



Graduate School of Development Studies

**INVESTIGATING CONSTRAINTS:
LAW ENFORCEMENT AGAINST WOMEN AND
CHILDREN TRAFFICKERS IN INDONESIA
(CASE STUDY: LAMPUNG PROVINCE, INDONESIA)**

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Renvi Liasari
(Indonesia)

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Members of the examining committee:

Prof. Dr Ben White

Dr Joop de Wit

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Inquiries:

Postal address: Institute of Social Studies
 P.O. Box 29776
 2502 LT The Hague
 The Netherlands

Location: Kortenaerkade 12
 2518 AX The Hague
 The Netherlands

Telephone: +31 70 426 0460

Fax: +31 70 426 0799

Table of Contents

List of Tables and Figures	5
List of Acronyms	6
Abstract	7
Chapter 1	
INTRODUCTION	
1.1 Women and Child trafficking in Indonesia : background	8
1.2 Indication of Problem Area	10
1.3 Research Questions	11
1.4 Methodology	11
1.5 Limitation of study	13
1.6 Organization of the Paper	13
Chapter 2	
Conceptual Framework	
2.1 Defining the concept of trafficking: application to women and children	14
2.2 Law Enforcement	17
2.3 Gender Concept	18
2.4 Capacity and Corruption	19
Chapter 3	
Actors, Roles, and Mechanism of bringing trafficker into punishment	
3.1 Actors and their roles in the criminal justice process	
3.1.1 The Police	22
3.1.2 Public Prosecutor	22
3.1.3 Judge	22
3.1.4 Lawyer	23
3.1.5 Defendant	23
3.1.6 Victim	23
3.1.7 NGO	23
3.1.8 Mass Media	24
3.1.9 The Witness	25
3.2 Legal Mechanism in bringing traffickers into punishment	25
3.2.1 The crime of women and child trafficking has occurred	26
3.2.2 Report or Complaint of women and child trafficking case to the police	26

3.2.3 Examination (Penyelidikan)	26
3.2.4 Investigation (Penyidikan)	26
3.2.5 Prosecution process	26
3.2.6 File the indictment	27
3.2.7 Schedule for trial	27
3.2.8 The Trial	28
3.2.9 Court Verdict	28
3.2.10 Sentencing	28
3.2.11 Appeal Process	29
3.3 The Weaknesses in the Criminal Justice Process	32

Chapter 4

Law Enforcement of Trafficking Cases : Paper vs Reality

4.1 Introduction	36
4.2 The Constraints related with Legal Mechanism	45
4.2.1 Constraint related to the report of child trafficking case	45
4.2.2 Constraint related to the evidence and witnesses	49
4.3 Corruption indication by both law enforcement agencies and government apparatus	50
4.4 Constraints related with The Capacity of Law enforcement	53
4.4.1 Insufficient knowledge and skill to respond women and child trafficking cases	53
4.4.2 Lack of coordination among law apparatus	55
4.5 Reconciliation between trafficker and victim	56
4.6 Conclusion	57

Chapter 5

Conclusion and Recommendation	58
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References

Notes

List of Tables and Figures

Table 1: The Characteristics of the Cases	37
Table 2: Length of Sentence of traffickers	38
Table 3: The Difference of the length of sentence toward traffickers: Law vs. cases	43
Scheme 1: Legal mechanism in bringing the traffickers into punishment	29

List of Acronyms

ILO	International Labour Organization
KUHAP	Kitab Undang-Undang Hukum Acara Pidana
KUHP	Kitab Undang-Undang Hukum Pidana
NGO	Non Governmental Organization
NPA	National Plan of Action
UN	United Nation

Abstract

This paper is attempting to identify the constraints that law enforcement agencies face to convict the traffickers of women and children trafficking through criminal justice process. Using qualitative research methodology, case study method and interview with key informants from law enforcement agencies and NGO who handle women and children trafficking cases, this study has concluded that not only weak legal mechanism and procedures, but also poor capacity of law enforcement agencies in responding the cases, corruption and reconciliation process between the traffickers and victims become the constraints in bringing the traffickers of women and children into justice.

Relevance to Development Studies

Woman and children rights are relevant issue in development studies. Further, women and children trafficking is a violation of women and children rights. In recent years, women and children trafficking have been attracting the public attention, both in terms local or international. Various efforts were done to prevent the practice of women and children trafficking and punish the traffickers. In Indonesian context, even though Indonesian Government has established Laws to eliminate the number of women and children trafficking and to convict the traffickers, but the number of arrest and punishment of traffickers is still in question. With regard to this situation, it is important to identify what went wrong in the practice of criminal justice towards women and child trafficking cases.

Keywords

Trafficking, women and children trafficking, law enforcement, law enforcement capacity

Chapter I

INTRODUCTION

1.1 Women and child trafficking in Indonesia: background

Human trafficking especially women and child trafficking is a global issue across, within and between countries including Indonesia. Research in some countries (Martens et al. (2003), Manohar (2002)) indicates that trafficking is basically a gender and age specific phenomenon, affecting mostly women and children. However, it is not that simple to distinguish between adult (women) and child trafficking victim only based on their age.

The structural vulnerability of women on relation to their exclusion from the public world, gender discrimination and undervaluation in the economic sphere renders them as the ideal workforce together with children to be exploited in low paying and hazardous work for maximum profit by the traffickers (Sanghera 1999:4). Even though the social categories of adult and child are imagined in opposition to one another and also essential to people moral identity in the contemporary western societies (O'connell Davidson 2005:25), but both child alongside with adult women are socially constructed as extremely inferior by wider political society in which they live.

Again, with regard to trafficking problems, some reason make the situation and condition of both (adult) women and child trafficking is difficult to differentiate only based on their age. For instance, the pull and push factor which cause women and child become victim of trafficking are the same. Traffickers often convince women and girl child who are disproportionately affected by poverty, chronic unemployment, discrimination, lack of access to education, and lack of economic opportunities in their home countries into the trafficking networks through false promises of decent working condition which can help them to get their dream (Asil (the American Society of International Law) 2001:408).

Moreover the working condition of women and child trafficking (especially trafficking for the purpose of sexual exploitation) is often similar. The general health risk of both women and children involve in prostitution such as the risk for HIV /AIDS infection is higher. In addition, trafficking victims also experience physical and emotional violence by traffickers, pimps, brothel owners, clients and sometimes law enforcement agencies(Pan-American Health Organization)

In responding to the problems of trafficking, UN protocol to prevent, suppress and punish trafficking women and children indicates that trafficking on women and children is a Crime. Therefore, as stated in article 3 of the protocol above, each State Party who ratifies this protocol shall adopt such legislative and other measures as may be necessary to establish women and child trafficking as criminal offences.

In the context of Indonesia, recent studies acknowledge Indonesia as the sending country for trafficking in persons worldwide. Based on various studies, it is suspected that there are several provinces in Indonesia that mainly serve as sending areas. In addition, there are also several districts/cities in the provinces also known as receiving areas and or transit areas (Coordinating Ministry for People Welfare 2005). Those studies give indication that trafficking especially women and child trafficking is happen in some places in Indonesia and therefore human trafficking can be classified as a serious crime and need to be eliminated.

The clandestine nature of trafficking in Indonesia makes it difficult to know the exact number of women and children trafficked. However, according to the NGO Education Committee for Indonesian creative Child Labour Foundation (Kompak), An estimated 300,000 children under the age of 18 years old work in brothel in Indonesia, while there are as many as 15.000 “hidden centres” in the country that engage in other commercial exploitation and other worst form of labour (Irwanto et al. 2000).

In addition, The data gathered by ILO in only the period of March to July 2006 state that there were 1.231 women and children have become the victims of trafficking. 55% out of them were exploited as house maids, 21% became

prostitute, 18.4% became formal sector workers, 5% became migrant labour, and 0.6% was the cases of baby trafficking (Inung/Untung 2007)

1.2 Indication of Problem Area

As a response to the situation above, The Government of Indonesia enacted its first five-year National Plan of Action for the elimination of trafficking in women and children (NPA) in 2002 through the issuance of presidential Decree No. 88 of 2002. The NPA emphasizes actions needed to be taken to strengthen Indonesia's legal framework and law enforcement capabilities to combat trafficking (Hamim 2006:365).

Nevertheless, the commitment of the Indonesian government in handling human trafficking (including child trafficking) is still considered to be low in comparative terms. As a result, in 2006, Indonesia is threatened to be listed in Tier 2 by US department of State as a country that fails to handle human trafficking.. The Tier 2 rating is given to a country that judged as a low commitment to handling human trafficking (Us Department of State 2006).

The Indonesian National Plan of Action for the elimination of trafficking in women and children in one of its objectives states that it is important to establish the legal norms and legal actions against traffickers of women and children. The Indonesian National Plan of Action for elimination of trafficking in women and children also point out that one of the targets of this National action plan is to lower the number of cases of trafficking of women and children and higher number of cases processed up to the court-a minimum 10 % per year.

In the last several years, Indonesian Government has established new laws to protect women and child trafficking victims and punish the traffickers. In fact, the number of women and children trafficking cases is thought to be increasing every year and the number of arrests and prosecutions is far higher than that shown in the government's progress reports March 2006 (Hamim 2006:365). Enforcers have taken many legal actions against traffickers, instituted legal process against them and taken them to court.

