

# Challenges for Anti-Trafficking NGOs in Indonesia: Rights, Social-Economic Context, and Navigating Obstacles

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## Abstract

NGOs play a crucial role in safeguarding human dignity, especially in developing countries like Indonesia, where they strategically work to address pressing human rights issues. However, NGOs encounter various challenges that impede their efforts. This research specifically focuses on the challenges faced by NGOs working in human trafficking and exploitation in Indonesia. The analysis is based on data obtained from interviews conducted with four NGOs and an independent worker specializing in the exploitation and trafficking of underage individuals. Moreover, this study delves into the socio-economic problems underlying human trafficking in Indonesia. Drawing inspiration from Marxist theories of labor and poverty, it posits that the issue of human trafficking in Indonesia is closely intertwined with socio-economic instability—particularly affecting the most impoverished segment of the population. The research identifies poverty as a key factor fueling exploitation and trafficking in Indonesia. Furthermore, the study reveals implementation challenges and a lack of alignment with international conventions, such as the Palermo Protocols, in enforcing Indonesia's national law against human trafficking (Law No. 21/2007). These issues are particularly apparent in cases involving underage victims.

Keywords: *Exploitation, Human Trafficking, NGO, Indonesia*

## I. INTRODUCTION

This work examines the issue of human trafficking in Indonesia. It begins with a socio-economic and human rights analysis, which critically reflects on the inequality and poverty prevailing in the country. The experiences of non-governmental organizations (NGOs) in Indonesia, which are actively engaged in combating human trafficking, will also be explored. This aspect is crucial in comprehending the challenges faced by NGOs operating against trafficking in Indonesia via intervention or prevention efforts. Expanding on the socio-economic paradigm, this research seeks to identify the obstacles hindering the adaptive functioning of NGOs in addressing trafficking cases. Do these obstacles relate to the regulatory mechanisms within the country?

Furthermore, the study seeks to elucidate the dynamics underlying *why* individuals become victims of trafficking. Southeast Asia is one of the most high-risk regions for trafficking and forced labor. This can be tied to the complex region's large population and its significant growth, a high poverty rate, inter-border conflicts, natural disasters,<sup>1</sup> and social inequality.<sup>2</sup>

In the aftermath of the COVID-19 pandemic, Indonesia has experienced significant setbacks in its economic and labor markets. Many have come to face job losses or the passing of their families' sole breadwinner. High unemployment levels have exacerbated trafficking and forced labor in Indonesia, especially the sexual exploitation<sup>3</sup> of minors in Bali.<sup>4</sup> Over the last five years, Indonesia has experienced significant cases of human trafficking exploitation targeting both domestic and foreign victims, with similar particularity to forced labor and sexual exploitation.<sup>5</sup> Furthermore, the COVID-19 pandemic increased the risk of forced marriage in Indonesia.<sup>6</sup> People experiencing unemployment or poverty can quickly become victims of exploitation and trafficking when desperate to save money or to secure the idea of a better life.<sup>7</sup> According to the IOM and ILO, Indonesia is a country of origin, transit, and destination for both cross-border trafficking and internal trafficking. Victims are Indonesians sent abroad to countries such as Hong Kong, Taiwan, South Korea, and the People's Republic of China (PRC), with sexual exploitation and forced marriage practices present in Bali and Nusa

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1 *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, by ILO & IOM (Geneva: International Labour Organization, 2022).

2 *Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry*, by IOM et al (Jakarta, Indonesia: International Organization for Migration (IOM), 2016).

3 Evie Ariadne, Benazir Pratamawaty & Putri Limilia, "Human Trafficking in Indonesia, the Dialectic of Poverty and Corruption" (2021) 23:3 *Sosiohumaniora* 356.

4 Adi Renaldi, "Covid-19 has worsened child sex trafficking in Indonesia, including resort paradise Bali", *South China Morning Post* (2022), online: <<https://www.scmp.com/week-asia/people/article/3161639/covid-19-has-worsened-child-sex-trafficking-indonesia-including>>.

5 *2022 Trafficking in Persons Report*, by Department of State US (2022).

6 Kosuke Inoue, "Child marriages in Asia rise as COVID drives more into poverty" *Nikkei Asia* (2022).

7 Syifa Amalia, Robby Syahputra & Alfatih Jagad, "Analysis of the Crime of Human Trafficking in Indonesia (Case Study: Human Trafficking with Marriage Mode in West Kalimantan)" (2021) 5:2 *Unram Law Rev.*

Tenggara Timur (NNT). According to Naibaho, human trafficking in Indonesia particularly targets women and children.<sup>8</sup> In addition to domestic migrant work, Indonesian people also fall victim to labor exploitation in China, Hong Kong, and South Korea and in factories, construction, and manufacturing industries. According to TRP 2020, Malaysia has become the destination for many Indonesians exploited by oil palm factories. Indonesians are also victims of trafficking in the fishing sector, especially in Taiwan and China. According to Yuniarto, Taiwan saw 484,367 migrant workers in 2013, and 211,118 were from Indonesia.<sup>9</sup> Of these, 462 were victims of human trafficking; 152 were exploited for labor, and 310 were exposed to sexual exploitation - almost all from Indonesia.

According to measures by the ILO, IOM, UNODC, and TRP, interventions for trafficking prevention and protection for victims are seen as governmental failures in the region. This makes the role of NGOs pivotal in the prevention and protection of human trafficking cases as critical mediators between trafficking victims and government institutions.

This paper centers on analyzing the problem of human trafficking in Indonesia, especially regarding the law and norms applied and law enforcement responses. However, the primary focus will be on the challenges and problems faced by Indonesian NGOs that work on human trafficking issues.

The research period involved interviews and direct observations with NGOs. These revealed that Indonesian regulations and laws aimed at preventing and protecting victims of human trafficking are hindered by excessive hyper-bureaucratization processes. The following section summarizes related literature reviews, particularly relevant laws and regulations. Analyses of case studies in Jakarta, Semarang, and Yogyakarta focus on the implementation of the national law against human trafficking in Indonesia (N.21/2007). The following discussion dives deeper into the results of interviews with NGOs and experts on human trafficking in specific regions of Java.

## II. LITERATURE REVIEW

Human trafficking as an illegal activity has been studied for decades. From a historical perspective, the concept of “human trafficking” was first understood as “slavery.” Slavery is an ancient concept that has long characterized human society. It is described in the Judeo-Christian Old and New Testaments, the Qur’an, and even in the social structure of empires (such as the Roman Empire).<sup>10</sup> Globally, the commercially enslaved person rose with imperialism from 1500-1800. It started to be questioned in the early 1800s by

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8 Nathalina Naibaho, “Human Trafficking in Indonesia: Law Enforcement Problems” (2011) 1:1 *Indones Law Rev.*

9 Paulus Rudolf Yuniarto, “Indonesia Migration Industry in Taiwan: Some Socio-Economic Implications and Improvement Challenges” (2016) 6:1 *J Kaji Wil* 17-33.

10 Kathryn Cullen-DuPont, *Human Trafficking* (Global Issue, 2009).

the English Empire and after 1865 by the United States, with the 1890<sup>11</sup> Final Act of the Brussels Conference that condemned all international slavery. Ultimately, this was a token act in practice. Similarly empty were the 1949 Convention for the Suppression of Traffic in Person and the Exploitation of the Prostitution of Others, where the international system started to build its first definition of human trafficking.<sup>12</sup> Studies on human trafficking are not new; academia has vastly examined and researched connections between human trafficking and social factors. These were further legislated in international jurisprudence through the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). However, according to O'Connell<sup>13</sup> (2013), human trafficking is different from slavery or modern slavery when it is reviewed how victims live. Victims of modern human trafficking do not necessarily live in locked or closed settings, and the trafficker does not have the right to property of the person during trafficking.<sup>14</sup> Essential factors, such as the structure of law, substance, and legal culture, must be understood in any review on overcoming human trafficking<sup>15</sup> and exploitation.<sup>16</sup> The definition of human trafficking definition has undergone different interpretations<sup>17</sup> and changed according to the conventions in use. Before December 2000, a concrete definition of human trafficking was not agreed upon, while academic debates were focused on the difference between illegal smuggling and illegal migration.<sup>18</sup>

Evidently, the definition of human trafficking depends on how the problem is identified and how it can be fought.<sup>19</sup> Nevertheless, in early 2000, the United National General Assembly adopted the Convention against Transnational Organized Crime (UNTOC), utilizing the Palermo Protocol for addressing transnational and organized crime.

