

HANDLING OF CRIME VICTIMS OF TRAFFICKING IN PERSONS IN THE DISTRICT NORTH KALIMANTAN NUNUKAN

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ABSTRACT

Human nature as being cultured and civilized must inculcate love for fellow human beings and to be treated fairly as social beings. As social beings must uphold the dignity of human beings as noble creatures created by God the Almighty so that should not be the existence of human trafficking, slavery, servitude slave trade, torture, cruel treatment or that is classified as a crime against humanity. Trafficking Occurs in small scope can be defined happen between regions / provinces within Indonesia with the title as the source area, local transit and receiving areas of trafficking in persons. Nunukan Regency is one of the transit area of the scene of the crime of trafficking in persons. This paper aims to find out the offenses Suffered by victims of criminal acts of trafficking and government Efforts to Nunukan in handling victims of human trafficking. Victims of the crime of trafficking in persons during the year 2009-2014 experienced by prospective illegal labor. Victims are being addressed by the Indonesian National Police Region North Borneo Resort Nunukan, Women Empowerment and Family Planning Nunukan and Services Center for Placement and Protection of Indonesian Workers (BP3TKI Nunukan).

Key words: Victims, Crime, Trafficking in Persons, Nunukan.

Introduction

The basic rights or fundamental rights of human beings brought from birth as a gift of God Almighty be the base rather than the rights and obligations of the other. Human rights associated with the nature, dignity, and human dignity, the human rights rooted in his nature as a creature of God.¹ As God's noblest creatures then no one can be at the mercy of other people to slavery, servitude, or traded.

Trafficking occurs in small scope can be defined happen between regions / provinces within Indonesia with the title as the source area, local transit and receiving areas of trafficking in persons. Overview trafficking regions in Indonesia by Ruth Rosenberg in the table on the source area, transit and receiving areas of trafficking in persons, as quoted by Sari Mandiana and Elfina Lebrine Sahetapy below:²

Table 1
Sending Areas, Regional Transit and Receiving Areas
Trafficking in Person in Indonesia

Sending Areas	Regional Transit	Receiving Areas
Prop. Sumatera Utara: Medan, Deli Serdang, Serdang Bedagai, Simalungun, Pematang Siantar, Asahan, Langkat, Tebing Tinggi, Labuhan Batu, Tapanuli Selatan, Dairi, Binjai.	Belawan, Medan, Padang Bulan, Deli Serdang, Serdang Bedagai, Asahan, Tanjung Balai, Labuhan Batu	Deli Serdang, Medan, Belawan, Serdang Bedagai, Simalungun.
-	Prop. Kepulauan Riau: Batam, Tanjung Pangkor	Batam
Prop. Lampung	Lampung Selatan	Lampung Selatan

¹ Farhana, *Aspek Hukum Perdagangan Orang di Indonesia*, Sinar Grafika, Jakarta, 2010, h. 10.

² Sari Mandiana dan Elfina Lebrine Sahetapy, "Implementasi UU No. 21 Tahun 2007 Dalam Upaya Pencegahan dan Pemberantasan Tindak Pidana Perdagangan Orang", makalah yang disampaikan pada *Seminar Nasional "Implementasi Undang-undang No. 27 Tahun 2007 Tentang PTPPO dalam Pencegahan dan Pemberantasan Perdagangan Orang"*, yang diselenggarakan Universitas Surabaya, Surabaya, 3 September 2007, h.7-8.

-	Prop. DKI Jakarta: Jakarta Pusat, Barat, Timur, Utara, Selatan	Jakarta Pusat, Barat, Timur, Utara, Selatan
Prop. Jawa Barat: Sukabumi, Tangerang, Bekasi, Indramayu, Bandung, Karawang, Bogor, Cianjur, Ciroyom, Sawangan, Depok, Cirebon, Kuningan.	Bandung, Losari-Cirebon	-
Prop. Jawa Tengah: Banyumas, Magelang, Purwokerto, Cilacap, Semarang, Tegal, Pekalongan, Purwodadi, Grobogan, Jepara, Boyolali	Cilacap, Solo	Baturaden, Solo
Prop. Jawa Timur: Banyuwangi, Nganjuk, Madiun, Kediri, Surabaya, Blitar, Jember, Gresik	Surabaya	Surabaya
Prop. Bali: Denpasar, Trunyan, Karangasem, Kintamani, Bangli	Denpasar	Denpasar, Gianyar, Legian, Nusa Dua, Sanur, Tuban, Kuta, Ubud, Candi Dasa
Prop. Kalimantan Barat: Pontianak	Entikong, Pontianak	Pontianak
Prop. Kalimantan Timur: Samarinda	Balikpapan, Nunukan, Tarakan	Balikpapan, Samarinda
-	Prop. Sulawesi Selatan: Pare-pare, Makasar, Sengkang, Watampone	-
Prop. Sulawesi Utara: Manado	Bitung	-
Prop. Sulawesi Tenggara	-	-
Prop. Nusa Tenggara Barat	Mataram	Pantai Senggigi, Sumbawa
Prop. Nusa Tenggara Timur	-	-
-	Prop. Maluku Utara: Ternate	-
	Prop. Papua: Serui	Biak, Fak-fak, Timika

Based on the above table can be described things below:

