



CILIS FACTSHEET 3

Indonesian Law on the Eradication of Human Trafficking

By Nurul Azizah Zayzda

This Factsheet covers:

- What is the current human trafficking law in Indonesia?
- How does the Eradication of the Criminal Acts of Trafficking in Persons Law define Human Trafficking?
- How does the consent of the victim affect law enforcement against the perpetrator?
- How do the Eradication of the Criminal Act of Trafficking in Persons Law and other related regulations protect and provide remedies for victims and survivors?
- Protection of Indonesian Migrant Workers from Human Trafficking

What is the Current Human Trafficking Law in Indonesia?

Law No. 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons is the first Indonesian statute that specifically stipulates measures to counter human trafficking (including through community engagement) and protect victims.

Before the introduction of this law, human trafficking was regulated only by:

- Article 297 of the Criminal Code, which stipulated the criminal offence of trafficking women and male children.
- Law No. 23 of 2002 on Child Protection, which prohibits the trafficking, selling or kidnapping children.
- Presidential Decision No. 88 of 2002 on the National Action Plan on the Eradication of Trafficking of Women and Children, which establishes a task force working under the President to coordinate eradication of human trafficking through advocacy, monitoring and evaluation, and cooperation between government agencies at national and international levels.

The structure of Law No. 21 of 2007 is as follows:

Chapter I	General Provisions
Chapter II	Criminal Act of Trafficking in Persons
Chapter III	Other Criminal Actions Relating to the Criminal Act of Trafficking in Persons
Chapter IV	Investigation, Prosecution, and Examination in a Court Proceeding
Chapter V	Protection of Witnesses and Victims
Chapter VI	Prevention and Treatment
Chapter VII	International Cooperation and Community Participation
Chapter VIII	Transitional Provisions
Chapter IX	Closing Provisions

A number of regulations have been introduced to implement the 2007 Law. The first was Presidential Regulation No. 69 of 2008 on the Task Force for the Prevention and Handling of Human Trafficking Crimes. This was amended by Presidential Regulation No. 22 of 2021 and again by Presidential Regulation No. 49 of 2023.

The 2007 Eradication of Human Trafficking Law was partly repealed by Law No. 1 of 2023 on the Criminal Code. Article 455 of the new Criminal Code increased the length of imprisonment that could be imposed on perpetrators of human trafficking. However, these amendments will not come into effect until 2026.

In 2015, Indonesia, along with other ASEAN member countries, signed the ASEAN Convention Against Trafficking in Persons, Especially Women and Children. Indonesia ratified the Convention through Law No. 12 of 2017. This Convention calls for legislation on the criminalisation of human trafficking, policies to prevent and cooperation among the member states.

How does the Eradication of the Criminal Act of Trafficking in Persons Law define the Crime of Human Trafficking?

A definition of human trafficking appears in Article 1(1) of the 2007 Eradication of Human Trafficking Law:

Trafficking in persons shall mean the recruitment, transportation, harbouring, sending, transfer, or receipt of a person by means of threat or use of violence, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within the country or cross border, for the purpose of exploitation or which causes the exploitation of a person.

This definition reflects the UN Protocol, which defines human trafficking as consisting of three elements: act, means and purpose.¹ The ‘**act**’ element in the above article is the “recruitment, transportation, harbouring, sending, transfer, or receipt of a person”.

The ‘**means**’ element is the “threat or use of violence, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”.

The ‘**purpose**’ element is “exploitation of a person”, which is defined in paragraphs (7) of Article 1 of the 2007 Human Trafficking Law as:

[...] Exploitation shall mean an act committed **with or without the consent** of the victim which includes but is not limited to prostitution, forced labour or service, slavery or practices similar to slavery, repression, extortion, physical abuse, sexual abuse, abuse of the reproductive organs, or the illegal transfer or transplantation of

1 Nathalina Naibaho, ‘Victim Protection and The Dynamic Situation of Human Trafficking: Indonesia Experience’ (2023) 20(4) *Indonesian Journal of International Law* <<https://scholarhub.ui.ac.id/ijil/vol20/iss4/3>> (‘Victim Protection and The Dynamic Situation of Human Trafficking’).

body organs or the use of another persons' labour or ability for one's own material or immaterial profit.

