



Human Trafficking: Legal Analysis on Indo-Malaysia Border

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Article Info

Submitted: 23/8/2023
Revised: 17/11/2023
Accepted: 27/11/2023

Keywords:

Comparative Law; Human Trafficking; Legal Evaluation

DOI:

<http://dx.doi.org/10.37253/jjr.v25i2.8513>

Abstract

Indonesia and Malaysia both face a crisis in combating human trafficking. This crisis includes human trafficking that occurs at the Indonesia-Malaysia border. Indonesia is in Tier 2, while Malaysia is on this issue's Tier 2 watch list. The laws and regulations that Indonesia and Malaysia have in dealing with the issue of human trafficking at the border between the two countries are related. The objectives of this research are (1) to know the provisions and comparison of the laws of the two countries in dealing with human trafficking and (2) to examine the existing rules based on the perspective of international Law to provide input in the renewal of legal science at the national and international levels. This research, which was written using the normative jurisprudence method, found that Indonesia and Malaysia each have specific laws stipulated in Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons and the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 and are involved in bilateral and multilateral cooperation regarding combating human trafficking. The legal efforts that both countries have made still have many shortcomings and require more severe improvements to achieve legal objectives.



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A. INTRODUCTION

Human trafficking is a transnational crime that violates human rights (Chandrawaty, 2020). Human trafficking is the worst Act and violates human dignity (Nurhenny, 2010). This circumstance can be said because human trafficking has taken away a person's right to be free and free from various exploitative behaviors such as slavery. Human trafficking itself is a more modern form of contemporary slavery. Human trafficking in the Convention Against Transnational Organized Crime 2000 is classified as a Transnational Organized Crime. Transnational means that the crime does not care about territorial lines and penetrates national boundaries, while Organized means that the crime involves many individuals spread across various countries (Monique & Puspamawarni, 2020).

Human trafficking knows no country status. From developed to developing countries, they are not spared from human trafficking. The perpetrators use many

modes. Usually, the victims will get exploited sexually into commercial sex workers or economically by forcing them to work high working hours for low wages. Some cases even use religious reasons such as marriage or child adoption when it is just a trick of contract marriage or baby selling (Maskuri, 2020). This fact is why human trafficking has become an international problem requiring combat cooperation. Independent efforts at the national level from one country will still not be enough to deal with the issue of human trafficking, considering that this crime occurs domestically and crosses the jurisdictional boundaries of the country's ability to enforce its laws, thus requiring cooperation with other countries. The international community has paid particular attention to the crime of human trafficking. This kind of attention is evidenced by the birth of several international conventions, such as the Convention on the Elimination of all Forms of Discrimination Against Women in 1979, which discusses eliminating all forms of discrimination against women, and the Convention of Children's Rights in 1989 regarding children's rights. Even though they come from different backgrounds, various international organizations such as IOM (International Organization for Migration), ILO (International Labour Organization), UNICEF (United Nations Children's Emergency Fund), and UNESCO (United Nations Educational Scientific and Cultural Organization) also strongly oppose the crime of human trafficking in any form, especially when it comes to children who are verbally and sexually exploited (Susanti, Syahrinaldi, & Hajri, 2022).

Indonesia is one of the countries that is still struggling with the problem of human trafficking. The rise of human trafficking, in general, occurs due to external and internal factors for victims, such as internal factors in the form of a desire to have a higher income to improve living standards or external factors in the form of domestic violence received by women (Abimanyu, 2022). The size of the country and the large population of Indonesia are also factors in human trafficking because these two conditions are at the root of other, more specific, critical needs. This situation is in line with the opinion of Bales, where in his journal, he explains the causes of human trafficking activities are corruption, poverty, lack of opportunities in obtaining employment, social chaos, and demographic profiles and divides them into two factors, namely: (1) trafficking from a country (push factor) that comes from the sending country; and (2) trafficking to a country (pull factor) that comes from the destination country (Bales, 2007).

Human trafficking in Indonesia can occur within or across national borders. There are several differences between trafficking within the country and across territorial boundaries. Among them are differences in routes, modes, application of Law, and forms of exploitation. It can be said that victims of human trafficking abroad tend to get more cruel treatment than victims in the country. An example is the viral case experienced by David and his wife. He and his wife became victims of human trafficking in Myanmar and were never repatriated back to Indonesia

after they managed to escape from the company that trafficked them (BBC News Indonesia, 2023). Victims who do not live in their own country make it difficult to get legal protection. The situation is even worse if the victims are citizens who enter and exit the country illegally. The failure of the immigration authorities to maintain an imaginary line can significantly impact the land because only authorized people with official documents are allowed to cross the line (Madani & Putra, 2020).

Regarding cross-border trafficking, Indonesia is not only a sending country but also acts as a destination and transit country for victims. The victims also vary from various groups; children, women, and even men do not escape being victims of human trafficking. However, vulnerable groups such as women, children, and low-income people are more likely to be victimized. Women are three times more likely to experience extreme violence than men (UNITED NATIONS: OFFICE ON DRUGS AND CRIME, 2023). The large number of areas outside Indonesia that border other countries impacts the availability of more varied immigration entry points. This circumstance becomes an opportunity for unscrupulous people to launch their actions, one of which is on the Indonesia-Malaysia border.