1. It turns out that the crime of trafficking in persons in the Republic of Indonesia No region or city as a source and transit and receiver, namely Medan, Deli Serdang, Serdang Bedagai, Surabaya, Denpasar and Pontianak.
2. Regions or cities as a source that is only Siantar, Langkat, Tebing Tinggi, South Tapanuli, Dairi, Binjai, Sukabumi, Tangerang, Bekasi, Indramayu, Karawang, Bogor, Cianjur, Ciroyom, Sawangan, Depok, Brass, Banyumas, Magelang, Purwokerto, Semarang, Tegal, Pekalongan, Purwodadi, Grobogan, Jepara, Boyolali, Banyuwangi, Nganjuk, Madiun, Kediri, Blitar, Jember, Gresik, Trunyan, Karangasem, Kintamani, and Bangli, and Manado.
3. The area or city as a source and transit ie Asahan, Labuhan Batu, Bandung and Cirebon, and Cilacap.
4. Regions or cities as a source and receiver are Simalungun and Samarinda.
5. The area or city as a transit namely Padang Bulan, Tanjung Balai, Tanjung Pangkor, Nunukan, Tarakan, Pare-pare, Makasar, Sengkang, Watampone, Bitung, Mataram, and Ternate, and Serui.
6. The area or city as a transit and receiver are Belawan, Batam, Lampung Selatan, Central Jakarta, West Jakarta, East Jakarta, North Jakarta, South Jakarta, and Solo and Balikpapan.
7. The area or city as the recipient only as Baturaden, Gianyar, Legian, Nusa Dua, Sanur, Tuban, Kuta, Ubud, Candi Dasa, Senggigi Beach, Sumbawa, Biak, and Fak-Fak, and Timika.

Trafficking occurs in a large scope, lines trafficking victims were Indonesian involve other countries as the destination or recipient of trafficking in persons, namely Malaysia, Singapore, the Middle East, and Hong Kong. The trading network can not be separated from the boundaries of the country more easily traversed, has a cross-country network of well-structured and highly secretive existence, even involving a syndicate. Regarding the trafficking that occur from poor countries to the developed countries by the National Criminal Intelligence Service (NCIS) and Lederer was quoted as saying by Tom Obokata explained that,

People are trafficked by land, sea and air generally from poor States into developed ones, and certain trafficking routes have been identified. From Russia, for instance, people are trafficked through the Balkan region, Poland and the Czech Republic into Western Europe. Italy and Greece have been identified as common destinations for people from the Middle East. In addition, people from Africa are trafficked not only into Western Europe, but also into the United States and Canada. In a similar vein, traffickers traffic people from China and South East Asian States into North America through the Atlantic Trafficking Route.³

These aforementioned trafficking occurred not only concern within the territorial limits of a single country, namely trafficking inter-city, inter-island or between regions, but also trafficking in persons outside the territorial boundaries of a country. Trafficking in persons is a transnational trafficking that occurs between two (2) states, or even more so that there is no mention source countries, transit countries and destination countries.

³ Tom Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach*, Martinus Nijhoff Publishers, Netherlands, 2006, h. 2.

Nunukan district as a transit area of human trafficking is one part of the territory of the division of East Kalimantan into North Borneo together with 3 districts and 1 other cities into the provinces of the youngest Indonesia, based on Law No. 20 of 2012 on the Establishment of Kalimantan Utara (Kaltara) on November 16, 2012. Prior to the passage of legislation, commonly referred to Nunukan district as part of the north eastern Kalimantan with a total area of 14 585 square kilometers, a population of around 95,000 people.

Nunukan district situated between 115 ° 33 'to 118 ° 3' east longitude and 3 ° 15'00 "with up to 4 ° 24'55" north latitude is the most northern region of the province of East Kalimantan. The district has 10 rivers and 17 islands. His position is one of the districts state border between Indonesia and Malaysia. Mileage relatively short only approximately 30 minutes Nunukan - Tawau, using motor boats further increase the amount of commercial traffic that occurred in the border area. Making Nunukan district as a strategic area in the map of traffic between countries.

Based on the description above, the formulation of the problem the which will be the focus of this paper is the offenses Suffered by victims of criminal acts of trafficking and government Efforts to Nunukan in handling victims of human trafficking.

Research Design

A. Crime of Trafficking in Persons

In Indonesia, the criminalization of trafficking in persons has been done that is contained in the provisions of Article 297 of Law Number 1 Year 1946 concerning Criminal Code (hereinafter referred to as the Criminal Code), determines that the trafficking of women and children trafficking male minors, shall be punished jail permanently six years. Article 297 of the Criminal Code does not provide a clear definition of trafficking in persons but only define the elements of the crime is the trafficking of women and boys who are not old enough. The absence of this definition brings serious problems in the application of the Criminal Code in cases which should be categorized as trafficking. A wide variety of criminal cases of trafficking in persons with developmental elements of the crime by the perpetrator did not see a human being or a corporation, subject to Article 297 of the Criminal Code.

Responding to the development of trafficking that occurred in Indonesia, the Indonesian government enacted Law No. 21 of 2007 on the Eradication of Trafficking in Persons (Official Gazette of the Republic of Indonesia Year 2007 Number 58, Supplement to the State Gazette of the Republic of Indonesia Number 4720, hereinafter referred to as the Act PTPPO). PTPPO Law is a national instrument for the elimination of trafficking in persons including legal protection of victims of trafficking.

Philosophical foundation passed Act PTPPO as stated in the academic paper is based on the provisions of Paragraph IV of the Preamble of the Constitution of the Republic of Indonesia Year 1945 (Constitution NRI 1945) that the purpose of the Indonesian state is to protect the entire Indonesian nation and the entire homeland of Indonesia, promote the general welfare, educating the nation and participate in the establishment of world order. The responsibility of the state, especially the government, requires to perform actions either legally, politically, economically and socially to prevent, eliminate and eradicate and punish perpetrators of crimes and the practice of trafficking in persons, especially women and children.⁴

Preamble PTPPO Law explains that human trafficking in Indonesia have improved and extended in the form of organized crime networks internationally. Legislation that is used in the treatment of human trafficking has not been able to provide the legal basis for an integrated and comprehensive to significantly reduce the number of trafficking victims. Fill preamble PTPPO Act are as follows:

- a. that every man as a creature of God Almighty has rights in accordance with the glory of dignity and status protected by law based on Pancasila and the Constitution of the Republic of Indonesia Year 1945;
- b. that trafficking in persons, especially women and children, is an action that is contrary to human dignity and violate human rights, and should be eradicated;
- c. that human trafficking has expanded in the form of a network of organized crime and disorganized, is both between countries and within the country, thus becoming a threat to society, nation and state, as well as the norms of life that is based on respect for human rights;
- d. that the desire to prevent and combat human trafficking crime is based on noble values, commitment to national and international efforts early prevention, prosecution of offenders, protection of victims, and increased cooperation;
- e. that legislation relating to trafficking in persons do not provide a legal basis for a comprehensive and integrated efforts to combat human trafficking crime.