Aside from the actions included in the 'act' element above, Chapter II of this Law specifies criminal acts of human trafficking as including the following:

- (1) bringing or taking another person into or outside Indonesian territory with the intention to exploit;²
- (2) adopting a child by promising or giving something with the intention to exploit;³
- (3) Sending a child within or to another country that causes such child to be exploited;⁴
- (4) abusing authority as a state official resulting in trafficking in persons;⁵
- (5) attempting to cause another person to commit the criminal act of trafficking in persons;⁶
- (6) assisting and attempting to commit the criminal act of trafficking in persons;⁷
- (7) planning and participating in an unlawful conspiracy to commit the criminal act of trafficking in persons;⁸ and
- (8) taking advantage of, or employing victims of, the criminal act of trafficking in persons or benefitting from the result of the criminal act.⁹

How does the Consent of the Victim Affect Law Enforcement Against the Perpetrator?

Article 26 provides an important provision related to the consent of victims: "The consent of a victim of the criminal act of human trafficking shall not prevent the prosecution of the offender of such crime."

This article reflects the UN Protocol, which states that as long as the 'means' element is met, the consent of the victim is irrelevant. The Protocol also provides that for the cases in which victims are children or minors, the 'means' element does not need to exist for an action to be categorised as criminal act of trafficking in persons.¹⁰ However, the 2007 Eradication of Human Trafficking Law does not specifically stipulate this principle regarding a child victim's consent. As a result, ICJR research has identified a trial where a victim was questioned regarding his or her consent. In a case of child sexual exploitation in Lombok, the judge decided that the 'purpose' or exploitation element was not met because the victim agreed to work with the perpetrator.¹¹

2 Article 3 and 4 of Law No. 21 of 2007.

3 Article 5 of Law No. 21 of 2007.

4 Article 6 of Law No. 21 of 2007.

5 Article 8 of Law No. 21 of 2007.

6 Article 9 of Law No. 21 of 2007.

7 Article 10 of Law No. 21 of 2007.

8 Article 11 of Law No. 21 of 2007.

9 Article 12 of Law No. 21 of 2007.

10 Naibaho (n 2).

11 Mataram Court Decision No. 310/Pid.Sus/2020/PN.Mtr, cited from Institute for Criminal Justice Reform, 'Perlu Segera Mereformasi Kebijakan Anti Perdagangan Orang Di Indonesia' (30 July 2021) <<https://icjr.or.id>>.

How do the Eradication of the Criminal Act of Human Trafficking Law and other Related Regulations Protect and Provide Remedies for the Victims and Survivors?

Articles 45, 46 and 47 of the 2007 Eradication of Human Trafficking Law deal with the protection of witnesses and victims:

- (1) A special service unit at the local police station must be established in each province and district/municipality for the purpose of examining witnesses and/or victims during investigations of cases of criminal acts of human trafficking.
- (2) An integrated service centre may be established in each district/municipality for witnesses or victims of a criminal act of human trafficking.
- (3) In the event a witness and/or victim and their families receive threats that pose a risk to their well-being, lives, and/or assets, the Indonesian National Police is obliged to provide protection before, during, and after court trial.

There is no specific provision in the 2007 Eradication of Human Trafficking Law dealing with the protection of women. However, Supreme Court Regulation No. 3 of 2017 provides guidelines for handling cases involving women.¹² It provides that judges must understand and apply the principles for trying cases that involve women,¹³ identify unequal treatment that causes discrimination against women, and guarantee women's rights to equal access in pursuing justice.¹⁴

Articles 38, 39 and 40 of the 2007 Eradication of Human Trafficking Law sets guidelines for the treatment of children. They state that investigation, prosecution, and court examination should take place without court costumes (robes, etc) or official uniforms. Trial examinations should be conducted in closed sessions and children must be accompanied by parents, a custodian, foster parents, legal counsel or other escort, and without the presence of the defendant.