However, the Minister of Women Empowerment, Meutia Farida Hatta states that only 1% of trafficking cases noted by ILO were taken to the court,

while the rest were not solved totally. This situation raises serious question about what went wrong in the practice of criminal justice towards women and child trafficking cases (Inung/Untung 2007)

Unlike much other research on the prevention of trafficking in women and children, the research about the challenges that law enforcement agencies face in responding to women and child trafficking cases is limited. Therefore the purpose of this research, which will focus specifically on the process and outcomes of legal actions taken to deal with women and child traffickers, are to find out the actors involved in the criminal justice process, their role, and the mechanism in bringing traffickers into punishment. Moreover, this study will also look at the constraints that the law enforcement agencies face in enforcing the law to punish traffickers and protect women and child trafficking victims.

1.3 Research Questions

Main Research Question:

Why do the efforts of the law enforcement agencies sometimes result in the failure to convict the traffickers through the criminal justice process or in the inappropriate punishment of traffickers?

Sub Questions :

1. Who are the actors involved in Law Enforcement as regards women and children trafficking cases?
2. How are law enforcement agencies organizing their responses to women and child trafficking cases with regard to eliminate the number of women and child trafficking victims?

1.4 Methodology

The qualitative research and case study method is the core of this study. According to Laws (2003:344) , case studies is defined as direct investigation of the case or cases in question, using multiple sources. The acceptance that case studies can be meaningful research tool has risen. It is because people's willingness of a convenient technique to catch a time-framed picture of one's or some aggregate that can be analyzed as a unit or collective-characteristics and performance.

People get familiar with the term "case studies" might be also caused by its "face-value credibility" term, i.e. that case studies can contribute evidence or illustration that can be identified by some readers (Bachor 2000). Therefore, the author chose case studies as the research method since it would enable the gain of a comprehensive description of many aspects towards the challenges in criminal justice process in bringing the traffickers into punishment.

For the purpose of this study, Lampung Province was chosen as a study location because of several reasons. First based on Coordinating Ministry for People's Welfare 2005, Lampung has been identified not only as a transit and receiving areas of trafficking within the country (Indonesia) but also as a sending area of trafficking in persons for national and international destination. Second,, according to the estimated data from Lembaga Advocacy Perempuan-Damar , a local NGO , Lampung is placed in the second place after North Sumatera as a Province which is identified as sending areas for women and child trafficking for the purpose of domestic workers and sexual worker, etc (Francisca 2007). Besides, geographically, Lampung province is a province which is identified as the transit area for trafficking since it is regarded as a main gate for those who want to overseas Sumatra Island (Lampung Post 2004) .

To gather data on the challenges that law enforcement agencies face in bringing the trafficker into criminal justice process, the author reviewed 12 closed trafficking cases out of 30 cases available. The selection of the 12 cases is based on the completeness of the legal document starting from the investigation in the police, prosecutor, and the court. The writer only reviewed the trafficking cases where a complaint was made to focus more on the process and outcomes of legal actions taken to deal with women and child traffickers. The selected cases were the trafficking cases that were gained from the court and NGO that handle the cases during period year 2003 – 2007.

This study selected a number of cases which are failed to bring the traffickers through the legal process, failed prosecutions (only passing light sentences to the traffickers) and successful prosecution (giving appropriate punishment to traffickers) . The study traced the process of investigation,

evidence-gathering, the bringing of charges and the trial process and the resulting outcome of the criminal justice process toward trafficking cases in women and children.

Further, the writer has interviewed middle and high ranking officials within law enforcement agencies, including police in special assistance unit for victims (Ruang Pelayanan Khusus), prosecutors, judges, lawyers from both victim and trafficker side, and NGOs involved . In addition to this, the study also reviews the Indonesian Laws related with the trafficking issue, NGO reports, books, journal and website related with trafficking issue to support legal case review and key stakeholder interview.

1.5 Limitation of study

Trafficking of women and children is a sensitive issue. The organization culture of law enforcement agencies related with openness creates difficulties in collecting the data and information. This situation creates difficulties in accessing the necessary amount of the number of available legal case and interview process. Besides, because of some mutation/turn over staffs in middle and high ranking officials in the police, public prosecutor and judges office, make this study more difficult then what is planned before.

1.6 Organization of the paper

This paper is organized in 5 chapters. Chapter one above indicates about the introduction, background of the study, research questions, methodology and limitation of the study. Chapter two discusses the conceptual framework used by the writer. Chapter Three will shows the actors involve in the criminal justice process, their role, the mechanism in bringing traffickers into punishment and the weaknesses in criminal justice process. Synthesizing from the case studies, Chapter Four will analyze the constraints that law enforcement faces in responding to women and child trafficking case. Finally, Last Chapter will provide Conclusion and Recommendations.

Chapter Two

Conceptual Framework

This chapter will discuss the concepts of trafficking, law enforcement, gender, capacity and corruption. The concepts above will be useful to guide the writer in answering the research questions.

2.1 Defining the concept of trafficking: application to women and children

In the past, people usually thought of trafficking as moving women across borders, against their will, and forcing them into prostitution. Over time, people have come to understand more about the complex issue of trafficking and now see that it in fact includes many different kinds of situations. Before, people did not differentiate between migrating, smuggling and trafficking. Therefore, It is important to recognize fundamental difference between migrating, smuggling, and human trafficking.

Migration is people movement or a transfer process of the people from one country to another region, it can be done either legally or illegally, voluntary or involuntary (although, most of them are done voluntary) . Smuggling is an effort of taking someone with his/her consciousness to other country illegally and the person will gain benefit of his movement (even illegally) for him/herself. In contrast, in the case of human trafficking , the trafficking victim never gain any benefit for their movement , and another person always take benefit and exploit them badly (Emmy Ls 2007)

The problems of trafficking in many cases are thought to be serious and growing. As a response to this situation, United Nations establish UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (Palermo protocol), especially Women and Children, supplementing the UN Convention against Trans national Crime. Article 3 of UN Protocol to prevent, suppress and punish trafficking in persons defined trafficking in general as :

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or

receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

In other words, we can identify that one case is trafficking case if it involve three components mention in UN Protocol to prevent, suppress and punish trafficking on women and children which are “process” in bringing the victim from one place to another place (start with recruitment process, and followed by transportation, transfer, harbouring or receipt of persons) by “means” (using threat or use of force or other forms of coercion, of abduction, of fraud, etc as mentioned in article 3 protocol above) to trap the trafficking victim, and for the “purpose” of exploitation. These definition of the crime of trafficking in persons provides for sufficient frameworks to encompass all types of trafficking in person such as, besides sexual exploitation and forced labour , also the slavery, servitude and slavery position.

In some cases involving children (defined as any person under eighteen years of age), The component of “means” is considered not relevant because children are considered to be in an unequal position with (adult) trafficker. The Protocol required only two components in child trafficking case: “the process” and “the purpose” for exploitation”:

“The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means (the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person) set forth in subparagraph (a) of this article;

Thus, paradoxically, all persons under the age of 18 recruited into prostitution or other forms of sexual exploitation(such as pornography) are considered to have been “trafficked” even if they are “willing” recruits, i.e. if

the dimension of “the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, ...” (see above) is absent.

Along with the protocol above, ILO Convention 182/1999 on the Worst Forms of Child Labour also give concern to prohibition of trafficking and child exploitation. Convention 182 defines the worst forms of child labour as:

“ all forms of slavery or practices similar to slavery, such as the sale and trafficking in children ,debt bondage and serfdom and forced or compulsory labour. .” (Art. 3) , and requires all those states parties who have ratified it (including Indonesia) *to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”* (Art. 1) and to *“take all necessary measures to ensure ... effective implementation and enforcement ..including the provision and application of penal sanctions”* (Art. 7).

As already mention in chapter one, however, there are also problems arising from the crude dichotomous separation of the trafficking victim based on the age perspective, between those under and those over 18 years of age (O'Connell Davidson 2005) . Western Society is seen the social categories of adult and child are opposite. Hence, especially in trafficking with the purpose of sexual exploitation, O’Connell Davidson recognized that there is no clear , fixed or absolute line of separation between commercial sex involving adults and that involving children (ibid:140).

One argument that supports the definitional separation between adult and child trafficking come from Derks (2000:14) that the vulnerability of children including bio-physiological, cognitive, behavioural and social changes takes place during the growth and maturation process, distinguishes children from adults, and thus also their trafficking situation. In addition, Chrissey Muller in (Gowan) argue that there is a key differences between adult and child trafficking. On the one hand, trafficking of adults involves mobilisation via coercive means which result in the exploitation. On the other hand, child trafficking only required the children to be mobilised and to be exploited (ibid). In contrast, other scholars such as Sanghera (1999) and O’Connel Davidson(2005) acknowledge that the situation and problems of women and

children as a victim of trafficking for the purpose of sexual exploitation are identical.

All the vulnerability of women and children is connected to deepening crises at their home base on the need to find alternate and feasible means of living (Sanghera 1999:7). To mention some, sexual abuse as well as poverty are some reasons of why children along with women become the victim of trafficking and have to take a part in prostitution . Besides, the problems which emerge in women and children trafficking are not merely because they have high tendency to be exploited as sex worker but also that people under age of 18 are clearly not all equally in danger within the sex trade or equally harmed by their involvement in it (O'connell Davidson 2005:141).

Adding up the explanation above, girl child who involve in the sex trade, have high tendency to be exploited by their gender identity that they share with adult women, not only by their age. The stigma as a “whore” is also affected girl child as a person who brings disgrace on their community next to the adult women prostitute (ibid). Therefore it will easy for both women and (girl) child to be re-victimized physically and emotionally by their community and the system.