The seriousness of the government in order to prevent, mitigate and simultaneously processing the perpetrators of human trafficking was also expressed by Didik Endro Purwoleksono that noteworthy today is related to trafficking, namely:

1. The victims of trafficking are likely to increase, to the attention both nationally and globally;
2. The victims are generally women and children (including children of men to pedophilia, etc.);
3. The data on trafficking victims is like an iceberg (Iceberg phenomenon)
4. Indonesia's position on the issue of trafficking as a sending country (of origin), transit and destination.
5. is a fairly lucrative crime in terms of revenue compared to other crimes.
6. an organized crime (organized crime).⁵

⁴ Puslitbang Hukum dan Peradilan M.A R.I, *Naskah Akademis Trafficking Perdagangan Manusia*, Puslitbang Hukum dan Peradilan M.A R.I, Jakarta, 2007.

⁵ Didik Endro Purwoleksono, "Tantangan dan Hambatan dalam Menanggulangi Tindak Pidana Perdagangan Orang (TPPO)", makalah yang disampaikan dalam kegiatan "Sosialisasi Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan

The term insider trading PTPPO Act adopted the term Trafficking in Persons contained in Article 3 (a) The Trafficking Protocol. As for the definition of trafficking in persons under Article 1 paragraph 1 of Law PTPPO are:

Trafficking is the act of recruitment, transportation, harboring, transportation, transfer, or receipt of persons by threat of violence, use of force, abduction, confinement, fraud, deception, abuse of power or vulnerability, debt bondage or giving payments or benefits, so as to obtain the approval of a person having control over another person, whether committed within the country or between countries, for the purpose of exploitation or cause people to be exploited.

The elements of insider trading PTPPO Act and The Trafficking Protocol consists of three (3) basic substance of the action, ways, and goals. The basic substance shown in the table below.

Table 2
Elements of Trafficking in Persons Under The Trafficking Protocol and the Act PTPPO

Elementary Substance	The Trafficking Protocol	Act PTPPO
1. Measures	a. recruitment, b. transportation, c. removal, d. concealment or the reception person	a. recruitment, b. transportation, c. shelter, d. delivery, e. removal, or f. The reception person
2. How	a. the threat or use of force, b. kidnapping, c. forgery, d. fraud, e. abuse of power or f. a vulnerable position or g. giving payments or benefits	a. threats of violence, b. the use of violence, c. kidnapping, d. confinement, forgery, e. fraud, f. abuse of power or g. vulnerable position, h. debt bondage or i. giving payments or benefits
3. Objective	a. including the exploitation of the prostitution or other forms of sexual exploitation, b. forced labor or services, c. slavery or other practices similar to slavery, d. serfdom e. making organs.	a. exploitation or b. resulting in people exploited

Based on the above table can be described things below:

1. The act of recruiting, transporting, harboring, transportation, transfer, or receipt of persons must be interpreted done separately in the trafficking of persons as an alternative, a minimum of one act was committed;
2. To act of recruitment, transportation, harboring, transportation, transfer, or receipt of a person simply by using one of the ways is already a series of trafficking in persons;
3. Perform one of the actions by using one of the ways listed in the table above should aim to lead the exploited or exploited;
4. The element of trafficking in persons must be accomplished by performing one of the actions by using one of the ways that aim to exploit or cause people to be exploited.
5. The three basic substance is carried out within the country and between countries for the purpose of exploitation or cause people to be exploited. The term exploitation of the Act more meaningful PTPPO widely referred to in Article 1 paragraph 7 of Law PTPPO, determine

Exploitation is the act with or without the consent of the victim which include but are not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, use of physical, sexual, reproductive organs, or unlawfully removing or transplanting organs and / or body tissues or harness or ability of a person by another party to benefit both material and immaterial.

Acts declared criminal offenses of insider trading PTPPO Act is a criminal offense of human trafficking and other crimes related to human trafficking crime.

a. Crime of Trafficking in Persons.

The elements of the crime of trafficking in persons consist of various criminal acts of trafficking in persons, namely:

1. The act of recruiting, transporting, harboring, transportation, transfer, or receipt of persons by threat of violence, use of force, abduction, confinement, fraud, deception, abuse of power or vulnerability, debt bondage or giving payments or benefits although the approval of the having control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia (Article 2, paragraph 1).
2. The act of entering the territory of the Republic of Indonesia with a view to being exploited in the territory of the Republic of Indonesia or exploited in other countries (Article 3).

Orang”, yang diselenggarakan oleh Yayasan Citra Tribuana Mandiri Forum Pemberdayaan Perempuan dan Perlindungan Anak Jawa Timur bekerjasama dengan Badan Pemberdayaan Perempuan dan Keluarga Berencana Propinsi Jawa Timur, Surabaya, 4 Nopember 2009.