Article 48 of the 2007 Eradication of Human Trafficking Law provides for restitution for victims or his/her beneficiaries. This consists of compensation for loss of assets or income, suffering, costs of medical and/or psychological treatment, and /or other losses suffered by the victim arising from the criminal act of trafficking in persons.

Article 51-55 sets out rights and duties related to rehabilitation. A victim is entitled to medical and social rehabilitation, assistance to return to their place of residence, and social reintegration from the government if he or she suffers physical and psychological hardship because of a criminal act of trafficking in persons. It needs to be noted that victims need to make a claim to receive rehabilitation and that assistance to return can be provided only if the victim is willing to return and there is no risk to his or her safety in doing so.

Article 54 specifically concerns victims who are Indonesian citizens located in another country or foreign nationals located in Indonesia. The Indonesian government, through its representative mission in another country, has the obligation to protect the person and interests of the victim, and must make efforts to return Indonesian victims to Indonesia, the expense arising from which will be borne by the state. If the victim is a foreign national located in Indonesia, the Indonesian government must make efforts to provide protection and return the victim to his/her country of origin through coordination with the representative of such country in Indonesia.

The assigned minister or agency in charge of rehabilitation is obliged to provide medical and social rehabilitation, assistance to return, and social reintegration no later than 7 days from the date of the claim. National and provincial governments are required to establish shelter and trauma centres for the purpose of providing medical and social rehabilitation, return assistance, and social reintegration. Community or social organisations are also encouraged to establish shelters or trauma centres.

12 Naibaho (n 2).

13 These principles consist of respect for human dignity and honour, non-discrimination, gender equality, equality before the law, justice, expediency and legal certainty.

14 Articles 2 and 3 of Chapter II on Principles and Aims, Law Supreme Court Regulation No. 3 of 2017

Another victim protection provision in the Law is Article 18, which states, “A victim who commits a crime under coercion by an offender of the criminal act of trafficking in persons shall not be liable to criminal charges.” It can be concluded that the Law recognises trafficking for forced criminal activity as a prohibited form of exploitation.¹⁵

Who is Involved in the Taskforce on the Eradication of Human Trafficking and What are Its Powers?

Article 58 of the 2007 Eradication of Human Trafficking Law assigns the obligation to prevent and address the crime of trafficking in persons to national and regional governments. It further orders that national and regional governments must form taskforces that should involve government, law enforcement agencies, civic organisations, non-government organisations, professional associations, and researchers and scholars.

The government is obliged to allocate a budget for these taskforces, which have the duties of coordinating, providing advocacy, monitoring law enforcement and conducting reports and evaluations. All matters related to the organisation, membership, budget and operating procedures should be regulated by a Presidential Regulation.

Presidential Regulation No. 69 of 2008 on the Taskforce for the Prevention and Handling of Human Trafficking Crimes mandated the formation of taskforces at the national, provincial, and *kabupaten* (regency) or municipality level. The national taskforce should report to the President. Article 4 confirms that the taskforce’s duties are those listed above. In addition, this Regulation specified the following:

- The provincial taskforce should report to the respective Governor, and the district or municipality taskforce to the respective *bupati* (head of a regency, that is, a county) or city mayor, and should work in coordination with the national task force.
- The national taskforce should be funded by the national budget specified by Ministry of Womens’ Empowerment, which minister is assigned the role of ‘Daily Chair’.
- The regional taskforce should be funded by the regional budget (provincial and regency/municipality).
- Should any task be assigned to specific government bodies as a result of taskforce coordination, the funding necessary for that task should be specified in the relevant government body’s funding.

