

CHAPTER I

INTRODUCTION

A. Background

The science and technology was change our live in the world, especially through improved information flows and communication skills. The distance was increasingly narrow, the previously is a far country today has turned into the next-door neighbor. A process called globalization is not just connecting the countries and people are becoming increasingly close, but also to make a relationship in global economic interdependence and the increasing flow of labor migration. Beyond the positive aspects, there are also negative aspects of globalization such as, the climate change, ethnic conflict and human rights violations, also human trafficking, terrorism and water disputes.¹

Human trafficking is a serious crime and it is a kind of the most heinous violation of human rights, as well as a deprivation of liberty rights, freedom of thought and the right should not be tortured. As like as mention in chapter 14 of Convention against Torture and other Cruel 1984, telling about the Prohibition of Torture and Slavery, also mentioned in chapter 2 and chapter 15 that alongside issue of Liberty of Person in Vienna Convention 1993.²

¹Sheikh Hasina, 2012, "*Membangun Digital Bangladesh dan Mensintesis Nilai-Nilai Demokrasi dengan Kemajuan*", Tabloid Diplomas, Departemen Luar Negeri Republik Indonesia

² Rhona K. M. Smith, 2010, *International Human Right*, Oxford University Press, New York, p. 3

Human trafficking has become endemic to facilitate the exploitation and abuse of a large number of people around the world. Besides physical and physiological trauma suffered, there are people who are still lumbered with an extreme debt in suffer of the victim. The victim of human trafficking can be anyone; matures, children, boys and the girls can be the victim of the human trafficking. Yet commonly, they are women and children who worked for sexuality.³

The statistics, which collected from the Police, Judiciary and other government departments by the Indonesian Social and Manpower Department, indicate there has been 29 percent increase of in cases against traffickers in recent years. In 2006, 110 cases were investigated and another 142 cases were investigated in 2007. Between January 2007 and March 2008, 218 trafficking cases were recorded, with slightly more cases of forced of prostitution than forced labor, April 2008 and 56 cases had been prosecuted. Another data could be seen in the table below, as follows:⁴

³*Lembar Fakta tentang Eksploitasi Seks Komersil dan Perdagangan Anak*, retrieved from www.unicef.org. Accessed on March 30th, 2012 at 9.05pm

⁴Larsen, Jacqueline Joudo, 2010, "*Migration and People Trafficking in Southeast Asia*", Australian Institute of Criminology, Canberra, p. 5

Sex	Infants	Children	Adults	Total
Female	55	651	2046	2702
Male	0	134	206	340
Total	55	785	2252	3042

Table 1.1 Table of Trafficked Person in Indonesia 2005-2008

Many Indonesians who have been trafficked identified through the migration process. They are caught as illegal immigrants in Malaysia and deported to Indonesia, at that point it is determined that sometimes they were trafficked to Malaysia.

IOM Indonesia who gathers data on Indonesians have been trafficked and was holding information relating to 3.042 persons between March 2005 and January 2008. Of these persons, 89 percent (n = 2.702) were female and 26 percent (n = 785) were children. Of all persons, 54 percent had been exploited as domestic workers and 16 percent as sex workers for women that has been trafficked. It is make Indonesia as one of Southeast Asia region which have a significant number of human trafficking cases.

The data of human trafficking case is keep develop, in 2011 data from IOM shows that the human trafficking case in Southeast Asia is still in the high position. The data can be seen in the tabel below:

Sex	Trafficking case in 2011
Male	245
Female	615
Total	860

Table 1.2 Case Data on Human Trafficking (IOM 2011): Southeast Asia & Pacific 2011

Based on the table, there is no significant changes of the number of human trafficking case. The data which collected by IOM is just a number of cases which already reported to IOM, the number of victim in every case is not calculated, it mean that in every case will take of many victim of human trafficking.

The recent issues concerning to the trafficking is organ trafficking, like case that happen in April 2012 about organ trafficking. There was three workers (Indonesian Labour) from East Lombok Nusa Tenggara (NTB). The body of them were returned from Malaysia to Indonesia and it was considered not reasonable because the number of organs of the workers are gone. M. Salah, Advocacy Division of Koslata,⁵ said that *“this is a part of human trafficking syndicate, in addition to organ trafficking and prostitution as well”*.⁶

⁵Koslata is a Non-Governmental Organization which concern in the human trafficking

⁶Media Indonesia, retrieved from <http://www.mediaindonesia.com/read/2012/04/19/313905/290/101/TKI-NTB-Diduga-jadi-Korban-Sindikata-Perdagangan-Organ-Tubuh>. Accessed on April 4th, 2012 at 03.40pm

The definition of organ trafficking is derived from the United Nations Trafficking in Persons. Organ trafficking entails the recruitment, transport, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, of a position of vulnerability, of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation by the removal of organs, tissues or cells for transplantation.⁷

The economic condition in Southeast Asia region become one of several issue related to human trafficking especially for women and children. Majority population within low level of education make them have no job to fulfill their daily life, some people take that chance to sell them to another country with the reason that they will got a great job in the countryside.

