

ONLINE SEX TRAFFICKING OF WOMEN AND CHILDREN IN INDONESIA: LEGAL PERSPECTIVES AND CHALLENGES

Milda, I. ^a, Kristiyanto ^b
Law Faculty, Brawijaya University, Indonesia
Corresponding Author : meeldha@yahoo.com

Abstract

As our life is getting interconnected by the so-called cyber-world, people are getting connected like never before, current generation of human civilizations is on the phase of unlimited interconnection. This unregulated cyber world has given so much advantages for human in general, however, in another side it also opens a window of threats, one of the threats towards this interconnected world of the internet today is online sex trafficking. This article examines the phenomenon of human trafficking in the context of sexual exploitation. It focuses on the patterns of online sex trafficking in Indonesia as well as legal perspectives and challenges. Finally, this article concludes that the Law Number 11 year 2008 on Information and Electronic Transaction and Law Number 44 year 2008 on Pornography is basically enough to counter online sex trafficking. However, these laws needs to be harmonized and synchronized with the current problems emerging in online sex trafficking.

Keywords: Online Sex Trafficking, Human Trafficking.

1. Introduction

With the population of more than 240 million people with diverse culture, ethnicity, race and beliefs. There are enormous problems emanating as to the consequence of these diversities. These problems varies economically, politically, culturally and so on. The rapid changes going around in the world for the past 30 years had given so much difference in almost all walks of life, in one side those differences are coming up in a positive way, in another side, it opens up negative things to come up. One of the fastest ever-changing fields since the earliest human civilization is technology, the fast acceleration of technology had resulted in much-more advanced human modernization, but again, as trends are getting more so-called "technologized", there are currently many technology-based crimes, ranging from hacking, cracking etc. However, when it comes to sex trafficking, technology had facilitated the criminals with a new perspective of doing crime like never before.

Sex trafficking, as widely known, remains one of the issues in developing countries. According to Global Report on Trafficking in Persons launched by the United Nations Office on Drugs and Crime (UNODC) provides information that number of cases in the case of human trafficking increase significantly in the last 5 years (UNODC, 2014). Efforts as well as policies have been designed to deal with the case. In fact, in s developing country such as Indonesia, this issue is still difficult to overcome. At least, based on observation so far, there are two factors contributing to human trafficking; push and pull factor respectively. The first relates to the situation in the place where the people originates from, while the second links to the place where people moves in.

There are several leading factors contributing to trafficking in Indonesia which including, criminal networks throughout Southeast Asia traffic young girls and women for sexual exploitation (Hayens, 2004). A lack of awareness when seeking jobs further compounds the vulnerability of women and children to be trafficked. As a result, approximately 30 percent of sex workers are younger than 18 years old (IRIN, 2009). These lack of awareness is a common trend in Indonesia where people are taking opportunity off because they lack in-depth consideration. Another leading factor is that corrupt law enforcers and weak enforcement of laws in dealing with trafficking cases which discourages victims from seeking protection and the prosecution of their traffickers (Human Trafficking, 2008).

The numbers of human trafficking in general and sex trafficking in particular is always in the increase year over year. The latest data from UNICEF showed that an estimated 100,000 women and children are trafficked from Indonesia annually. These data only showed the victims who are being trafficked overseas and did not include victims being trafficked locally, if the local trafficking is included the number is way higher than 100,000 (UNICEF, 2010). Despite there are so many cases going around, again the patterns and types of whether online or traditional sex trafficking remain the same, they are

told they are being recruited by the fake media, or even close friend, for positions as cultural ambassadors or traditional dancers in Japan. The recruitment process for Malaysia and Singapore promises them jobs in karaoke bars and restaurants as singers, hostesses, or even domestic workers. Nevertheless, when the women arrive in the said countries, they are instead forced into providing sexual services (Dasgupta, 2006). Labor migration is also a common types of human trafficking, legal and illegal, occurs in great numbers. An estimated 700,000 labor migrants have left Indonesia primarily to work in Malaysia and countries in the Middle East. Abuse against migrant workers, primarily illegal workers, is compounded by the fact that labor agencies control most aspects of the migration process from Indonesia to Malaysia with very little oversight from either government (Press Release, 2009).