Indonesia and Malaysia are allied countries that share a direct border. The routes in and out between the two countries are also diverse, such as by land, sea, and air. It is then not impossible for human trafficking to occur at the border of the two countries, given the easily accessible routes. Moreover, the availability of rat routes allows people to avoid administrative checks by the immigration authorities (Niko, 2016). Immigration checks are fundamental because they are the first bastion of defense where human trafficking can be prevented before it takes its toll. Examples of these rat routes include the jungle routes in Kalimantan bordering Sabah-Serawak. Or through Indonesia's vast sea and air routes. However, it is crucial to be aware that even though many perpetrators violate the administrative provisions of the state and carry out illegal human trafficking practices, human trafficking can still be carried out through legal stages through fraudulent mechanisms when recruiting with the mode of debt repayment (Monique & Puspamawarni, 2020). Therefore, caution and accuracy must be prioritized so no party becomes a victim.

Other studies include Heni Susanti's which examines the legal regulations regarding human trafficking in Indonesia and Malaysia (Susanti et al., 2022). Heni Susanti's research has similarities in terms of legal regulation and comparison of human trafficking in Indonesia and Malaysia. Still, this research has updates on evaluating human trafficking laws in both countries based on international Law. Based on the above statement, the main issues in this research are How Indonesian and Malaysian Law regulate human trafficking and How International Law views the regulation of human trafficking in Indonesia and Malaysia. Hence, since this research highlights human trafficking events on the Indonesia-Malaysia border,

the discussion will focus on the comparison of legal arrangements regarding human trafficking in Indonesia and Malaysia and the evaluation of international Law regarding Indonesian and Malaysian Law.

B. RESEARCH METHOD

The research method used in this writing is normative juridical research or doctrinal juridical research, which collaborates with a comparative approach in which it examines problems based on primary legal sources in the form of Legislation supported by secondary legal materials such as books, journals, literature, scientific articles, and reports that discuss human trafficking in Indonesia and Malaysia. This research is also supported by tertiary sources from the internet, which are limited in number so as not to lose the original purpose and not to disturb the purity of the research so that it can produce writings that can be accounted for.

C. RESULTS AND DISCUSSIONS

Comparison of Human Trafficking Legal Regulations in Indonesia and Malaysia

Indonesia has a close relationship with Malaysia regarding resolving human trafficking issues. Although human trafficking can occur in Indonesia's border areas with other countries such as Australia, Timor Leste, and Singapore, human trafficking on the Indonesia-Malaysia border always takes victims. As described earlier, two factors cause cross-border human trafficking: push and pull factors. Both factors stem from the sending and receiving countries. Receiving countries tend to have more value in various aspects related to peace and social welfare than sending countries, such as economic factors, low education, unemployment, socio-culture, and weak law enforcement. (Kamal, 2019). Generally, when the conditions of the area that a person occupies cannot provide the welfare needed, the person will choose to move to a place that he feels is much better in guaranteeing his interest (Sulaksono, 2016). Irresponsible elements then utilize this condition. Subtly, they lure the victims by promising a better livelihood. The victims, who are generally vulnerable groups such as women, children, and people from low economic backgrounds, are tempted to follow the orders of these unscrupulous individuals. Their lack of knowledge about human trafficking makes them easily tricked (Utami, 2019). Moreover, Malaysia tends to be a recipient country of human trafficking from Indonesia because, in some aspects, such as corruption, infant mortality, and food production rates, Malaysia has a better situation than Indonesia. The rapid economic development and prosperous conditions make Malaysia more alluring and attract people from other countries to come to Malaysia (Hamzah et al., 2019).

Human trafficking is not only carried out like any other trade with direct payment and receipt transactions. Victims often do not know that they are victims of human trafficking until they are exploited, or at least get it by the initial agreement before they are dispatched. Human trafficking can be understood as trapping victims using violence, coercion, deception, or other forms of exploitation to obtain personal gain (Silvia, 2020). Unlike human smuggling, some of them want to be involved in the Act or pay for human smuggling services, which they feel are much cheaper than crossing the border legally at a higher price and a more complicated process (Salam, 2020). Becoming a migrant worker is often used by unscrupulous people or brokers. They promise to send the victims as laborers, but when they reach the destination country, they do not get what they were promised. Especially if the victims are women and children, they tend to be forcibly used and sexually exploited (Kusumawardhani, 2010) (Sitepu, 2022).

The number of human trafficking cases in Indonesia and Malaysia changes every year. In 2022, in Indonesia, there were 133 under investigation by the National Police Criminal Investigation Unit, plus 46 cases still under investigation, and in Malaysia, there were 137 cases plus 109 further investigations. Based on a report from the Global Trafficking in Report, East Asia and The Pacific, in Indonesia, there were 60 victims of human trafficking in 2020. The graph decreased significantly compared to previous years—similarly, the number of human trafficking victims in Malaysia.