3. The act of bringing citizens of Indonesia to Indonesian territory with a view to being exploited outside the territory of the Republic of Indonesia (Article 4).
4. The act of doing adoptions by promising something or leave something for the purpose of exploitation (Article 5).
5. The act of sending the child into or out of the country in any way that results in the child exploitation (Article 6).
6. The act of trying to mobilize others to commit criminal acts of trafficking, and criminal offenses that did not happen (Article 9).
7. The act of helping or having attempted to commit the crime of trafficking in persons (Article 10).
8. Deeds or planning to commit conspiracy to commit the crime of trafficking in persons (Article 11).
9. The act of use or exploit victims of human trafficking crime by means of sexual intercourse or other lewd acts with victims of human trafficking crime, employ victims of human trafficking to continue to practice exploitation, or take advantage of the results of the crime of trafficking in persons (Article 12) ,

b. Other crimes related to human trafficking crime.

Regarding elements other crimes related to human trafficking crime is as follows:

1. The act of giving or entering false information on state documents or other documents or falsifying documents state or other documents, to facilitate the occurrence of the crime of trafficking in persons (Article 19).
2. The act of giving false testimony, submit false evidence or false evidence, influence witnesses or unlawfully in the trial court the crime of trafficking in persons (Article 20).
3. The act of physical assault against witnesses or officials in proceedings in criminal trafficking in persons (Article 21, paragraph 1).
4. The act of deliberately prevent, hinder, or interrupt, either directly or indirectly any investigation, prosecution and examination before the court against the suspect, accused or witnesses in cases of trafficking in persons (Article 22).
5. The act of helping fugitive perpetrators of criminal acts of trafficking in persons from the criminal justice process by giving or lending money, goods, or other possessions to the perpetrator; providing shelter to the perpetrator; hide the perpetrator; or hide the perpetrator presence information (Article 23).
6. The act of notifying the identity of witnesses or victims have been notified to him when the identities of witnesses or victims to be kept secret (Article 24).

Elements of other crimes related to human trafficking crime mentioned above constitute a criminal offense provisions in the process of inquiry, investigation, prosecution and trial of cases of human trafficking. Conditions criminal form of imprisonment shorter than the elements of the criminal offense of trafficking in persons shall be punished with imprisonment of 1 (one) year (Article 19 through Article 23 of Law PTPPO).

Transactions trafficking performed by Executive Placement of Indonesian Workers Private (PPTKIS) closely associated with the procedure and implementation of migrant workers by PPTKIS abroad that much distorted and does not comply with the rules and regulations concerning the placement of Indonesian workers (TKI) abroad. In response to the rise of workers to work abroad and anticipate trafficking conducted by the company, the government issued Law Implementation Placement of Indonesian Workers Abroad (Law PPTKILN).

Duties and responsibilities PPTKIS to prospective migrants / migrant workers under the Act PPTKILN, beginning of the whole process of recruitment, document management, education and training, storage, preparation, departure to the destination country and the return of the country of destination or starting from the pre placement, future placement , until after placement. The period of placement of prospective migrant workers / migrant workers conducted before the departure prospective migrants / migrant workers to the region / country of destination in accordance with the employment agreement (between prospective workers with the User). In this case PPTKIS can do a camp for prospective migrants / migrant workers before departure. To represent the interests PPTKIS abroad in the placement of prospective migrants / migrant workers, the private PPTKIS required to have a representative in the country of migrant workers are placed.

B. Victims of Crime of Trafficking in Persons

Human trafficking crime can not be separated from the victim. For victims who have suffered physical, psychological, and social have the right to the protection of the events that have happened. Arief Gosita in this case explores the meaning of the victims are those who suffer from physical and spiritual as a result of the actions of others who seek fulfillment interests of themselves or others contrary to the interests and rights are suffering.⁶

Victims are basically not only those individuals or groups who directly suffer the consequences of actions that cause harm / suffering for self / group, even, more broadly includes the immediate family or dependents of the direct victim and persons who suffered losses when help victims overcome the affliction or to prevent victimization.⁷

According to Philip M. Hadjon, the principle of legal protection for the people (in Indonesia) is the principle of the recognition and protection of human dignity based on Pancasila and the rule of law based on Pancasila.⁸ According to Barda Nawawi Arief terms of victim protection can be viewed from two meanings, namely:

⁶ Arif Gosita, *Masalah Korban Kejahatan*, CV Akademika Pressindo, Jakarta, Cetakan II, 1995, h. 77.

⁷ Dikdik M. Arief Mansur dan Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan Antara Norma dan Realita*, RajaGrafindo Persada, Jakarta, 2007, h. 48.

⁸ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia Sebuah Studi tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi*, M² Print, Peradaban, 2007, h. 19.

- a. can be interpreted as "legal protection to not become a victim of crime" (meaning the protection of human rights or legal interests of a person);
- b. can be interpreted as "protection to obtain insurance / legal compensation for the suffering / loss of people who have become victims of crime" (so synonymous with the "sponsorship victim"). The form of compensation that can be vindication (rehabilitation), the recovery of equanimity (among others, with remission), compensation (restitution, compensation, guarantees / social welfare benefits), and so forth.⁹

The other view presented by Arief Amrullah that the concept of protection for victims of corporate crime, both oriented towards potential victims (stop prior to the victim), or in other words the protection of the public, as well as protection oriented towards real victims, or victims directly, namely the victim after the occurrence of crime. Arief Amrullah further argued that,

Today there has been a development orientation of criminal law, if the original criminal law oriented to act (crime) the goal is prevention of crime, then the person (Offender) the goal is treatment of Offender, then evolved to the victim (victims) the goal is treatment off victims. Their attention to the victims, according to today's development so that the criminal law abolishing the impression that only spoil the perpetrator rather than the victim.¹⁰

The loss suffered by the victims of trafficking relating to a causal relationship with deeds done, both factual causality (*sine qua non*), as well as cause and effect approximately (*proximate cause*). Thus, the parties have grounds for a (cause of action), the principle is the injured party itself (the victim).

