast, the Palermo Protocol stipulates that in cases involving child victims, the occurrence of exploitation is not a prerequisite for proving the crime of trafficking in persons.

The ambiguity in the categorization of criminal conduct under Article 10 of the Anti-Trafficking Law stems from the legislature's omission to clearly differentiate the legal ramifications between acts of attempt and those of facilitation or assistance. Both attempted and assisted acts are penalized with sanctions equivalent to those imposed on principal offenders, notwithstanding the crucial legal distinction between a "crime" and an "offense." This lack of differentiation has substantial implications for foundational principles of criminal law, including the concurrence of criminal acts (concursus), the application of limitation periods, and the execution of penal measures (Wijayanto, 2014).

**c. Overlapping legal provisions give rise to legal uncertainty**

The formulation of the Anti-Trafficking Law, which adopts provisions from the Palermo Protocol, regrettably did not undergo a comprehensive harmonization process during its ratification. This legislative gap has resulted in overlapping regulations, thereby contributing to legal uncertainty (Weriansyah et al., 2023). A range of domestic legal instruments address human trafficking, including the Manpower Law, the Law on the Protection and Placement of Indonesian Migrant Workers, the Population Administration Law, the Law on the Protection of Witnesses and Victims, the Citizenship Law, and the Law on the Elimination of Sexual Violence. However, the overlapping normative domains of these statutes may impede the effective realization of victims' rights and generate legal uncertainty in the enforcement process. A specific example examined in this study is the regulatory redundancy concerning the definition and penalization of "sexual exploitation," as articulated in Article 12 of the Anti-Trafficking Law and Article 4(2) of the Sexual Violence Law. Both provisions impose similar criminal sanctions, resulting in interpretive inconsistencies and practical difficulties in ensuring coherent and uniform law enforcement.

# ASEAN's Role in Providing Legal Protection Regarding the Crime of Human Trafficking Against Women and Children within ASEAN is Reflected through Regional Cooperation and Legal Instruments

Trafficking in persons is a global issue that has garnered significant international attention (Mikhael & Ginting, 2022). The transnational nature of human trafficking necessitates cooperative engagement among Southeast Asian states. Since the early 1990s, regional initiatives aimed at combating trafficking in persons have gradually taken shape. A key development in this regard is the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (ASEAN MLAT), which establishes a legal framework to facilitate inter-state cooperation among ASEAN member countries. This treaty enables mutual support in legal proceedings related to trafficking, including the exchange of information, evidentiary materials, and witness testimony (Association of Southeast Asian Nations, 2010). In addition to the ASEAN MLAT, several regional conventions and policy instruments have been developed to strengthen ASEAN's legal framework in addressing human trafficking. Notable among these are the 2004 ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children, the 2011 Leaders' Joint Statement on Enhancing Cooperation Against Trafficking in Persons in Southeast Asia, and the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children. These instruments collectively reflect ASEAN's ongoing commitment to regional collaboration in preventing and addressing trafficking, with a particular emphasis on the protection of vulnerable groups (Solim, 2019).

ASEAN has progressively strengthened its regional human rights enforcement mechanisms, not only through normative development but also through institutional innovation. A significant milestone was the establishment of the ASEAN Intergovernmental Commission on Human Rights ("AICHR") on 23 October 2009. As ASEAN's principal human rights body, the AICHR serves as a platform for dialogue and dispute resolution among member states. While its mandate includes promoting and protecting human rights, it also holds

limited authority to address violations by member states, although the scope and enforceability of such powers remain subject to ongoing debate (W. Tan & Shahrullah, 2017).

ASEAN's rule of law in combating trafficking in persons demonstrates growing legal progress. In 2015, ASEAN agreed to establish ACTIP. This Convention was born out of the collective ambition and heightened awareness of ASEAN members to combat human trafficking, acknowledging the gap in comprehensive regional legal instruments specifically addressing the issue. Therefore, ASEAN plays a critical role in finding a common regional solution that supports national policies, leading to the creation of a legal instrument based on the following principles: a) Prevention of Human Trafficking; b) Victim Protection; c) Law Enforcement of Trafficking in Persons Crimes; d) Cooperation between Member States (Association of Southeast Asian Nations, 2015). Therefore, ACTIP can play a role as a form of cooperation between ASEAN countries in combating the problem of trafficking in persons and as a form of ASEAN policy to address the problem of human trafficking that often arises in the ASEAN region. With this convention, ASEAN has recognized the urgency of addressing the problem of trafficking in human beings, especially women and children, as well as the importance of eradicating transnational crime at the regional level.