In this research, I believe that it is important to recognize the fact that because of the similarity in many aspects of the vulnerability of women and children as a trafficking victim, thus, both women and children are equally important as a subject of this research.

2.2 Law Enforcement

Criminal action is an action that can be convict according to laws. This sanction can make someone lose his/her freedom during a period of time (Arief 1996). Therefore giving punishment is one way to control the deviation of human behaviour (Sunarso 2005). Giving the punishment in general term is a part of designing the law based on Legal principle. Therefore, to give punishment needs some kinds of law principles first. A criminal case can be launched when someone has committed a crime as defined in the Indonesian Criminal Code (KUHP) . Trafficking in persons in Indonesia is defined as a crime by KUHP and others Laws related with trafficking such as Child

Protection Act No. 23/2002, Indonesian Act No 21/2007 about Human Trafficking, etc. The three basic principles of crime punishment is to protect public need, prevent and also control the crime and the rehabilitation of the criminal.

In addition, the purpose of having criminal court is to give justice both for victim and defendant. However, as Abidin (2005) states that deciding the purpose of conviction is problematic, especially in deciding whether the conviction is aimed at giving suitable punishment towards the crime that occurred or it is only a means for preventing society from anti-social actions so that the crime will never occur anymore in the future. Deciding the limit of conviction is also a crucial problem since it strongly affects the right of both defendant and the victim to get justice.

2.3 Gender concept

The term 'gender' refers to the cultural construction of men and women identity. It can be defined as 'more than biological differences between them. It includes the ways in which those differences create classification of women and men to assign roles in the society. Moreover, it is important to acknowledge that gender roles are the expectations a culture has of one's behavior as appropriate for male or female (Liebman) in www.outthere.org.nz.

In the patriarchal society, women and children experience gender discrimination, inside and outside the house (public sphere) ((Heyzer 2002), (Harkrisnowo 2003)) . In addition, Laws are also affected by gender bias in the community. The discriminatory laws may for example deny women the right to own land; affect their right to inheritance and making them vulnerable and dependent to men (Manohar 2002:15)

The gender dimension has great influence in trafficking issue. It influences all aspects of the trafficking process from the factors that contribute to trafficking to the nature of the laws and policies developed to cope with the issue . Women and children are especially vulnerable because they are most likely to be illiterate and uninformed and have been conditioned by gender relations in their home culture to passively accept whatever conditions are offered (Heyzer 2002:6). Thus, ILO-IPEC, (2002) states that it is largely

acknowledge that women and children are trafficked by their families who believe it may offer a way out of poverty. Moreover, many young women are vulnerable to trafficking not only because of lack of economic opportunities but also because they wanted to escape from burden of long hours unpaid domestic work and family care expected from them (ibid:9).

2.4 Capacity building and corruption

Capacity is defined as the ability to anticipate and influence transformation, make informed, intelligent decisions about policy, and evaluate current activities to guide future action (Honadle 1981:577). Moreover, (Philbin 1996) argues that Capacity building is defined as the "process of developing and strengthening the skills, instincts, abilities, processes and resources that organizations and communities need to survive, adapt, and thrive in the fast-changing world."

There are three dimensions in the concept of capacity. First, capacity refers to human resources such as staffs recruitment, staff performance, and staff utilization. The first type of capacity refers more to individual of staff. Second, organizational dimension focuses on incentive systems, structure of work and organizational structure. And The third is more about institutional context in which staff and organization work involving economic, financial, political, social and cultural factors as well as norms and values, rules and regulations and legal framework (Holzner and Wit 2003:3)

Capacity has important role to perform appropriate work effectively, efficiently, and sustainable. In other words, capacity is refers to organization ability and individual skills and capabilities to achieve its goal effectively and to sustain itself over the long term (Philbin 1996). In turns, the capacity building address to the improvement in the capability of public sector organizations either single or in cooperation with other organizations to perform appropriate work (Grindle and Hilderbrand 1995:445). Moreover, capacity building also tends to address specialized management issues such as financial, management, organization development, and service integration (Honadle 1981). Hence, the use of the improvement on capacity building can also improve the

performance of public official to perform their task and role to serve the people.

However, even though the three dimensions of capacity above are connected each other, but the Institutional context which includes the norms and rules in the society , has big influence to undermine other dimensions of capacity either can constrain or support organization and its staff to perform their task properly (Grindle and Hilderbrand 1995:447). For instance, organizations are deeply shaped by their environment, including existing social and gender hierarchies. Therefore, even though there is an improvement in human resources and organisational dimension of capacity, if the rules are not being enforced consistently in society or when norms in society are still biased against women, it will weaken the capacity of the bureaucrat and law enforcement agencies to carry out their duty to serve the public.

In contrast, As public choice theory emphasize, 'the bureaucrat are also self interested , utility maximizes, and motivated by such factors such as salary, prerequisites of the office, public reputation, power, patronage, and the ease of managing bureau' (Nisnaken (2005) cited by (Felkins 1997)). The official at any level is either in public or private sectors perform at least partly in his own self interest. Hence, in fulfilling their self interest to gain private enrichment, the bureaucrats (government officials, law enforcement agencies, etc) often misuse their official position.

This situation will lead to rent seeking behavior in which 'individuals or group lobby government for taxing, spending and regulatory policies' that benefiting both side (government officials and private sector) (Johnson 2005). In addition, the bureaucrats have to involve with the illicit crimes or doing corruption to gain financial benefit for themselves. As Gurgur and Shah (2005:1) stated, corruption is defined as the abuse of public official power for private gain.

In addition, CSD (2002) in (CORRUPTION:Case In Cambodia) acknowledge that corruption occurs when 'public official accepts, solicits, or extorts a payment, or when private agents offer a payment to get out of the law competitive or personal interest.' In addition, corruption is manifestation of

institutional weakness, poor ethical standards, low incentives and insufficient enforcement and happens at any level in the government officials (ibid).

For the purpose of this paper, which will focus on law enforcement agencies, corruption is defined as any type of illicit behavior engaged within a law enforcement officials who gain unauthorized material reward because of his position (Roebuck and Barker 1974:424) . The concept of capacity building and the corruption will be useful to asses the role of law enforcement agencies in performing their formal role.

Chapter 3:

Actors, roles, and mechanisms of bringing traffickers into punishment

This chapter describes the relevant actors, roles, and mechanisms of bringing the traffickers to justice. Indonesian criminal code procedures (KUHAP) state that in the criminal justice process, there are some actors given the special rights by the law to enforce the law and get involve in criminal justice process. Those parties are discussed below:

3.1. Actors and their roles in the Criminal justice process

3.1.1 The police (polisi)

In the criminal justice process, Police is the first actor who is given particular mandate by Indonesian Criminal Code Procedures (KUHAP) to conduct the examination (penyelidikan) and police investigation (penyidikan) towards the criminal action (Article 1 (1) and (4) Indonesian Criminal code procedures.

The examination and investigation are used to search and collect criminal evidence that might be useful to find the suspect. After gathering evidence for the case and questioning witnesses, the police may arrest or detain the trafficker in order to prevent the suspect from running away, destroying or concealing evidence or intimidating or threaten the victim witnesses (Syafira Hardani 2004:41)

3.1.2. Public prosecutor (Jaksa Penuntut Umum)

Article 1 item 6 (a) and (b) of KUHAP state that public prosecutor (Jaksa Penuntut Umum) is an official given the authority by the law to press criminal charges (issues an indictment) against a suspect of a crime and executes the judge decision.

3.1.3 Judge (Hakim)

The responsibility of the court in the criminal action is to judge all the crimes stated in Indonesian criminal code (KUHP). In conducting the court functions, judge act out as state official authorized by the law to examine, prosecute and give punishment (Article 31 Indonesian Law 4/2004 about the

judge Authority). Besides, The judge as a law enforcer and justice official is obliged to explore, follow and understand legal values in the society (Article 28 Indonesian Law 4/2004).

3.1.4 Lawyer (Penasehat Hukum)

Lawyer is a person who represents the suspect or defendant during all stages of the legal process (Article 1 (13) KUHAP). Lawyer has the rights to collect data, document, and evidence which can give the clear clues toward the criminal case that he/she handles, and drafting the written defence (Pledoi/ Pembelaan tertulis) to represent his client in the trial process.

Beside law enforcement agencies mentioned by the law, there are also another actors who involved in the criminal justice process, they are as follows:

3.1.5. Defendant (Terdakwa)

Defendant also refers to different legal status for the accused person in every step of criminal justice process. Article 55 KUHP stipulates that criminal actors can be punished. In the investigation stage in police and prosecutor office, the term “suspect” refer to a person in spite of his action or condition, based on preliminary evidence assumed to have committed the crime (Article 1 (14) KUHAP).

In the trial process, the term “suspect” can be altered as the “defendant” which in article 1 (15) KUHAP define as the suspect who can be prosecuted, examine and tried in a court. Whereas, somebody who has been accused of a crime and found guilty in the trial process can be said as convict or criminal .

3.1.6 Victim (Korban Tindak Pidana)

The victim is ‘person who is injured or harmed as a result of crime’ (Syafira Hardani 2004:36) . The victim has roles to cooperate with the police in order to give information about the crime that happened to her. The victim also gives necessary evidence needed by police so that the police can arrest the suspect. Besides that victim can act as key witness in the court and testify against the defendant (ibid).

