



**LAW OF THE REPUBLIC OF INDONESIA
NUMBER 21 YEAR 2007**

ON

**THE ERADICATION OF THE CRIMINAL
ACT OF TRAFFICKING IN PERSONS**

**Ministry of Women's Empowerment
Republic of Indonesia
and
Department of Justice and Human Rights
Republic of Indonesia**



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Translation approved by:



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BY THE GRACE OF GOD THE ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF INDONESIA,

- Considering:
- a. that all human beings as God's creations possess fundamental rights which are inherent to their noble dignity and respect and are protected by the law in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia;
 - b. that trafficking in persons, especially the trafficking of women and children, constitutes a crime which violates human dignity and respect and human rights, thus should be eliminated;
 - c. that trafficking in persons has escalated to take the form of organized and non-organized crime networks having a transnational as well as a domestic scope, and therefore posing a threat against society, the people and the country, and also against principles that are based on human rights;
 - d. that the desire to prevent and counter the criminal act of trafficking in persons is based upon noble values and national as well as international commitments to undertake efforts to effect prevention, prosecution of perpetrators, protection for victims, and enhancement of collaborations;
 - e. that current legislation relating to trafficking in persons is not capable of providing a comprehensive and

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integrated legal basis for the eradication of such criminal acts;

- f. that in view of the conditions as set forth in points, a, b, c, d, and e above, it is deemed necessary to enact a Law on the Eradication of the Criminal Act of Trafficking in Persons.

- In view of
1. Article 20, Article 21, and Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia;
 2. Law Number 7 of 1984 on the Ratification of the Convention on the Elimination of all Forms of Discrimination Against Women (State Gazette Year 1984 Number 29, Supplement to State Gazette Number 3277);
 3. Law Number 23 of 2002 on Child Protection (State Gazette Year 2002 Number 109, Supplement to State Gazette Number 4235);

Upon the Mutual Approval of the
HOUSE OF REPRESENTATIVES OF
THE REPUBLIC OF INDONESIA
and the
PRESIDENT OF THE REPUBLIC OF INDONESIA

DECIDE:

To enact: LAW ON THE ERADICATION OF THE CRIMINAL ACT
OF TRAFFICKING IN PERSONS

CHAPTER I
GENERAL PROVISIONS

Article 1

In this Law, the following terms shall have the meaning as assigned:

1. Trafficking in Persons shall mean the recruitment, transportation, harboring, sending, transfer, or receipt of a person by means of threat or use of force, 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.
2. The Criminal Act of Trafficking in Persons shall mean any crime or series of crimes which meet the qualifications set out in this Law.
3. Victim shall mean a person suffering from psychological, mental, physical, sexual, economic, and/or social trauma caused by the criminal act of trafficking in persons.
4. Anyone shall mean an individual or corporate entity who commits the criminal act of trafficking in persons.
5. A Child shall mean a person under the age of 18 (eighteen) years old, including an unborn baby.
6. A Corporate Entity shall mean an organized group of persons and/or assets, whether constituting a legal entity or a non-legal entity.

7. Exploitation shall mean an act committed with or without the consent of the victim which includes but is not limited to prostitution, forced labor 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 body organs or the use of another persons' labor or ability for one's own material or immaterial profit.
8. Sexual Exploitation shall mean any form of the use of sexual organs or other organs of the victim for the purpose of obtaining profit, including but not limited to all acts of prostitution and sexually indecent acts.
9. Recruitment shall mean any act which includes persuading, gathering, transporting, or separating a person from her/his family or community.
10. Sending shall mean the act of dispatching or shipping a person from one location to another.
11. Force shall mean any unlawful act, with or without the use of an instrument, against the physical and psychological aspect of a person that threatens the life or body, or causes the deprivation of such person's freedom.
12. Threat of Force shall mean any illegal act in the form of verbal statements, writing, pictures, symbols, or body movements, with or without the use of instruments, which invoke fear or restricts the fundamental freedom of a person.
13. Restitution shall mean the payment of compensation imposed on the offender based on court ruling having permanent legal force for the material and/or immaterial damages suffered by victims or their beneficiaries.
14. Rehabilitation shall mean recovery from physical, psychological and social ailments in order to enable [the victim] to resume his/her role within the family or community.
15. Debt Bondage shall mean the act of placing a person in a situation or condition where such person places or is forced to place him/herself or his/her family or a person under his/her charge or his/her personal service as a form of repayment of the debt.

CHAPTER II CRIMINAL ACT OF TRAFFICKING IN PERSONS

Article 2

- (1) Anyone who recruits, transports, harbors, sends, transfers, or receives a person through the threat of force, use of force, abduction, incarceration, fraud, deception, abuse of authority or position of vulnerability, debt bondage or the giving of payment or benefit despite the giving of consent by another individual having charge over the person, for the purpose of exploiting the person within the territory of the Republic of Indonesia shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah).
- (2) If the act as described in paragraph (1) results in a person being exploited, the offender is subject to the same punishment as provided under paragraph (1).

Article 3

Anyone who brings another person into the territory of the Republic of Indonesia with the intention to exploit such person within the said territory or in another country shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah).

Article 4

Anyone who takes an Indonesian citizen outside the territory of the Republic of Indonesia with the intention to exploit such person outside the said territory shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of

Rp600,000,000.00 (six hundred million rupiah).

Article 5

Anyone who adopts a child by promising or giving something with the intention of exploiting [such child] shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah).