Furthermore, Indonesia occupies the second position as a contributing country to victims of human trafficking after Vietnam in Malaysia. It was recorded that in 2017-2018, there were 233 victims, or 19% of all trafficking victims in Malaysia were Indonesian citizens. Although it is not explicitly mentioned how many cases originated from Indonesia to Malaysia or vice versa, with the discovery of Indonesian citizens who are victims of human trafficking in Malaysia, it can be concluded that the Indonesia-Malaysia border is indeed a way for human trafficking activities to continue.

Human trafficking on the Indonesia-Malaysia border can be summarized into four situations: Indonesia becomes the sending country, and Malaysia becomes the receiving country; Malaysia becomes the sending country, and Indonesia becomes the receiving country; Indonesia becomes a transit country as the shipping country before being sent to Malaysia; and Malaysia becomes a transit country by the sending country before being sent to Indonesia. So if the above circumstances occur, there will be legal action by each Government or legally related activities between human trafficking laws in Indonesia and Malaysia, whether associated with the criminal liability of the perpetrators or legal protection for the victims.

In Indonesia, human trafficking was initially regulated in the Criminal Code in Article 297, which reads, "Any person who intentionally causes or facilitates the

trafficking of minor boys shall be punished by a maximum imprisonment of six years." Over time, the punishment provided by the article was felt to be unbalanced with the consequences. Finally, 2007, Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons was enacted. Then followed by Law Number 14 of 2009 concerning the Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women, and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, which is one part of the 2000 Palermo Protocol in addition to the Protocol against the Smuggling of Migrants by Land, Air, and Sea, Supplementing the United Nations Convention against Transnational Organized Crime and Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime. Moreover, with the enactment of this Law, the provisions in Article 297 of the Criminal Code are no longer applicable or revoked.

Human trafficking is defined by Article 1 paragraph (1) of this particular Law as "Trafficking in persons is the act of recruiting, transporting, harboring, sending, transferring, or receiving a person by threat of violence, use of force, abduction, harboring, falsification, deception, abuse of power or vulnerable position, debt bondage or giving payment or benefit, to obtain the consent of the person who has control over the other person, whether carried out within the country or between countries, for exploitation or resulting in exploitation." The following articles explain if a person is proven to have committed the crime of trafficking in persons in the territory of Indonesia (article 2 paragraphs (1) and (2) by bringing people into the region of Indonesia for exploitation in the part of Indonesia or in another country (article 3); by bringing Indonesian citizens outside the territory of Indonesia for exploitation in another country (article 4); by adopting a child by promising something or giving something with the intention of exploitation (Article 5); or by sending a child within or outside the country in any way that results in the child being exploited (Article 6); all of which are punishable by a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp 120.000.000.00 (one hundred twenty million rupiahs) and a maximum of Rp 600,000,000.00 (six hundred million rupiahs).

Then Article 7 paragraph (1) explains that if the crime of trafficking in persons in Article 2, Article 3, Article 4, Article 5, Article 6 causes the victim to suffer severe injuries, severe mental disorders, other infectious diseases that endanger their life, pregnancy, or disruption or loss of reproductive function, then the punishment is increased by 1/3 (one third) of the sentence or in the next paragraph the penalty increases to a minimum of 5 years and a maximum of life imprisonment and a fine of at least Rp 200.000,000.00 (two hundred million rupiahs) and a maximum of Rp 5,000,000,000.00 (five billion rupiahs) if the victim dies.

This Law seeks to ensure that all parties directly or indirectly involved in the crime of human trafficking receive the fairest possible punishment. Individuals, groups, corporations, and state officials who openly commit human trafficking, even if they only help during the crime process, such as offering, will be punished according to how much they contribute. The Law also addresses protection, restitution, and rehabilitation for victims. Victims are treated specially by this Law, even in evidence; one piece of evidence in the form of a victim-witness statement plus one piece of legal evidence can be used to prove the defendant is guilty. In contrast to other general crimes, where there is a provision that one witness is not a witness, the testimony of a witness is not sufficient to be considered as evidence (Bunaen, 2015).

Apart from Law 21/2007, several other legal bases contribute to handling human trafficking cases in Indonesia. These include Law No. 39/1999 on Human Rights, Law No. 13/2006 on Witness and Victim Protection, Law No. 35/2014 on Child Protection, and various international treaties relating to eradicating human trafficking. Regarding cross-border trafficking, such as the case that occurred at the Indonesia-Malaysia border, under this Law, if a citizen becomes a victim and is abroad, the Indonesian Government, through its representatives abroad, will make every effort to provide protection and immediately repatriate the victim at a cost entirely borne by the state. Moreover, suppose it turns out that in Indonesia, foreign citizens are victims of human trafficking. In that case, the Indonesian Government will also provide protection and seek repatriation to the country of origin through its representatives in Indonesia.

In Malaysia, the provisions regarding human trafficking are regulated in the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007. In this Act, human trafficking is defined as “all actions of recruiting, conveying, transferring, acquiring, maintaining, harboring, providing or receiving, a person, for exploitation, by the following means: (a) threat or use of force or other forms of coercion; (b) abduction; (c) fraud; (d) deception; (e) abuse of power; (f) abuse of the position of the vulnerability of a person to an act of trafficking in persons; or (g) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person.”