Gallagher<sup>20</sup> highlights the interconnectedness between human trafficking and migrant smuggling, as underscored by the Palermo Protocol. This protocol consists of three imperatives, which the United Nations established to facilitate implementing the UNTOC (otherwise known as the Palermo Convention). According to the United Nations Office on Drugs and Crime (UNODC) report in 2004, the convention comprises three key protocols: the legislative guide for implementing the UNTOC; the

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11 Jean Allain, *The International Definition of Slavery and Its Contemporary Application* (Daloz, 2018).

12 Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge: Cambridge University Press, 2010).

13 Julia O'Connell Davidson, "Troubling freedom: Migration, debt, and modern slavery" (2013) 1:2 *Migr Stud* 176-195.

14 Cullen-DuPont, *supra* note 10.

15 Naibaho, *supra* note 8.

16 Lawrence M Friedman, *American Law* (London, 1984).

17 Gallagher, *supra* note 12.

18 *Ibid.*

19 Marjan Wijers & Lin Chew, *Trafficking in Women: Forced Labour and Slavery-Like Practices in Marriage, Domestic Labour and Prostitution* (STV/GAATW, 1999).

20 Gallagher, *supra* note 12.

legislative guides for implementing the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (supplementing the UNTOC); and the Protocol against the Smuggling of Migrants by Land, Sea, and Air (supplementing the UNTOC). In order to facilitate the implementation of the UNTOC, the original protocol functions as a legislative guide. A second protocol serves here as a legislative guide, which helps to implement the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. The UNTOC is enhanced by this protocol. The third protocol aims to tackle the problem of migrants being smuggled by air, sea, and land. Similar to the second protocol, the third supplements the UNTOC and leans to prevent and combat the illicit activity of migrant smuggling across various modes of transportation.

Nowadays, legislative guides for implementing the protocol are the international instruments against trafficking. According to Zanser and Thinyane,<sup>21</sup> the Palermo protocol was the first International Legislation to regulate human trafficking. According to Wijers,<sup>22</sup> the protocol was necessary because of changes in political order with the fall of the Soviet Union. After the end of the Soviet Union and the fall of the Berlin Wall, the crime of trafficking against Eastern Europeans grew—predominantly against women.

Accordingly, the Palermo Protocols clearly defines the realm of criminal law and the delineation of offenses such as human trafficking. A critical distinction arises when considering the age of the victim. The dichotomy in treatment is particularly noteworthy in regard to how “mental and material elements” are legally defined. For adults, defined as individuals above 18 years of age, a comprehensive analysis of trafficking as an offense is crucial. According to established protocols, the definition of trafficking involves the concurrent presence of three material elements: act, means, and exploitative purpose. The significance of these elements lies in their collective manifestation, shaping how the offense is characterized. This contrasts with the definition of child trafficking, reserved for those under 17 years of age. Here, a departure from the conventional criteria is discernible. Notably, the material element of “means” assumes a different role—or, more precisely, it is not deemed indispensable. This departure stems from the intrinsic vulnerability associated with minors under the age of 18, necessitating a nuanced interpretation of elements constituting the offense.

Moreover, a distinctive nuance arises in the context of the protocols outlined in the Palermo framework, specifically in the issue of consent by the trafficked or smuggled individual. In cases involving adults, the material element of means remains relevant. However, a pivotal shift occurs when addressing cases of minors. Here, the material element of means assumes a diminished role and is not an obligatory component to

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21 Sophie Zinser & Hannah Thinyane, “A Step Forward for Palermo’s Trafficking Protocol, This Time Integrating Frontier Technology” (2021) 16:1 Yale J Int Aff.

22 Marjan Wijers, “How we got here: the story of the Palermo protocol on trafficking”, (2021), online: *openDemocracy* <<https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/how-we-got-here-story-palermo-protocol-trafficking/>>.

establish the occurrence of trafficking. This nuanced differentiation underscores the legal intricacies inherent in the prosecution of trafficking offenses. This emphasizes just how imperative it is to tailor legal frameworks to account for the unique vulnerabilities of minors. In essence, when the material element of means is omitted in cases involving minors, the distinct nature of such offenses is confirmed. It acknowledges that the age of the victim necessitates a specialized and protective legal approach.<sup>23</sup>

The definition provided above is crucial for understanding a significant challenge and obstacle that Indonesian NGOs face in adequately pursuing anti-trafficking laws. In cases involving human trafficking, especially those concerning underage victims,<sup>24</sup> the issue specifically lies in the material elements of the law.<sup>25</sup> This is because minors are unable to provide consent to their exploitation, even if they are aware of their involvement with a trafficker. This directly relates to the fact that they are minors.<sup>26</sup>

Underage victims should be regarded as victims of trafficking, irrespective of the material element of means. However, a significant concern was highlighted by the interviewed NGOs: in cases of underage trafficking, the material means element was applied, though it was initially intended to solely apply in adult cases. This discrepancy poses a significant challenge in identifying and addressing the trafficking of children.

From a juridical perspective, Indonesia has a comprehensive body of legislation related to the trafficking of minors. This is seen in Indonesia's production of norms and regulations addressing labor exploitation and human trafficking. The law applicable to human trafficking cases is Law No. 21/2007, otherwise known as the Human Trafficking Act (*Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang*; UU TPPO). According to Law No. 21/2007, human trafficking is defined as the recruitment, transportation, harboring, sending, transferring, or receiving of individuals through the use or threat of force, kidnapping, confinement, fraud, abuse of power or vulnerability, debt bondage, or providing payments or benefits to obtain consent from a person who has control over another person. These acts can occur within the country or across international borders, with the intention of exploiting or resulting in the exploitation of individuals (UU TPPO art1 paragraph 1).

Prior to the enactment of Law No. 21/2007, the regulation of human trafficking, particularly concerning women and children, was governed by the provisions of laws and regulations found in the Book of Criminal Code (*Kitab Undang-Undang Hukum Pidana*;

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23 *Anti-human trafficking manual for criminal justice practitioners: Module 1*, by UNODC (2009).

24 Luz María Puente Aba, "Defining Child Trafficking for Labor Exploitation, Forced Child Labor, and Child Labor" in John Winterdyk & Jackie Jones, eds, *Palgrave Int Handb Hum Traffick* (Palgrave Macmillan, 2020) 339.

25 Cindy J Smith & Kristina Kangaspunta, "Denying Human Trafficking and Its Nuances in a Cultural Context" in John Winterdyk, Benjamin Perrin & Philip Reichel, eds, *Hum Traffick Explor Int Nat Concerns Complexities* (New York: Routledge, 2012).

26 UNODC, *supra* note 23.

KUHP).<sup>27</sup> However, there are weaknesses in the structural framework and normative defenses concerning exploitation cases, such as early marriage or the protection of migrant workers.<sup>28</sup> These weaknesses primarily stem from the unclear interpretation of norms and laws. Additionally, there is often a lack of consistency between the law's application and its intended implications.

Therefore, Law No 39/1999 on Human Rights follows the National Action Plan for the Elimination of Trafficking Women and Children (*Rencana Aksi Nasional Penghapusan Perdagangan Perempuan dan Anak*; RAN-P3A). However, in-person trafficking prevention mismatches with enforcement at the national level. As a member of ASEAN, Indonesia participated in and agreed with the 2017 Convention against Human Trafficking (ACTIP), Especially Women and Children. Human trafficking has been on ASEAN's transnational crime agenda since 1990.<sup>29</sup> Additionally, ASEAN has developed strategies for combatting human trafficking with two apparatuses: the Inter-Governmental Commission on Human Rights (AICHR) and the Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

Furthermore, ASEAN developed a few legal instruments under the ASEAN Declaration against Trafficking in Persons, Especially Women and Children in 2004, including the Leader's Joint Statement on Enhancing Cooperation Against Trafficking in Persons in Southeast Asia in 2011; the ASEAN Human Rights Declaration in 2012; and the latest ACTIP, Especially Women and Children in 2017. Through Law No. 12 in 2017, the Government of Indonesia has ratified the convention. However, the various agreements made by ASEAN in connection with human trafficking lack force. Instead, they adopt a mechanism of soft law. Here, international norms and procedures are still able to produce certain legal effects;<sup>30</sup> however, they do not have the requisite degree of content required to effectively enforce rights or obligations. According to D'Amato,<sup>31</sup> the agreements lack detailed directives. Indonesia's legal body protecting children (particularly for sexual exploitation) includes regulations such as the Law on Child Protection, elimination of child labor, and protection of children and young persons (No. 23/2002). This regulation was the first to protect underage people in Indonesia. Before this law, a minimum age (16) for marriage in Indonesia was only imposed by the 1974 Law for Marriage. The law was feeble and open to interpretation because it allowed the family of the minor to decide on their behalf. The 2002 regulation was similarly

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27 Ni Putu Rai Yuliantini et al, "Legal Protection for Women and Children as Victims of Human Trafficking in Indonesia" (2022) 13:1 J Huk Nov 26–37.