3.1.7 Non government organization (NGO) which supports to human trafficking victims

Even though in Indonesian Criminal Code Procedures (KUHAP) and other Laws related with child trafficking does not mention in detail about the role of non government organization, However, NGOs can have important role in the process of criminal prosecution. Some NGOs are really concerned about the issues of eliminating human trafficking case. These NGOs help in the recovery and reintegration process for the victims, and may give legal assistance to the victim during the trial process.

In the criminal justice process, NGO usually accompanies the victim in the court to give support, and ensures that the victim does not have agreement with the defendant to stop the case (Syafira Hardani 2004). The NGO often provides shelter for human trafficking victims during legal process and before she is finally allowed to go home and keeps monitoring the legal process of the case . NGO usually establish such a relationship with other NGO in other regions. They often coordinate each other in the process of investigation, placement of the victims in the safe places, and the process of returning the victims to their families (Lada-Damar 2003).

3.1.8 Mass Media

In the criminal justice process of child trafficking case, mass media such as newspaper, radio, and television, also have an important role by publishing the cases through those media. In some cases, the media and the Non governmental organizations usually work together in investigating the case in which later, the result of investigation can be news for the public. Besides, Mass media also has important role in monitoring the cases of child trafficking by publishing every step of its investigation, starting from the police, prosecutor, and the court.

In addition, mass media also create the society's awareness toward the trafficking issue by giving information about the definition of trafficking, the dangerous effects of it, and the ways in which people can overcome the problem if their family, neighbours or other people become a victim of women and child trafficking (ibid).

3.1.9 Witnesses

A witness is someone who can provide information for the purpose of investigation, prosecution, and the trial process. The information provided must come from his/her own seeing, listening, and experiences (Article 1 (26) KUHP). Witness may also be someone who is expert in certain fields (usually known as expert witness). The witness information can be one of the evidences that can be used by the judge in making decision of a case. The information given by the witness can make the sentence for the trafficker lighter or heavier.

3.2 Mechanism of bringing traffickers to justice

After discussing the actors and their role in the criminal justice process, next this study will provide the mechanism of bringing traffickers to justice. Women and child trafficking is regarded as a crime in The Indonesian Criminal Code and other laws related to this issue. This study found out that there is no differentiation between the criminal justice mechanism for other crimes and the criminal justice mechanism for human trafficking. The mechanism of bringing a trafficker into punishment through the criminal justice process is regulated by The Indonesian Criminal Code Procedures (KUHP).

The followings are the steps and mechanism to bring women and child trafficker through the criminal justice process:

3.2.1 The crime of women and child trafficking has occurred.

Article 1 (1) Indonesian Criminal Code states that something is regarded as a crime if it has been defined as a crime by the law. A crime also means an action to which the doer can be sentenced (Prodjodikoro 2003). The trafficking crime must fulfil all elements in Article 297 Indonesian Criminal Code and other articles related with the element of trafficking which are 287, 289,290,291,293,297,324 KUHP, Articles 83-85 Child Protection Act No.23/2002, Article 20 (1) and (2) Indonesian Human Rights Act No. 39/1999 .

3.2.2 There is a report/complaint of women and child trafficking case to the police.

To begin a criminal justice process of a crime, there must be a report or complaint to the police that a crime has occurred. Article 1 (25) KUHAP point out that complaint is a report by the victim or his/her family with the request that police take action against someone who has committed a crime. Even though in other cases, complaint can be withdrawn by the complainer and he/she can decide freely whether the ensuing legal process will be continued to the trial process or not, in trafficking cases, the complainer can not withdrawn their complaint and police will take following action toward the trafficking crime.

3.2.3 Examination (Penyelidikan)

A report or complaint received by the police examiner can be a starting point for the police to take any following action. The function of an examination of a case is to prepare any available data, information, and evidences as the basis to begin the investigation. The process of examination is emphasized on searching and finding out whether event that has occurred is regarded or suspected as a crime (Article 102 point 1 KUHAP).

3.2.4 Investigation (Penyidikan)

After an examination has been done and it can be proved that a crime has occurred, the police officer who knows, receives the report or complaint of an incident that is regarded as a crime, must take some actions (Article 106 KUHAP). The emphasis of an investigation is on finding out and collecting any evidences that might be useful to find the suspect (M.Yahya Harahap 2000a). After collecting all the evidence and asking information to the witnesses, the police can arrest the suspect in order to avoid the suspect's escape, destruction/concealment of evidence, intimidation, or threat towards the victim or other witnesses. However, the case can be closed if there is not enough evidence available (Syafira Hardani 2004)

3.2.5 Prosecution process

After doing the investigation, the police investigator has to submit the case file of the crime to the public prosecutor. Article 138 item KUHAP states that

the prosecutor must review and examine the result of the investigation soon and he/she is responsible to inform the police whether the result of the investigation has been complete or not . If the result has not been complete, the general prosecutor must return the draft of the case file to the investigator enclosed with any instruction of anything that has to be done before the general prosecutor decide whether the case investigation will be continued or closed.

Article 13-15 of KUHAP state that soon after the general prosecutor confirms that the investigation result has been complete and the case file fulfils the requirements to issue the charges to the defendant, the public prosecutor has to make an indictment letter which contains a precise, clear and complete description of the indicated crimes by mentioning the time and location, and by whom the crime was committed.

The public prosecutor can terminate the case if the evidence is not consider sufficient or if the acts committed are not considered as a crime under the laws. If this condition happens, the general prosecution has to state it clearly in the decision letter. The general prosecutor also has to inform the defendant and if the defendant has been arrested, he must be immediately released(M. Yahya Harahap 2000b) .

3.2.6. File the indictment

After the indictment letter is ready and completed, the public prosecutor has to files the indictment directly in the State Court within their jurisdiction .The public prosecutor files that indictment letter with the request to try the case as soon as possible (Syafira Hardani 2004:47-48).

3.2. 7. Schedule for trial

If the indictment has been filed to the state court, the court should make sure first that the case is within their jurisdiction. Afterwards, the head of the state court appoints panel of judges to adjudicate the case at the trial process and next, that appointed judges will schedule the trial (Article 152 item 1 KUHAP). After that, the chief of the panel judges instructs the prosecutor to summon the defendant and witness in order to come to the court at the appointed time and date for the trial (Syafira Hardani 2004:48).

3.2. 8. The Trial

The third part of chapter IV Indonesian Criminal Code Procedures states that after the head of the panel judges open the meeting and state that the trial is opened to public (except the case about immorality or if the defendant is children), the head of the panel of judges instructs the prosecutor to present the defendant.

His presence is very important in the court. Without his presence in the court, the examination can not be done. That is why if the defendant can not be presented on the trial day, head of the judges is able to postpone the trial schedule and instruct the prosecutor to present the defendant at the next session. If defendant is in the court already, the court process is continued by establishing the identity of defendant and reading the indictment letter by the prosecutor.

If there is no objection proposed by defendant or his attorney about the mechanism procedure of the trial process, the trial will be continued with examination of the witnesses.

3.2. 9. The Court Verdict

After the trial process ended, the Judges committee will meet to discuss and decide the verdict. The verdict should be based on the charges in the indictment letter and the facts that were proven during the trial process. The judge's verdict must be based on at least two legal evidence that support the case, the judges believe that the criminal action is truly committed and based on the examination in the court, defendant is proved to have committed the criminal action (Article 183 Indonesian Criminal Code Procedures).

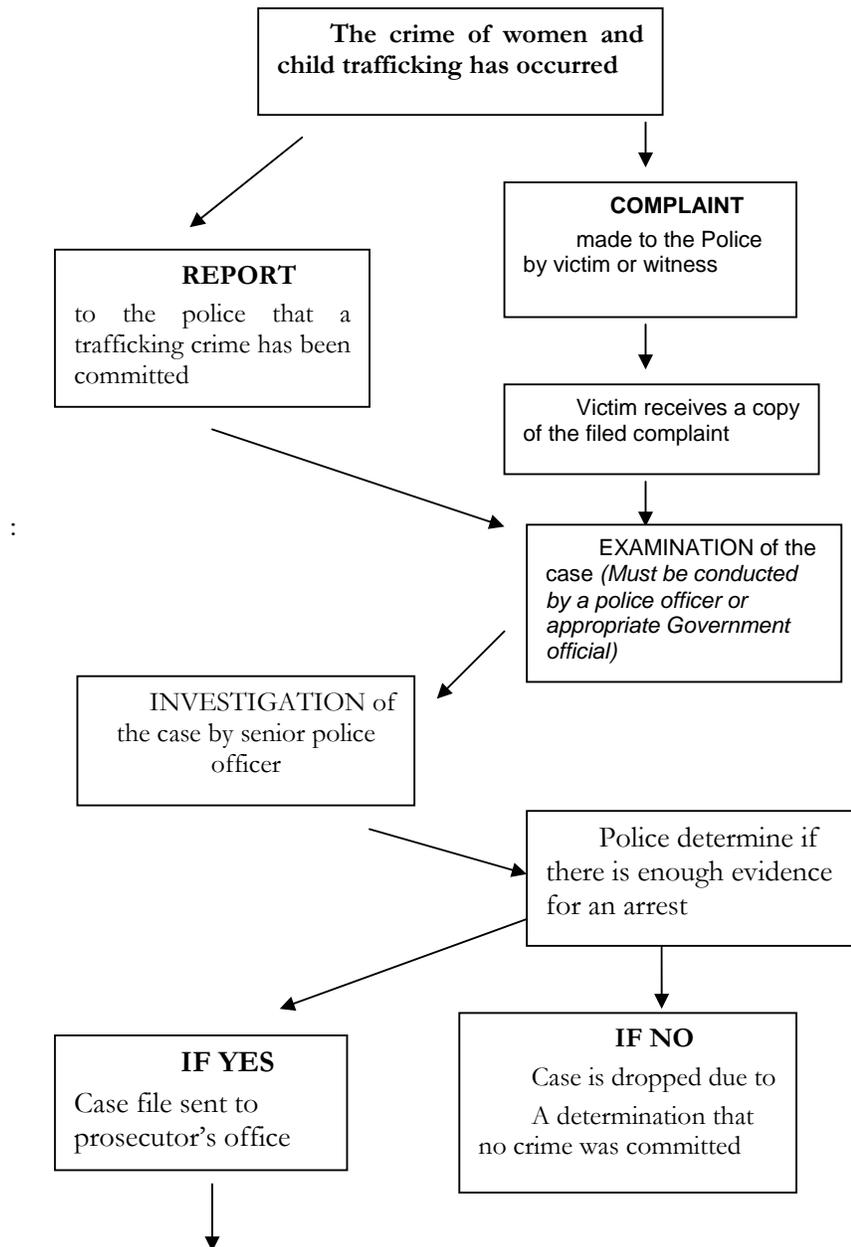
Court verdict is a judge statement declared in the open court which is in the form of one of three possibilities, which are release (found not guilty), excused (the act of defendant are not criminalized in the law) or convicted (found guilty).