Similar to Indonesia, Malaysia provides different penalties for perpetrators of human trafficking. Moreover, the punishment will be more severe if the victim is a child. Some of its provisions if a person is found guilty of committing an act of human trafficking: (Section 12) A victim other than a child or a person with a physical or mental disability is punishable with a maximum sentence of 15 years imprisonment and a fine; (Section 13) A victim other than a child or a person with a physical or mental disability that causes serious injury, death, suicide, HIV and AIDS infection, the perpetrator belongs to a criminal group, or the perpetrator belongs to a public official, is punishable with a minimum sentence of 5 years

imprisonment and caning; (Section 14) A child victim or a person with a physical disability is punishable with a minimum of 5 years imprisonment and a maximum of life imprisonment with flogging; (Section 15A) An offender who takes transit of a trafficked person within Malaysia is punishable with 15 years imprisonment and a fine.

Not only regulates the criminal liability of the perpetrator, this Act also governs the rights of victims, including (Section 42) The right to stay temporarily in a shelter; (Section 45) The right to medical assistance; (Section 47) The right to hospitalization; (Section 51A) The right to freedom of work; (Section 53) The right to guardianship from parents or relatives; (Section 54) The right to be repatriated to the country of origin; (Section 66A) The right to restitution; (Section 66B) The right to receive unpaid wages. As long as victims of human trafficking have not been repatriated to their country of origin, they will stay in a place provided by the Malaysian judiciary as protection and efforts to restore the victim's condition. This situation is a continuation of the National Anti-Trafficking and Anti-Migrant Smuggling Action Plan as an effort to combat human trafficking in Malaysia, and the responsibility is held by the Ministry of Home Affairs and Majlis Anti-Trafficking and Anti-Migrant Smuggling (MAPOM) (Susanti et al., 2022).

Human trafficking on the Indonesia-Malaysia border requires intense resolution, considering that both countries are bound and responsible for following up on crimes in their jurisdictions. Indonesia and Malaysia must be equally involved in the case-handling process, especially restoring the victim's condition. This improvement is because the purpose of punishment is not only to provide a deterrent effect to the perpetrator but also to restore the victim's condition to its original state (Hakim, 2020). Human trafficking is an international problem. To solve this, a comprehensive global approach is needed by involving countries of origin, transit, and destination in each stage, starting from prevention, repression, law enforcement against perpetrators, and protection for victims (Sahetapy et al., 2022). Therefore, in addition to the two countries each having laws explicitly dealing with the crime of human trafficking, to combat this crime, they also cooperate in the form of agreements with the aim that the crime of human trafficking, which mainly involves both parties, can be resolved and resolved to the maximum. Some of these are international agreements, such as the Cooperation Agreement on the Badan Perlindungan Pekerja Migran Indonesia (BP2MI). The presence of PMI in the domestic sector in Malaysia ensures better protection, especially in terms of fulfilling the rights of Indonesian migrants working in Malaysia. The number of Indonesian citizens who choose to work in Malaysia is challenging for both countries. Indonesia should not be negligent in protecting its citizens who leave the country, and Malaysia does not know that human trafficking crimes have occurred in its territory, especially in terms of safeguarding Indonesian Migrant Workers (TKI).

As in past news, Indonesian Migrant Workers (TKI) are vulnerable to becoming victims of human trafficking. (Rajagukguk, 2020). The presence of BP2MI is expected to be a means for Indonesia and Malaysia to provide a sense of security for anyone who migrates to Malaysia INDOMALPHI Cooperation, which is a cooperation between Indonesia, Malaysia, and the Philippines as a form of rapid action on a series of robbery and kidnapping activities by the Abu Sayyaf group in the Sulu Sea. The aim is to prevent similar incidents and other severe maritime crimes such as terrorism, kidnapping, robbery, or transnational crimes such as human trafficking from happening again along the sea borders of the three countries (Atamimi et al., 2020); MALSINDO Cooperation, which is a cooperation between Malaysia, Singapore, and Indonesia in maintaining security in the Malacca Strait by conducting structured patrol activities and strengthening relations between the navies of each country (Magfirah & Wijaya, 2017); and The ASEAN Convention Against Human Trafficking in Persons, Especially Women, and Children (ACTIP) is an agreement resulting from the 27th ASEAN meeting forum which is contained in the renewal of the ASEAN Declaration Against Human Trafficking in Persons Particularly Women and Children. This declaration was then followed by the birth of the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children (APA). This series of activities is an effort by all ASEAN member countries to eradicate human trafficking, especially in Southeast Asia. The focus of ACTIP is to strengthen preventive policies against human trafficking, strengthen legal protection for victims, strengthen law enforcement during the legal process, and maintain regional cooperation between countries and internationally in handling human trafficking cases. While APA circulates policies in the form of strengthening legal policies and controls at the borders of ASEAN member states, maximizing efforts in the prosecution of human traffickers, and Strengthening ASEAN regional cooperation to effectively deal with demand and supply suspected of growing potential for human trafficking crimes (Khairi, 2021).