28 Ruth Rosenberg et al, *Trafficking of Women and Children in Indonesia* (International Catholic Migration Commission, 2003).

29 Naparat Kranrattanasuit, *ASEAN and Human Trafficking: Case Studies of Cambodia, Thailand, and Vietnam* (Leiden: Brill Nijhoff, 2014).

30 *Ibid.*

31 Anthony D'Amato, "Softness in International Law: A Self-Serving Quest for New Legal Materials: A Reply to Jean d'Aspremont" (2009) 20:3 Eur J Int Law 897–910.

ineffective, especially in protecting children in sexual exploitation cases.<sup>32</sup> Therefore, dualistic restitution settlements for victims are issued by the Criminal Procedure Code<sup>33</sup> and the TPPO, making it challenging to resolve the issue of reparations for the victims.<sup>34</sup>

### III. METHOD

The purpose of this study is to examine the challenges faced by NGOs working with human trafficking cases in Indonesia. Qualitative analysis was employed as the research methodology. This involved interviews with a group of Indonesian NGO representatives, as well as an independent expert who works with different NGOs on child trafficking and exploitation.

The methodological decision to employ semi-structured interviews is motivated by the intricate details of human experiences and perspectives. The complex terrain of subjective realities is better explored in semi-structured interviews because of their natural flexibility, opening a window for in-depth investigation and comprehension.

What obstacles are faced by NGOs dealing with trafficking in Indonesia? This question is focused on comprehensively investigating the challenges confronting NGOs in addressing Indonesia-specific trafficking issues. These investigations adopt a dual analytical framework involving legal and socio-economic dimensions. The interview is meticulously designed to unravel the intricacies surrounding NGO operations while delving into the lived realities of individuals subjected to trafficking. Based on semi-structured questions, the interrogative approach employs questions formulated to elucidate the multifaceted challenges NGOs encounter in Indonesia. Primarily, the inquiry seeks to discern the legal obstructions to these organizations' abilities to function effectively. The legal lens aims to unveil the regulatory hurdles, statutory limitations, and procedural complexities NGOs grapple with in combating trafficking.

The socio-economic lens of the investigation is used to examine challenges encountered within the broader societal and economic milieu. The questions seek to unravel dimensions of the socio-economic landscape that influence (and impede on) NGO endeavors. Furthermore, the questions are formulated with a deliberate intention to afford NGOs space, legitimizing their role as primary actors in this domain. Beyond merely identifying obstacles, the inquiry seeks to dissect the operational dynamics of these organizations, outlining the roles they assume and the strategies they employ. This approach facilitates a comprehensive understanding of the challenges and the proactive

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<sup>32</sup> Krisna Murti & Riswadi, *Legal Protection for Children Based on Law Number 17 of 2016* (Salatiga: EAI, 2021).

<sup>33</sup> Hamja Hamja, Kodir Maulana & Asep Susanto, "Negative Implications of Criminal Action for Female Child Trafficking Victims in Indonesia" (2023) 2:1 *Yuris J Court Justice* 1-16.

<sup>34</sup> Yuliantini et al, *supra* note 27.



measures adopted by NGOs, thereby contributing to a nuanced understanding of the broader anti-trafficking landscape in Indonesia.

In order to protect the anonymity of the interviewees, their identities are kept confidential. The data collection took place between the second and third waves of the COVID-19 pandemic in Indonesia, with a targeted sample size of 3-5 different NGOs. Although the sample size is small, a comparative analysis has been conducted among the NGOs that work on human trafficking cases, taking into account their differing approaches. For instance, Solidaritas Perempuan and ECPAT focus on providing support to the victims of trafficking, while SETARA and SEMIN primarily engage in prevention work. This balance between a limited sample size and a comparative analysis contributes to the overall findings of the study.

Interview participants work in the NGOs Solidaritas Perempuan Jakarta, Yayasan Sekretariat Anak Merdeka Indonesia (SAMIN) in Yogyakarta, SETARA in Semarang, and End Child Prostitution and Trafficking (ECPAT) in Indonesia. Aims of nuance informed the choice to involve different locations. Given the diverse range of organizations working at the local, regional, and national levels of Indonesia's NGO landscape, a thorough examination of their operational dynamics is important. Through the active participation of people from different places, this study aims to carefully document the nuances in how NGOs operate. Most importantly, having participants from different places is a purposeful way to highlight the range of experiences in the NGO field.

The study found that different NGOs, even those that work on the same issue, operate differently. For instance, Solidaritas Perempuan provides support in cases of victims of human trafficking, specifically women. SAMIN also works on prevention via education and workshops, particularly with youth and children. ECPAT works on both support and prevention activities.

The process also afforded observation opportunities. For example, a child-friendly district team assistant from the Sleman district provided the chance to participate in a workshop held in Merdikorejo. There, it became possible to observe how the municipal authorities work in preventing child and adolescent trafficking cases.

#### IV. RESULTS

This study highlights two primary issues pertaining to human trafficking in Indonesia: a deficient regulatory and bureaucratic framework and inadequate social policies aimed at combating poverty and inequality.

The study reveals profound systemic challenges embedded in the Indonesian landscape of human trafficking. This discussion applies a Marxist lens to unravel the interconnected nature of these issues, elucidating the symbiotic relationship between the socio-economic factors, legal apparatuses, and actors involved in perpetuating

exploitation. Indeed, regulatory and bureaucratic dynamics observed discordance between Indonesia's Trafficking in Persons Protection Act (TTPO) and international agreements (i.e. the Protocols of Palermo). This incongruity results in the dilution of charges, the consequent penalties, and their potential reparations. These results echo the Marxist tenet that legal structures are instruments to reflect the interests of dominant classes. The vagueness in defining trafficked minors within the TTPO aligns with Marxist critiques, portraying legal ambiguity as a tool of the ruling class to perpetuate systemic inequalities.

Nevertheless, the results also show socio-economic determinants. The socio-economic challenges outlined in the study underscore poverty and inequality as pivotal drivers of human trafficking. Families ensnared in low labor market prospects, limited educational opportunities, and financial precarity portray a higher compulsion to exploit their children for economic survival (Table 1). From a Marxist perspective, this scenario is emblematic of the capitalist system's intrinsic proclivity to exploit the proletariat, creating conditions conducive to human trafficking. By revealing families' aspirations to escape poverty via engagement with exploitative practices, the study poignantly illustrates the structural inadequacies within the capitalist system. Addressing the root causes demands a Marxist-inspired interrogation of the prevailing economic structures perpetuating systemic vulnerabilities and exploitation.

Therefore, the results also show the actors in the trafficking nexus (Table 2). Scrutinizing the diverse actors involved in trafficking—ranging from brokers to governmental institutions—provides insight into their roles within the larger capitalist framework. Government agencies facilitating labor migration can be analyzed through a Marxist lens as instrumental in maintaining a steady flow of inexpensive labor to serve ruling class interests. The complicity of local criminal elements, mafia, and law enforcement personnel suggests a complex interplay of interests that perpetuates exploitation. A Marxist analysis would posit that these actors, consciously or unconsciously, contribute to preserving existing power dynamics and class distinctions.

The findings of this research are derived from interviews conducted with NGOs in Jakarta, Yogyakarta, and Semarang. They reveal that the measures for preventing human trafficking (particularly child trafficking) in Indonesia fail to adhere to international treaties, such as the Protocols of Palermo. The collected data demonstrates a regulatory conflict between the Palermo Protocols and the Indonesian TTPO law, which lacks a provision that distinguishes minor trafficking. This conflict results in the downgrading of trafficking charges to lesser offenses, consequently reducing both the sentencing for the accused and the compensation awarded to the victims.