Article 6

Anyone who sends a child within the country or to another country using any means, thus causing such child to be exploited, shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah).

Article 7

- (1) If the criminal act as described in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6 results in the victim to suffer major injury or major mental disturbance, to contract a life-threatening contagious disease, to become pregnant, or damage or loss to her/his reproductive organs, the applicable punishment will be added by 1/3 (one-third) of the punishment provided under Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6.
- (2) If the criminal act as described in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6 results in the death of the victim, the applicable punishment is by prison sentence of a minimum period of 5 (five) years and a maximum of a life term and a fine amounting to a minimum of Rp200,000,000.00 (two hundred million rupiah) and a maximum of Rp5,000,000,000.00 (five billion rupiah).

Article 8

- (1) A state official who commits an abuse of authority resulting in the criminal act of trafficking in persons as described in Article 2, Article 3, Article 4, Article 5 and Article 6 is subject to an increase of punishment by 1/3 (one-third) of the punishment described in Article 2, Article 3, Article 4, Article 5 and Article 6.
- (2) In addition to the punishment as provided under paragraph (1) above, an offender may be punished with the additional criminal sanction of dishonorable discharge from his/her position.
- (3) The additional criminal sanction as described in paragraph (2) will be expressed in the same court ruling.

Article 9

Anyone who attempts to cause another person to commit the criminal act of trafficking in persons, and the crime is not undertaken, shall be punishable by a prison sentence of a minimum period of 1 (one) year and a maximum of 6 (six) years and a fine amounting to a minimum of Rp40,000,000.00 (forty million rupiah) and a maximum of Rp240,000,000.00 (two hundred and forty million rupiah).

Article 10

Anyone who assists or attempts to commit the criminal act of trafficking in persons shall be punishable by the criminal sanctions as provided under Articles 2, 3, 4, 5 and 6.

Article 11

Anyone who plans or participates in an unlawful conspiracy to commit the criminal act of trafficking in persons shall be punishable by the criminal sanctions that apply to the actual perpetrators as provided under Articles 2, 3, 4, 5 and 6.

Article 12

Anyone who uses or takes advantage of a victim of the criminal act of trafficking in persons by way of engaging in sexual intercourse or other indecent acts with the victim, employing the victim so as to continue the exploitative situation, or gains benefit from the result of the crime, shall be punishable with the same criminal sanctions as described in Articles 2, 3, 4, 5 and 6.

Article 13

- (1) The criminal act of trafficking in persons shall be deemed to have been committed by a corporate entity if such a crime is committed by anyone acting for and/or on behalf of the corporation or for the interest of the corporation, either under an employment contract or other forms of relationship, within the scope of the corporate entity's operations, alone or in alliance with another person.
- (2) If the criminal act of trafficking in persons is committed by a corporate entity as provided under paragraph (1) above, the investigation, prosecution and sentencing of such crime shall be carried out against the corporate entity and/or its management.

Article 14

In the event a summons is issued against a corporate entity, such summons shall be served to the management at its office address, at the location where the corporate entity operates its business, or at the domicile of the management.

Article 15

- (1) In the case where the criminal act of trafficking in persons is committed by a corporate entity, in addition to the punishment and fine imposed on the management, a sanction can be imposed on the entity in the form of [an additional] fine amounting to 3 (three) times the amount of fine as provided under Articles 2, 3, 4, 5 and 6.

- (2) In addition to the fine as referred to in paragraph (1), a corporate entity may be subject to:
 - a. revocation of its business license;
 - b. confiscation of proceeds derived from the crime in question;
 - c. revocation of status as a legal entity;
 - d. dismissal of the management; and/or
 - e. prohibition on the management to establish another corporate entity within the same line of business.

Article 16

In the event the criminal act of trafficking in persons is committed by an organized group, each of the offenders in such group shall be punishable by the criminal sanctions as referred to in Article 2 increased by 1/3 (one-third).

Article 17

In the event the criminal act as stipulated under Articles 2, 3, and 4 is committed against a child, the applicable sentence shall be increased by 1/3 (one-third).

Article 18

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.

CHAPTER III
OTHER CRIMINAL ACTIONS RELATING TO
THE CRIMINAL ACT OF TRAFFICKING IN PERSONS

Article 19

Anyone who gives or enters false information on a state document or other document or falsifies such document with the aim of facilitating the commission of the criminal act of trafficking in persons shall be punishable by a prison sentence of a minimum period of 1 (one) year and a maximum period of 7 (seven) years and a fine amounting to a minimum of Rp40,000,000.00 (forty million rupiah) and a maximum of Rp280,000,000.00 (two hundred and eighty million rupiah).

Article 20

Anyone who gives false testimony, provides false evidentiary instruments or evidentiary materials, or unlawfully influences a witness during a court proceeding against a criminal act of trafficking in persons shall be punishable by a prison sentence of a minimum period of 1 (one) year and a maximum period of 7 (seven) years and a fine amounting to a minimum of Rp40,000,000.00 (forty million rupiah) and a maximum of Rp280,000,000.00 (two hundred and eighty million rupiah).