Table 1. Comparison of Law

Comparison Aspect	Indonesia	Malaysia
The Role of Law	Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons.	Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007.
Definition	Trafficking in persons is the Act of recruiting, transporting, harboring, sending, transferring, or receiving a person by threat of violence, use of force, abduction,	All actions of recruiting, conveying, transferring, acquiring, maintaining, harboring, providing, or receiving a person for exploitation by the following means: (a) threat or use of force

	<p>harboring, falsification, deception, abuse of power or vulnerable position, debt bondage or giving payment or benefit, to obtain the consent of the person who has control over the other person, whether carried out within the country or between countries, for exploitation or resulting in exploitation.</p>	<p>or other forms of coercion; (b) abduction; (c) fraud; (d) deception; (e) abuse of power; (f) abuse of the position of the vulnerability of a person to an act of trafficking in persons; or (g) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person.</p>
Punishment	<p>Any person who commits recruitment, transportation, harboring, sending, transferring, or receiving a person by threat of violence, use of force, abduction, harboring, falsification, deception, abuse of power or position of vulnerability, debt bondage, or providing payment or benefit despite obtaining the consent of a person who has control over another person, to exploit that person in the territory of the Republic of Indonesia, shall be punished with imprisonment of not less than 3 (three) years and not more than 15 (fifteen) years and a fine of not less than Rp120,000,000.00 (one hundred twenty million rupiahs) and a maximum of Rp600,000,000.00 (six hundred million rupiahs) (Article 2 paragraph (1)).</p>	<p>Any person who traffics in persons not being a child for exploitation commits an offense and shall, on conviction, be punished with imprisonment for a term not exceeding fifteen years and shall also be liable to a fine (Section 12).</p>
Principle Punishment	<p>Imprisonment, Fines, and Confinement.</p>	<p>Imprisonment and Fines.</p>

Additional Punishment	In addition to the main punishment, this additional punishment is also given if the perpetrator is a corporation, namely (Article 15 paragraph (2)) <ol style="list-style-type: none">a. revocation of business license;b. confiscation of assets resulting from criminal offense;c. revocation of legal entity statusd. dismissal of the management, and/ore. prohibition to the administration to establish a corporation in the same line of business.
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Source: Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons and Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007

While handling more specific human trafficking cases, Indonesia and Malaysia have both been bound by an extradition treaty, which is a law that regulates the procedure for transferring suspects, defendants, or convicts from one country to another for trial under the laws of the requesting country. In this case, an example can be realized with bilateral cooperation between the Indonesian National Police (POLRI) and the Malaysian Royal Malaysian Police in eradicating and dealing with transnational crimes based on (Sutiarnoto et al., 2013): (1) Extradition Treaty between the Republic of Indonesia and Malaysia (Law No. 9 of 1974 on the ratification of the treaty between the Government of the Republic of Indonesia and the Government of Malaysia regarding Extradition); (2) Mutual Legal Assistance in Criminal Matters; (3) Memorandum of Understanding Between The Indonesian National Police and The Royal Malaysia Police on Combating ILLICIT Trafficking in Narcotic, Drugs, Psychotropic Substances, Precursors, Hazardous Materials and Enhancement of Police Cooperation. As an example of its application, if Malaysians are suspected of being perpetrators of human trafficking fleeing to Indonesia, then Malaysian law enforcement officers

may enter the jurisdiction of Indonesia to pursue the perpetrators and vice versa. This mechanism is to combat and eradicate human trafficking now and in the future (Abimanyu 2022).

Legal Evaluation from an International Law Perspective of Trafficking Law Enforcement in Indonesia and Malaysia

Law is part of policy, and Law is included in public policy. Policy evaluation is a must as a further effort to achieve the policy's objectives. This evaluation consists of the Law, considering that the Law is part of public policy. According to Jones (Kawengian & Rares, 2015), there are three forms of policy evaluation: Political evaluation departs from the nature of the benefits provided by the policy to the state. So, this evaluation measures what benefits the state gets after the procedure is implemented. Organizational evaluation is based on how much the implementing agencies contribute to implementing the program. This evaluation focuses on what efforts have been made by state agencies responsible for handling human trafficking cases and what results have been obtained; and Substantive evaluation, which is an evaluation of the level of success of a policy in achieving its objectives and how influential the policy is on the problems faced. So, this evaluation will assess how effectively the Law eradicates human trafficking.

International Law views human trafficking as an extraordinary crime and can only be resolved if countries worldwide are actively and intensively involved. Even in this case, international Law has its parameters to assess how far a country's ability to handle human trafficking cases is in its country. This assessment milestone is based on the Trafficking Victims Protection Act (TVPA), which contains minimum standards for addressing human trafficking issues. Furthermore, regarding the human trafficking policies of Indonesia and Malaysia, based on Jones' concept of evaluation, if viewed from the perspective of international Law, the evaluation will be attributed to the minimum standard (TVPA), which will cover all stages of the policy starting from the prevention stage, the law enforcement stage, to the legal protection stage. The minimum standard TVPA is: "For purposes of this chapter, the minimum standards for the elimination of trafficking applicable to the Government of a country of origin, transit, or destination for victims of severe forms of trafficking are the following: (1) The country's Government should prohibit severe forms of trafficking in persons and punish acts of such trafficking; (2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the Government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault; (3) For the knowing commission of any act of a severe form of trafficking in persons, the Government of the country should prescribe

punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense; and (4) The country's Government should make serious and sustained efforts to eliminate severe forms of trafficking in persons.