Since 2007, Indonesia has a specific law for eradicating the criminal act of trafficking in persons. Nevertheless, as this study demonstrated, one of the main problems that NGOs face is implementing and enforcing the TTPO in cases of underage victims. With some shortcomings, this has considerably strengthened protection against underage abuse.

Interview data reveals the challenges faced by NGOs in addressing trafficking cases involving underage victims in Indonesia. Despite the establishment of a robust legal framework to protect minors in the country, the TTPO lacks a clear definition for trafficked minors. As a result, and reflected by the NGO interviews, the TTPO has been ineffective in reducing trafficking cases, particularly those involving children, failing to adequately safeguard the rights of victims. Other problems within the system further exacerbate this issue. An interview was conducted with a consultant from Sleman district, an expert in child trafficking and child fruit exploitation collaborating with local NGOs in Indonesia (anonymized as “Mas Jos”). According to this interview, there is a lack of accurate understanding of the terminology used by various institutions—including the local government (DINAS in Indonesian), which hampers the proper identification of trafficking cases. Furthermore, as reflected in other NGO interviews and police reports, there is difficulty in interpreting the TTPO law. Often, cases that should be addressed under the TTPO are instead categorized under general criminal law (*hukum pidana*), leading to negative consequences for victims who do not qualify as trafficking victims. In many instances, these cases are treated as “fraud” rather than trafficking, resulting in lighter penalties for the offenders. Consequently, the perpetrators receive less severe punishment compared to what they would have received if the crime had been recognized as trafficking. This situation not only undermines the justice system but also has a detrimental impact on the victims themselves.

**Table 1**

**The socio-economic context regarding trafficking and exploitation according to the NGOs**

Socio-economic challenges and poverty as one of the principal underlying trafficking in Indonesia:	Solidaritas Perempuan	SETARA - Semarang	SAMIN - Yogyakarta	Mas Jos, Consultant - Sleman	ECPAT - Jakarta
Low prospects in the labor market	✓	✗	✗	✗	✗
Low education	✓	✓	✓	✓	✓

Exploitation for a wage below the minimum level in a foreign country	✓	✗	✗	✗	✓
Low-income family of origin	n/d	✓	✓	✓	n/d
Difficulties in re-entering the original village	✓	✓	✓	✓	n/d
Family compliant in exploitation	n/d	✓	n/d	✓	✓
Family compliant without knowledge of exploitation	n/d	✓	n/d	✗	n/d

*Data extrapolated from the interviews*

The data presented in the table sheds light on the intricate socio-economic context surrounding trafficking and exploitation in Indonesia, particularly emphasizing the role of family dynamics. The notable inclusion of family compliance as a factor adds a layer of complexity in understanding the root causes and perpetuation of trafficking. Families can have a role during the trafficking process. This implies that, in certain cases, families are actively involved in or supportive of the trafficking and exploitation of their members, potentially due to economic pressures or other factors. Family compliance can stem from various influences, such as financial desperation, lack of alternative opportunities, or coercion. Families might feel compelled to participate in exploitation due to economic hardships, making them vulnerable to recruiters or traffickers who promise financial gains.

The complex interplay of poverty, limited opportunities, and the desire for economic improvement can lead families to make choices that perpetuate the cycle of exploitation. Here, families may comply without being fully aware of the exploitation. This suggests that families might unknowingly contribute to the trafficking and exploitation of their members. These families' lack of awareness can be a result of misinformation, manipulation by traffickers, or a desperate belief in false promises. Families may be compliant due to a lack of understanding of the situation's exploitative nature, further highlighting the difficulty of addressing the root causes of trafficking. Indeed, the legal frameworks alone may prove insufficient in contexts where families are unwittingly complicit. This is because legal frameworks often focus on punishing perpetrators, but the role of families adds a layer of complexity. Tackling the issue requires a nuanced approach, considering the socio-economic factors leading to family compliance. Thus, merely implementing laws may not be enough.

Therefore, socio-economic challenges, such as low prospects in the labor market, low education levels, and exploitation for wages below the minimum, emerge as prevalent factors contributing to trafficking. Poverty and limited opportunities create an environment where individuals and their families may become vulnerable to exploitation.

It is evident that these systemic issues urgently need to be addressed to enhance the protection of trafficking victims, particularly minors. Efforts should focus on clarifying the definition of trafficked minors within the TTPO, ensuring proper understanding of terminology among relevant institutions, and facilitating effective interpretation and implementation of the law. By doing so, the legal framework can be strengthened, leading to improved outcomes for victims—and, ultimately, a more comprehensive approach to combatting human trafficking in Indonesia. Moreover, the findings of this study underscore that poverty, coupled with a high level of inequality and wealth disparity, significantly amplifies the likelihood of trafficking incidents in Indonesia. The conducted interviews reveal that the aspiration to escape the poverty trap compels family members to exploit their children for financial gain, as evident from the testimonies by Mas Jos and SETARA. The impoverished circumstances contribute to the surge in human trafficking cases in Indonesia, exacerbated by a social framework that inadequately addresses the economic conditions of the vulnerable. A thorough analysis starts by reviewing the actors who have a role in human trafficking in Indonesia (Table 2).

**Table 2**

**Actors involved in human trafficking cases in Indonesia**

Solidaritas Perempuan	<p><u>Before becoming a victim of trafficking</u></p> <ul style="list-style-type: none"> <li>● Brokers</li> <li>● Women</li> </ul>
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	<ul style="list-style-type: none"> <li>● BP2MI (<i>Badan Perlindungan Pekerja Migran</i>) -Migrant Workers Protection Board</li> <li>● Ministry of Foreign Affairs</li> <li>● Family</li> <li>● Regional government</li> <li>● Manpower</li> <li>● Migration</li> <li>● P3MI (Indonesian Migrant Worker Placement Company)</li> </ul> <p><u>During trafficking</u></p> <ul style="list-style-type: none"> <li>● BP2MI</li> <li>● Agency</li> <li>● Employer</li> </ul> <p><u>After trafficking</u></p> <ul style="list-style-type: none"> <li>● BP2MI</li> <li>● Broker</li> <li>● Agency</li> <li>● Ministry of Manpower and its staff</li> <li>● Ministry of Foreign Affairs and staff</li> </ul> <p style="text-align: center;">Quarantine Place (during the covid-19 pandemic)</p>
SETARA Semarang	<p style="text-align: center;">-</p> <p><u>Principal actors:</u></p> <ul style="list-style-type: none"> <li>● Children</li> <li>● Police officers</li> <li>● Family</li> <li>● Local mafia</li> <li>● Dinas Social (Social Service)</li> </ul>

		<ul style="list-style-type: none"> <li>● Friends</li> <li>● Perpetrator</li> <li>● Village</li> </ul>
SAMIN Yogyakarta	-	<p><u>Principal actors:</u></p> <ul style="list-style-type: none"> <li>● Brokers</li> <li>● Field workers</li> <li>● Local people</li> <li>● Criminal</li> <li>● Local criminal boss</li> <li>● Local mafia</li> <li>● Police officer</li> <li>● Children</li> <li>● Important noted people</li> <li>● Minor migrants</li> </ul>
Mas Consultant Sleman	Jos, -	<p><u>Principal actors:</u></p> <ul style="list-style-type: none"> <li>● Family</li> <li>● Closest</li> <li>● Girlfriend</li> <li>● Boyfriend</li> <li>● Friend</li> <li>● Village</li> <li>● Employee</li> <li>● RT (Neighborhood unit)</li> <li>● RW (Community unit)</li> <li>● Kelurahan (urban village)</li> <li>● Children</li> <li>● Police</li> </ul>

ECPAT - Jakarta	<p><u>Principal actors:</u></p> <ul style="list-style-type: none"> <li>● Children</li> <li>● Internet</li> <li>● Social media interaction</li> <li>● Perpetrator</li> <li>● Family</li> </ul>
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*Data extrapolated from the interviews for understanding the principal actors in cases of human trafficking.*

## V. DISCUSSION

### 1. Unveiling the Nexus of Socio-Economic Context: The Causes of Human Trafficking in Indonesia

According to UNICEF (2005), the principal causes of human trafficking are socio-economic factors, including high levels of poverty, weak governance, conflict, natural disasters, discrimination and exploitation, and low levels of education among the population. According to the Global Report on Trafficking in Persons<sup>35</sup> (2016), more than 2,630,000 persons live in some form of modern slavery in Southeast Asia. Women remain the largest victim group across the region, and sexual exploitation is the most significant crime.<sup>36</sup> 8.5 million people in Southeast Asia (74.3%) are victims of domestic work trafficking. Marxist theory is here revisited, in specific pertinence to labor and exploitation. Marx's analysis emphasizes the significant role of slavery<sup>37</sup> (i.e. human trafficking) in the rise of capitalism, as it serves as a cornerstone of bourgeois industry.<sup>38</sup> However, Ruggiero<sup>39</sup> argues that Marx's examination of early capitalism does not view slavery as a commodity due to slaves' lack of agency over their produced labor and their inability to be monetarily compensated for their time. This perspective is also evident in Marx's works, such as the *Grundrisse* and *Capital*. According to Marx, while both slavery and wage labor are outcomes of capitalism, they possess distinct characteristics. Free-wage workers are devoid of exchange value, while enslaved individuals exist solely as labor for their masters.<sup>40</sup> Understanding this theory is crucial for comprehending the intricacies and mechanisms of human trafficking, as it builds upon Marx's insights into

<sup>35</sup> *Global Report on Trafficking in Persons 2020*, by UNODC (New York: United Nations, 2020).