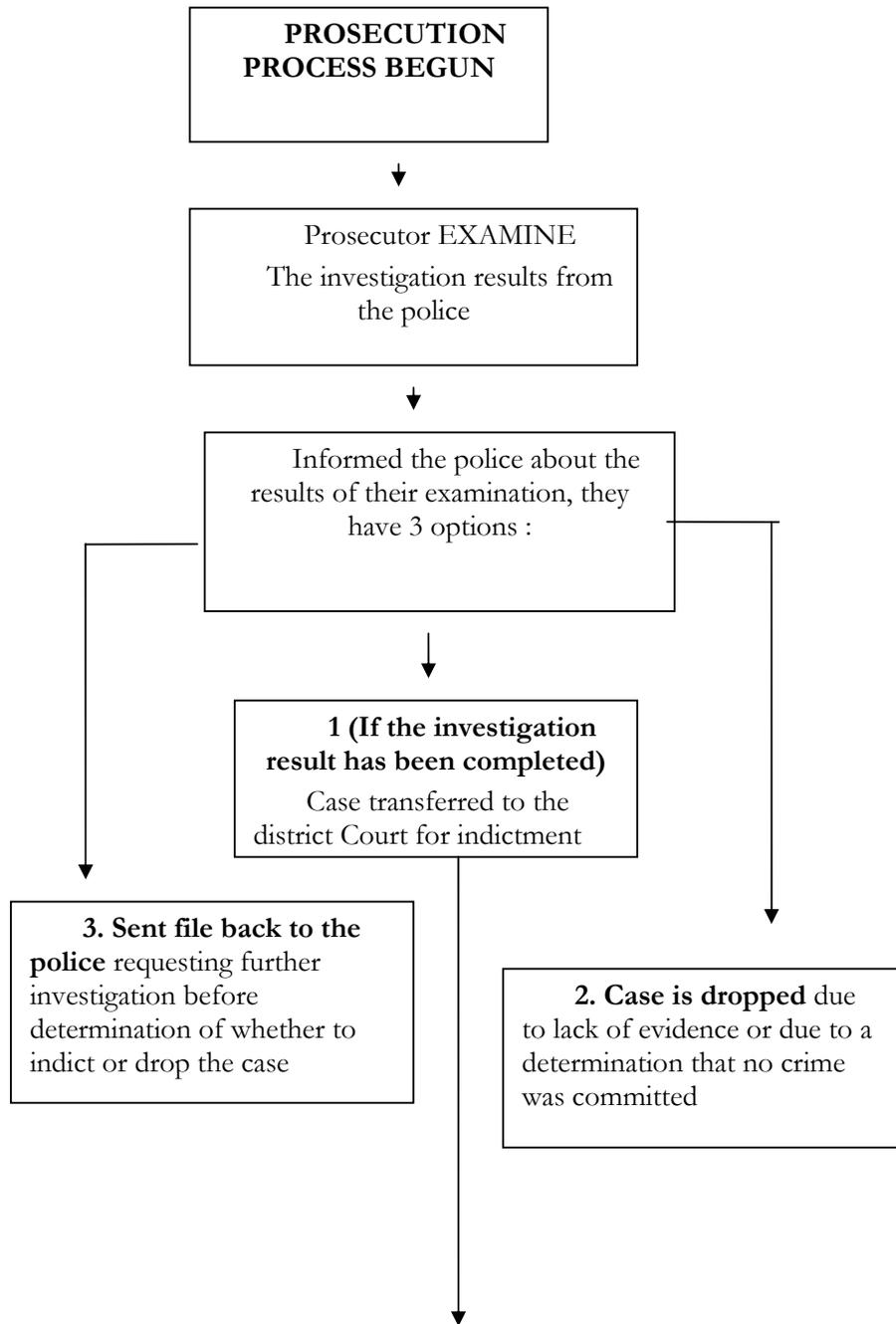
3.2.10. Sentencing

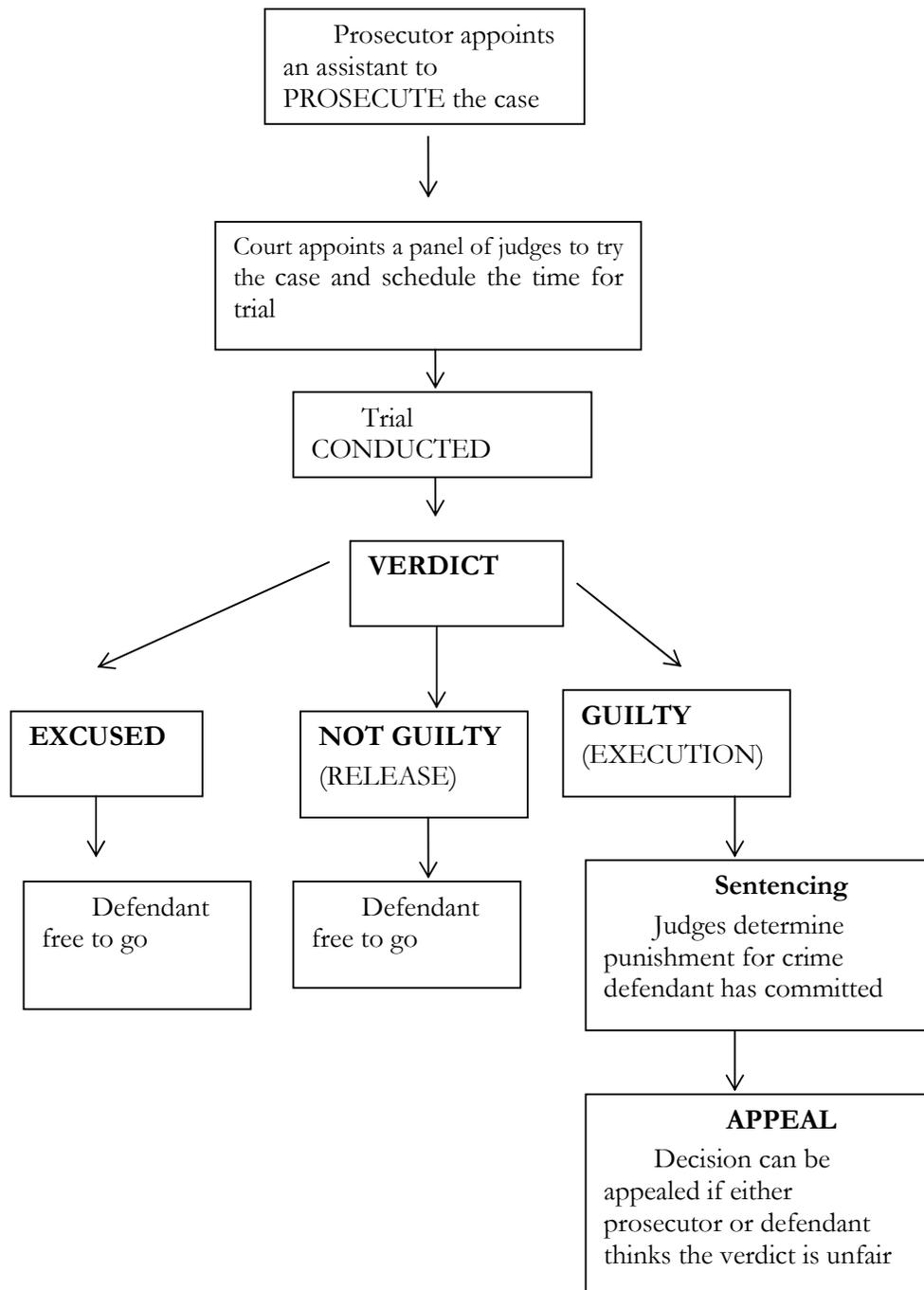
If the suspect is found guilty of the charged crime(s) then the judges shall impose a sentence against him/her. The Forms of punishment in a criminal case is usually a prison term, fine, or sanction (Syafira Hardani 2004:53)

3.2. 11. Appeal process

Articles 236-238 Indonesian Criminal Code Procedures stated that if the public prosecutor and the defendant are not satisfied or object the verdict determined by the panel judges , they have rights to propose the appeal to the higher court. But, the appeal inquiry can not be conducted by public prosecutor if the State Court’s verdict is excuse the defendant from all kinds of charges. Adopted from Syafira Hardani (2004) , the scheme 1 below can help us understand the legal mechanism in bringing the traffickers into punishment







Source : (Syafira Hardani 2004:37-38)

3.3 The Weaknesses in the criminal justice process

Even though the Law gives a mandate to the law enforcement agencies to handle trafficking cases in the line with the legal mechanisms and procedures mentioned above, in fact, there is still possibility for miscarriage of justice in responding to women and child trafficking cases. Corruption and a weak judiciary system related with the legal mechanism to convict the traffickers remain serious impediments to the effective prosecution of traffickers.