In terms of juridical glasses, the concept of damages in law is known in two (2) fields of law, namely the concept of damages for breach of contract and the concept of compensation for engagement under the legislation, including damages for tort. So that a person can be said to have committed an unlawful act that may apply Article 1365 of the Civil Code, the elements of Article 1365 of the must be filled. If there is one element that is not fulfilled / can not be proved by the plaintiff, then the law is considered not happen act against the law. The elements of the tort to be met under Article 1365 of the Civil Code are as follows:

1. The existence of a deed
2. The act is against the law
3. The existence of fault of the perpetrator
4. The existence of damages for victims
5. There is a causal relationship between the acts with the loss.

Civil aspects of legal protection for victims in PTPPO Act, is part of the victims' rights relating to material losses suffered by victims, including restitution, rehabilitation, health, social rehabilitation, repatriation and social reintegration and government. Judging from the interest in the concept of victim compensation contained two benefits, namely to meet the material damages and all costs already incurred and a victim of emotional gratification. The terms of the interests of the perpetrator, liability for damages is seen as a form of punishment imposed and perceived as a concrete and directly related to the mistake offender.

According Gelaway quoted as saying by Chaerudin and Sharif Fadillah who formulated five objectives of liability for damages, namely:

1. Relieve the suffering of the victims,
2. As a mitigating element of punishment to be imposed,
3. As one way to rehabilitate the convict,
4. Facilitate the judicial process,
5. Can reduce the threat or the reaction of the public in the form of retaliation.¹¹

The core purpose of the compensation payment obligation is not to develop the justice and welfare of the victim as a member of society and benchmark their implementation is that it should allow the victim to develop the rights and obligations as human beings.¹²

Law PTPPO have included legal protection for victims of trafficking in persons contained in Article 48 through Article 55. Special on the responsibility of the perpetrators of the crime victims of trafficking in persons contained in Article 48 to Article 50. Under Article 48 of Law PTPPO each of the victims or their heirs the right to obtain restitution¹³ for damages imposed on the perpetrator to the victim, on:

1. Loss of wealth or income;
2. Suffering;
3. Costs for medical care actions and / or psychological; and / or
4. Another loss suffered by the victim as a result of trafficking.

Another disadvantage of this provision is meant losing possessions, basic transportation costs, attorney fees or other costs associated with legal proceedings or the loss of income that promised the perpetrators. The provisions of Article 48 can be seen

⁹ Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, Kencana, Jakarta, 2007, h. 61.

¹⁰ Arief Amrullah, *Kejahatan Korporasi*, Bayumedia Publishing, Malang, 2006, h. 198-199.

¹¹ Chaerudin dan Syarif Fadillah, *Korban Kejahatan dalam Perspektif Viktimologi dan Hukum Pidana Islam*, Grahadika Press, Jakarta, 2004, h. 65.

¹² Farhana, *Op.cit.*, h. 165.

¹³ Arief Amrullah, *Op.cit.*, h.199

that this form of compensation is called restitution in the form of money. Thus, the purpose of compensation, which is the fulfillment of the demands in the form of exchange for a sum of money.

Restitution is more focused on the responsibility of the perpetrators of the consequences caused by the crime, so the main goal is the eradication of all the losses suffered by the victim. The benchmarks for determining the amount or size of damages depends on the social status of the offender and the victim. Usually victims with lower social status of the offender, will seek compensation in the form of material and restoration of the dignity and good name would be an advantage for the victim status instead.

The imposition of restitution is not set explicitly in the case of criminal trafficking in persons, namely corporations who are unable to pay restitution. Inability offender pay restitution to in Article 50 paragraph 4 may only be applied to the perpetrator of natural persons, can not be applied to the corporation for this article determines the offender be subject to imprisonment for a replacement for a maximum of 1 (one) year if it is not able to pay restitution. This situation became lame and relieve back and profitable corporate responsibility in its obligation to provide protection in the form of compensation to the victim.

Restitution is referred to in the Act PTPPO different punished by a fine or additional penalty which may be imposed to the corporation. Status restitution here does not have its own place in the effort oriented to the victim. Considering the impacts and losses suffered by the victim prior to the victim's children, should this restitution is one form of additional criminal who must also imposed for particular corporations. Improving the status of refunds into payment of compensation as a form of additional punishment that can be meted out to the corporate, opportunities and guarantees of protection for the victim to obtain the rights for damages more adequate and oriented to the suffering of victims.

Position of the victim of an unlawful act differently with the parties to the contract that has been done against defaults by his opponent in the contract. Parties that have dared to sign a contract, meaning he had more or less willing to take certain risks, including the risk of loss that rises from the contract. So that the compensation given to him not too loud entry into force. However, another case for the victim of an unlawful act, which had never thought of the risk of a tort, which sometimes come very suddenly and without accounted for at all. Because the victim of an unlawful act is not at all ready to accept the risks and did not even think about the risk, then he should be protected, so that the compensation that apply to him a wider and more assertive of its validity.

The consent of the victim (consent) is also a reason for the perpetrators to evade charges of tort. In this case when the victim has agreed on actions taken by the perpetrator, and the act was carried out which resulted in losses to the victim, then the victim can not claim damages from the perpetrators of such acts. A consent can be given by the victim, but it can also be provided by others. Other people who can give such approval are as follows:

1. The family of the victim if the victim can not give consent.
2. Parents or guardians of children under the common
3. Receivers for the insane.