<sup>36</sup> *Ibid.*

<sup>37</sup> Karl Marx, *The Poverty of Philosophy* by M. Proudhon (1847).

<sup>38</sup> Ken Lawrence, "Marx on American Slavery" (1977) 1:1 Theor Rev.

<sup>39</sup> Vincenzo Ruggiero, "Trafficking in Human Beings: Slaves in Contemporary Europe" (1997) 25:3 Int J Sociol Law 231-244.

<sup>40</sup> Lawrence, *supra* note 38.



labor and exploitation.<sup>41</sup> In works such as the *German Ideology* and the *Communist Manifesto*, Marx contends that the state is fully controlled by capitalists<sup>42</sup> who prioritize the long-term interests of the capitalist system.<sup>43</sup>

However, Elster<sup>44</sup> argues that a deeper understanding of causal mechanisms affecting individuals is needed to fully grasp this interpretation of Marxism. Elster posits that individuals, specifically the working class in Marxist terms, make choices based on their preferences among various options.<sup>45</sup> However, these choices are influenced by their economic circumstances. As a focal point in Marxism,<sup>46</sup> exploitation is closely connected to the theories of surplus<sup>47</sup> value and the labor theory of value,<sup>48</sup> which attributes value to socially necessary labor time.<sup>49</sup> Roemer<sup>50</sup> further clarifies that Marxism's understanding of exploitation revolves around the unequal exchange of labor for goods. These concepts employ Marxist terminology, juxtaposing the bourgeoisie and capitalism against the proletariat or working class. Nonetheless, when examining trafficking victims, it becomes evident that they offer their labor power for meager wages. The fruits of their labor are intended for their employers and exploiters. The wages they receive are barely sufficient for survival, preventing them from facing starvation. In this context, traffickers assume the role of the bourgeoisie, while the victims represent the proletarians. Hodgson<sup>51</sup> argues that the working-class experiences exploitation since the profits generated by their labor only sustain socially necessary labor, while the surplus value accrues to the capitalists. Amorim<sup>52</sup> identifies that contemporary capitalist societies continually strive to increase production surpluses. However, the Marxist concept of exploitation may not provide a clear explanation for the problem of trafficking. According to LeBaron and Ayers,<sup>53</sup>

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41 Hal Draper, *Karl Marx's Theory of Revolution: State and bureaucracy. 2 v* (Monthly Review Press, 1977).

42 Bob Jessop, *The Capitalist State*, first edition ed (New York,: New York University Press, 1982).

43 Ralph Miliband, *Class Power and State Power* (Verso, 1983); Ted W Meckstroth, "Marx and the Logic of Social Theory: The Capitalist State" (2000) 64:1 *Sci Soc* 55-86.

44 Jon Elster, "Marxism, functionalism and game theory: The Case for Methodological Individualism" (1982) 11:3 *Theory Soc* 453-482.

45 Jon Elster, *Making Sense of Marx* (Cambridge University Press, 1985).

46 Paul Warren, "In Defense of the Marxian Theory of Exploitation: Thoughts on Roemer, Cohen, and Others" (2015) 41:2 *Soc Theory Pract* 286-308.

47 G A Cohen, "The Labor Theory of Value and the Concept of Exploitation" in Marshall Cohen, ed, *Marx Justice Hist* (Princeton University Press, 1980) 135.

48 Geoff Hodgson, "A Theory of Exploitation Without the Labor Theory of Value" (1980) 44:3 *Sci Soc* 257-273.

49 John E Roemer, "Exploitation and Labour Theory of Value" (1986) 21:3 *Econ Polit Wkly* 138-140.

50 John E Roemer, "Should Marxists be Interested in Exploitation?" (1985) 14:1 *Philos Public Aff* 30-65.

51 Hodgson, *supra* note 48.

52 Henrique Amorim, "Theories of immaterial labour: a critical reflection based on Marx" (2014) 8:1 *Work Organ Labour Glob* 88-103.

53 Genevieve LeBaron & Alison J Ayers, "The Rise of a 'New Slavery'? Understanding African unfree labour through neoliberalism" (2013) 34:5 *Third World Q* 873-892.

exploitation or forced labor arises from conditions of poverty, erosion of the welfare system,<sup>54</sup> and high levels of inequality that push individuals into exploitative situations.<sup>55</sup>

The phenomenon of labor exploitation closely intertwines with the economic compulsion that individuals experience in their lives.<sup>56</sup> In the case of trafficking and exploitation, it becomes evident that poverty and economic hardships drive people to view unfree work as their best available option. However, the Marxist theory alone does not fully explain poverty, a crucial factor contributing to individuals' vulnerability to trafficking in Indonesia.<sup>57</sup> Poverty can be assessed by considering various aspects, including limited access to essential goods, unstable wages, inadequate educational opportunities, and insufficient access to public health services. Additionally, it is essential to acknowledge the fundamental disparities in perceiving poverty between the Global North and South. Associating poverty with disparities in status and interests makes poverty research inherently political.<sup>58</sup> It becomes an exercise of power, where educated elites categorize, stigmatize, and (above all) neutralize the poor and disadvantaged—through analyses that conceal the political nature of socio-economic inequality.

Furthermore, measuring poverty goes beyond mere technical calculations of GDP. Amartya Sen<sup>59</sup> suggests analyzing poverty through the lens of freedom, considering the constraints individuals face in fully realizing their potential (due to being trapped in a state of “unfreedom”). If poverty is solely understood in terms of income deficiency, other vital factors such as life expectancy and educational opportunities are overlooked. Duflo and Banerjee<sup>60</sup> illustrate this by emphasizing the challenges faced by a child. The circumstances in which an individual is born greatly shape their prospects. For a child born into poverty, even if they possess exceptional abilities, breaking free from their current conditions is highly challenging.

Moreover, Jefferson<sup>61</sup> provides contextual insight into the factor of poverty. He highlights that in India, impoverished individuals rely on traditional wood-burning stoves, whereas in the US, 97% of the poor population possesses basic cooking stoves. Despite the different contexts of poverty, both situations entail significant limitations for the affected individuals. This concept could be applicable in Indonesia, particularly in impoverished regions like Yogyakarta. The forthcoming analysis of the interviews with Mas Jos and SETARA further supports this notion. Other scholars have proposed

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54 Christopher Pesterfield, “Unfree Labour and the Capitalist State: An Open Marxist Analysis of the 2015 Modern Slavery Act” (2021) 45:4 *Cap Cl* 543–560.

55 Genevieve LeBaron et al, *Confronting Root Causes: Forced Labour in Global Supply Chains* (openDemocracy and the Sheffield Political Economy Research Institute (SPERI), 2018).

56 Pesterfield, *supra* note 54.

57 Aniello Iannone, “Unveiling the Impact of the COVID-19 Pandemic (2019-2021) on Inequality, Poverty, and Food Security in Indonesia” (2023) 14:2 *Polit J Ilmu Polit* 189–208.

58 O’Connell Davidson, *supra* note 13.

59 Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf, 1999).

60 Abhijit V Banerjee & Esther Duflo, *Poor Economics: A Radical Rethinking of the Way to Fight Global Poverty* (PublicAffairs, 2012).