Hadjon defines legal protection as the safeguarding of individual dignity and rights, as well as the formal recognition of human rights afforded to legal subjects under established legal norms, aimed at preventing arbitrary actions by the state. This protection is generally divided into two categories, one of which is preventive legal protection, involving proactive measures by the government to prevent rights violations before they occur. ACTIP addresses this preventive aspect in Chapter III, where its provisions focus on reducing the risks and root causes of trafficking in persons, including (Hadjon, 1987):

a) Enhancing the strengthening of the national legal framework. ASEAN member states have an obligation to encourage a more effective and comprehensive national legal system to address trafficking in persons and to adopt relevant laws whenever possible.

b) Increased insight through education. ASEAN Member States bear the obligation to promote public awareness in preventing and combating trafficking in persons through the implementation of structured, systematic, and comprehensive campaigns, aimed at reaching all levels of society.
c) Foster cooperation with non-governmental organizations and engage all sectors of the community in efforts to combat trafficking in persons. ASEAN Member States are obligated to cooperate with non-governmental organizations in developing preventive programs, conducting training initiatives, and ensuring the protection of victims. Such efforts are to be pursued through both bilateral and multilateral cooperation frameworks.
d) Improved Welfare for the Vulnerable. ASEAN member states are obligated to strengthen policies in social and cultural education to prevent the exploitation of individuals, particularly children, and to provide expanded employment opportunities for women.
e) Research that supports data accuracy. Member States are obligated to undertake comprehensive research and analysis on the evolving modus operandi of trafficking in persons, with the aim of informing the development of targeted and effective prevention policies.

Repressive legal protection encompasses the enforcement of legal sanctions such as imprisonment, monetary fines, and additional punitive measures applied after the occurrence of a legal violation or dispute (Hadjon, 1987). ACTIP provides preventive measures as outlined in Chapter IV, including:

a) Development of national legal policies. Member states are obligated to incorporate procedures for identifying victims and clearly define their rights.
b) Restitution. Member states are obligated to include restitution provisions in national law to provide compensation to victims of trafficking in persons, including shelter, medical assistance, psychological support,

employment opportunities, education, and training, specifying a clear timeframe for these services.

c) Ensuring the safety of victims in the destination country, transit or country of origin. Member states are obligated to protect victims while they remain within their territory

d) Cooperation Between Member States. In cases where trafficking in persons involves multiple jurisdictions, Member States are obligated to acknowledge and respect the victim identification process as conducted under the national laws of the receiving state. Furthermore, Member States are required to ensure the protection of trafficking victims, particularly when they are suspected of having committed unlawful acts as a direct consequence of coercion or force.

e) Repatriation and Return of Victims. Member states, as destination countries, are obligated to ensure the safety of victims and assist in their return to their home countries.

The substantive scope of ACTIP appears comprehensive, as it incorporates both preventive and repressive measures in addressing trafficking in persons. However, a legal analysis of ACTIP within the framework of international law reveals ambiguity concerning its status as a formal source of international law. Fundamentally, international law defines an international agreement as a written accord concluded between states and governed by international legal norms, regardless of whether it is contained in a single instrument or multiple related instruments, and irrespective of its title or designation (Nations), 1969). The characteristic of an international treaty is that it is made by the subject of international law (Mauna, 2001). Article 2 (a) of the International Law Commission's Draft Articles on the Responsibility of International Organizations defines an international organization as one that is established through an international agreement, such as a charter, covenant, final act, treaty, statute, or pact. Legal personality refers to the organization's capacity to exercise rights and fulfill obligations under international law. This capacity includes the ability to act at the international level, enabling the organization to perform legal functions such as entering into agreements, initiating legal

proceedings, claiming immunity, establishing external relations with member states or other international organizations, and exercising other rights granted under international law (Draft Articles on the Responsibility of International Organizations, 2011). In this case, ACTIP is an international agreement born from ASEAN as its legal subject.