Article 21

- (1) Anyone who commits physical assault against a witness or court officer during proceedings in the criminal act of trafficking in persons shall be punishable by a prison sentence of a minimum period of 1 (one) year and a maximum period of 5 (five) years and a fine amounting to a minimum of Rp40,000,000.00 (forty million rupiah) and a maximum of Rp200,000,000.00 (two hundred million rupiah).
- (2) If the act specified in paragraph (1) results in the witness or officer at the proceeding to suffer major injuries, the offender shall be punishable by a prison sentence of a minimum period of 2 (two) years and a maximum period of 10 (ten) years and a fine amounting to a minimum of Rp80,000,000.00 (eighty

million rupiah) and a maximum of Rp400,000,000.00 (four hundred million rupiah).

- (3) If the act specified in paragraph (1) results in the death of the witness or officer at the proceeding, the offender shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum period of 15 (fifteen) years and a fine amounting to a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp600,000,000.00 (six hundred million rupiah).

Article 22

Anyone who deliberately prevents, obstructs, or foils, whether directly or indirectly, the investigation, prosecution, and examination process of a suspect, defendant, or witness in a court proceeding of a criminal act of trafficking in persons shall be punishable by a prison sentence of a minimum period of 1 (one) year and a maximum period of 5 (five) years and a fine amounting to a minimum of Rp40,000,000.00 (forty million rupiah) and a maximum of Rp200,000,000.00 (two hundred million rupiah).

Article 23

Anyone who assists in the escape of a person who committed the criminal act of trafficking in persons from a judicial proceeding by:

- a. giving or lending money, goods, or other assets to the offender;
- b. providing shelter to the offender;
- c. hiding the offender; or
- d. withholding information pertaining to the whereabouts of the offender,

shall be punishable by a prison sentence of a minimum period of 1 (one) year and a maximum period of 5 (five) years and a fine amounting to a minimum of Rp40,000,000.00 (forty million rupiah) and a maximum of Rp200,000,000.00 (two hundred million rupiah).

Article 24

Anyone who discloses the identity of a witness or victim despite such person having been informed that the identity of the witness or victim must be kept confidential shall be punishable by a prison sentence of a minimum period of 3 (three) years and a maximum period of 7 (seven) years and a fine amounting to a minimum of Rp120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp280,000,000.00 (two hundred and eighty million rupiah).

Article 25

If the convicted offender is not able to pay the imposed fine, he/she shall be subject to a prison sentence in lieu of such fine for a maximum period of 1 (one) year.

Article 26

The consent of a victim of the criminal act of trafficking in persons shall not eliminate the prosecution of the offender of such crime.

Article 27

A perpetrator of the criminal act of trafficking in persons forfeits his/her right of claim to a debt or other agreements with the victim, if such debt or agreement has been used as a means to exploit the victim.

CHAPTER IV INVESTIGATION, PROSECUTION, AND EXAMINATION IN A COURT PROCEEDING

Article 28

Investigation, prosecution, and examination in a court proceeding over a criminal act of trafficking in persons case shall be conducted in accordance with the applicable Law of Criminal Procedure, unless otherwise provided hereunder.

Article 29

Other than those specified in the Penal Procedural Code, evidence may also take the form of:

- a. information that is stated, transmitted, received, or stored electronically by an optical device or other similar devices; and
- b. data, recordings, or information that are visible, readable, and/or audible, which may be generated with or without the aid of an instrument, whether documented on paper, physical objects other than paper, or electronically recorded, including but not limited to:
 - 1) texts, sounds, or images;
 - 2) maps, designs, photographs, or other similar media; or
 - 3) letters, markings, figures, symbols, or perforations that bear meaning or which can be understood by a person having the ability to read or interpret them.

Article 30

As a valid evidentiary instrument, testimony from a victim/witness is sufficient to prove the guilt of the defendant, provided that one other evidentiary instrument is given.

Article 31

- (1) Based on the existence of sufficient preliminary evidence, investigators are authorized to monitor [tap] telephone lines or other means of communications that are suspected of being used to prepare, plan and commit the criminal act of trafficking in persons.
- (2) The monitoring as referred to in paragraph (1) may be exercised only upon the written authorization of the head of a court, which shall be valid for a maximum period of 1 (one) year.

Article 32

Investigators, prosecutors, or judges may order a financial service provider to freeze the assets of a person suspected of or charged with the criminal act of trafficking in persons.

Article 33

- (1) During the process of investigation, prosecution, and examination in court, the informant has the right to the confidentiality of his/her identity and address or other information that may reveal such person's identity or address.
- (2) In the event the informant requests that his/her identity and address or other information as described in paragraph (1) be kept confidential, the confidentiality obligation must be notified to the witnesses and other persons involved in the case prior to the commencement of examination by the authorized officer.

Article 34

In the event a witness and/or victim cannot be brought forward during court proceedings, a witness testimony may be given over distance through audio/visual means of communications.

Article 35

In the course of investigation, prosecution, and examination in court, witnesses and/or victims are entitled to be accompanied by a legal counsel and/or other escort as necessary.

Article 36

- (1) In the course of investigation, prosecution, and examination in court, the victim is entitled to receive information regarding the progress of the case involving him/herself.
- (2) Information pertaining to the progress of the case as referred to in paragraph (1) may be in the form of a copy of the transcript of each phase of the examination.

Article 37

- (1) A witness and/or victim may request from the chairman of the presiding judges to be allowed to give testimony before the

court without the presence of the defendant.

- (2) In the event the witness and/or victim is to give testimony without the presence of the defendant, the chairman of the presiding judges may order the defendant to leave the courtroom.
- (3) Examination of the defendant as referred to in paragraph (2) may be resumed after the defendant has been informed of the testimony given by the witness and/or victim during the defendant's absence from the courtroom.