61 Philip N Jefferson, *Poverty: A Very Short Introduction* (Oxford, 2018).

various definitions<sup>62</sup> and theories related to poverty<sup>63</sup> and anti-poverty programs.<sup>64</sup> However, most of the assessed authors distinguish the origins of poverty<sup>65</sup> in terms of individual deficiencies<sup>66</sup> and broader social phenomena.<sup>67</sup> Additionally, poverty can be analyzed through five theories:<sup>68</sup>

1. Poverty caused by individual deficiencies;
2. Poverty caused by cultural belief systems, which perpetuate sub-cultures of poverty;
3. Poverty caused by economic, political, and social distortions or discrimination;
4. Poverty caused by geographical disparities;
5. Poverty caused by cumulative and cyclical interdependencies.

According to McAuliffe and Triandafyllidou,<sup>69</sup> 75% of victims of trafficking in Asia are from Southeast Asia, with significant trafficking associated with sexual exploitation. Human trafficking in Indonesia takes various forms, involving women and children, domestic labor, migrant work, sex work, child exploitation, servile marriage through mail-order brides, and natural disasters.<sup>70</sup> Men are also prominently seen in trafficking surrounding domestic labor and in the industries of fishing, tobacco, and sex commerce.

In Indonesian cases, all of these social factors are strongly present. Indeed, the poverty rate in Indonesia has declined dramatically in the last 50 years because of the country's growing economy.<sup>71</sup> Nevertheless, in a massive country like Indonesia, the poverty rate needs to be observed from a sub-national perspective, taking into consideration both the local (urban or rural) and the internal situations of the various areas, as several (such as Papua) are impacted by natural disasters<sup>72</sup> and complex political

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62 Alex Addae-Korankye, "Theories of Poverty: A Critical Review" (2019) 48 J Poverty Invest Dev 55-62.

63 Ted K Bradshaw, "Theories of Poverty and Anti-Poverty Programs in Community Development" (2007) 38:1 Community Dev 7-25.

64 William W Goldsmith & Edward J Blakely, "Separate Societies: Poverty and Inequality in U.S. Cities" (1993) 22:3 Contemp Sociol 82-83.

65 L Kushnick & J Jennings, *A New Introduction to Poverty: The Role of Race, Power and Wealth* (New York University Press, 1999).

66 J R Rodgers, "Poverty Intensity in Australia" (2000) 33:3 Aust Econ Rev 235-244.

67 Bradley R Schiller, *The Economics of Poverty and Discrimination* (Prentice-Hall, 1989).

68 Bradshaw, *supra* note 63.

69 *Report Overview: Technological, Geopolitical and Environmental Transformations Shaping our Migration and Mobility Futures*, by Marie McAuliffe & Anna Triandafyllidou (International Organization for Migration (IOM), 2022).

70 IOM, *The Climate Change-Human Trafficking Nexus* (International Organization for Migration (IOM), 2016).

71 Hal Hill, "What's Happened to Poverty and Inequality in Indonesia over Half a Century?" (2021) 38:1 Asian Dev Rev 68-97.

72 Amri Ilmma & Matthew Wai-Poi, "Patterns of regional poverty in the new Indonesia" in Hal Hill, ed, *Reg Dyn Decentralized Indones* (Singapore: ISEAS Publishing, 2014) 98.

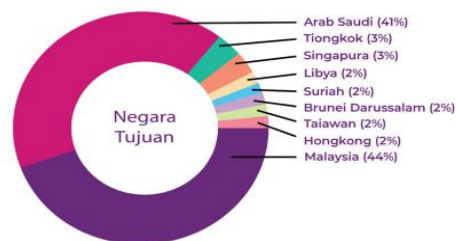
situations.<sup>73</sup> In addition, infrastructural development in Indonesia has yet to positively impact poverty levels.<sup>74</sup>

According to the most recent Trafficking in Person Report by the U.S. Department of State, all 34 Indonesian provinces are a source and destination of trafficking. In the early 1980s, the countries with a high number of Indonesian immigrant workers were Saudi Arabia, Malaysia, Singapura, Hong Kong, Taiwan, and Brunei Darussalam—with Indonesians making 38.7% and 37.7% of their migrant workers.<sup>75</sup> The Government of Indonesia estimated that nowadays, 2 million Indonesians work abroad undocumented. Indeed, Indonesia is a significant source of forced labor and sex trafficking for Malaysia as a destination country.<sup>76</sup> Solidaritas Perempuan also confirmed this in their interview. During interviews with party experts in migration law matters, it was evident that Indonesian women are especially prominent in trafficking aligned with domestic work in Saudi Arabia (alongside other areas of the Middle East, such as Libya and Syria).

### Graphic 1

#### Total of Cases (Women) Trafficked According to Destination, 2020

Jumlah kasus berdasarkan negara tujuan



Source: NGO Solidaritas Perempuan

73 Budy Resosudarmo et al, “Development in Papua after special autonomy” in Hal Hill, ed, *Reg Dyn Decentralized Indones* (Singapore: Institute of Southeast Asian Studies (ISEAS), 2014) 433.

74 Galih Pramono & Waris Marsisno, “Availability of Infrastructure for Poverty Reduction in Indonesia: Spatial Panel Data Analysis” (2018) 64:2 *Econ Finance Indones* 157-180; Jonathan Haughton & Shahidur R Khandker, *Handbook on Poverty + Inequality* (Washington D.C: World Bank Publications, 2009).

75 Graeme Hugo, “Women’s International Labour Migration” in Kathryn Robinson & Sharon Bessell, eds, *Women Indones Gend Equity Dev* (Singapore: ISEAS Publishing, 2002) 158.

76 Arun Kumar Acharya & Diego Lopez Naranjo, “Impacts of Cultural Practices in Anti-Trafficking Policies in Southeast Asia” in Jennifer Bryson Clark & Sasha Poucki, eds, *SAGE Handb Hum Traffick Mod Day Slavery* (SAGE, 2019).

According to Solidaritas Perempuan (2020), the highest trafficking report level came from Malaysia (44%), followed by Arab Saudi (42%). As reported by the ILO<sup>77</sup> (2016), migrant domestic workers live in inhuman conditions, forced to work 15 hours a day in countries like Malaysia. According to Solidaritas Perempuan data, 67% of victims in 2020 were trafficked into domestic work slavery, and 4-15% of the victims (particularly women) were trafficked into other labor divisions, such as the palm oil industry. Migrant workers in Saudi Arabia and Malaysia face inhumane conditions. Many are not allowed to leave their homes, and according to ILO Indonesia, domestic exploitation in these countries is highly dangerous. Indeed, socio-economic factors contribute to trafficking. Significant drivers are poverty and social inequalities, such as low levels of education opportunities for women.<sup>78</sup>

Nevertheless, one factor that pushes Indonesian migrants to go to these countries is a similarity in culture and religion, particularly Islam. The means used by traffickers to bring workers from Indonesia to Arab Saudi is through manipulation of the Haji and Umroh visas (43% of cases).<sup>79</sup>

Furthermore, Solidaritas Perempuan's analysis shows how traffickers and brokers lure people who will become victims, using lies to pressure the victims' socio-economic condition. 50% of their collected cases indicate how victims were deceived into believing that going to Saudi Arabia was legal. This legality would, in the end, not exist, according to *Kepmenaker* (Labor State Decisions; *Keputusan Negari Tenaga Kerja*) No. 206/2005, demonstrating that despite the legal framework, justice is not being served.

Interestingly, 19% of victims received money from traffickers to give to their families. This practice is common not just in cross-national trafficking, but also in Indonesian domestic trafficking. In Semarang, a child exploitation case was documented to involve granting sums of money from the trafficker to the victim's family. The family, who lived in extreme poverty, believed that the underage daughter was working to help the family's finances.

Moreover, the *modus operandi* used by traffickers or brokers can involve various 'tools,' including legal deeds, the promise of a high salary, and a good quality of life. In reality, victims experience seizures of personal documents, threats of being handed over to the police as illegal workers, prohibition of communication with family members, physical violence, wages below the minimum essential for living, work without rest and in inadequate conditions, death due to illness, and lack of access to healthcare because of their illegal status. Victims of trafficking are abused with bodily violence. They receive no salary or rights and maintain low access to health services. This was corroborated by

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77 *Global Action Programme on Migrant Domestic Workers and their Families*, by ILO (International Labour Organization, 2016).