International agreements are generally categorized into two types: binding instruments, also known as "hard law," and non-binding instruments, referred to as "soft law". Soft law is characterized by the absence of clearly defined legal norms, a lack of strong foundational principles, and the reliance on third parties for implementation through diplomatic means. On the other hand, hard law consists of binding rules that include specific legal norms, and its enforcement can be carried out directly by international courts, international organizations, or in countries that have ratified the agreement (Shaffer & Pollack, 2010). The legalization theory introduced by Kenneth et al. classifies soft law in practice as resolutions, action plans, recommendations, and declarations, while hard law is represented by treaties and protocols,(Kenneth W. Abbott & Andrew Moravcsik, Anne-Marie Slaughter, 2000) ACTIP is an international agreement classified as a hard law instrument, established in the form of a convention (Schwarzenberger, 1952). Hard law instruments enable states to demonstrate a more credible commitment to international agreements. This is due to the fact that such instruments impose legal sanctions on violating states, which can negatively impact their international reputation if they are proven to have breached their legal obligations (Shaffer & Pollack, 2010). Although ACTIP is classified as a hard law instrument, it does not contain sanction mechanisms for member states that fail to comply. This absence contributes to ambiguity regarding its effectiveness as an international agreement in providing legal certainty for member states.

Legal protection is inherently linked to the effectiveness of institutional enforcement mechanisms and the extent of cross-border cooperation between states (Simanjuntak, 2024). Although ACTIP constitutes a binding legal instrument (hard law), the ASEAN Intergovernmental Commission on Human Rights (AICHR), as a regional body within ASEAN, has yet to be granted a clear

mandate for its implementation. One of the key institutional shortcomings lies in AICHR's lack of authority to monitor and investigate human rights violations in Southeast Asia, which significantly undermines its capacity to fulfill its human rights protection mandate (Riyanto, 2024). This weakness stems from the fact that the AICHR's implementation mandate lacks autonomous authority to prosecute human trafficking cases, as its scope of action remains significantly constrained (Triyana, 2011). Furthermore, the AICHR's intergovernmental institutional structure, comprising representatives from each member state, inherently reflects the divergent political interests within ASEAN. The variation in political, social, and economic contexts, alongside differing interpretations and implementations of human rights norms among member states, poses significant challenges to the effective protection of human rights for victims of human trafficking (Riyanto, 2024).

Furthermore, to examine ACTIP within the framework of international law, the author adopts Oppenheim's perspective, which asserts that international law constitutes real law. According to Oppenheim, three conditions must be fulfilled for a norm to be considered law: first, the existence of legal rules in this context, ACTIP, as a hard law instrument, contains clearly defined norms; second, the presence of a community in this case, the ASEAN member states as subjects of international law; and third, the existence of enforcement mechanisms to ensure compliance. The latter refers to the availability of sanctions that can be imposed by ASEAN as an international organization. However, ACTIP lacks such enforcement guarantees, which weakens its legal force and effectiveness in practice (Dixon, 2000).

Despite notable progress in the development of ASEAN legal instruments to combat trafficking in persons, such efforts remain limited by the enduring principle of non-intervention, as articulated in Article 2 of the ASEAN Charter. This principle, which emphasizes respect for the sovereignty and internal affairs of member states, has its roots in the geopolitical dynamics of the Cold War, during which external powers particularly the United States and the Soviet Union-vied for influence over the domestic political landscapes of Southeast Asian Nations (Rahmanto, 2017). ASEAN acknowledges that member states

cannot achieve socio-economic development and regional stability if they remain subject to external political competition (Association of Southeast Asian Nations, 2010). In addition, the historical, racial, cultural, political, and religious plurality among ASEAN member states has led to a stronger emphasis on sovereignty and national law as primary means of safeguarding their independence (Pohan, 2009).

The inconsistency in the application of the non-intervention principle was clearly demonstrated when the Global Alliance Against Traffic in Women (GAATW), along with Migrant Care and Tenaganita, submitted an official complaint to the AICHR in February 2023. The complaint concerned human trafficking practices that have resulted in thousands of ASEAN citizens being subjected to forced labor in Myanmar, Cambodia, Laos, Thailand, and the Philippines, where they are coerced into participating in love scams, investment fraud, and other forms of cybercrime (Global Alliance Against Traffic in Women, 2023). Ironically, many of these individuals are treated not as victims of exploitation, but as perpetrators of human trafficking and are consequently criminalized. This situation underscores how ASEAN's adherence to the principle of non-intervention remains a significant impediment to fostering cross-border accountability and the collective protection of human rights. Furthermore, Amnesty International, in its 2025 report titled "Slavery, Human Trafficking, and Torture in Cambodia's Scamming Compounds," identifies Cambodia as a regional hub for digital exploitation, facilitated by the country's weak legal framework for human rights protection (Amnesty International, 2025). Victims of exploitation are often recruited through deceptive advertisements, subjected to torture including electric shocks, and forced into labor—including child labor. The widespread occurrence of such abuses serves as a stark indication of the failure of ASEAN's institutional framework to uphold its commitments to human rights protection and the eradication of human trafficking (Amnesty International, 2025). This affirms that the principle of non-intervention, which underpins ASEAN's regional cooperation, in practice undermines the effectiveness of internationally agreed legal norms.

