Human Trafficking From Migrant Labor: An Analysis of Patriarchal Ideology in Community and State

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Abstract : The fact that so many Indonesians live abroad is not the only reason why so many Indonesians facing problems overseas, but the irregular migration process is often the more common trigger for increasing the number of Indonesians facing overseas problems such as human trafficking and people smuggling. Human trafficking has developed in such a way that its scope and seriousness have now become an international, a regional and a national focus in fighting human trafficking. The majority of Indonesian migrant workers face the conditions of forced labor and slavery in more advanced and Middle Eastern Asian countries especially Malaysia, Saudi Arabia, Singapore, Kuwait, Syria and Iraq. The strengthening of patriarchal ideology in society and state adversely affects this condition because this ideology sees (1) the positions of children and women as objects and not the subjects of patriarchy, so that they gain a second or subordinate position in which children and women have no bargaining position against the wishes of their parents; (2) women's low level of education has caused them to be the objects of violence, which is a tool for men to show their power and a tool for forcing early marriage and; (3) the strengthening of globalization and neoliberalism.

Keywords : Human Trafficking, Migrant Workers, Indonesian Labor, Patriarchal Ideology

1. Introduction

The term migrant worker refers to a person who will, is doing, or has done a paid work in a country where he is not a citizen. This condition raises several demands that need to be met. The right to life, and receives good treatment with a reasonable portion of work. Thus the rule of law must be clear and firm. Being clear in terms of transparency and being firm in terms of its enforcement. In the context of protecting migrant workers, it requires the readiness of each country to make arrangements in law and its enforcement. It is contradictory to fight for the rights of migrant workers residing in other countries whereas in the country it still issues regulations which are still open for the opportunities for violations. The regulations in Indonesia, for example, still imply that migrant workers are commodities. The choice to place migrant workers as a commodity has a negative impact on other countries which may categorize them in the worse place. In the simplified language, the demand to treat migrant workers in other countries can not be achieved maximally if in their own country they have not got a protected place.

The United Nations estimates that every year 700,000 to 4 million women and children become victims of human trafficking. The most worrying thing is that most of these victims of trafficking are children and women who end up slumped in prostitution and exploitation of labor, forced labor, debt bondage or slavery. In 2011 an estimated 100,000 women and children from Indonesia are trafficked each year for sexual exploitation, domestic workers, forced marriage and child labor. Economic factors, poverty and gender inequality are thought to be the main factors causing human trafficking. In addition to these three factors, Sagala & Rozana (2007) as cited by Andari

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(2011) argue that in the feminist perspective the causes of children's and women's vulnerability to become victims of human trafficking are: (1) Strengthening of patriarchal ideology in a society and a state. This ideology views women as objects and not subjects of patriarchy, so that they gain a second or subordinate position in which children and women have no bargaining position against the wishes of their parents; (2) Women's low level of education has caused them to be the objects of violence, which is a tool for men to show their power and a tool for forcing early marriage and; (3) The strengthening of globalization and neoliberalism.

2. Discussion

One of the areas in Indonesia's economic sector which cooperates with other countries is the employment sector. Indonesia needs and accepts foreign workers. At the same time, Indonesia sends Indonesian migrant workers (*TKI*) abroad. In this case the authors describe Indonesia as the sending country of labor. Indonesian Worker (*TKI*) overseas is every Indonesian citizen who is eligible to work abroad in employment for a certain period of time for gaining wages.

The placement of Indonesian workers abroad is regulated by two Indonesian Acts, namely the Paragraph 33 of the Act Number 13 of the Year 2003 regarding Manpower which reads, *"The placement of Labor consists of: (a) the placement of domestic workers, (b) the placement of manpower abroad". The Paragraph 34 of the Act Number 13 of the Year 2003 which reads, "The provisions concerning the placement of workers abroad as referred to in the Paragraph 33 letter b shall be regulated by law.*

What is meant by being regulated by the Act in the Paragraph 34 of the Act Number 13 of the Year 2003 is the Act Number 39 of the Year 2004 concerning the Placement and Protection of Indonesian Migrant Workers (*TKI*) abroad. In the consideration of this Act it is mentioned: "(a) that work is a human right which must be endorsed highly, respected and guaranteed its enforcement; (b) that every worker has equal rights and opportunities without discrimination in order to obtain decent employment and income both domestically and abroad in accordance with his/her skills, talents, interests and abilities.