Lack of opportunities, mainly in the villages where people originated has been recognized despite chronic poverty as the push factor on why people migrates (moves) to other places. With limited skills and education, villagers can be easily persuaded going to big cities. Higher wages, wide opportunities and open network are some features that the villagers perceived on living in big cities. On the other hand, demand on domestic worker and low-wages unskilled labor for manufacturing and construction industries is higher from time to time.

Thousands of people migrate from rural to urban areas. Some of them luckily get job while still many of them do not. For the later, informal business is the most relevant sector where they can get job though with low wages and no job insurances. These unskilled labor are mostly undocumented by official agencies and therefore the agencies are difficult to monitor and control. In most human trafficking cases, the doers are undocumented workers. However, research in this topic remains limited because of security and access issues.

Human trafficking becomes hot debate where it is known that the issue develops into other serious crime. One of them is online sex trafficking. As happening now in Indonesia, some metropolitan cities like Jakarta and Surabaya have been operating policy and regulation on banning prostitution. The closing of Dolly-one of the biggest prostitution area in Southeast Asia- is now trending topic (Mail Online, 2014). Surabaya's mayor; Tri Rismaharini, has successfully changed Dolly from prostitution area into children-friendly neighborhood with sufficient support for developing local businesses. Indeed, this is one of her achievements as being a Mayor. In fact, the prostitution business is not ended yet.

Being headline in local news, conventional prostitution like Dolly is now changing into 'modern type' of online business (The Jakarta Post, 2014). Operated easily like other online business, online prostitution is now developing into more serious business with transaction of millions rupiah (TribunNews, 2014). In this case, the age of prostitute ranges between 19-22 years. Many explanations on why they are part of the business but most commonly are the economic motives. In relation to this, social media like Facebook, messengers and the likes are used as media to interact among people who are in need for prostitutes. Cheap, simple and quick are the main advantageous offer by online prostitutes/prostitution.

As earlier stated, online prostitution becomes a new trend in the case of human trafficking. Different to conventional prostitution, the members of prostitution groups do not necessary have to show up their face or profiles to potential customers. Noted in the case of online prostitution in Surabaya, East Java, the brothel keeper said that she only shares name, short picture and tariff to customer. When it comes to business, the prostitute and customer may arrange their for place and time. About 30-40% from tariff will be taken by the brothel keeper for each transaction (Kompas, 2014).

Another trend and method of online prostitution, as mentioned by a brothel keeper from Bandung is to set a plan in different city, book the hotel and arrange the time. Accordingly, "this way is more beneficial to prostitutes as they get more customers and I get more money" (JPNN, 2014). Due to this scheme, the online prostitution business is hardly founded physically. From the statement made by accused woman who organized more than 1800 sexual workers in Surabaya, customer starts to ask for online prostitutes by asking the cashiers in spas or beauty centers. Then, information is given personally by sharing their PIN or mobile phone numbers. There are plenty of choices for customer to freely select their preferences. Young underage girls are the favorite in this case. In Jakarta, the business is also developing. A Police officer who arrested one of the brothel keepers said that the Police has monitored the operation of online prostitution long time ago, but no report has been made so far. This makes it difficult for the police to trace (Kompas, 2014).

Fairly admitted by the Police, online prostitution is an issue that is not easy to solve. Though the business is accessible and traceable, it is still difficult to stop as new members of prostitute are continuously coming. In addition, poverty is no longer the most common source of problem in online prostitution. Many prostitutes are identified as from rich family supported with sufficient allowance. For them, joining online prostitution is part of modern life style. However, it cannot be theorized so far that such life style contributes to the emerging and trending online prostitution.

As online prostitution developed increasingly, the prostitute might be from a different place in Indonesia. Young women from China, Russia, as well as from Morocco and other countries are found as part of wide network on online prostitution. This can be anatomically classified into transnational crime where national law and regulations are difficult to enact. It can be operationalized if one or two countries have arranged special agreement on that case accordingly (Kompas, 2014). Indonesia has regulated some policies related to online prostitution but not specifically on the case. For instance, Law 11/ 2008 on information and electronic transaction. Deeds distribute and / or transmit and / or make accessible electronic information and / or electronic documents that have a charge of violation of decency.