78 Sutinah & Karen Mwendu Kinuthia, "Trafficking of women and children in East Java, Indonesia" (2019) 20:9 *J Int Womens Stud* 94-106.

79 Solidaritas Perempuan, *Catatan Akhir Tahun Advokasi Kasus . Mengungkap Realitas dan Perjuangan Perempuan di tengah Politik Patriarki dan Krisis Multidimensional* (Solidaritas Perempuan, 2020).

all the NGO interviews, verifying that victims' documents are seized by the “*majikan*” (the master), a practice used to control victims and threaten them with reports to local police.

Another issue exacerbated by human trafficking in Indonesia is early servile marriage and child marriage. According to Duflo and Banerjee,<sup>80</sup> there is a connection between low income, poverty, and marriage. Families can push for marriage, commonly for a daughter, to lower the family’s economic burden. Once the daughter is married, she is no longer deemed to weigh on the family financially. In Indonesia, more than 1 million women married before the age of 18. The number of women contracted for early marriage at age 15 is 1,300, with the highest levels in South-Kalimantan, Nord Sulawesi, Maluku, NNT, Yogyakarta, and North Sumatera (Graphic 3). Child marriage is a historically typical practice. According to UNICEF,<sup>81</sup> it is stated that in some regions, 35% of girls who marry are under 18. However, over the last ten years, early marriage has seen a gradual decline, though it remains common.

## Graphic 2

### Percentage of Women Aged 20-24 Who Were Married Before Age 18 by Province, 2018

Image 3.4.1 Percentage of Women Aged 20-24 Who Were Married Before Age 18 by Province, 2018

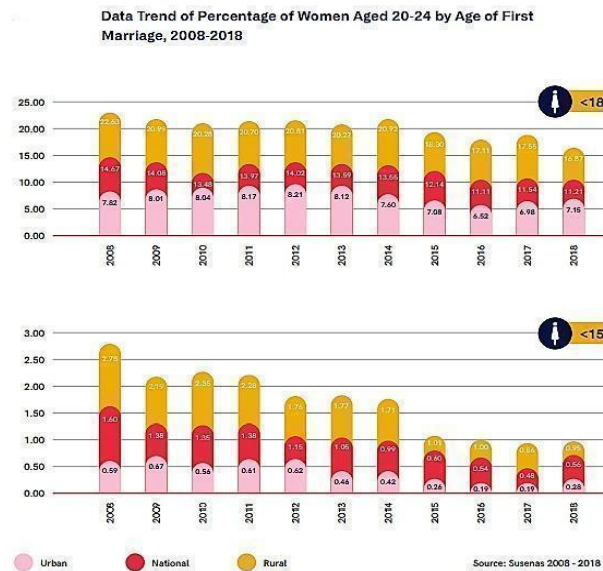


Source: UNICEF 2020 *Prevention of Child Marriage Acceleration*

80 Banerjee & Duflo, *supra* note 60.

81 *The State of Children in Indonesia - Trends, Opportunities and Challenges for Realizing Children’s Rights*, by UNICEF (UNICEF, 2020).

**Graphic 3**  
**Data Trend of Percentage of Women Aged 20-24 by Age of First Marriage, 2008-2018**



*Source: UNICEF 2020 Prevention of Child Marriage Acceleration*

The relationship between low education, early marriage, and poverty can cause trafficking. Exhibited by data by Solidaritas Perempuan, women and girls who have been victims of human trafficking prominently have low education. Specifically, the latest data from NGOs shows that 61% of victims finished their education at or below the elementary level. Meanwhile, 17% concluded secondary school, only 13% completed high school, and 2% are assumed to have completed a bachelor's degree. The majority of these women have experienced violence, abuse, and exploitation. During the interview with Mas Jos, it was notable how most analyzed cases (consisting mostly of underage cases) involved low education among both the relatives and the minor who had dropped out of school. During the investigation in Semarang, observing “silver men” cases, it was evident that there existed a direct relationship between institutions and families’ access to education (and prominent poverty). “Silver men” is a term used in Indonesia to describe Indonesians, often very young boys or teenagers, who ask for money at traffic lights in Indonesia. The practice is illegal, particularly if it is a minor. The appellation derives from the boys spreading silver paint mixed with oil on their bodies. It is a widespread practice, especially in the center of Java.

The following considers that Semarang has better socio-economic conditions than in Yogyakarta. From the data on the city of Yogyakarta, it is possible to see the significant causes of human trafficking. However, according to the interview with SAMIN, it is essential to understand that Yogyakarta is not classified as a central transition or destination area for human trafficking. Unsurprisingly, according to the NGOs and the TPR 2021, trafficking data from Yogyakarta is underestimated. In particular, the

interviews with Mas Jos and SAMIN showed complicated reporting challenges in processing the many Yogyakarta cases of exploitation and trafficking—especially of sexual exploitation of children.

Sexual exploitation as a form of human trafficking is prevalent in Indonesia, with commercial sex being one of the most prominent types of trafficking after domestic migrant labor. It is crucial to establish a clear distinction between sex work and sexual exploitation when addressing cases of human trafficking. Sex trafficking and sexual exploitation are explicit violations of human rights, which can victimize individuals of all genders and ages. However, engaging in consensual and non-exploitative sex work, as long as it does not involve underage individuals, does not constitute a violation of human rights. According to the TPR<sup>82</sup> report, an estimated 70,000 to 80,000 children were reported to be sold for sex across 34 Indonesian provinces in 2020. Walk Free<sup>83</sup> highlights that out of the 1,833,000 enslaved Indonesians, 43% are minors between the ages of 14 and 17.<sup>84</sup> One primary issue with sexual exploitation is its occurrence in conjunction with other forms of abuse. Individuals, including women, men, and children, can be victims of labor exploitation and sexual abuse simultaneously. Cases involving underage individuals are particularly complex due to the presence of fake ID cards or passports, which can complicate the reporting process. Solidaritas Perempuan asserts that determining the age of victims becomes challenging when they are near the age range of 15 to 17. According to Solidaritas Perempuan and other NGOs, it is only during the trial investigations and the initiation of criminal trials that it becomes possible to establish whether the victim was a minor when subjected to trafficking.

### **The story of Mas Jos and the problem of child labor and sexual exploitation in Yogyakarta**

During the interview with Mas Jos of Sleman, two specific issues were brought to attention: child labor and sexual exploitation. According to Mas Jos, human trafficking cases are not officially reported in Yogyakarta, as it is not considered a destination or transit point for trafficking. However, the reality is that Yogyakarta has a significant prevalence of child labor. For instance, there are instances where underage individuals are brought from Central Java to Sleman by their own parents for the purpose of sexual exploitation. These families exploit their children to earn income through such exploitative activities. Mas Jos indicated that this practice is widespread in Yogyakarta, with the victims residing in affordable hotels (specific hotel names cannot be disclosed

82 Department of State US, *supra* note 5.

83 Walk Free, “Modern Slavery in the Asia and the Pacific”, (2023), online: <https://www.walkfree.org/global-slavery-index/findings/regional-findings/asia-and-the-pacific/>.

84 Deanna Davy, “Regional Overview: Sexual Exploitation of Children in Southeast Asia” (2017) ECPAT Int.



here). When questioned about the lack of awareness among authorities, including the police, Mas Jos implied that it is a well-known issue that is intentionally concealed.

Another case discussed in Yogyakarta involved the "guardian boy" working in bird shops. The victim in this case originated from Central Java and was trafficked to Jakarta with the promise of a salary. According to Mas Jos, he sought money to purchase items like an iPhone and a moped. He was then subjected to underpayment and endured harsh working conditions, often working over 12 hours per day.

*Source: the interview with Mas Jos in Yogyakarta*

## 2. The Challenges and problems faced by the NGOs in Indonesia in the cases of Yogyakarta, Semarang, and Jakarta

To produce a meaningful analysis of the challenges that Indonesian NGOs face during trafficking cases, it is essential to highlight common experiential features. Through the interviews, some crucial common elements were highlighted. According to the data collected and the tables above, there is a commonality between the actors who have an essential role in trafficking. Principle actors can be discerned from SETARA, SAMIN, ECPAT, and Mas Jos, namely, the family, the village and close friends, the police, and the local crime or local mafia. Solidaritas Perempuan is excluded here because of their particular focus on women, and, different from the other NGOs, Solidaritas Perempuan's work focuses on supporting victims. Actors important for Solidaritas Perempuan include government departments, such as the Ministry of Foreign Affairs, P3MI, BP2MI, and the Ministry of Manpower. Thus, looking at the last report by the Solidaritas Perempuan on human trafficking in Indonesia (especially among women), Solidaritas Perempuan is active, especially in liaising with victims of trafficking in other countries, including Saudi Arabia and Malaysia. A factor that unites the experience of the NGOs is the socio-economic challenges of the victims or future victims of trafficking. This is thus central and will be analyzed in further detail, with Table 2 summarizing the socio-economic context of trafficking victims in Indonesia.