Article 38

Investigation, prosecution, and court examination against [sic] a child witness and/or victim must be conducted with the interest of the child in mind, without the use of court apparels or official uniforms.

Article 39

- (1) Examination of a child witness and/or victim in a criminal act of trafficking in persons trial must be conducted in a closed session.
- (2) In the course of the examination as described in paragraph (1) above, the child witness and/or victim must be accompanied by parents, a custodian, foster parents, legal counsel, or other escorts.
- (3) Examination of child witness and/or victim as referred to in paragraph (1) shall be conducted without the presence of the defendant.

Article 40

- (1) Subject to the approval of the court, the examination of a child witness and/or victim may be conducted outside the courtroom using a recording.
- (2) The examination as described in paragraph (1) shall be

conducted before an authorized officer.

Article 41

- (1) If, following a due and proper summons, the defendant fails to be present in court without any valid reason, the case may be examined and ruled upon in absentia.
- (2) If the defendant attends subsequent court proceedings prior to a ruling being passed, he/she must be examined, and all testimonies from witnesses and evidentiary documents read during the preceding sessions are considered as having been presented in the presence of the defendant.

Article 42

Any ruling made in the absence of the defendant shall be publicized by the public prosecutor on the bulletin board of the court, the office of the Regional Government, or notified to the defendant's family or legal counsel.

CHAPTER V PROTECTION OF WITNESSES AND VICTIMS

Article 43

Provisions regarding witness and victim protection in a criminal act of trafficking in persons case shall be applied in accordance with Law Number 13 of 2006 regarding Witness and Victim Protection, unless otherwise provided hereunder.

Article 44

- (1) Witnesses and/or victims of the criminal act of trafficking in persons are entitled to have the confidentiality of their identity maintained.
- (2) The right as provided in paragraph (1) is also given to the family of a witness and/or victim to the second degree, provided that the family and/or the victim has received

physical or psychological threats from outside parties relating to the testimony of the witness and/or victim.

Article 45

- (1) In order to protect witnesses and/or victims, 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 the criminal act of trafficking in persons.
- (2) Further provisions on the establishment of the said special unit and procedures for the examination of witnesses and/or victims shall be governed under a Regulation of the Chief of the Indonesian National Police.

Article 46

- (1) In order to protect witnesses and/or victims, an integrated service center may be established in each district/municipality for witnesses or victims of a criminal act of trafficking in persons.
- (2) Further provisions on the procedures and mechanisms of the integrated service center as referred to in paragraph (1) shall be regulated by a Government Regulation.

Article 47

In the event a witness and/or victim and their families receive threats which pose a risk to their wellbeing, lives, and/or assets, the Indonesian National Police is obligated to provide protection before, during, and after the court trial.

Article 48

- (1) Every victim of a criminal act of trafficking in persons or his/her beneficiary is entitled to receive restitution.
- (2) Restitution as referred to in paragraph (1) constitutes

compensation for:

- a. loss of assets or income;
 - b. suffering;
 - c. cost of medical and/or psychological treatment; and /or
 - d. other losses suffered by the victim arising from the criminal act of trafficking in persons.
- (3) Restitution shall be awarded and specified in the same court ruling of the criminal act of trafficking in persons cases.
 - (4) The provision of restitution as provided under paragraph (1) shall be effected upon the issuance of the first court ruling.
 - (5) Restitution as provided under paragraph (4) may be temporarily deposited with the court in which the case is ruled upon.
 - (6) Provision of restitution shall be effected within 14 (fourteen) days from the notification of court ruling having permanent legal force.
 - (7) In the event the offender is ruled as not guilty by a court of appeals or cassation, the court will stipulate in its ruling that the deposited restitution money is to be returned to the said offender.

Article 49

- (1) Payment of restitution shall be reported to the head of the court where the ruling was passed, accompanied by proof of such payment.
- (2) Upon receipt of the proof of payment as referred to in paragraph (1), the head of the court shall announce the payment of restitution in the court's bulletin board.
- (3) A copy of the proof of payment of restitution as referred to in paragraph (1) shall be given by the court to the victim or his/her beneficiary.

Article 50

- (1) In the event the order to pay restitution is not carried out within the period as prescribed under Article 48 paragraph (6), the victim or his/her beneficiary informs such failure to the court.
- (2) The court as referred to in paragraph (1) will issue a written notice to the restitution provider to immediately make such restitution payment to the victim or his/her beneficiary.
- (3) If the notice as referred to in paragraph (2) is not acted upon within 14 (fourteen) days, the court will instruct the prosecutor to seize the assets of the convicted offender and auction such assets in order to effect restitution payment.
- (4) If the offender is not able to pay restitution, he/she is subject to a prison sentence in lieu of restitution for a maximum period of 1 (one) year.

Article 51

- (1) A victim is entitled to receive medical and social rehabilitation, return assistance, and social reintegration from the government if such victim suffers physical and psychological hardship as a result of the criminal act of trafficking in persons.
- (2) The entitlements as referred to in paragraph (1) is to be claimed by the victim or his/her family, colleagues, the police, escorting volunteer, or social worker following the reporting of the case by the victim or any other person to the Indonesian National Police.
- (3) The claim as referred to in paragraph (2) shall be submitted to the government through the minister or agency in charge of medical and social issues in the respective region.