With the operation of online prostitution as well as human trafficking, initial efforts have been made. In 2013, there was a ministerial meeting held in Bali named Bali Process where join cooperation between states were set to overcome this problem. The Indonesian delegation, represented by the Ministry of Foreign Affairs said that the importance of the cooperation is undoubted. Accordingly, he mentioned three approaches namely prevention, early detection and protection. At the operational basis, the rule of civil society on providing adequate information on the case and intensified awareness of its dangers are very crucial.

Apart from legal and formal approaches to stop online prostitution, there are alternatives to doing that. One of those is censoring the web content and its patterns. As technically advised by expert, it is possible to limit the access of prostitution by customer to prostitution web simply by identifying and blocking the web (Techno, 2014). Besides technical solution, it is also advised to stop online prostitution by social approaches. At least five ways are identical to this approach namely social sanction, open employment, education, good neighborhood and political willingness (Republica, 2014). Among these five, the rule of the state to stop online prostitution is very important. Two testimonies from people who are living in ex-Dolly Surabaya East Java mention that, in relation to good neighborhood, they often felt regretful and shame whenever their friends ask for address. These people are stigmatized as they live in the red-light area (Republica, 2014). Because of this, their family members cannot live socially like it supposed to be.

In fact, legal enactment and policy resign to deal with online prostitution is not without challenges. On the ITE Law, there is a voice saying that monitoring media is a form of violation against human rights and liberation of freedom of speech. As this Law may enforce to people who are texting, posting and mentioning any words that are considered 'taboo', many opponents to this Law are afraid that the Law will be used ignorantly to control society.

2. Patterns and Types of Online Sex Trafficking in Indonesia

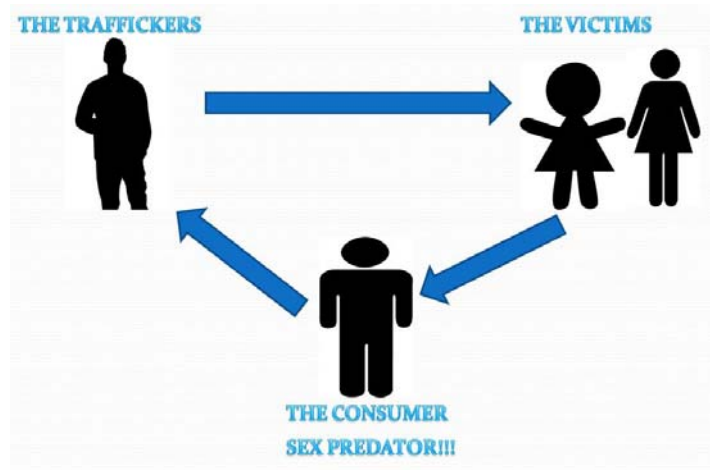
In the last decade, many researches have discussed about criminal network analysis. Jeffrey Scott McIllwain argues that the power of organized crime is on its network (Scott, 1993). His report is based on the anthropological approach with qualitative method resulted in a concluding remarks of the criminal network that is the members of organization need time to build trust and sense of belonging. He also states that criminal network is a gradual process that finally entails with more organized action.

Using the different methods, Carlo Morselli reviews on the analysis of organized criminal networks ranging from brokerage position in drug trafficking and hierarchical organization like Hells Angel in Quebec (Morselli, 2009). He reveals that the inaccuracy of relational data within the network turns out to be challenges of social network analysis (Morselli, 2009).

Gordon Stovin and Chris Davies claim that academician and practitioner has a gap in countering organized crime since lack of communication and available case studies is blamed for this uncoordinated action (Stovin & Davies, 2008). They argue that social network mapping has a limitation on explaining the nature of organized crime. This article derived from practitioner's

perspective on how to tackle criminal network using hotspot matrix method by Ratcliffe (Stovin & Davies, 2008).

There are plenty of patterns and types of traditional sex trafficking, however with the new possibility offered by the technology, the criminals are just getting more and more creative. The basic principles of online sex trafficking are the same in comparison with the traditional sex trafficking, patterns such as; Recruitment, False Promises, Fraud, Scam and Deception. The main reason remains the same that most of the victims who are thrown to the sex prostitution (read: trafficking) is because a classical reason, which is an economic reason.