The principle of non-intervention constitutes a fundamental norm in international law and international relations, prohibiting any state from interfering in matters that lie exclusively within the domestic jurisdiction of another sovereign state (Shaw, 1994). Each state possesses the sovereign right to determine its own national policies without interference from other states. International law guarantees both the recognition of state sovereignty and protection from external intervention in a state's domestic political affairs. The principle of non-intervention must not be conflated with the principle of non-involvement. Although the principle of non-intervention prohibits direct interference in the internal affairs of a sovereign state, it does not preclude inter-state cooperation in political, economic, or social domains. Forms of collaboration, such as military partnerships, trade agreements, and joint initiatives to combat transnational crimes, including illicit drug trafficking are permissible within the bounds of non-intervention, even when such cooperation may have implications for a state's exercise of sovereignty (Funston, 2000). An act or form of external engagement may be classified as intervention if it involves coercive or dictatorial measures that effectively strip the target state of its sovereign control over internal affairs. In legal terms, intervention requires an element of compulsion that undermines the autonomy of the affected state. More political or diplomatic engagement, without coercive intent or effect, does not constitute intervention. Consistent with this interpretation, ASEAN maintains the principle of non-intervention as a foundational tenet of regional cooperation, underscoring mutual respect for sovereignty, territorial integrity, and non-involvement in the domestic affairs of its Member States (Jennings & Watts, 2008). The principle of non-intervention is reflected in several concrete manifestations, including refraining from criticizing the internal policies or alleged arbitrariness of member states toward their own populations, condemning any member state that violates the principle, and withholding recognition or protection from rebel groups that attempt to overthrow a legitimate government of a member state. Additionally, this principle encompasses the provision of political support and material assistance to member states in their efforts to suppress subversive activities, thereby reinforcing the

sovereignty and political stability of the region (Acharya, 2014). The contrasting interpretations of the non-intervention principle held by ASEAN and the broader international community have constrained ASEAN's ability to take a proactive and influential role in combating human trafficking.

# Conclusion

The enactment of the Anti-Trafficking Law represents a commendable step by Indonesia in affirming its commitment to public protection and in providing a legal framework for combating human trafficking. Nevertheless, the law's effectiveness is significantly hindered by the inherent complexity of trafficking crimes and the multiplicity of overlapping legal instruments such as the Child Protection Law, the Immigration Law, the Criminal Code, the Labor Law, the Law on the Placement and Protection of Indonesian Migrant Workers, the Population Administration Law, the Witness and Victim Protection Law, and the Sexual Violence Crimes Law (TPKS Law). This legal fragmentation creates regulatory overlap and inconsistencies. Furthermore, Article 2 of the Anti-Trafficking Law, which incorporates compound elements within a formal offense structure, poses additional challenges for law enforcement in executing their duties. The alignment of the Anti-Trafficking Law with the Palermo Protocol, particularly Articles 3, 4, and 5, also lacks coherence, resulting in normative inconsistencies that undermine the internal logic and legal clarity of the statute.

ASEAN has exhibited a degree of legal progressiveness in addressing human trafficking, particularly through the adoption of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP). This convention marks a noteworthy advancement and symbolizes renewed commitment among member states. However, despite its classification as a binding international legal instrument (hard law), ACTIP lacks robust legal enforceability. Its effectiveness is undermined by the absence of concrete sanctions for non-compliance by member states. The limited practical impact and uncertain legal force of ACTIP can be attributed, in part, to ASEAN's rigid commitment to the principle of non-intervention. The differing interpretations

of this principle between ASEAN and the international community have further constrained ASEAN's capacity to adopt a more assertive and unified approach in tackling the complex, transnational issue of human trafficking. This study asserts the necessity of amending Law No. 21 of 2007 to reinforce binding national legal frameworks and to ensure greater legal certainty in combating human trafficking. In parallel, it is recommended that ASEAN reevaluate its traditional adherence to the principle of non-intervention by embracing a more adaptive and forward looking conceptprogressive non-intervention which may be operationalized through the formulation of a specific ASEAN protocol addressing cross-border trafficking issue.

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## Competing Interest

None.