As an effort to improve the quality of placement and protection of Indonesian Migrant Workers (*TKI*) the government has also established the Coordinating Agency of Placement of the Indonesian Migrant Workers (*BKPTKI*) on April 16, 1999 through the Presidential Decree no. 29/1999. In 2004 the Act No. 39/2004 on the Placement and Protection of Indonesian Migrant Workers Abroad was issued. It was then followed by the issuance of the Presidential Regulation No. 81/2006 on the Establishment of *BNP2TKI* whose operational structure involves the elements of central government agencies related to the services of Indonesian migrant workers (*TKI*), among others: Ministry of Foreign Affairs, Ministry of Transportation, Ministry of Manpower, Police, Ministry of Social Affairs, Ministry of National Education, Ministry of Health, Immigration and *Ministry of State Secretariat*. With the existence of the *BNP2TKI*, the placement and protection of Indonesian migrant workers are within the authority of the *BNP2TKI* coordinated by the Minister of Manpower and Transmigration. The existence of the regulation concerning the placement and protection of Indonesian workers abroad does not mean removing a number of violations of individual rights. In line with the formation of the set of rules, the variation of the types of violations also increases, for that reason the authors examine the theme of the discussion trying to answer the legal review of the protection of the rights of Indonesian migrant workers by the state in its position as the main subject of international law.

But the placement of Indonesian workers abroad up to the present time has ached the hearts of most people of Indonesia. Almost everyday, the people of Indonesia hear, watch and read the news about the problems experienced by the prospective Indonesian migrant workers and the Indonesian migrant workers at the pre departure, at the workplaces in the placement countries, and at Soekarno-

Hatta Airport when they return to the country. The huge number of Indonesian migrant workers migrating abroad is shown by the statistical data of Indonesian employment placement in 2016 and 2017 (up to May) obtained from *BNP2TKI* as follows:

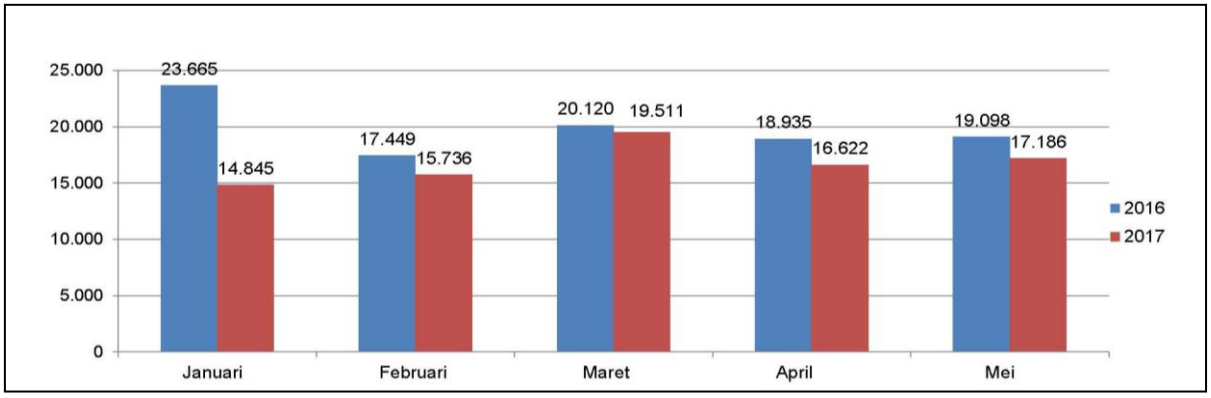


Figure 1. Placement of Indonesian Migrant Workers Year 2016 And 2017

Source : Processed from the data obtained from *BNP2TKI*

2.1 Introducing the Concepts And Theory of Migration

Migration as a demographic component has various definitions. Simply stated, migration is defined as the movement of the population with the aim of settling from one place to another through political/state boundaries or administrative boundaries / boundaries of a part of a country. While the United Nations defines population migration as a resettlement from an administrative unit to another administrative unit (United Nations 1970; 1 in Eridiana 2010). Still in Eridiana (2010), Gould and Prothero (1975, 41) also emphasize the element of displacement. However, according to them, even if someone has officially moved to another place, but if there is a prior intention to return to the original place, it must be regarded as a circular mobility, not as a migration.