It is not an open secret that the law enforcement agencies such as police, public prosecutor, the judges, and the lawyer as the main actors in enforcing the law may become actors in the “justice” market to sell and to buy the justice and become the source of corruption. Thus, the values of justice have been distorted and corrupted and the criterion to measure the benefit of each case is only seen from economic and political view.

The modus of corruption involving police usually happens when the police get money from the suspect to prevent the case being investigated by the police department. The money paid to the police as a bribe will make the case be dropped at the level of examination and investigation in the police, ((Winarta 2002),(Syafira Hardani 2004)). In addition, Hamim(2005) and Sanghera (1999:38) indicate that police often give protection to pimps and their business. This results in failure of the police to raid the centres of prostitution which are indicated as a place or location of women and children trafficking victims, as they enjoy the bribe given to them.

The modus of corruption within the prosecutor’s office is often the same with the police. Thus, the prosecutor will try to prolong the investigation to give a chance for suspect to negotiate with them. Or in some cases, the prosecutor themselves made an offer to the suspect for a lighter charges if they willing to pay ((Suara Merdeka 2008),(Lampung Post 2006b)).

Besides that, with their power, the prosecutor could possibly change the status of the suspect and witness. For instance, the status of a witness can be suspected, or in contrast , the status of the suspect can become only as a witness (Winarta 2002) . Moreover, because of corruption practice in

prosecutor office, charges against the defendant is commonly reduced or dropped for a fee ((Hamim 2005), (Syafira Hardani 2004)).

Corrupt practices also happen in the court involving not only judges but also court clerk and defendant's lawyer. Bribing the judges to ensure the outcome of the trial process is not uncommon. Even Djoko Sarwono, a high official staff in the Supreme Court stated that 90 % of Indonesia judges are corrupt (Jawa Post 2007). Bribing the judges often happen to influence the head of the state court to choose favourable judges for the case. The compositions of the judges who handle the case are important to determine trial outcomes at the end. In addition, the judge's verdict can also be arranged (Winarta 2002).

The judges often release the defendant or give a light sentence with poor legal argumentation. However, because of collusion among the judges, the prosecutor, the defendant and his lawyer, there is no appeal made to the high court even though the verdict may be unsatisfactory for the victim (Lampung Post 2006a). Thus, as mention earlier in chapter 2, corruption may result in diminishing public trust toward law enforcement agencies, reducing respect to the rules and creating a sense of anti-government.

What makes the problems of the Indonesian judicial system particularly severe is that such corrupt practices are done systematically by the officials and the authorized persons including lawyers. There is no doubt that many lawyers are involved in the corrupt judicial mafia . Lawyers have an important role in the law system to help the suspect and victim to reach the justice. But nowadays, the lawyer is more well-known as a 'broker' for their client to sell and to buy justice from the authorized officials (the judge, public prosecutor, and police) (Winarta 2002) .

In addition, not only the role of law enforcement agencies have been criticised but also the role of the media is not as ideal as what people might wish. Even though the media has an important role to make the trial process including the verdict accountable to the public by publishing the news about it, yet, there are some journalists who collaborate in judicial corruption. Journalists tend to publish news which poses the lawyers involved in a judicial

corruption as a “good” lawyer. Sometimes, the media cancel the news about unfair trial or verdict because they are also involved in judicial corruption (ibid). Moreover, Sanghera (1999:38) says that :

“There is a strong and regrettable tendency within the media to sensationalise the issue of trafficking today. Without proper knowledge of trafficking issue, they often discredit the victim especially the victim who get involved in the trafficking for the purpose of sexual exploitation. This trend needs to be seriously critiqued and arrested as it may end up doing more damage to the cause of anti trafficking work by creating and projecting stereotypes which eventually hamper understanding of the issue, its causes and its consequences.”

Besides corruption, The Indonesian Legal system itself also poses some challenges. The laws which were actually established (Indonesian Criminal Code (KUHP), Child Protection Act, Human Right Act) to address women and child trafficking cases are considered by many to be inadequate (Harkrisnowo 2003). In the law that presented before, there is no clear and ambiguous definition of human trafficking.

This situation results in different interpretation of the Law by the law enforcement agencies in the implementation level of these Laws to bring the trafficker into punishment. For instance article 297 KUHP does not give clear and fix definition about human trafficking. Additionally, this article only exclusively addresses women and underage boys trafficking and denied that the victims of trafficking can also be adult (men) and underage girls. This article also left out other forms of human trafficking such as domestic workers, begging, etc and more focus on sexual exploitation ((Harkrisnowo 2003: 62) .

The legal process which often takes time creates room for corruption and collusion among the actors involved in the criminal justice process. This situation makes the victims suffer because of the uncertainty of the case’s outcomes. Moreover, high costs related with the cases such as accommodation and transportation costs also become a problem. The reason for this is because the trial is far from the victim’s house (Syafira Hardani 2004:14).

Finally, the lack of standards for verdicts (ibid) for the same cases make it difficult to predict the outcomes of the cases at the end. The standard of verdict is important to avoid the danger of punishment arising from mistakes in dealing with law (Dudnik 1965:485).

Chapter Four

Law Enforcement of Trafficking cases : Paper vs Reality

4.1 Introduction

This chapter will discuss why the role of law enforcement agencies in handling the trafficking crime often end up with failure in bringing trafficker through criminal justice process or inappropriate punishment of traffickers. In addition, this chapter will also describe the description of the women and child trafficking cases which are summarized from legal document review in every step of criminal justice process starting from the examination and investigation in the police and public prosecutor, until the judge verdict in the trial process. In addition, to give complete description about the challenges faced by law enforcement agencies in handling women and child trafficking cases, this chapter also provides the result of the interview with law enforcement agencies who are handling women and children trafficking cases.

Table 1 below summarizing the characteristic of the case that have been reviewed for the purpose of this study:

Table 1: The Characteristics of the Cases

Victim's ages	total	Sex	Total number of traffickers	Relation between victim and traffickers
0-8	-			
9-12	1	F	3	Neighbour, relatives, friends, unknown
13-15	2	F	7	
16-18	3	F	5	
19-25	6	F	13	

From 12 cases that have been reviewed, it is found out that all victims are female, between 9-25 years old. The table above indicates that the trafficking is a complex crime, it involves more than one actor in every case therefore the

number of the victim is not equal with the number of the traffickers. Relationship between the actors and the victims are various, from the people who are recognized by the victims such as relatives, friend, neighbours to unknown people such as the broker who facilitate the recruitment, etc. In addition , 10 out of 12 cases in this study are women and child trafficking cases for the purpose of sexual exploitation and others two are child trafficking cases for the purpose of the exploitation of domestic worker. This result shows strong correlation with the definition of human trafficking which defined by Palermo Protocol or the Indonesian Laws toward the trafficking crime.

From 12 cases of women and child trafficking that have been reviewed, 10 cases resulted in conviction and another two cases were only untill the investigation process in police . That 2 cases were not continued through the prosecution process because police could not find the initial evidence which indicate that trafficking crime has occured or even though there was sufficient inital evidence, if the police can not identify the existence of the suspect , so finally the police decided to stop the case.

In addition, the table 2 below show that the prison sentence which was subjected to the defendants also vary. From twelve case and legal document reviewed, punishments to the traffickers are varying starting from 5 months to 4 years and five months.

Table 2: Length of Sentence of traffickers

Length of sentence	Total case number	Additional information
0- 6 months	2	5 months and 15 days
7-12 months	3	7 months (1), 8 months (1)
13 – 24 months	2	20 months (2)
25-36 months	2	2 years and 6 months (2)
Above 36 months	1	4 years and 5 months (1)

Based on 10 cases review in the trial process, it was seen that only one case that the trafficker was given 4 years and 5 months punishment in prison, close to the maximum punishment (6 years) as stated in chapter 297 Indonesian Criminal Code . And from the other 9 cases, only 3 cases that the traffickers got 1-3 years punishment and it was so regrettably that more than 50% reviewed cases resulted in the conviction that the traffickers got minimum punishment under 1 year in jail, even 2 out of 6 cases, the traffickers got under 6 months punishment.

In this chapter, i will present only 5 out of 12 cases that i have been reviewed. I choose the cases because the characteristic of this 5 cases are different from other cases which the trafficker got the highest sentences to show the successful of prosecution process (1 case), the prosecutor made an appeal to the high court, the prosecutor charges the traffickers with different article in the KUHP even though they have done the same crime (trafficking), etc. Moreover, to show failure in the criminal justice process in bringing the traffickers into punishment, I choose the cases which are stopped at the level of investigation (1), and the cases in which the traffickers get the light sentences (3). In addition, I have changed all the name of the victims and traffickers in every case that I presented in this study.

Case 1 below will help us understand the success of the law enforcement in bringing the trafficker close to the maximum punishment as stated in the Indonesian criminal code.