Article 52

- (1) The minister or agency in charge of rehabilitation as referred to in Article 51 paragraph (1) is obliged to provide medical and

social rehabilitation, return assistance, and social reintegration within no later than 7 (seven) days from the date of the claim.

- (2) For the purpose of providing medical and social rehabilitation, return assistance, and social reintegration as referred to in paragraph (1), the National and Provincial Government are required to establish shelter and trauma centers.
- (3) For the provision of services as referred to in paragraph (2), the community or social organizations may also establish shelters or trauma centers.

Article 53

In the event the victim suffers trauma or disease which threatens his/her life as a result of the criminal act of trafficking in persons thus requiring immediate assistance, the minister or agency in charge of medical and social issues in the provinces is required to provide initial assistance within no later than 7 (seven) days following the submission of a request.

Article 54

- (1) If a victim located in a foreign country requires legal protection as a consequence of the criminal act of trafficking in persons, the Indonesian government through its representative mission in the said country has the obligation to protect the person and interests of the victim, and must make efforts to return the victim to Indonesia, the expense arising from which will be borne by the state.
- (2) If the victim is a foreign national located in Indonesia, the Indonesian government must make efforts to provide protection and return to his/her country of origin through coordination with the representative of such country in Indonesia.
- (3) The provision of protection as stipulated in paragraphs (1) and (2) shall be conducted in accordance with international laws or customary norms.

Article 55

In addition to the rights as provided in this Law, a witness to and/or victim of the criminal act of trafficking in persons is entitled to the rights and protection as provided in other laws.

CHAPTER VI PREVENTION AND TREATMENT

Article 56

Prevention of the criminal act of trafficking in persons shall be aimed at preventing the criminal act of trafficking in persons at the earliest moment possible.

Article 57

- (1) The Government, Regional Governments, the community, and families, have the obligation to prevent the criminal act of trafficking in persons.
- (2) The Government and Regional Governments have the obligation to formulate policies, programs, actions and to allocate budgets to prevent and address trafficking in persons.

Article 58

- (1) For the purpose of the eradication of the criminal act of trafficking in persons, the Government and Regional Governments have the obligation to take measures to prevent and address the criminal act of trafficking in persons.
- (2) To achieve effectiveness and ensure the implementation of the measures as referred to in paragraph (1), the Government shall form a task force comprised of representatives from the government, law enforcement agencies, civic organizations, non-government organizations, professional associations, and researchers/scholars.

- (3) [Each] Regional Government shall form a task force comprised of representatives from the government, law enforcement agencies, civic organizations, non-government organizations, professional associations, and researchers/scholars.
- (4) The task forces as referred to in paragraphs (2) and (3) constitute a coordinating body with the duty to:
 - a. coordinate efforts to prevent and address the criminal act of trafficking in persons;
 - b. provide advocacy, socialization, training, and cooperation;
 - c. monitor developments in the provision of victim protection including rehabilitation, return, and social reintegration;
 - d. monitor law enforcement; and
 - e. conduct reports and evaluations.
- (5) The national task force shall be chaired by a minister or an official of the same level appointed by virtue of a Presidential Regulation.
- (6) To achieve effectiveness and ensure the implementation of the measures as referred to in paragraph (2), the Government and Regional Governments have the obligation to allocate budgets as necessary.
- (7) Further provisions on the establishment, organization, membership, budget, and operating procedures of the national and regional task forces shall be stipulated in a Presidential Decree.

CHAPTER VII
INTERNATIONAL COOPERATION AND COMMUNITY
PARTICIPATION

Part One
International Cooperation

Article 59

- (1) In order to ensure effectiveness of the prevention and the eradication of the criminal act of trafficking in persons, the Government of the Republic of Indonesia has the obligation to seek out international cooperation, whether bilaterally, regionally, or multilaterally.
- (2) The cooperation as referred to in paragraph (1) may be effected through an agreement on the mutual assistance in criminal matters and/or other technical cooperation in accordance with prevailing laws.

Part Two
Community Participation

Article 60

- (1) The community shall participate in assisting in the prevention [of trafficking in persons] and the handling [of the treatment] of its victims.
- (2) Community participation as referred to in paragraph (1) is manifested through the provision of information and/or lodging of reports on the occurrence of trafficking in persons to law enforcement organizations or authorized officials, or participation in the treatment of victims of the criminal act of trafficking in persons.

Article 61

In order to facilitate the prevention of the criminal act of trafficking in persons and the treatment of its victims, the Government has the obligation to provide the widest possible access for community participation, both at the national and international levels in accordance with the prevailing legislations, laws and international customary norms.

Article 62

In order to effect the participation as referred to in Articles 60 and 61, the community is entitled to receive protection of the law.

Article 63

Community participation as referred to in Articles 60 and 61 shall be carried out in an accountable manner in accordance with the provisions of the law.

CHAPTER VIII TRANSITIONAL PROVISIONS

Article 64

When this law enters into effect, cases of trafficking in persons that are still under investigation, prosecution or judicial process shall continue to be processed pursuant to the applicable laws [other than this law].

CHAPTER IX

Closing Provisions

Article 65

When this law enters into effect, Articles 297 and 324 of Law No. 1 of 1946 on Penal Provisions (State Gazette of the Republic of Indonesia II No. 9) jo. Law No. 73 of 1958 on Notification of Enactment of Law No. 1 of 1946 on Penal Provisions for the Entire Territory of the Republic of Indonesia and Amending the Penal Code (State Gazette of the Republic of Indonesia Year 1958 No. 127, Supplement to the State Gazette Number 1660) which has been subject to a number of amendments and additions, the latest of which was by virtue of Law No. 27 of 1999 on Amendment to the Penal Code in Relation to Crimes Against the State (State Gazette of the Republic of Indonesia Year 1999 No. 74, Supplement to the State Gazette No. 4850) are automatically revoked and are rendered null and void.