In Indonesia, the concept of migration used in the 1971 census was similar to that of the 1980 census. Migration is the movement of a person over the province boundary to another province within 6 months or more. Almost all migrations relate to the space and the time. Regarding the interrelation between the space and the time, the experts encounter a difficulty to establish it. So the definition of migration by some experts is often perceived as lacking of accuracy. According to Tjiptoherijanto (2000) in Safrida (2008), migration is the movement of people from their place of origin to the destination. The migration decisions are made on the basis of the comparative advantage of the two regions. The main purpose of migration is to improve the quality of lives of the migrants and their families, so they generally look for jobs that can provide higher income and social status in the destination areas.

Similar definition was also expressed by Martin (2003), in which migration was a movement of population from one region to another, which occurs due to differences in conditions of both areas. According to Martin, the biggest difference that encourages migration is economic and non-economic condition. Based on the grouping, the factors that encourage migrants to migrate are divided into three categories, namely demand pull, supply push and network factors. The demand pull factor occurs when there is demand for labor from the destination area, such as the Mexican workforce recruited to work in the agricultural sector in America. The push supply factor occurs when labor is no longer possible to gain employment in their own region, thus encouraging them to migrate to other areas. Network factors are factors that can inform migrants in making decisions for migration.

2.2 International Migration

International migration as one type of migration is defined as the migration that crosses the political boundary between countries. This political limit is very dynamic depending on the existing global political constellation. As a country with high population growth and high unemployment rates, labor migration abroad (international migration) is one way of addressing the problem. International migration is the process of moving a country's population to another country. Generally people migrate abroad to obtain better economic welfare for themselves and their families. One fact shows that unemployment, low wages, less promising career prospects for highly educated people and the risk of investing in the country are the factors that influence a person to migrate abroad. Many factors that motivate Indonesian workers to choose to work abroad including limited employment opportunities, low wages, and poverty that encourages someone to leave his country to seek a better life in another country. These migrants go to a destination country that has a higher rate of economic growth than that of their home country.