There are many residents are faced with the delicate situation caused by the worsening economic situation in Southeast Asia. It is becoming one of the main causes of the outbreak of human trafficking. Data from the International Organization for Migration (IOM) there are 200,000-225,000 women and children trafficked from Southeast Asia. With the exception of Brunei Darussalam and Singapore, all countries of the Association of Southeast Asian

⁷Saberi, et.al., 2008, Organ Trafficking and Transplant Tourism: A Commentary on the Global Realities, *American Journal of Transplantation*, p. 925-926

Nations (ASEAN) is a country of origin, transit and destination of human trafficking crimes.⁸

In the context of the regional comparison, the United Nations Office on Drug and Crime (UNODC) in 2006 reported that Asia is a region of the main countries of origin and destination of human trafficking and Indonesia was located on the index of the medium as the country of origin, low as transit countries and low as a destination country. Indonesia also suspected to be the recipient of an international human trafficking.

Total 150 of foreign sex workers operating in Batam Province of Riau island. They come from Thailand, Taiwan, China, Hong Kong and several European countries including Norway. Many women of foreign nations come from China, Vietnam, Mongolia, Russia, and Uzbekistan with 16-28 years of age to enter Indonesia with tourist visas and business visas are valid for 6 months, but when he got in Indonesia, they become commercial sex workers. Further pointed out that not all human trafficking is transnational and involves not only women and children but also men because of the type and final destination of human trafficking is not only for prostitution but also for economic matter, the

⁸Government of Republic Indonesia, Pemberantasan Perdagangan Manusia di Asia Tenggara Memerlukan Sinergi Kerjasama Negara Anggota AIPO, *Seminar on Legal Cooperation to Combat Trafficking in Women and Minors*, held in Ho Chi Minh City, Viet Nam, on July 2-5th, 2006

practice of begging, adoption, descent, marriage, construction workers, plantation workers, factory workers, etc.⁹

Being a developing country, Indonesia is having a hard time to be excluded from the phenomenon, which is as “a sender country” or “a source country”. The agency reported data as follows:¹⁰

1. Indonesia is a source country in trafficking in persons, especially women and children;
2. Most of the victims were being traded for sexual exploitation and worker;
3. The target countries include Hong Kong, Singapore, Taipei, Malaysia, Brunei Darussalam, and Persian Gulf Countries, Australia, South Korea and Japan;
4. The government has not totally committed to prevent the human trafficking; even the issue now has been getting more attention than before.

Actually International community has repeatedly tried to eliminate the practice of human trafficking through international instruments on human beings since 1904. The first time is by the release of the International Agreement of the White Slave Traffic Suppression. Yet, the agreement is not very effective in practice; six years later, in 1910 approved the International Convention for the Suppression of White Slave Traffic. In further development assisted by Nations

⁹*Ibid.*

¹⁰Harkristuti Harkrisnowo, 2003, *Indonesia Country Report: Human Trafficking*, Universitas Indonesia Human Right Center, Jakarta, p. 4

League, signed the Convention on the Suppression of Traffic in Women and Children in 1921 and the International Convention of the Suppression of Traffic in Women of Full Age in 1933.

In 1949 The United Nations consolidated the Fourth Convention to be the Convention for the Suppression of the Traffic in Person and the Prostitution Exploitation,¹¹ and the last is Palermo Protocol in Preventing, Suppress and Punish Trafficking in Persons Especially Women and Children.¹²

In November 2000, the UN General Assembly, based on UN Resolution MU 55/25 adopted the Convention on Organized Crime (Organized Crime Convention) and its protocols, the Protocol against the Smuggling of Migrants by Land and Sea and the Protocol to Prevent Suppress and Punish Trafficking in Persons, Especially Women and Children.

The focus of the Convention is to create an international structure to prevent and combat transnational crime in the production sector and the movement of illicit drugs, trafficking in illegal immigrants and delivery. The Convention also is not only focus on protecting human rights; the Convention

¹¹Nursyahbani Katjasungkana, 1999, *Perisai Perempuan: Kesepakatan Internasional untuk Perlindungan Perempuan*, LBH APIK, Jakarta, p. 3

¹²Office of High Commissioner on Human Right, retrieved from <http://www2.ohchr.org/english/law/pdf/protocoltraffic.pdf>. Downloaded on March 30th, 2012 at 9.30pm

has designed to create a system of international cooperation to stop the movement of drugs and people.

However, the effort is not enough because of the increasing number of human trafficking is still high, especially in the Southeast Asia region. A part of Southeast Asia regions is Indonesia, which is still in the high level of human trafficking. In June 2003, the U.S. Department of State rated Indonesia to Tier 3 Watch List, although in 2004, Indonesia had been re-rated Tier 2.