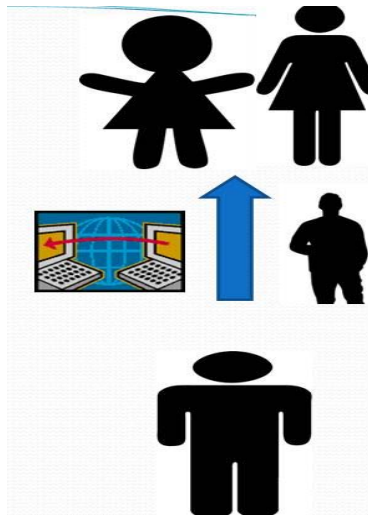


Picture 1: Patterns of Traditional Sex Trafficking

The burden of economy has blinded their eyes to take any possible opportunities without further and in-depth consideration. In another perspective, it's safe and fair to say, that this is actually the failure of the Government to provide a decent job opportunity for the victims because people will never go to the world of prostitution if there is a better option of getting money. Sex trafficking has gone along the way throughout Indonesia, domestic trafficking occurs to Bali, Bintan, Jakarta, Jambi, Papua, Riau, Surabaya and some other big city (IRIN, 2009).

In fact, Indonesia is primarily a country of origin for trafficking in women and children. Indonesian women and children are trafficked to Southeast Asia, East Asia, the Middle East, Australia, North America, and Europe (Rosenberg, 2003). Those are the primary area to where the victims were trafficked to, the demands in those destination is also one of the leading factors why the conduct of sex trafficking is still going around along the way. The methods however varies, today most of the methods are conducted in a more techno-based. The traffickers are selling the victims through the internet by uploading their pictures to a certain website, in which then the sex-consumer (read: sex predator) could taking benefit of them by having them for nude video-calling or even the traffickers could sell them into various online sex prostitution services world-wide.

Based on the Kenney's network theory, the first pattern can be classified as a wheel network consisting of several cell workers where the core group leader (that is trafficker) controls decision making authority including trading and distributing where the victim is trafficked (Kenny, 2007). In some cases, the core group leader remains anonymous and does not affiliate with their cell workers. On the other hand, in first pattern, the core group leader and cell managers involve themselves in the most daily matters of everyday operations. Consequently, after several weeks of running the prostitution under the traditional scheme, the police successfully raided and arrested the perpetrator within the network.



Picture 2: Patterns of Online Sex Trafficking

Based on Kenney's theory, the second pattern which show online sex trafficking can be categorized as the chain network which every chain organizes several core groups by using internet scheme (Kenny, 2007). The one-on-one transaction¹ underlies the sex transaction amongst the dealer. Even though the core members of a trafficking group have ultimate decision in giving instructions, the hierarchal command cannot be found within this network. The standard rule of Mafia applies in this network; that is the existence of a broken cell/chain system. Everyone is only responsible of the stage which they play the role so that the trafficker does not know one another when maintaining transaction. The traffickers have no clue how to obtain the victim from suppliers and where the victim is trafficked in the next stage of the consumer since all of the transactions are conducted through online (Rosenberg, 2003). As a result it will be difficult to crush their links in the investigation process.

3. Indonesia's Legal Perspective and Legal Challenge

Given the fact that 70% of human trafficking case are happening in the field of sex trafficking, an extraordinary effort need to be cultivated to battle the crime. In order to deal with the on-going uprising and potential threat regarding human trafficking, Indonesia's government had begun their countless work since 2007 where the first-ever human trafficking act was officially enacted. The law itself was called the *Law Number 21 Year 2007 about the Eradication of Human Trafficking Crimes*, which adopts a comprehensive approach to address human trafficking. The act contains numerous human trafficking and sex trafficking crimes as well as punishment. In addition to that, the Law No. 21 Year 2007 has also provided numerous guarantees for the fulfillment of the rights of victims, as follows;

1. The right to confidentiality of the identity of victims of crime of trafficking in persons and their families to the second degree. (Article 44)
2. The right to protection from threats that endanger themselves, life and/or property (Article 47)
3. The right to restitution (Article 48)
The right to receive medical rehabilitation, social rehabilitation, repatriation and social reintegration of government (Article 51)
4. The victims who are trafficked abroad entitled to be protected and returned to Indonesia at the expense of the state (Article 54).