Article 66

Implementing regulations mandated under this Law must be enacted no later than 6 (six) months following this Law coming into effect.

Article 67

This Law will enter into effect on the date of the promulgation hereof.

For this Law to be known to the public, it is hereby ordered that the same is to be published in the State Gazette of the Republic of Indonesia.

Enacted in Jakarta

On 19 of April 2007
PRESIDENT OF
THE REPUBLIC OF INDONESIA,

DR. H. SUSILO BAMBANG YUDHOYONO

Promulgated in
Jakarta
On 19 April 2007

MINISTER OF LAW AND
HUMAN RIGHTS
OF THE REPUBLIC OF INDONESIA

HAMID AWALUDIN

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 2007,
NUMBER 58

ELUCIDATION
OF THE LAW OF THE REPUBLIC OF INDONESIA
NUMBER 21 YEAR 2007
ON
THE ERADICATION OF THE CRIMINAL ACT OF TRAFFICKING
IN PERSONS

I. GENERAL

Trafficking in persons is a modern day form of slavery. Trafficking in persons is also one of the grossest violations of human respect and dignity.

The increase of instances of trafficking in persons in various countries, including Indonesia and other developing nations, has become the focus of attention of Indonesia as a nation, the international community, and members of international organizations, especially the United Nations (UN).

Based on empirical evidence, women and children constitute groups that are most likely to fall victim to the criminal act of trafficking in persons. Victims are trafficked not only to be prostituted or other forms of sexual exploitations, but also for various other reasons such as forced labor or servitude, slavery, or practices similar to slavery. Traffickers engage in the recruitment, transport, transfer, harboring, or receipt of persons with the aim to entrap, force, or take advantage of such person into exploitative practices under threat of force, use of force, abduction, fraud, deception, misuse of authority or position of vulnerability, or the giving of payment or benefit for the purpose of obtaining consent from the person having control over the victim.

Forms of exploitation which include forced labor or servitude, slavery, and practices similar to slavery, forced labor or servitude are work conditions which arise through methods, plans or schemes designed to convince a person that if he/she fails to perform a certain kind of work, such person or a person under their care will suffer either physically or psychologically. Slavery is a condition where a person is under the ownership of another person. Practices similar to slavery are actions which place a person under the control of another person causing the former to be unable to refuse an unlawful profession ordered by the latter, despite the former having no wish to perform such

work.

The criminal act of trafficking in persons, especially against women and children, has become widespread in the form of both organized and non-organized crime networks. The criminal act of trafficking in persons has even gone so far as to involve not only individual persons but also corporate entities and state officials who abuse their authority and power. Networks of traffickers also have an operational reach not only encompassing regions within a state's boundaries but also crossing state borders.

Provisions on prohibition of trafficking in persons are basically set out in the Indonesian Penal Code (KUHP). Article 297 of the Penal Code sets forth a prohibition against the trafficking in females and underage males and qualifies such action as a criminal offence. Article 83 of Law No. 23 of 2002 on Child Protection prohibits the trading, sale, or abduction of children for personal benefit or to be sold. However, provisions in the Penal Code and Child Protection Law do not provide a clear legal definition of trafficking in persons. In addition, Article 297 of the Penal Code imposes a very light punishment that is disproportionate with the suffering inflicted on the victims of trafficking. As such, a special law on the criminal act of trafficking in persons is required which is able to provide a material and formal legal basis. To that end, this special law should anticipate and cover all types of actions, means, or forms of exploitations which may occur in the criminal act of trafficking in persons, whether perpetrated among regions inside the border or across state boundaries, by individual offenders as well as corporate entities.

This Law regulates the protection of witnesses and victims as an important aspect in law enforcement, aimed at giving basic protection to witnesses and victims. Additionally, this Law also gives considerable attention to the suffering of victims as a result of the criminal act of trafficking in persons, manifested in the right to restitution that are required to be paid by the offender as compensation to the victim, and also provides the rights of victims to medical and social rehabilitation, return assistance and reintegration that must be fulfilled by the state, especially for victims who have undergone physical, psychological, and social hardship as a result of the crime.

The prevention and handling of the criminal act of

trafficking in persons is the responsibility of the National Government, Regional Governments, the community, and families. In order to formulate comprehensive and integrated steps to prevent and mitigate the crime, task forces need to be created. The criminal act of trafficking in persons is a crime that occurs not only within the boundaries of a state but also crosses borders. As such, international cooperation needs to be developed in the form of bilateral assistance agreements in the area of crime and/or other technical cooperation in accordance with the prevailing laws.

The formulation of this Law also constitutes a manifestation of Indonesia's commitment to observe the UN protocol of 2000 on the Prevention, Suppress and Punishment of Trafficking in Persons, especially Women and Children (the Palermo Protocol), to which Indonesia is a signatory.

II. ARTICLE BY ARTICLE

Article 1

Sufficiently clear.

Article 2

Paragraph (1)

Under this provision, the term "for the purpose of" before the words "exploiting the person" denotes that the criminal act of trafficking in persons is a formal offence, i.e. the crime is deemed to have occurred if the stipulated qualifications are fulfilled, without requiring to give rise to an effect.