The rate of a country as Tier 1 is considered as being capable to fighting the human trafficking. The Tier 2 rating is given to a country that is committed to eradicate human trafficking, while the Tier 2 watch list is for countries with low commitment to fighting the human trafficking, and Tier 3 is for a country having a poor commitment is handling the human trafficking.¹³

In addition, criminal laws and regulations on migrant workers were still weak, so they have mostly made matters worse for human trafficking victims. Sumarni Dawam Rahardjo, Deputy of Child Protection at the Department of Women's Empowerment, said that Indonesia was denied to be rated as Tier 3.¹⁴

Due to the number of trafficking case in Southeast Asia, ASEAN as the organization of the countries in Southeast Asia region, which have purpose in the

¹³Human Trafficking, retrieved from <http://www.humantrafficking.org/updates/543>. Accessed on March 30th, 2012, at 7.30am

¹⁴Ninin Damayanti, "Human Trafficking Rate in Indonesia Still High", Koran Tempo, January 15th 2007, p. 7

economic development, create peace and stability, in the other side, transnational crime can be an obstacle to reach the main purpose of the ASEAN it self as like as human trafficking. To achieve the purpose, ASEAN should be more pro-active and play significant role to prevent the human trafficking cases that faced by the members, especially human trafficking cases.

ASEAN member countries have to have committed to fight against human trafficking action in their own countries, the commitments are to work together to prevent trafficking, to identify and protect the victims, and to ensure that offenders are punished. ASEAN member countries are working hard to put these commitments into action, through mechanisms such as the ASEAN Community and Senior Officials Meeting on Transnational Crime.

ASEAN also proposing a convention to prevent and combat human trafficking within the region, which also serve as a guidance for the member on the responses and strengthening the international cooperation in preventing the human trafficking case to investigate and prosecute such cases, promoting common standard and approaches, protecting and support the victim, mutual legal assistance and extradition.

ASEAN has been making a good strides in tackling the problem of trafficking in persons, ASEAN member had also discussed setting up special police unite and specialist investigators to handle the issue of human trafficking.

Hence, the meaning of role based on the Webster's College Dictionary, the role are:¹⁵

1. A part or character played by an actors singer, or other performer;
2. A function or part performed especially in a particular operation or process;
3. The right, obligation, and expected behavior or patterns associated with a particular social status.

B. Research Question

How is the role of ASEAN in Preventing Human Trafficking in Southeast Asia?

C. Research Objective

1. To know how does the role of ASEAN in preventing human trafficking in Southeast Asia.
2. To know what is the role of Indonesia government as the member of ASEAN in preventing human trafficking.

D. Research Benefits

1. Theoretically

The benefits of the research are to increase of knowledge about the role of ASEAN in Preventing Human Trafficking and the role of Indonesia as the member of ASEAN in Preventing Human Trafficking.

¹⁵Webster College Dictionary, retrieved from <http://www.merriam-webster.com/dictionary/role>. Accessed on Saturday, September 1st, 2012, at 10pm

2. Practically

The paper aims at explaining science to the public about the role of ASEAN in preventing human trafficking in Southeast Asia. This study will provide legal awareness among society, government, academic and law enforcement officials related to the human trafficking cases in Southeast Asia especially in Indonesian country.

E. Systematic of Writing

This research consists of five chapters (Chapter I-Introduction, Chapter II-Literature Review, Chapter III-Methodology, Chapter IV-The Result and Analysis, Chapter V-Conclusion and Suggestion). The research aims to give and to know how does the role of ASEAN in preventing human trafficking in Southeast Asia and also to know the role of government of Indonesia in preventing human trafficking.

1. Chapter I: The researcher will try to give informations about the situation of human trafficking case in Southeast Asia including the average number of human trafficking case in Southeast Asia which in the high position based on the data from IOM, in Chapter I also give the informations about the effort of international community to prevent the human trafficking case but the effort to prevent the human trafficking case is still weak, it can be seen from the data, especially in Southeast Asia region, it is become the background of problem in this research, ASEAN as the

regional organization in Southeast Asia should be pro active and play a significant role in preventing human trafficking cases, the focus of the research is Indonesia as the leader of ASEAN, the Chapter I also discuss about the Objective of the research and the benefit of the research;

2. Chapter II: in Chapter II will discuss about the general theory and the legal aspect related to the international organization, ASEAN and the human trafficking;
3. Chapter III: in Chapter II will discuss about the methodology which used on the research.
4. Chapter IV: in Chapter IV will discuss about the role of ASEAN in preventing human trafficking in Southeast Asia and the analysis of the problem in Indonesia perspective to overcome the case of human trafficking;
5. Chapter V: in Chapter V will give the conclusion about the role of ASEAN in preventing human trafficking and the suggestion of the problem that faced by ASEAN in preventing the human trafficking case.