### **Semarang and the exploited girl: inadequate income as a driver in human trafficking**

During the interview conducted with the NGO SETARA of Semarang, a case involving a victim of child exploitation with a complex background was examined. One of the NGO's experts on child trafficking elaborated on the circumstances where the victim came into contact with the trafficker, who enticed her with promises of financial rewards in exchange for employment. Notably, the perpetrator was not a stranger but rather an acquaintance within the community. The victim, being a minor, was targeted and manipulated by the trafficker. Her family was living in dire poverty. Initial suspicions arose when she started bringing expensive items, such as fans and cash, back home. Upon intervention by the NGO, it was revealed that the situation constituted a case of child exploitation that required reporting. However, the victim's family hesitated to report the incident, as they viewed the girl's work as a means of supporting the family. Initiating an investigation in such cases becomes complex due to these circumstances.

### **The Silver Men of Semarang**

The interview conducted with SETARA presented a valuable opportunity to examine an additional case, commonly known as the "silver men" case. Within this context, the exploitation of underage victims sheds light on the collective involvement of the entire family. According to the NGO, the impoverished family once again found themselves embroiled in the situation. However, when the boys were apprehended by the police and subsequently taken to a detention center, where only parents were permitted to retrieve them, no family members appeared—out of fear of potential charges being pressed against them by the authorities.

*Source: the interviews with SETARA and Mas Jos*

Economic challenges among victims and their families were confirmed during interviews with SETARA and Mas Jos. According to the interview with SETARA, poverty is one of the main problems that pushes victims to contact traffickers and exploiters. During the interview with SETARA, two events were collected to explain the problem of poverty in Semarang, especially among young people. According to instances reported by SETARA, the entire family may, in some cases, be involved in the minor's exploitation (the son/daughter). An example is the case of the silver men, where (according to the report from SETARA) the whole family (who lived in a state of high poverty) was involved. Given that the situation involved underage individuals, which is illegal in Indonesia, the minors were initially taken into police custody. Moreover, it is important to highlight that the minors did not have adequate access to education during the period of exploitation, which could potentially lead to difficulties in the future. It should be noted that limited educational opportunities serve as a contributing factor that heightens the risk of falling victim to trafficking.

Another fundamental point (summarized in Table 3) is the interaction between investigators/law enforcement agencies and trafficking cases. Overall, according to the interviewees, the police and judicial bodies do not have adequate knowledge of the legislation around trafficking and exploitation. This knowledge gap feeds delays and injustice during trafficking cases. According to the interviews, the police face challenges in confronting trafficking cases of both adult workers and minors. In the latter, however (according to SETARA, SAMIN, ECPAT, and Mas Jos), the problem also derives from the disharmony between the TPPO (national law on trafficking) and international standards such as the Protocols of Palermo. This issue is unpacked when examining the challenges that NGOs face when applying the law.

**Table 3**

**Problems with law enforcement and judicial systems during cases of trafficking and exploitation and enforcement of laws**

Solidaritas Perempuan	<p>Law enforcement officials lack perspective and are stunted in handling criminal cases of trafficking in persons who are women migrant workers.</p> <p>Perpetrators involve the closest family member/s. There is pressure from the family, which leads to under-reporting to prevent family embarrassment. Victims and their companions are also often intimidated by perpetrators or brokers.</p>
SETARA Semarang	<p>- The law (No. 21/2007) does not provide a distinct definition for child trafficking; it solely addresses trafficking in persons.</p> <p>Due to this inadequacy in the national law, instances of trafficking in persons are often treated as generic criminal offenses under ordinary criminal law by the police.</p>
SAMIN Yogyakarta; Mas Jos, Consultant - Sleman	<p>- Law (N. 21/2007) fails to define trafficking in children; there is only a definition of trafficking in persons.</p>

ECPAT -Jakarta	The problem in the law (N. 21 2007) does not define trafficking in children in the law; there is only a definition of trafficking in persons.
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*Source: Data extrapolated from the interviews on the gap in the law*

The issues highlighted in Table 3 regarding law enforcement and judicial systems during cases of trafficking and exploitation, as well as the enforcement of laws, point to significant challenges in addressing human trafficking—particularly in the context of adults and children. These problems have implications that extend beyond mere legal intricacies and contribute to the continued perpetuation of trafficking. The absence of a distinct definition for child trafficking in the national law (No. 21/2007) is a critical gap. This deficiency hinders the ability of law enforcement to specifically target and combat child trafficking as a distinct and severe crime. Such legal inadequacies may lead to a lack of clarity in identifying, prosecuting, and punishing offenders. The tendency to treat trafficking in persons as a generic criminal offense rather than recognizing it as a distinct and heinous crime can lead to inadequate prosecution and punishment of offenders. This approach may fail to acknowledge the gravity of human trafficking and the specific harms inflicted on victims. The involvement of close family members in trafficking, coupled with familial pressures and concerns about embarrassment, contributes to under-reporting. The fear of retaliation and intimidation by perpetrators or brokers further exacerbates this issue. These dynamics not only impede the reporting of cases but also create an environment where the exploitation of vulnerable individuals can persist without proper intervention.

## VII. CONCLUSION

Human trafficking is a complex and challenging problem. This study has provided insights into social factors contributing to the increased risk of trafficking in persons in Indonesia, as well as significant challenges faced by NGOs operating in the country. The interviews conducted with NGOs revealed a common theme, namely the inconsistency and misalignment between international protocols (such as the Palermo Protocols) and national laws (particularly the TPPO), which creates challenges in addressing the trafficking of minors. The research findings indicate that NGOs encounter numerous challenges when dealing with trafficking cases, particularly the bureaucratic complexities associated with the application of national laws. The interviews and collected data demonstrate that the regulations pertaining to trafficking in Indonesia do not fully align with international legal standards, particularly in relation to the Palermo Protocols and their application to underage victims. This discrepancy poses a significant challenge for NGOs working in the field of trafficking, particularly when it involves minors.

It is important to note that children, due to their status as minors, are legally unable to provide informed consent. Their lack of capacity to make conscious decisions, which require physical, mental, social, and moral maturity, is a critical aspect. This study has shed light on certain aspects that the Indonesian government should consider in order to enhance anti-trafficking efforts in the country. First, it is crucial to incorporate the Palermo protocols, particularly when addressing child trafficking. The clause that restricts child consent should be eliminated in Indonesia. Additionally, there is a need to expedite judicial proceedings to prevent loss of contact with the victims. All of the interviewed NGOs emphasized the detrimental impact of this legal technicality. Over the years, the Indonesian government has made efforts to improve laws and regulations concerning human trafficking and labor migration. However, NGOs often face challenges in pursuing anti-trafficking efforts, as perpetrators are sometimes treated and punished as fraudsters.

Additionally, this study explored the social factors contributing to human trafficking and exploitation in Indonesia. Analysis of the data gathered from interviews with NGOs and Mas Jos reveals how poverty, inequality, and limited access to education lead victims to view exploitation as an opportunity to escape poverty. In the cases involving underage victims, it is evident that family members can actively participate in the exploitation—particularly in instances of sexual exploitation. The stories of the silver men and the guardian boy in Yogyakarta exemplify the social factors that contribute to exploitation and human trafficking. The victims, driven by their desire to escape poverty, unknowingly enter a nightmare of sexual and labor exploitation. Therefore, it is essential to proactively educate law enforcement personnel to bridge the knowledge gaps regarding trafficking and exploitation terminology. Failure to address this gap puts victims at risk, as they may be misclassified as victims of fraud rather than exploitation. Moreover, this lack of terminology or common understanding within law enforcement allows criminals to be prosecuted under ordinary criminal law instead of trafficking-specific legislation. Lastly, in order to minimize the allure of traffickers and local criminal organizations, the government should implement social policies aimed at supporting the most vulnerable segments of the population, particularly impoverished women and children.

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