Rani (17 years old) asked for permission to her parents to spend the night in her friend's house in Panjang. After she arrived in Panjang, she called her boyfriend, Ali (26 years old) in order to tell Ali that she was in Panjang. At that time, Ali asked Rani to wait for him in front of a movie theater in Panjang. Later on, Ali took Rani to one of his relative's house in Teluk Betung. However, on the way to Teluk Betung, Ali changed the journey to take Rani to a hotel. In the hotel, Ali pursued Rani to have sexual intercourse and promised to marry her in Bangka, Sumatra. Rani fully believed Ali and obeyed what Ali wanted at that time.

When they were staying in the hotel, Ali also offered Rani, the victim, to work in his friend's restaurant in Bangka. On the coming day, they left for Bangka through a travel agent. After they arrived at Bangka, Ali told Rani that she had to work in order to get money that they could use to finance their

wedding which was not a little. Ali said that he has called his friend to accept Rani to work in a discotheque, not in a restaurant as what he has promised. After knowing that she had to work in a discotheque, the victim could only accept without doing anything since she was expecting that Ali would marry her.

In Bangka, Rani worked in a café owned by Rudi and Ita who also came from Lampung province. In that café, Rani worked as a waitress and prostitute. She had worked for about 17 days before finally she was picked up by her uncle who got information from one of Rani's friends that Rani was in Bangka. After returning to Lampung, the victim and her family reported the case to the police of South Lampung. Rani reported Ali that he has done a crime called deception (penipuan, article 378 KUHP).

Based on the report, the police directly did the examination towards the case in the purpose of finding the first evidence which showed that there has occurred a crime as what has been reported by the victim. After there was sufficient evidence, investigation of the case then continued. Based on the result of investigation, the police decided that in this case, not only deception that occurred, but also the trafficking on women as well. The police of South Lampung then cooperated with the police from Bangka and succeeded arresting Ali, Rudi, and Ita.

In the examination process by the police, Ali, Rudi, and Ita were charged with different articles in Indonesian Criminal Code Procedure. Ali was charged by prosecutor of doing deception and underage girl trafficking (article 378 and 297 KUHP). While Rudi and Ita were charged that they violate article 295, Indonesian Criminal Code about facilitating prostitution with the children.

After the examination process has finished, the police sent the case file directly to the prosecutor office so that the prosecutor could do further examination. Based on these examination, case file sent by the police was regarded complete, the judge then transfer the case with the indictment letter to the district court to bring the case to justice. Although Ali, Rudi, and Ita were charged for the same case, their trial was done separately. Examination of witnesses, evidence in the form of Rani's income note (2 pages) and the facts which was found in the trial session assisted the panel judges to decide whether the suspect was guilty or not. At the last trial, the judge gave different punishment to each defendant.

Ali was convicted for child trafficking (violate article 297, Indonesian Criminal Code) and punished with 4 years and 5-months punishment in prison, or 4 months period shorter than what the prosecutor demanded, i.e. 5-year in prison. In this case, Ali's Lawyer stated that his client has not done the crime of trafficking which is regulated in article 297 KUHP. This is because of two reasons. First, when they arrived in Bangka, the victim with her own willingness agreed to work in the discotheque. Second, Ali agreed to keep his promise to marry the victim. Unfortunately, this two reasons fail to convince the judges to give light sentence for Ali. Meanwhile the other 2 suspects, Rudi and Ita got sentence that was 5-month and 15-day punishment in prison (shorter than the prosecutor's claim, i.e. 10-month incarceration).

(Lembaga Advokasi Perempuan Damar 2003)

In this case, the law enforcement agency has succeeded to give punishment to Ali as the trafficker, by giving high sentence to him that was 4-year and 6-month in prison since Ali was proved that he has done human trafficking. However, for the other 2 suspects, Rudi and Ita, since the beginning of the prosecution process, they were only charged with very light sentence, that was 10 month in prison. However, if we see the principals elements of human trafficking crime, all the people who has a role in the crime since the process of recruitment until the process of acceptance of the trafficking victims in the purpose of exploitation, also has to be regarded as the human traffickers.

However, there also women and child trafficking case in which the public prosecutor unsatisfied with the judge verdict toward the trafficker. This will illustrate by the case 2 below :

Case 2

After the victim and her parents reported the case to the police, the suspect (Siti – 26 years old) was taken to the police station in the purpose of crime investigation. She was blamed for human trafficking as what is stated in article 297 Indonesian Criminal Code (KUHP) . Based on the result of the investigation, there was sufficient evidence to prove that the she has done that crime; therefore, the police detained her for 20 days. Another purpose of the arrest of the suspect was to avoid if the suspect would escape, break or destroy the evidence. Since the process of investigation has not been finished yet, the police asked more time for investigating the case of Siti to the chairperson of Bandar Lampung court; that was during 40 days. Besides arresting Siti, the police also seized the money in the nominal of 250.000 rupiah as the evidence in this case.

After the investigation towards the suspect finished, the police then sent the case file to the prosecutor. At the stage of investigation by prosecutor, the prosecutor then examined the case and assessed whether the result of investigation was sufficient or not to prosecute the suspect that he/she has the trafficking crime stated in the article 297 of Indonesian Criminal Code. Besides, the suspect also demanded by public prosecutor by article 328 Indonesian Criminal Code about taking someone without permission from his/her home in the purpose of placing him/her under the suspect's authority or someone else's authority or causing someone neglected. After that, the case was transferred to the district court for indictment. After checking the indictment later, the head of district court stated that the case was included in their jurisdiction .Then, the head of Bandar Lampung court appoint 3 judges who became the panel of judges to examine and conduct the trial of this case. Afterwards the chairperson of judges in this case decided the time for bringing

the case to the court and directed the general prosecutor to bring the witnesses and all evidence related to the case.

On the day when the trial was held, the judge stated that the trial begun and closed for public. The head of judges asked the prosecutor to bring the suspect to the court room. The suspect then entered the room with guidance. Later, the judge asked the suspect identity and told that she had the right to be accompanied by a lawyer. She explained that she would be assisted by 2 lawyers. The trial then began and continued by examining the witnesses and some evidence. When the examination process finished, the prosecution by the general prosecutor then started. It was based on the evidence found in the court which are the information from the witnesses, suspect, and the evidence. In this case, article which is charged to the suspect was same as what was stated on the indictment letter; they are charged in primary of Indonesian Criminal Code article 297 and the second subsidiary of Indonesian Criminal Code article 328. Public prosecutor charge the suspect for 4 years punishment in jail. After the prosecutor finished reading the indictment, the judge then gave the chance for the suspect's lawyer to give any defence in the next session.

In the next session of the trial, the suspect's lawyer read the written defence that they made. In that defense, they explained that the accusation was not realistic since the victims worked in a café in Palembang by her own willingness (the victim knew that they would work in a café as waitress, serve visitors, etc.). Besides, there has been conciliation between the defendant and the victims (and the victim's family) and the victims have withdrawn their report to the police. After the lawyer read their defence, the judge gave the chance to general prosecutor to propose any written comments upon that defence. The general prosecutor still believed that the child (girl) trafficking has occurred and that the defendant, Siti, has done the crime as what was suspected to her.

Finally, after considering all the available facts and evidence in the trial process, the panel of judges who examined the case came to decision that the defendant has done such a crime, i.e. child trafficking. The judges also gave punishment to the suspect; that is 2-year and 6-month punishment in prison and also stated that the evidence in the form of money nominally 250.000 Indonesian Rupiah would be taken by the government. This decision was mentioned in the court which was opened for the public. The public prosecution who was not satisfied with the verdict then made an appeal to the high court.

Based on the result of case review conducted by High court, the High Court's judges decided not to change the verdict of the defendant (2 years and six months) concerning that punishment is fair, the defendant is a mother of two children and also because she promised not to do trafficking crime again in the future. Based on that consideration, the prosecutor finally accepted the verdict from High Court.

In addition, case 3 below also illustrated the failure of law enforcement agencies in bringing the traffickers into punishment:

Case 3 :

At the end of 2006, Rini, 17 years old, left her home town, Tanggamus, to Jakarta along with a broker who promised her to work in Malaysia. Even though that sponsor did not explain clearly the description of the job there, the victim who just has elementary school education and with poor economy background, was tempted towards the sponsor's offer to get high salary if she worked abroad. Finally, the victim was taken to Employment agency (Perusahaan Jasa Tenaga Kerja) and was trained as servant while waiting all documents to finish. During pre-departure, it has been four times that she moved from one house to another. In the training process, the victim never got salary. Because she felt uncomfortable with this situation, she finally decided to run away from that job although with no documents and little money.

In her escape, Rini met Udin, a man, who was come from Tanjung Bintan. He acted nicely to her. Even he offered a job to her as shop keeper in Tanjung Bintan, Riau Island. And finally she agreed to accept that job, They then went to Tanjung Bintan, there, Udin took Rini to a place, and it turned out that the place was localization for prostitute. She was forced to serve men who need sexual intercourse. Even on one day, Rini ever served 3 foreigners to have sexual intercourse.

This situation, ended up, when the police did raid to that localization and found her who was in silent because of fright. The victim then was taken out from that place and sent to the shelter of Woman Crisis Center in Riau. As follow up of rescuing the victim, Riau government made coordination with one of NGO in Lampung which assist woman and child trafficking victim. Finally, the victim's return process was successful and now the victim got economic assistance from the Tanggamus District office of Women Empowerment (Biro Pemberdayaan Perempuan Kabupaten Tanggamus) in order to survive and not become the victim for the third time. This case was not continuing using legal process because Police did not know where the suspect (Udin) lives now.