There are also criteria to consider as an indication of a country's severe and consistent efforts to eradicate all forms of human trafficking, which are: (1) Whether the Government is disciplined in prosecuting perpetrators of human trafficking crimes by investigating, charging, and punishing those who are fully or partially responsible. Serious consideration should be given to suspending or reducing sentences for severe human trafficking crimes. Governments should be able to provide data on human trafficking investigations, prosecutions, and convictions regularly by September 30 of each year through their Minister of Foreign Affairs. If a country fails to provide such data, it is considered not to have investigated, prosecuted, or convicted human trafficking crimes; (2) Whether the Government protects victims of severe human trafficking and engages in all legal remedies, including providing legal alternatives for the removal of victims from their country of exploitation. Governments should also ensure that victims are not imprisoned, fined, or otherwise penalized for any unlawful acts they commit due to their trafficking. This includes providing training to law enforcement officials with a needs-based approach; (3) Whether the Government has made preventive efforts to prevent trafficking from occurring from the most basic level such as informing to educating and facilitating everything necessary so that no citizen becomes a victim of human trafficking abroad; (4) Whether the Government has cooperation with other governments in the investigation and prosecution of human trafficking crimes; (5) Whether the Government extradites traffickers in accordance with existing provisions as well as other perpetrators of serious crimes; (6) Whether the Government regularly monitors migration and emigration routes for evidence of human trafficking activities, and whether the state institutions respond to these efforts by directly conducting investigations or other supporting measures, as well as whether there is legal harmonization in protecting the internationally recognized human rights of victims to leave the destination country back to the country of origin; (7) Whether the Government of the country takes firm action against its officials who are involved in human trafficking activities in any form both at home and abroad; (8) Whether a percentage of victims of human trafficking are citizens of the country; (9) Whether the Government, based on its capacity, is able to provide information to the public about its efforts to fulfill the criteria in paragraphs (1) to (8) and monitor and maintain the stability of these efforts; (10) Whether the Government of the country has made progress from the previous year in combating the crime of human trafficking; (11) Whether the Government of the country has succeeded in reducing the demand for (a) commercial sex acts; and (b) participation in international sex tourism by its own nationals.

From the above assessment, all countries will be divided into four tiers, namely: (1) Tier 1 countries whose governments have successfully met the minimum standards of the TVPA; (2) Tier 2 countries whose governments have not fully met the minimum standards of the TVPA but are making significant efforts to meet the standards; (3) Tier 2 watch list countries whose governments have not fully met the minimum standards of the TVPA but are making significant efforts to conform to the standards, but The number of victims and the forms of trafficking that occur in the country are still severe and tend to increase; b. There has not been successful in proving an increase in efforts to eradicate human trafficking from the previous year; c. There is a commitment from the country to take additional steps in the next year; (4) Tier 3 countries still need to meet the minimum standards of the TVPA and have yet to show significant efforts to meet these standards. In 2023 based on the United States Report, Indonesia will be included in the Tier 2 group, while Malaysia will be included in the Tier 2 watch list. This change is an improvement for Indonesia and Malaysia because, in 2022, both countries were 1 tier lower than this year.

When examined using political evaluation based on TVPA's minimum standards, Law No. 21/2007 on the Eradication of Trafficking in Persons and the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 has not been able to provide tangible benefits to the state. In the prevention stage alone, both countries have no database system that offers complete and detailed centralized data from the investigation, prosecution, and execution stages, which impacts the obstruction of the law enforcement process. Prevention is the most crucial stage and the first door to preventing human trafficking crimes. Sometimes, the data in the regions differ from the data in the center, which hampers the legal process (United States of America, 2023). Suppose a country has a good and comprehensive database. In that case, it can know precisely the critical aspects of the human trafficking problem, such as the number of cases, data on the perpetrators, and the number of victims. For example, whenever a country arrests a human trafficker, the authorities can simultaneously trace other human trafficking syndicates. Thus, people who have become victims can be rescued immediately, or at least people who want to be trafficked do not need to become victims. More importantly, with adequate data, the Government can read the patterns of the perpetrators so that if actions lead to human trafficking activities, the Government can act immediately.

An example is what Santoso formulated (Sulaksono, 2018): Legal-entry and illegal stay and Illegal-entry and unlawful stay. In addition to these two patterns, if countries have good data collection, other ways can likely be identified to increase a country's knowledge in combating human trafficking. However, this is still difficult to achieve because the data collection of both countries is still messy, so there are likely to be cases that need to be mapped by the system. Untraceable human trafficking activities affect the state's ability to enforce the Law because

those in need cannot enjoy the expected justice. Good data collection will make it easier for the state to track the whereabouts of perpetrators and victims. This exemplary data collection can reduce unwanted possibilities, such as authorities mistakenly arresting, detaining, or deporting unidentified victims. The data results can also be used as a basis for evaluation to find solutions to problems in the future.