Regarding sex trafficking, the article in the law Number 21 year 2007 which is most-related towards sex trafficking is article 2 point 1 (one), states; "*Everyone who perform the recruitment,*

transportation, shelter, transfer, or acceptance of someone with the threat of violence, the use of violence, abduction, confinement, forgery, fraud, abuse of power or of a position of vulnerability, entrapment debt or giving payments or benefits even though obtaining the consent of a person who have control over another person, for the purpose of exploiting such person in the territory of the Republic of Indonesia, shall be punished of imprisonment for at least 3 (three) years and a maximum of 15 (fifteen) years, and fined at least Rp120.000.000,00 (one hundred and twenty million rupiah) and at most Rp600.000.000,00 (six hundred million rupiah)” (Article 2).

However, in the implementation level, it seems that the need for more advanced human trafficking law is necessary since the current law is not able to accommodate the human and sex trafficking crimes which are getting increasingly widespread year over year. The revised towards the current law is a necessity since the article regarding with sex trafficking in the current law don't have a specific elements in regards with online sex trafficking, which make the case of current online sex trafficking less of legal certainty.

In order to address that problem, in 2008 Indonesia's government made a huge leap-forward in addressing the phenomenon of sex trafficking, where 2 (laws) are enacted at 2008, they are; *Law Number 11 year 2008 about ITE* and *Law Number 44 year 2008 about Pornography*. The law number 11 year 2008 about ITE is a regulation governing a wide online or offline activities regarding the internet usage, however in the context of human or sex trafficking, there is only 1 (one) article that correlate the most, which is the article 27 point 1 (one) which stated; *“Every person who is deliberately and without right to distribute and/or transmit and/or make accessible Electronic Information and/or Electronic Document has a charge which violates morality” (Article 27).*

While the Law Number 44 year 2008 about Pornography, there is only 1 (one) article regarding with sex trafficking, which is written on the article 4 (four) point 1 (one), which stated; *“Every person is prohibited to produce, create, reproduce, copy, distribute, broadcast, importing, exporting, offering, reselling, lease, or provide pornography that explicitly includes;*

- a. mating, including aberrant mating;*
- b. sexual violence;*
- c. masturbation;*
- d. nudity or displaying nudity-impressed content;*
- e. genitals; or*
- f. child pornography” (Article 2).*

Even though there was an improvement towards the regulation when it comes to the usage of the internet and pornography in 2008, there are few points that still could not accommodate the problem of online sex trafficking, the Law Number 11 year 2008 about ITE, could not be related too much towards the case of online sex trafficking since the elements is not highly-related towards human trafficking law. The Law Number 44 year 2008 about Pornography is the same case, where there is a lack of online-elements as well as there is no further and in-depth relation towards the human trafficking law. However, the elements of the Law Number 11 year 2008 about ITE and Law Number 44 year 2008 about Pornography is basically enough to deal with the current problem, something that still lack once again are the elements of the Law Number 21 year 2007 about human trafficking that needs to be harmonized and synchronized with the current relevant laws.

As a consequence, it doesn't necessarily mean that the person who commits such online sex trafficking crimes will not be punished or charged with the laws, the perpetrator will still get a charged with certain articles, however will present legal difficulties for the law enforcement agencies to know which laws or which article are applicable towards them, because there is still less legal uniformity in regards with the case of online sex trafficking among those laws.