The role of victims in trafficking in persons referred to in Article 26 of Law PTPPO very important in the prosecution of traffickers. This article states that the agreement does not eliminate the trafficking victims, prosecution of the crime of trafficking in persons. Knowledge of the victim (his permission or the permission of parents oang to victims who are minors) that he will be the object of trade does not eliminate the legal process for the offender. Forms of compensation in respect of a tort is recognized by the law are as follows:

1. Compensation for Nominal
2. Indemnity Compensation
3. Compensation for Punishment

Indemnity compensation (compensatory damages) is a payment of compensation to victims for losses on and that really has been experienced by the victim of an unlawful act. Therefore, compensation is also called the actual damages. For example, compensation for any costs incurred casualties, loss of profits / wages, pain and suffering, including mental adversity such as stress, embarrassment, fell a good name, and others

The actual compensation is the compensation for the losses that have actually been experienced in practice. For example, the cost of hospital and doctor having to seek treatment. Current compensation is compensation of the most common and easily accepted by the law, whether in tort or contract in the event of default. Actual acceptable compensation against the losses as follows:

1. The financial burden, such as medical expenses, lost livelihoods, and others.
2. The physical suffering, like a wound, a broken arm, and others.
3. Mental anguish, like embarrassment, stress, and others.

Compensation related to mental stress (mental disturbance) is the compensation for which is usually the form of a sum of money, which is given to the victim of an unlawful act caused the victim had suffered mental distress. Such indemnity is in practice often referred to as compensation "immaterial" as opposed to the usual compensation indemnity called "material". Change is immaterial payments that amount can not be calculated mathematically, but it is more of a discretion of the judge, but also with the proviso that the amount of compensation must be "reasonable". The reasonableness of the amount of compensation depends on many things, including the following:

- a. Mental burden borne by the victim.
- b. Status and position of the victim.

- c. Status and condition in which the tort occurred.
- d. The situation and the mental condition of the victim.
- e. Situation and mental condition of the offender.
- f. Background does tort.
- g. Kind of unlawful act, namely whether intentional misconduct, negligence or strict liability.

In addition, these immaterial damages can only be charged against losses due to acts against the law and is not feasible for the losses caused by the breach of contract.

Compensation for losses (future lost), may also apply. Such compensation is more often applied to tort rather than to the contract defaults. This is due to the fact that in a breach of contract, the victim intentionally enter into contracts, of course with the readiness to bear all the consequences. However, in a tort, the victim was never there expressly to receive approval for the unlawful act committed by the other person. Therefore, it is a reasonable if the conception and application of the compensation as a result of an unlawful act is much harder and more strict than the compensation as a result of breach of contract.

Respect of the payment of compensation given to victims of human trafficking crime should be clearly distinguished in law PTPPO between paid from state funds commonly known as compensation and to be paid by the perpetrator himself to the victim who is usually referred to restitution. Settings distinction compensation payment which is the obligation of the state and which are the responsibility of the perpetrator can assist victims in the fulfillment of their rights as a result of suffering materially and / or immaterial. However, the payment of restitution by the offender may be criminal, arising from the decision of the criminal court and restitution to be paid by the giver or a manifestation of the perpetrators of criminal acts of trafficking in persons. Because restitution is provided and included in the ruling of the court at the same time and do the confiscation of the wealth of the stakeholders and auction it off for the restitution payments.

Compensation as one of the main rights of victims of trafficking is also one of the recommended guidelines in human rights and human trafficking as mentioned in Guideline 9 on access to compensation:

As a victim of human rights violations, people who are trafficked have the right under international law to obtain appropriate compensation and adequate. This right is often not provided well for people who are trafficked often lack information on the possibilities and processes for redress, including compensation for trafficking and extortion related. To overcome this problem, legal and other material assistance should be given to people who are trafficked in order to enable them to realize their right to compensation is appropriate and adequate.

Methodology

The methodology used in this study is a legal research through the study of literature with a system as follows:

a. Research Type

This type of research is research that is socio-legal laws which have characteristics as a descriptive science that describes the relationship existing concepts with cases that are in the field to produce arguments, theories or new concepts as a result deskriptif in solving problems.

b. Problems Approach

Based on the type, this research is a legal research so that the approach used is approach the law (statute approach), the conceptual approach (conceptual approach), and the approach of the case (case approach). Approach legislation (statute approach) is done by examining the laws and regulations that still applies particularly in Nunukan and concerned with legal issues. This approach is used to analyze, mempreskripsikan, systematize, and interpret the Indonesian national legal instruments concerning human trafficking crime.

The conceptual approach to move from the views and doctrines that developed in the jurisprudence. This approach is used to find the types of human trafficking crime suffered by victims through the concept of the crime of trafficking in persons, the concept of the elements of the crime of trafficking in persons, and the concept of crime victims.

Case approach is done by collecting data of victims of the crime of trafficking in Nunukan for a period of 6 (six) years ie 2009 to 2014 were obtained from the State Police of the Republic of Indonesia East Kalimantan Resort Nunukan and Women Empowerment and Family Planning Nunukan district.

c. Source of Laws Material

Based on the research type, this dissertation is the study of law so the sources of this research are the primary legal materials and secondary legal materials.

i. Primary legal materials, namely data crime victims of human trafficking in Nunukan as local border area is used as a transit area of trafficking of persons.

ii. Secondary law include text books, dictionaries law, legal journals, and articles of law as well as legislation relating to the crime of trafficking in persons and policy Nunukan government in implementing the Act PTPPO, among other sub-UndangNomor 39 Years 2004 on the Placement and Protection of Indonesian Workers Abroad, Law No. 13 of 2006 on the Protection of Witnesses and Victims, and UndangNomor Act 21 of 2007, as well as UndangNomor Act 6 of 2011 on Immigration.

d. Legal Materials Analysis and Withdrawal of Conclusions

Analysis of the legal materials in this study is qualitative, by seeking basic ontological and Ratio legis problems of victims of trafficking in Nunukan sebagaiwilayah State border, to be analyzed and presented in writing argumentative so clear that relations between the two propositions in accordance with applicable law and finally obtained a conclusion.