This regulation was repealed by Presidential Regulation No. 22 of 2021 on Amendments to Presidential Regulation Number 69 of 2008. The new regulation assigned the national taskforce the function of formulating strategies and a national plan of action for the prevention and handling of the crime of human trafficking.

Presidential Regulation No. 19 of 2023 on the National Action Plan on the Prevention and Handling of the Crime of Human Trafficking of 2020-2024 introduced the first national action plan.

In the same year, Presidential Regulation No, 49 of 2023 was enacted to amend the National Task Force Regulation. Through this regulation, the daily chair position was transferred from the Minister of Women and Child Empowerment to the Chief of National Police. The budget for the national task force is now to be taken from the national police budget.

Other government bodies involved in law enforcement and protection of victims of trafficking include:¹⁶

- (1) Women and Children’s Protection Integrated Service Center (P2TP2A). This is an implementing unit of a regency or municipal government agency named the Women’s Empowerment, Child Protection, Population Control and Family Planning Agency¹⁷

15 Felicity Gerry Qc et al, ‘Is the Law an Ass When It Comes to Mules? How Indonesia Can Lead a New Global Approach to Treating Drug Traffickers as Human Trafficked Victims’ (2018) 8(1) *Asian Journal of International Law* 166 (‘Is the Law an Ass When It Comes to Mules?’).

16 Naibaho (n 2).

17 Dinas Pemberdayaan Perempuan, Perlindungan Anak, Pengendalian Penduduk dan Keluarga Berencana, ‘P2TP2A’, *Dinas Pemberdayaan Perempuan, Perlindungan Anak, Pengendalian Penduduk dan Keluarga Berencana Pemerintah Kota Malang* (Government website) <<https://sosdp3ap2kb.malangkota.go.id/p2tp2a/>>.

- (2) Women and Children's Services Unit (PPA), a special police unit responsible for providing protection services to women and children victims of crime and law enforcement against the perpetrators.¹⁸
- (3) Witness and Victim Protection Agency (*Lembaga Perlindungan Saksi dan Korban/ LPSK*), responsible for legal assistance and providing restitution.

Protection of Indonesian Migrant Workers from Human Trafficking

Indonesian migrant workers are vulnerable to becoming victims of human trafficking and, in fact, constitute the largest category of victims. Aside from the 2007 Law on the Eradication of Human Trafficking, Law No 18 of 2017 on the Protection of Indonesian Migrant Workers and their Family Members also upholds the 'anti human trafficking' principle. The Law regulates the protection of Indonesian migrant workers in three phases; before, during and after working.¹⁹

Although there is no specific provision on preventing human trafficking of Indonesian migrant workers, the provisions on 'before, during and after working' support the prevention of exploitation.

(1) *Before working protection*

In this phase, prospective employees' placement documents should be checked to ensure that they are complete and valid, and work conditions and terms of employment are known.²⁰ The Indonesian Labour Attache and/or appointed foreign official in the destination country of the worker is obliged to verify the business partners and prospective employees and periodically make a list of the problematic employers and business partners.²¹ The placement agency is obliged to place the employees in the type of job agreed in the Employment Contract. If it fails to do so, the agency will face administrative sanctions.²²

(2) *During working protection*

In this phase, protection measures should include supervision and evaluation of employers, jobs and work conditions, as well as assistance, mediation, advocacy and legal assistance provision in the form of advocacy services by the central government and/or Indonesian Missions.²³

(3) *After working protection*

The 'after working' measures include facilitation of return to the region of residence, settlement of any Indonesian migrant workers claims to rights that have not been fulfilled, and social rehabilitation and integration and empowerment of the Indonesian migrant workers and their families.²⁴

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18 Article 3 of Regulation of Chief of National Police No. Pol. 10 of 2007

19 Article 7 of Law No. 18 of 2017.

20 Article 8 of Law No. 18 of 2017.

21 Article 10 of Law No. 18 of 2017.

22 Article 19 of Law No. 18 of 2017.

23 Article 21 of Law No. 18 of 2017.

24 Article 24 of Law No. 18 of 2017.