Paragraph (2)

Sufficiently clear.

Article 3

This clause is meant to clarify that the territory of the Republic of Indonesia is a country of destination or transit.

Article 4

Sufficiently clear.

Article 5

Sufficiently clear.

Article 6

The phrase "sends a child within the country" in this clause means the transfer of a child between regions within the territory of the Republic of Indonesia.

Article 7

Paragraph (1)

The term "major injury" in this clause means:

- a. an illness or injury which presents no hope of full recovery or which poses a life threatening risk;
- b. permanent loss of ability to carry out work duties or livelihood activity;
- c. loss of [function] of a sensory organ;
- d. significant disability;
- e. paralysis;
- f. mental illness occurring continuously for at least 4 (four) weeks or intermittently for 1 (one) year; or
- g. death of fetus in the womb of a woman or resulting in reproductive organ dysfunction.

Paragraph (2)

Sufficiently Clear.

Article 8

Paragraph (1)

The term "state official" in this clause include government officials, members of the Indonesia National Army, members of the Indonesian National Police, members of security forces, law enforcement officers, or public officials who misuse their authority to commit or facilitate the criminal act of trafficking in persons. "Abuse of authority" in the context of this clause means the exercise of authority which is not in accordance with its intended purpose or the prevailing rules and regulations.

Paragraph (2)

Sufficiently clear.

Paragraph (3)
Sufficiently clear.

Article 9
Sufficiently clear.

Article 10
Sufficiently clear.

Article 11
Sufficiently clear.

Article 12
Sufficiently clear.

Article 13
Sufficiently clear.

Article 14
Sufficiently clear.

Article 15
Paragraph (1)
Sufficiently clear.

Paragraph (2)
The term “revocation of its business license, confiscation of proceeds derived from the crime in question, revocation of status as a legal entity, dismissal of the management, and/or prohibition on the management to establish another corporate entity within the same line of business” in the context of this clause is enforced in accordance with the applicable provisions of the law.

Article 16
In this clause the term “organized group” is a structured group consisting of 3 (three) or more persons, existing for a certain period and acting with the purpose of committing one or more of the criminal offences provided in this Law with the aim to obtain material or financial benefit either directly or indirectly.

Article 17
Sufficiently clear.

Article 18
The term “coercion” in the context of this clause is a condition in which a person/victim is made to undertake an activity which contravenes such person’s free will.

Article 19
The term “state document” in the context of this clause includes but is not limited to passport, identity card, diploma, family certificate, birth certificate, and marriage certificate. “Other documents” in this clause include but are not limited to collective labor agreement, request for Indonesian labor, insurance, and other related documents.

Article 20
Sufficiently clear.

Article 21
Paragraph (1)
The term “court officers” refers to the judges, prosecutor, court clerk, victim’s escort, legal counsel, and police who are present in court during a trial of the criminal act of trafficking in persons.

Paragraph (2)
Sufficiently clear.

Paragraph (3)
Sufficiently clear.

Article 22
Sufficiently clear.

Article 23
Sufficiently clear.

Article 24
This clause also applies in the case of publication of the identity of a victim or witness in the mass media.

Article 25

Sufficiently clear.

Article 26

Sufficiently clear.

Article 27

Under this clause, the victim retains the right of claim over any indebtedness or agreement if the offender carries an obligation to pay a debt or other agreement to the victim.

Article 28

Sufficiently clear.

Article 29

The terms “data, recordings, or information that are visible, readable, and/or audible, which may be generated with or without the aid of an instrument, whether documented on paper, physical objects other than paper, or electronically recorded” as used within the context of this clause may include: data stored in a computer, telephone or other electronic device, or other records such as:

- a. bank account statements, business records, financial records, credit or loan records, or transaction records related to a person or corporate entity suspected of being involved in the criminal act of trafficking in persons;
- b. movement, travel, or communication records of a person or organization suspected of being involved in the crime as governed under this Law; or
- c. documents, testimonies, or other evidences obtained from a foreign country, with whose authorities Indonesia engages in a cooperation relating to reciprocal assistance in matters of crime in accordance with the prevailing laws.

Article 30

Sufficiently clear.

Article 31

Sufficiently clear.

Article 32

The term “financial service provider” means, among others, a bank securities company, mutual funds, custodian, and currency trader.

Article 33

Sufficiently clear.

Article 34

Sufficiently clear.

Article 35

The term “other escort” means, among others, psychologist, psychiatrist, medical professional, religious figure, and family member.

Article 36

Paragraph (1)

[The term “victim” used in] the phrase “victim is entitled to receive information regarding the progress of the case involving him/herself” in this clause means the victim who steps forward as a witness in a trial of the criminal act of trafficking.

Paragraph (2)

The term “information pertaining to the progress of the case at each phase of the examination” means, among others, copies of court transcripts or résumés of examination during the investigation, indictment, and prosecution phases, and the court’s ruling.

Article 37

Sufficiently clear.

Article 38

Sufficiently clear.

Article 39

Sufficiently clear.

Article 40

Paragraph (1)

The “recording” in this clause may be conducted using an audio and/or audio/visual recording instrument.

Paragraph (2)

The term “authorized officer” means an investigator or public prosecutor.

Article 41

Sufficiently clear.