Finding and Discussion

As the implementation of the Act PTPPO, Indonesia has issued policies that include a directive Crime Prevention and Treatment of Human Trafficking, among others are:

1. Government Regulation of the Republic of Indonesia Number 9 Year 2008 on Procedures and Mechanisms Integrated Services For Witness and Victim or the Crime of Trafficking in Persons;
2. Presidential Regulation No. 69 Year 2008 on the Establishment of a Task Force Prevention and Crime of Trafficking in Persons;
3. Regulation of the Minister of Women No. 1 of 2009 on Minimum Service Standards for Integrated Services For Witnesses and / or Victims of Crime of Trafficking in Persons;
4. Regulation of the Coordinating Minister for People's Welfare No. 25 of 2009 on the National Action Plan for Combating Trafficking in Persons and Sexual Exploitation of Children (RAN PTPPO and ESA) 2009-2014. This Regulation evaluate the Presidential Decree Number 87 Year 2002 concerning the National Action Plan for the Elimination of Commercial Sexual Exploitation of Children and Presidential Decree No. 88 Year 2002 on National Action Plan for the Elimination of Trafficking in Women and Children (RAN P3A);
5. Regulation of the Minister of Women Empowerment and Child Protection of the Republic of Indonesia Number 22 Year 2010 on Procedures Standards Operational Integrated Services For Witnesses and / or Victims of Crime of Trafficking in Persons;
6. Regulation of the Minister of Women Empowerment and Child Protection of the Republic of Indonesia Number 09 Year 2011 on the Early Alert Crime of Trafficking in Persons.

Human trafficking crime that occurred in Nunukan handled by the State Police of the Republic of Indonesia Nunukan Resort East Kalimantan and Women Empowerment and Family Planning Nunukan. The handling of criminal cases of trafficking in persons by Invisible Criminal Police Nunukan during the years 2009-2014 as many as eight cases. The case has the same modus operandi but the article and the laws that have been violated are different, as shown in the table below.

Table 3
Data Case Crime of Trafficking in Persons
Nunukan Regency Year 2009-2014

No	Year	Modus Operandi	Act The Breached
1	2009	Facilitation and recruitment of prospective migrant workers illegally to be employed in Malaysia	- Article 102 Paragraph 1 Letter a or Article 103 Paragraph 1 Letter f Act PPTKILN
2	2009	Facilitation and recruitment of prospective migrant workers illegally to be employed in Malaysia	- Article 4 and Article 6 of the Law PTPPO
3	2011	Facilitation and recruitment of prospective migrant workers illegally to be employed in Malaysia	- Article 102 Paragraph 1 Letter a Law PPTKILN - Article 4 in conjunction with Article 10 of Law PTPPO
4	2011	Facilitating and recruiting candidates for employment and make delivery to be employed / sexual exploitation	- Article 83 of the Law on the Protection of Children - Article 2 Paragraph 1 of the Law PTPPO
5	2012	Facilitation and recruiting candidates for employment and make delivery to be employed / sexual exploitation	- Article 2 Paragraph 1 of the Law PTPPO
6	2012	Facilitation and recruiting candidates for employment and make delivery to be employed / sexual exploitation	- Article 2 Paragraph 1 of the Law PTPPO
7	2013	Facilitation and recruiting candidates for employment and make delivery under the pretext to be employed in the cafe but was taken to a karaoke place, serving visitors karaoke / sexual exploitation	- Article 2 Paragraph 1 and Paragraph 2 of the Law PTPPO - Article 88 of the Law on the Protection of Children
8	2014	Facilitation and recruiting candidates for employment and make delivery under the pretext to be employed in a restaurant but was forced to serve guests at an THM / sexual exploitation	- Article 1 of Law PTPPO - Article 88 of the Child Protection Law in conjunction with Article 296 Penal Code

Source: Processed Researcher

Based on the above table can be described things below:

1. The case of human trafficking crime that occurred in 2009 were 2 cases, in 2011 as many as two cases, in 2012 as many as 2 cases, and in 2013 and 2014 respectively only 1 case. In 2010 there were no cases of human trafficking.
2. The modus operandi of the elements of the crime of trafficking in persons during the period 2009 to 2014 is to take delivery of candidate recruitment and manpower to be employed in a place that is not in accordance with the agreement or in the illegal sense. Recruitment of prospective labor and delivery done illegally, in addition to the placement of the candidates are not in accordance with the agreements that have been submitted. Action recruitment and sending hopeful worker is employed with the purpose of exploiting the sexual exploitation serving visitors in the form of karaoke, serving guests at a THM. The excuse made by the perpetrators of criminal acts of trafficking in persons was initially employed at a cafe or restaurant. Placements are all candidates for employment in the country of Malaysia. Measures candidate recruitment and sending unauthorized workers constitute unlawful act Article 2 of Law PTPPO, as well as actions placement candidates for employment that is inconsistent with the agreement.
3. Victims of human trafficking crime is not only an adult because the case in 2011, 2013 and 2014 has befallen the child victim, the trafficking of children.
4. The criminal acts of trafficking in persons are not only subject to the articles of Law PTPPO but also the laws relating to trafficking, ie the Law PPTKILN, and the Child Protection Act.
5. The occurrence of the crime of trafficking in persons begins with citizens who want to work abroad including Malaysia, met with actors who offered them a job. But in the shipping process or employment in Malaysia is not in accordance with the initial agreement and the provisions of the Act PPTKILN resulting in trafficking of persons.
6. The perpetrator is an individual who is not a PPTKIS although in Nunukan there are companies engaged in the recruitment of Indonesian workers. Actors who are natural persons shall be subject to criminal sanctions as a corporation so that the penalty of the perpetrator is in accordance with Article 2 of Law PTPPO that is punishable by imprisonment of at least three (3) years and a maximum of 15 (fifteen) years of imprisonment and a fine of bit Rp.120.000.000,00 (one hundred and twenty million rupiah) and at most Rp.600.000.000,00 (six hundred million rupiah).