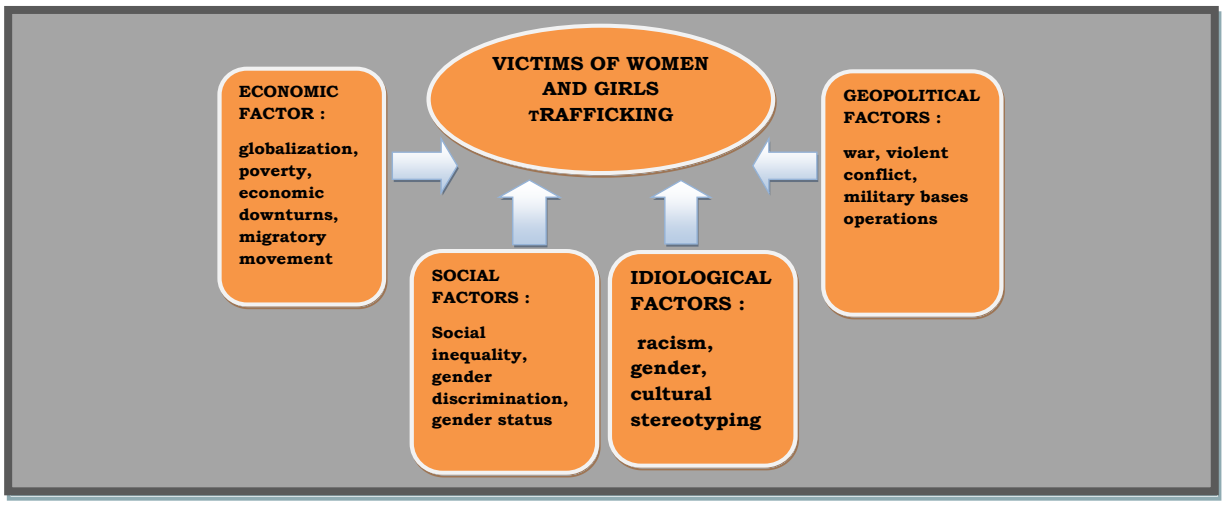


Figure 2 : Cameron & Newmann scheme of thought framework

The scheme of thought framework became the rationale for explaining the process of structural victimization in this study. The scheme sees various structural factors in society contributing to the occurrence of the crime of human trafficking, namely economic factors comprising globalization, poverty, economic decline and migration movements. Then is the social factor, namely the existence of social inequality, discrimination based on gender, discrimination based on age and gender status. The next factor is ideological factor such as racism, gender, and cultural stereotypes. The forms of patriarchism in society are also examples of ideological factors. The last factor is the geopolitical factor. The things that fall into geopolitical factors are wars, violent conflicts, and military operations. Geopolitical factors can be found in conflicting countries. These structural factors will create condition of vulnerability for women and children to become victims of human trafficking.

In contrast with an internal migration, in an international migration, migrants are not able to decide freely in finding employment in the destination country. But the destination country that decides to accept the migrants as per their needs. The destination country may select the experts and skilled people they require. This is an economic advantage for the destination country. The economic benefit to the country of origin is reduced pressure on labor markets in the country, and sources of foreign exchange earnings through remittances to their families. In fact, there are so many actions that can be regarded as a form of human trafficking. Clearly, these deeds are classified in the category of very serious crimes. The victims of human trafficking are those who are marginalized, especially women. Women's parties are very flexible to be easily exploited. Because they are often harmed by

their position that had been weak and treated unfairly by the environment. The initial cause leading to trafficking traps is a result of their poverty and their dependence on others. There is a great number of potential migrant workers who falsify their age identity which caused them to be easily exploited by the mode of trafficking. The reason is that the underage workers are usually not well informed about the consequences of work, especially in overseas countries.This has some major impacts on the government.

Firstly, encouraging the central and local governments to create jobs in the country so that alternative job search abroad can be minimized. In relation to the role of the government, the immigration authorities must be more responsive and conscientious in monitoring the citizens entering and leaving the country, so that the practice of official documents but for illegal activities can be suppressed. Then the cooperation of the Police and the community in this case NGOs should be actively supported in dealing with cases of human trafficking. It is also intended to crack down on any company that has the opportunity to practice the trafficking of people who often do not pay attention to the procedure.

Secondly, the enhancement of the regional authority, particularly related to the border areas which previously became the central authority due to security and defense. Human trafficking occurs because the management of the border areas is very bad, therefore, the alternative option is increasing the budget to overcome human trafficking by the central government or give more authority to the local government to directly overcoming the problems. The basic assumption if the responsibility is given to the local government, in addition to knowing the local conditions better, the local government can directly work to integrate all existing components including coordination among government at village, regency / municipality level to promote the settlement of human trafficking problems.

Thirdly, the development of infrastructure and facilities of the security system in the border areas must be implemented. This means that, in the case of tackling human trafficking, the government is obliged to adopt a welfare approach to the border area community while maintaining the security approach. The poor condition of both things provide opportunities for crime syndicates to seek profit.

The study results of the World Labor Organization (ILO) show that there are around 12.3 million people throughout the world trapped in forced labor. Indonesia ranks second in human trafficking crimes involving violence and sexual exploitation of children in 2012. According to the United Nations, Indonesia is classified as destination areas, transit and sending countries (sending, transit and producing area) for human trafficking. The main causes of this practice are the economic implications and unavailability of employment, low levels of education, low levels of security, and a lack of caring from the government so that the opportunities are taken by irresponsible people. The actions that can be taken at the national level, among others, enforcing the Act No. 21 of Year 2007, improving the security of the guard at the border of the country, by land and sea and air, improving security in immigration, increasing employment, improving education, closing places with potential sexual exploitation. The actions that can be taken at the foreign level, among others, are improving the relationship between countries, conducting joint operations, and forming organizations to combat trafficking.

Since 2010, the government has made coordination efforts for anti-trafficking efforts. But the government has not enacted migrant laws and imposed appropriate criminal sanctions for recruitment. Besides, there has not been strong effort to investigate, prosecute and punish officials involved in trafficking. The efforts taken to protect victims of trafficking include: putting the victim to a safe place, returning to the origin (area of origin or country of origin) including legal counseling, rehabilitation (recovery of physical and psychological health), reintegration (Reintegration to the family or to the community) and empowerment efforts in the economic and educational sectors so that victims are not trapped back into human trafficking.