4. Conclusion

In conclusion, there are few ways in which our government need to act in order to maintain and give more legal certainty towards the case of online sex trafficking, and there is no better way than to revise the Law Number 21 year 2007 about the Eradication of Human Trafficking crimes. The revised must be focused upon the articles that have a correlation towards the internet as the new tool that can be used by the trafficker. Actually, there is also an international law governing about Convention on this Cybercrime, the definition of that convention is, *international treaty with a provision to combat child pornography on the internet*, it does not go so far as to explicitly criminalize the use of the Internet to

traffic children or to sell children into sexual servitude (Article 2). So as a purpose of reference, the Government could study the content inside the convention and then apply same to the Indonesia's legal system. There are also various other international law and international convention regarding with the issue of online sex trafficking which can be used to strengthen the elements on the Indonesia's law of human trafficking, which in the end of the day will so much benefit our legal system which will end up towards more legal certainty regarding the case as well as giving more legal certainty towards the legal enforcer upon the application of the laws specifically about the crimes of online sex trafficking.

References

Council of Europe. 2001. Convention on Cybercrime, Explanatory Report, 6, Nov. 23, 2001, S. Treaty Doc. No. 108-11, 2001 WL 34368783, 41 I.L.M. 282, C.E.T.S. No. 185 [hereinafter Explanatory Report]. Retrieved from: <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm>.

Dasgupta, A. 2006. An Overview of Trafficking in Indonesia, WHEN THEY WERE SOLD. Retrieved from: http://solidarityv2.timberlakepublishing.com/files/when_they_were_sold_chapter2.pdf.
Dolly Closure. 2014. Retrieved from: <http://www.thejakartapost.com/news/2014/11/01/prostitution-goes-online-after-dolly-closure.html> on 21 October 2014.

Haynes, D. 2002. International Community Must Fight Child Sex Networks in SE Asia: UN, Agence France Presse, Apr. 19, 2004. See also Brian Calvert, "In Trafficking Case, Court Balks Again," Cambodia Daily, Feb. 27, 2002.

INTEGRATED REGIONAL INFORMATION NETWORKS (IRIN). 2009. Indonesia: Trafficking fuels commercial sex work. Retrieved from: <http://www.irinnews.org/Report.aspx?ReportId=84678> on June 3, 2009.

INTERNATIONAL DEVELOPMENT LAW ORGANIZATION, HUMAN TRAFFICKING (2008). Retrieved from: http://www.idlo.int/DOCNews/Human_trafficking.pdf. on June 3, 2009.

JPNN.com. 2014. Brothel Owner Received Rp. 5.000.000,- per Week from Online Prostitution. Retrieved from: <http://www.jpnn.com/read/2014/08/19/252646/Mucikari-Ekspo-Prostitusi-Online-Minimal-Raup-Rp-5-Juta-Seminggu-> on 21 October 2014.

Kenney, M. 2007. 'The Architecture of Drug Trafficking: Network Form of Organization in the Colombia Cocain Trade' (2007) 8(3) Global Crime [242]. Retrieved from: <http://dx.doi.org/10.1080/17440570701507794> on 23 October 2014.

Kompas.com. 2014. On Online Prostitution in Indonesia. Retrieved from: <http://english.kompas.com/read/2011/01/20/0846533/On.Online.Prostitution.in.Indonesia> on 21 October 2014.

Mail Online. 2014. Largest Muslim Country in Bid to Shut its Giant Red-Light District - by Paying its 1,500 Prostitutes to Quit Brothels. Retrieved from: <http://www.dailymail.co.uk/wires/ap/article-2666677/Indonesia-prostitutes-resist-red-light-shutdown.html> on 21 October 2014.

McIllwain, J.C. 2014. Organized crime: A Social Network Approach (1999) 32(4) Crime, Law and Social Change [301]. Retrieved from: <http://www.proquest.com.ezproxy.uow.edu.au/> on 25 September 2014.

Press Release. 2009. Human Rights Watch, Indonesia: Protection to Child Domestic Workers, Feb. 11, 2009. Retrieved from: <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html> on 21 October 2014.

Laws

- [1] Article 2 (two) point 1 (one) of the Law Number 21 year 2007 about the Eradication of the Crimes of Human Trafficking
- [2] Article 27 point 1 (one) of the Law Number 11 year 2008 about ITE
- [3] Article 4 point 1 (one) of the Law Number 44 year 2008 about Pornography
- [4] Carlo Morselli, *Inside Criminal Network* (2009).
- [5] Ruth Rosenberg, Ed. *supra* at 1.
- [6] The Jakarta Post, *Prostitution Goes Online*