Nunukan government sees the need of seriousness in dealing with victims of trafficking, given the Nunukan district is on the border with the State of Malaysia, so it must be willing to accept Indonesian workers deported by neighboring countries including Malaysia. Indonesian workers abroad vulnerable to trafficking victims having to go through the stages of recruitment are not rare legal action against both the Act PPTKILN, PTPPO Act, and the Child Protection Act.

Addressing the vulnerability of Indonesian labor trafficking victims are then in Nunukan established Service Center for Placement and Protection of Indonesian Workers (BP3TKI Nunukan) which is part of the National Agency for Placement and Protection of Indonesian Workers. BP3TKI Nunukan has a vision of "Creating service placement and protection of migrant workers are qualified and dignified" and its mission consists of:

1. Provide services CTKI document that will work to the LN through SPPTKLN / SISKOTLN;
2. Provide labor market information services abroad;
3. Providing advisory services to PPTKIS / branch offices, BLKLN and shelters in efforts to stabilize TKI TKI quality improvement;
4. Provide protection services and legal aid for migrant workers with problems both at the time of the pre, period, and after placement;
5. To increase the human resources and supporting facilities BP3TKI Nunukan placement services and protection of migrant workers.

Nunukan BP3TKI services carried out as an implementation of the vision and mission include:

1. Information services job opportunities abroad;
2. Services on license renewal branch office operations Company Private Placement of Indonesian Workers (PPTKIS);
3. Service permission to recruit prospective Indonesian Workers;
4. Service debriefing late departure (PAP);
5. Service labor card issuance abroad (KTKLN);
6. Care insurance claim settlement assistance Indonesian Manpower;
7. Services management assistance deportation and repatriation of Indonesian Workers problematic (TKIB);
8. Advocacy and mediation services for resolving cases of Indonesian Workers.

Nunukan government through the Bureau of Women's Empowerment and Family Planning in 2012 has returned 8 (eight) the citizen victims of human trafficking crime in the area of Tawau, Sabah, Malaysia. 8 citizen repatriation of victims of trafficking is carried out through the Indonesian Consulate Tawau Tawau departed from the Port to the Port Tunon Taka Nunukan by ship Purnama Express.

Legal settlement of trafficking cases was conducted in Tawau Court for Locus Delicti in the area of Tawau, Sabah, Malaysia. Trafficking victims are first placed in the Women's Protection Home Typical Kota Kinabalu, Sabah, Malaysia. Victims become a witness in the trial of the perpetrators of human trafficking. Based on the testimony of these witnesses, the perpetrators of trafficking in persons convicted and sentenced to imprisonment for five years by the Court Tawau. In connection with the Court's decision, the eight (8) persons citizen victims of human trafficking crime is welcome to be repatriated to Indonesia.

Role of Women Empowerment and Family Planning Nunukan in handling cases of human trafficking victims are receiving the arrival of the victims of Tawau, Malaysia and accommodating while for later repatriation to the place of origin of victims such as East Java. Camps are conducted in a special place by the Bureau of Women's Empowerment and Family Planning Nunukan an

attempt by the government to provide protection for victims of trafficking in persons, especially migrant workers who returned from Tawau, Malaysia.

Nunukan regency government annually provides to the operating budget of Women Empowerment and Family Planning as an extension of the duty of government to provide protection and handling of victims of human trafficking. Through the budget, Women Empowerment and Family Planning in accordance with the work plan budget allocations given. The work plan annually conducted in the form of counseling or socialization for local communities, especially Indonesian worker candidates about PTPPO Act, PPTKILN Act, the Child Protection Act. Other activities are temporary shelter and repatriation of trafficking victims to their home area.

Conclusions and Suggestions

Based on the discussion above may results the Conclusions as follows:

1. The types of offenses suffered by victims of trafficking in Nunukan district based on data from the 2009-2014 trading case of the Indonesian National Police Regional Nunukan in East Kalimantan Resorts are:
 - Recruitment of prospective workers illegal
 - Delivery of prospective workers illegal
 - Hired as a visitor waiter karaoke, guest service at THM
 - Sexual exploitation.
2. The Government's efforts Nunukan in handling trafficking victims are:
 - a. Through Women Empowerment and Family Planning:
 - Provide a budget for the work plan in a year;
 - Provide a special place temporary shelter trafficking victims from Tawau, Malaysia;
 - Repatriating trafficking victims from Tawau, Malaysia to the area of origin;
 - Conducting assistance to trafficking victims.
 - b. Services through the Center for Placement and Protection of Indonesian Workers (BP3TKI Nunukan):
 - Supervision of the Indonesian Labor either at the pre, period, and after placement;
 - Provide a means of supporting placement services and protection for Indonesian Workers.
 - Service management assistance deportation and repatriation of Indonesian Workers problematic (TKIB);
 - Advocacy and mediation services for resolving cases of Indonesian Workers.

That advices given to the the problems and conclusion above are:

1. The National Police of the Republic of Indonesia Nunukan Resort East Kalimantan together Nunukan government to conduct raids on entertainment venues that hire women and children in an effort to minimize the trafficking of persons.
2. The Government of Nunukan regency in monitoring and evaluating the Integrated Services Center for Women and Children (P2TP2A) "True Love" Nunukan to be active again perform their duties and functions to provide protection to trafficking victims.

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