Article 42

This clause is designed:

- a. to allow convicted offenders on the run to be aware of the ruling; or
- b. to provide additional punishment to the offender in the form of a “tarnish of the reputation” for his/her uncooperative conduct during the legal proceedings.

Article 43

Sufficiently clear.

Article 44

Sufficiently clear.

Article 45

Sufficiently clear.

Article 46

Sufficiently clear.

Article 47

Sufficiently clear.

Article 48

Paragraph (1)

In this Article, the procedure for the claim for restitution

is commenced from the time the victim lodges a report of his/her case to the local Police and is carried out by investigators simultaneously with the investigations of the crime committed. The prosecutor is obligated to inform the witness of his/her rights to claim for restitution, and must state the amount of the loss suffered by the victim as a result of the criminal act of trafficking in persons in concurrence with the charges [for the offence]. This procedure does not eliminate the right of the victim to file his/her own claim for compensation of such loss.

Paragraph (2)

The term “other losses” in this clause may include:

- a. loss of personal property;
- b. basic transport cost;
- c. legal fees or other costs relating to the legal proceedings; or
- d. loss of income promised by the offender.

Paragraph (3)

Sufficiently clear.

Paragraph (4)

Sufficiently clear.

Paragraph (5)

In this clause, the temporary depositing of cash restitution with the court is done in accordance with the provisions of the law. This clause is made to mirror the process which applies in the handling of a civil case on the consignment.

Paragraph (6)

Restitution as provided under this clause constitutes factual payment of the restitution amount awarded which was previously deposited with the court of the first instance.

Paragraph (7)

Sufficiently clear.

Article 49

Sufficiently clear.

Article 50

Sufficiently clear.

Article 51

Paragraph (1)

The term “medical rehabilitation” in this clause is the rehabilitation to normal of both physical and psychological conditions.

The term “social rehabilitation” in this clause is the rehabilitation of mental/social disorder and the restoration of social ability in order for the victim to be able to resume his/her role in the family and society.

The term “social reintegration” in this clause is the reunification of a victim of the criminal act of trafficking in persons with his/her family or a foster family which can provide protection to and meet the needs of the victim.

The right to “return assistance” must be provided under the condition that the victim is indeed willing to return home, and that there is no greater risk awaiting the victim.

Paragraph (2)

Under this clause, request for rehabilitation may be made by the victim or his/her legal counsel by submitting proof of his/her case to the police.

Paragraph (3)

“Government” in the context of this clause is the institution in charge of handling medical issues and/or mitigation of social issues, and which may be provided jointly by authorities at the central, provincial and district/municipality level, particularly the area where the victim originates or is domiciled.

Article 52

Paragraph (1)

Sufficiently clear.

Paragraph (2)

In this clause, the establishment of social shelter or trauma center is conducted in accordance with the needs

of each of the regions, with due consideration of priority. In the event a particular region already has a social shelter or trauma center established, the use thereof should be optimized pursuant to the provisions of this Law.

Paragraph (3)

Sufficiently clear.

Article 53

Sufficiently clear.

Article 54

Paragraph (1)

The phrase “its representative mission in the said country” as used in this clause means the embassy, consulate general, liaison office, trade office or other diplomatic mission or consulate, which carries out the mandate of the Indonesian Government in accordance with the laws to protect the interest of Indonesian citizens or legal entities who encounter legal problems abroad.

Paragraph (2)

Sufficiently clear.

Paragraph (3)

Sufficiently clear.

Article 55

“Other laws” as used in this clause also refers to laws which provide protection for witnesses and/or victims.

Article 56

Sufficiently clear.

Article 57

Paragraph (1)

The term “Government” as used in this clause is any institution which manages issues in the areas of, among others, education, women empowerment, labor, law human rights, communication and information. “Regional Government” in this clause includes

provincial and district/municipality authorities.

Paragraph (2)

Actions to “address” include, among others, monitoring, prosecution, and enhancement of the capacities of law enforcement institutions and other stakeholders.

Article 58

Sufficiently clear.

Article 59

Paragraph (1)

The “Government of the Republic of Indonesia” in this clause means officials conferred by the President with the authority to engage in international relations and political interests of the Republic of Indonesia in accordance with the applicable laws.

Paragraph (2)

“agreement on the mutual assistance in criminal matters” in this clause includes:

- a. collection of evidence and statements from persons;
- b. delivery of official documents and other relevant legal records;
- c. identification of persons and locations;
- d. fulfillment of requests for investigation and seizure and transfer of evidence in the form of documents and objects;
- e. efforts to move proceeds derived from a crime;
- f. efforts to obtain consent from persons willing to provide testimony and assist in investigations conducted by the requesting party and, if such person is under incarceration, arrange for his/her temporary transfer to the requesting party;
- g. delivery of documents;
- h. assessment by experts and notification of the result of a criminal proceeding; and
- i. other assistance pursuant to the reciprocal agreement in the area of crime management.

Article 60

Sufficiently clear.

Article 61

Sufficiently clear.

Article 62

“Protection of the law” in this clause may be in the form of:

- a. personal safety;
- b. confidentiality of personal identity; or
- c. legal prosecution as a result of accountable reporting of a criminal act of trafficking in persons.

Article 63

Sufficiently clear.

Article 64

Sufficiently clear.

Article 65

Sufficiently clear.

Article 66

Sufficiently clear.

Article 67

Sufficiently clear.

SUPPLEMENT TO THE STATE GAZETTE OF
THE REPUBLIC OF INDONESIA NUMBER 4720