Indonesian Act Number 21 of Year 2007 provides protection for victims as follows:

1) *The victim has the right to testify without appearing in court;*
2) *The victims of human trafficking are protected in accordance with the Act Number 13 of Year 2006 regarding Protection of Witness and Victim;*
3) *Victims and their families have the right to hide their identity;*
4) *Victims are entitled to receive restitution for being the victims of the crimes.*

The Indonesian government's efforts in providing legal protection to international migrant workers as victims of trafficking in relation to the concept of patriarchal ideology in society and state are to conduct bilateral and regional cooperation. At the bilateral level Indonesia has signed a memorandum of understanding with the destination country of migrants to protect Indonesian migrant workers. Indonesian migrant workers from the village and remote areas lack of information on the dangers and modes of trafficking of women and children. Other factors such as weak law enforcement, poverty, debt wounding, weak women's position due to culture and the structure of patriarchal ideology (The culture that views daughters as their parents' belonging, the "property" of their parents; A daughter is viewed as a sexually valuable sexual object; The culture of selling the daughter as a family commodity), the low level of education, the impudence of the implementation and arrangement of the agent that sends labor abroad have been the factors driving the high number of trafficking of women in Indonesia.

For example, in 2006 Indonesian government and Malaysian government signed the MoU of the Recruitment and Placement of Indonesian Domestic Workers, which was then amended on the 30th May 2011. The MoU regulates the rights and obligations of both employers and employees in the destination country (Malaysia). This MoU is expected to prevent the types of violations against migrant workers that lead to criminal acts of trafficking or people smuggling.

3. Conclusions

Many factors that motivate Indonesian workers to choose to work abroad including limited employment opportunities in their country, low wages, and poverty that encourage someone to leave their country to seek a better life in another country. These migrants go to a destination country that has a higher rate of economic growth than that of their home country. The Government of Indonesia makes an effort to provide legal protection for its international migrant workers as the victims of human trafficking by engaging in bilateral and regional cooperation, so that information can be provided easily and profoundly to rural and remote communities on the dangers and modes of trafficking of women and children because of the culture and ideological structure of patriarchy that views daughters as objects of economic value because of their low level of education. Then with the existence of bilateral and regional cooperation, it is expected that the implementation and arrangement of rules for labor agents will be more orderly. Parents are expected to be more protecting toward their daughters and prevent them from working abroad so as to reduce the problems of human trafficking of migrant workers from Indonesia abroad.

4. References

[1] Razak, Tatang Budi Utama (2012), "*Eliminating Trafficking In Persons And People Smuggling : Indonesia Experience*." Director for Protection of Indonesians and Legal Entities

Overseas. Jakarta : Ministry for Foreign of Republic of Indonesia : 2011.
[2] Andari, Annisa Jihan "*Structural Victimization Analysis Against Three Victims of Trafficking of Women And Girls*." Journal of Indonesian Criminology Vol.7 N0. III December 2011, Jakarta. 2011.
[3] Erman Suparno, *National Manpower Strategy,* Kompas, Jakarta, 2009.
[4] Marlina, http://journal.unnes.ac.id/nju/index.php/pandecta, Journal of the Protection of the Rights of Migrant Workers by State in its Position as the Subject of International Law, Faculty of Law, University of Surabaya, Indonesia, Volume 8. Number 2. July 2013.
[5] Hidayatunnismah, Feny Nur Anggraeni, Qoryllah Fitri Pertiwi, International *Migration: Women Workers And Human Trafficking*, Study Program of Population Studies and Employment, University of Indonesia, Jakarta, 2013.
[6] Eridiana, Wahyu. *Migration*. A Paper. Indonesia University of Education, Bandung, 2010.
[7] *Ibid.*
[8] Hidayatunnismah, Feny Nur Anggraeni, Qoryllah Fitri Pertiwi, *Loc. Cit.*
[9] Safrida. A Dissertation. The Impact of Migration Policy on Labor Market and Economy in Indonesia. Graduate School of Bogor Agricultural University. 2008.
[10] Martin, Philip. *Sustainable Labor Migration Policies in a Globalizing World.* University of California, Davis. 2003.
[11] Solimano, Andres. *International Migration and The Global Economic Order: An Overwiew.* Macroeconomics and Growth Development Economics Research Group. The World Bank. 2001