On the other hand, in Malaysia, human trafficking is vulnerable to being equated with immigrant smuggling as both crimes are governed by the same Act (United States of America, 2021) (Takdir, 2022). Knowing the definitions and differences is the first step in enforcing the Law. Harmonizing the understanding between human trafficking and smuggling is urgent to avoid legal confusion when taking action. Not to mention that Indonesia and Malaysia do not have national SOPs to proactively identify victims, especially those from minority victim groups such as men, stateless people, and victims forced at sea (United States of America, 2022). Forced labor is another form of human trafficking because it often involves violence. This form of human trafficking often involves other elements as well. Aside from the involvement of several countries of origin, transit, and destination, it also involves syndicates of unregistered or even registered organizations and a repository of profits (Wibowo et al., 2020). The fact that most victims of human trafficking are women and children and those exploited on land means that men and those working on the sea, who could also be victims of human trafficking, are marginalized. The governments of both countries must immediately rush to implement systematic SOPs throughout their countries so that all people who need justice can get it.

The subsequent evaluation is an organizational evaluation. This evaluation examines the performance of relevant parties in handling human trafficking cases. In its implementation, the parties do not have a communicative relationship. Different agencies tend to have additional knowledge about the number of cases, victims, and conditions, resulting in a lack of synchronization between the numbers identified and the actual situation. In addition to an incomplete database, this is also due to one of the authorities needing to report their findings in the field after an inspection. Alternatively, the Government could not follow up on the reported findings, resulting in a legal vacuum (United States of America, 2022). The activity of each state agency in combating human trafficking from the highest to the lowest level is unstable. Some anti-trafficking task forces in some regions need to be funded with more and more resources, resulting in suboptimal performance. Even Malaysia only has two judges specializing in human trafficking (United States of America, 2023). Sometimes, the authorities are passive and tend only to move when the problem starts to go viral. This situation needs to reflect a firm attitude in responding to occurring crimes. The state should always be ready to eradicate corruption without being asked or even demanded, considering that it is an obligation the people have committed. In addition, unfavorable

communication due to the rigid nature of laws between the two countries has also caused legal delays in handling human trafficking cases, especially cases involving both countries. Although both countries have committed under the Law to protect and facilitate victims from other countries, the complicated regulations from the investigation to the sentencing process take a long time. As a result, many victims prefer to return to their home countries immediately and are reluctant to participate in the legal process.

The lack of coordination between authorities allows for errors in the prosecution process that lead to perpetrators not being adequately punished; for example, perpetrators who should have been charged with trafficking under the Trafficking in Persons Act were instead punished with sexual violence under the Criminal Code. Not to mention the culture of corruption between the two countries that have never found common ground, hindering the process of handling human trafficking (Mattar, 2006). The crime that thrives has the potential to grow new cases because the parties involved will inevitably disregard the truth for personal gain. Usually, state officials will cooperate with a collection of evil people and help them. Alternatively, in other words, officials facilitate human trafficking crimes. The assistance provided ranges from administrative levels, such as promoting the issuance of fake documents, giving permission to brokers to transport victims without official documents through the border, to actions, such as providing protection to places where trafficking is practiced, intimidating victims and witnesses during the legal process, and being negligent during the supervision process. Even if the authorities catch corrupt officials, their penalties tend to be unreasonable. Some are only imprisoned for a short period, and others are transferred or demoted. (United States of America, 2023). Whereas for corruption that indicates that there is involvement from other countries, it can be extradited so that it is appropriate for the countries involved to provide each other with the broadest possible action during the legal process so that the punishment given can be commensurate with the consequences caused (United Nations Convention against Corruption, 2003). This situation worsens because corruption is generally not done alone and involves many actors. So that each other will protect each other that the crime is not exposed, which can be concluded if impunity for involvement in human trafficking crimes still exists. Although success in enforcing the Law depends on the joint commitment of the Government and society, if state officials cannot fulfill their responsibilities, how can justice be served? (AS et al., 2020).

Finally, there is substantive evaluation. This evaluation focuses on the success in achieving the objectives and the impact on handling human trafficking cases. The existence of Indonesia in the Tier 2 group and Malaysia in the Tier 2 watch list cannot be separated from the efforts made. This situation is a reflection of the actions and results obtained. Many field findings show incomplete legal

processes involving and not involving victims during the handling process. Many investigations have been neglected, and many prosecutions have stalled, allowing perpetrators to return to the streets. Not to mention the victims whose rights are ignored. Many victims return to their home countries due to slow legal processes and tough negotiations. This situation happened because victims had to stay in shelters with limited access. They cannot move freely and are not even allowed to work, making it difficult to fulfill their daily lives for security reasons. The conditions of the shelters are also unattractive and can vary from region to region. The victims are made uncomfortable because they are also intimidated by the perpetrators (United States of America, 2021). Even Malaysia lacks language interpreters, and legal assistance is only provided to people sentenced to death, further exacerbating the situation. (Hidayat, 2017).

Furthermore, although Malaysian Law allows victims to give testimony via video or recording, some judges still ask for victims' testimony in person, and many victims are reluctant to participate. The right to compensation and restitution that victims should have received was not fully realized. Some verdicts did not even mention rebates. The main objective of the Law, which is not just revenge and providing a deterrent effect but also includes the restoration of victims' rights, has not been achieved. There are still many legal gaps that make justice challenging to achieve. Even at the prevention stage, the governments of both countries have not provided comprehensive education for their citizens. Many citizens do not even know that there is a law against human trafficking. This condition broadly impacts individuals, families, and the environment. Sometimes, the victim's ignorance of human trafficking is the reason. For example, parents unknowingly sell their children to traffickers (Yusitarani & Sa'adah, 2020). Cooperation from victims is needed to make it easier for law enforcement officials to take action against human traffickers because, sometimes, human trafficking cases are uncovered after a report. Limited human resources and capabilities of the authorities are often an obstacle in investigating human trafficking activities (Pusat Informasi Kriminal Nasional, 2022).

The laws of Indonesia and Malaysia are still unable to deal with the problem of human trafficking in their countries. Indonesia still needs to improve many things in its law enforcement, even from the most basic level, namely the formulation of laws, because the existing rules still need to be considered complete and universal. This formulation is because some acts still violate human rights that have not been regulated. So, reform needs to be done by adding, reducing, or adjusting regulations regarding human rights violations that are still related to economic, social, cultural, and political interests (Nuraeny, 2016).

Law enforcement against traffickers in Malaysia is not optimal because the Law considers victims of human trafficking as administrative offenders. This situation is reinforced by the PDRM, which stated that the investigations carried

out failed in ensnaring the perpetrators because no elements of coercion or exploitation were found. The Malaysian study concluded that the victims came to Malaysia voluntarily. Malaysia also does not have definite regulations regarding minimum wages for migrant workers who work as domestic servants. The work of domestic helpers is considered informal work and is not officially regulated in the labor law. As a result, there is no regulation on the minimum wage that domestic helpers can earn. Malaysia also opposes legally binding and human rights-based protection standards for illegal migrants. Thus, victims trafficked under the pretext of becoming migrant workers are vulnerable to difficulties facing the Law. The above is bad news for Indonesia, considering that many of its citizens are in Malaysia to become migrant workers.

In contrast, migrant workers are very vulnerable to becoming victims of human trafficking. So far, cases of human trafficking in the domestic worker sector have not affected relations between Indonesia and Malaysia. In response, Malaysia tends to be ambivalent because Indonesian workers want to work in the construction and agriculture sectors with low wages. At the same time, many local Malaysians refuse to work in the 3D (dirty, dangerous, and complex) sector (Wahyurudhanto, 2019). Although Indonesia knows migrant workers as economic saviors, maximum efforts have not accompanied this. Both Indonesia and Malaysia must work harder to eradicate human trafficking at the national and international levels. If they do not improve immediately, it will be a question in the future whether justice can be fought for with conditions that are certainly far more complicated with far more modern forms of crime, considering technology develops every day. Both at the stages of prevention, enforcement, and legal protection, it turns out that there are still many legal defects. So, evaluation is needed to improve the existing situation.

D. CONCLUSION

Human trafficking is a criminal offense that violates human rights. Human trafficking activities in a country are not only national but also international. Human trafficking is classified as a transnational organized crime, a cross-border crime involving criminal groups working together to commit crimes. Indonesia and Malaysia have consistently combated human trafficking over the past decade, especially cases in the Indonesia-Malaysia border region, a vulnerable area for human trafficking. Many efforts have been made, especially presenting Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons and the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 as a legal umbrella in cracking down on human trafficking. In addition to the two countries making their laws that apply in their jurisdictions, Indonesia and Malaysia are also involved in cooperation both bilaterally and multilaterally. It is intended that if human trafficking involves both countries, such as the occurrence of human

trafficking in the border area, the problem can be appropriately handled without legal confusion. However, what has been implemented is still not good enough from the international law perspective. Indonesia is still in Tier 2, while Malaysia is on the Tier 2 watch list. The governments of Indonesia and Malaysia have not met the minimum standards set out in the Trafficking Victim's Protection Act (TVPA), such as lack of funding, lack of human resources, incomplete databases, slow government response, and chaotic protection of victims. The governments of both countries must immediately move to improve all existing shortcomings, starting from the level of prevention and law enforcement to victim protection. Because if the Government is slow to improve, it will be challenging to combat human trafficking at the national and international levels.

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Legal Provision

Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007

Trafficking Victim's Protection Act

Law No. 01/1946 on the Criminal Code

Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons

ACKNOWLEDGMENTS

The authors would like to express their sincere gratitude to all those who have provided invaluable support, both material and moral, during the research and writing of this article.

COMPETING INTEREST

The authors declare that there are no competing interests.