Table 3 illustrates that there is no uniformity of the sentence toward the trafficker even though the public prosecutor charged them with the same article in Indonesian Criminal Code. There was differentiation in the length of sentence among the traffickers even they were sued with the same article (for example article 297 in Indonesian Criminal Code).

Table 3: The Difference of the length of sentence toward traffickers: Law vs. cases

Article in Indonesian criminal code related with trafficking cases	Sentence based on the Law	Sentence imposed in different cases	
Article 297	Maximum 6	8 months (1)	

(Anyone who engages in trafficking of females (age not specified) And underage males.	years in jail	20 months (2) 2 years and 6 months (1) 4 years and 5 months (1)	
Article 296 (Anyone who deliberately connects or facilitates an act of obscenity committed by another person with another person, and performs it as a livelihood or a habitual act.	a maximum penalty of 1 year and 4 months in jail or a maximum fine of one thousand rupiah.	7 months (2)	
Article 295 Anyone who deliberately commits or facilitates an act of obscenity, other than the ones referred to in point 1 above, committed by a person who is recognized by him/her to be underage or should be presumed as such, with another person Article 289 Anyone, who by violence or threats of violence, forces a person to commit, or allows	a penalty of 4 years in jail. If the crime is his/her livelihood or is habitual he/she is liable to a penalty of 4 and 1/3 year a maximum penalty of 9 years	5 months and 15 days (2) 2 years and 6 months (1)	

someone else to commit, an act of obscenity is liable to a maximum penalty of 9 years in jail.			
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Based on the writer's review of 12 cases , it appears that there was no distinction between handling the trafficking case with children as a victim and women (adult) victim. This matter can be seen, although Child Protection Act No 23/2002 was establish, but none of the 6 cases with children as a victim were using article 83 in Child Protection Act toward child trafficking to charge the suspects .

Despite that fact, if the law enforcement agencies applied this article (article 83 on child protection act), the traffickers could be punished with 3 years minimum in prison and 15 years in maximum. Besides, the traffickers have to pay 300 million rupiah as a fine and 60 million rupiah as minimum fine. Referring to this article, proportionally trafficking case with children as a victim, the traffickers could get maximum punishment in prison and also fine so that it will make other traffickers afraid and stop their action.

Based on legal case review and interview with the key informant involved in the criminal justice process, it is clear that there were some factors which caused the difficulties of law enforcement agencies to bring the trafficking case trough the criminal justice process to give maximum punishment to the traffickers. The constraints are related with legal mechanism, corruption, and law enforcement capacity in responding women and children trafficking cases.

4.2 The constraints related with Legal mechanism

4.2.1 Constraint related to the report of women and child trafficking cases

As mentioned in the previous chapter, in order to conduct legal process towards somebody including someone who is suspected has done the trafficking crime toward woman and children, it requires a report or complaint from somebody to the police. In the trafficking case, report or complaint to the police toward the trafficking crime is very important as a basic for the police to take action to process the case.

However, police often finds difficulty to conduct examination and investigation toward the trafficking cases because there is no report or complaint from the victim or other parties who recognized that the trafficking crime has occurred (Based on the interview with the police investigator in special service unit room (Ruang pelayanan Khusus, RPK) in Police station Poltabes Bandar Lampung). The unwillingness to make a report or complaint to the police by the victim or other witness that know there is a trafficking crime towards woman and child are caused by several reasons which are : **first**, victims are often in difficult situation, they can not do any actions to escape.

In woman and child trafficking cases, victims often do not have connection with outside because their activities and behaviour are always monitored by the pimp and their bodyguards around the victim. Because of this, the victims of trafficking are afraid of doing escape. Besides that, the pimp always creates a situation of dependency either personally or institutionally. Personal dependency is conditioned with certain ways such as provision of foods, clothes, etc so unconsciously victim think that their economy and social needs are fulfilled (Suyanto 2003)

The report or complaint about the woman and child trafficking, usually, can only be done after the family of the victims make a complaint to the police that their child or wife are assumed have been trafficked by other people or if the victim has successfully escaped **with all efforts** as illustrated in the case below

From case 2:

Sari, 17 years old, together with her friend Ani, 19 years old came over to Siti's house (26) her cousin in Rajabasa, Bandar Lampung. After having conversation, Siti asks Sari and her friend to stay in her house with the reason that on the next day Sari and Ani would be asked by Siti to go to Kota Agung to eat durian. Both victims were not suspicious, they agreed to stay a night in Siti's house . On the next day, after they arrived in traffic intersection Kota Agung, Siti said that she wanted to meet her friend, Budi, for business, afterwards Siti ask Budi and both victims to look for job in Palembang. Siti said and offered that her friend in Palembang was searching for workers to work in his café. Siti also explain that when they worked in café they just accompany the guests singing and drinking. Because both Sari and Ani were also looking for the job, they finally accepted the job. Then, all of them bought train tickets to Palembang. And all transportations were paid by Siti.

After they arrived in Palembang, Siti asked Ani to go to discothèque to meet and be introduced by May (the pimp), the owner of café. After that, Sari and Ani were handed over to May. Siti has given 500.000 Indonesian Rupiah by May. This money was shared with Budi. Next, Siti and Budi went back to Bandar Lampung without saying goodbye to Sari and Ani. From discothèque, May asked both victims to have beauty injection. May explained that the injection can make them more beautiful and beautify their appearance. Actually May lied with them, it was not beauty injection but it was pregnancy prevention injection. From the health clinic , May asked the victims to go to barbershop to have their hair cut with the newest style. Soon when they turned up in her café, Sari and Ani were put in different room and were asked to dress up and serve the guest to sing and make sexual intercourse. But, Sari did not want to go out from the room and refused to eat and drink. On the third day, when she knew that the guard did not work, she could escape. Because she was confused and did not have any money so finally **she took Indri (her partner)'s hand phone**. Finally, the victim escaped and could go back to Bandar Lampung safely. After she arrived at home, she then told her parents about what had happened to her and afterward, accompanied by her parents she makes a complaint to the police about her case. The police then precede the case trough legal process and arrest the traffickers.

The case above describes how the victim tried all of her effort to escape from the pimp even though she has to do another criminal act which in this case is stealing somebody else's hand phone.

The **second** reason is although the woman and child victim of trafficking decided to carry out legal process as follow up of their case, for trafficking with the purpose of sexual exploitation , the victim often becomes “a victim for the

‘second’ time”. This means that during the examination and investigation process as a witness either in police or court, the victim was often put in the corner with gender biased questions, which means the victim is often blamed for encouraging that crime to happen related to the way of the victim’s behaviour or dress. (Syafira Hardani 2004:15)

The **third** reason, the informants from NGO who give legal assistance to the trafficking victim said that the questions related to the process of how that trafficking occurred in which also started with other crimes like raping, make the victim feels uncomfortable and gets traumatic because she has to recall every bad memory happened to her when she has to give the detailed information to the police or to the court. This situation makes the victim feels reluctant to report or make complaint of her case to the police or even asks NGO who assists her not to continue that case.

Moreover, Lack of understanding of community in woman and child trafficking issue also become one of the reasons of low participation from community in giving the information and reporting the woman and child trafficking case to the police (Parjoko et al. 2003, 2004).. This matter can be seen in the cased handled by one NGO in Lampung below:

Case 4:

Such a miserable condition for Susi (19 years). On that day, she was asked by her neighbor who is also her friend. Rina to come over to her boarding house in Panjang. In that place victim was introduced to her boyfriend, Yanto. Then, she was offered by Yanto to visit his uncle’s house near the beach. When they were in that house, Rina went home earlier .Not long after that, Yanto and Susi also asked permission to go home. Yanto offered to take her home. Unfortunately, Yanto did not take Susi home, he then took her to Imran’s house as he said was his uncle. Secretly, to Imran’s wife who works as pimp in Bangka, Yanto asked for 150.000 Indonesian Rupiah to bring Susi to Bangka.

That night, the travel car came over to pick Susi up . She wanted to know her direction, then she asked another passengers to ask the driver about their direction. And she found out that they would go to Palembang, South Sumatera. Because of her worried , she then asked the driver to take her to Way Halim and ask the driver not to let Yanto know. However, that driver has cooperation with him and informed this intention. Because she thought she had been threatad, she tried to escape and could be caught by Yadi and be brought to Rina’s boarding house. At Rina’s house, Yadi threaten her not

trying to escape. On the next day, together, Susi, Yanto and Rina went to Menggala. In Menggala, they stayed in Tono's house.

Seeing there was a possibility to escape, Susi ran to the house of the leader of neighborhood BA to complaint about her case. Soon after that, Yanto came over to pick her up and talked to BA Leader by saying that this problem is a personal problem between him and Susi and promises to act nicely and took her home in Tanjung Karang. With that reason Yanto could take Susi from RT's house. After they arrived in Tono's house, Yanto threatened Susi with words and he took out of his knife and did physical abuse such as slapping, and forced her to follow all Tono(his younger brother) 's words and commands. After spending two days in Tulang Bawang, Tono took her to Bandar Lampung to go to his's aunt house who also work as a pimp in Bangka. Before he sell her to his aunt, Susi was kept hostage and raped by him. She could not escape because the door of that house was locked and her actions were always monitored by them.

To run away from him, she had done many efforts, for example, seduced him to take her home and said she was willing to marry him so that he would not be sued by her and her family. Finally, he believe in her and took her home. Because there was nobody in her house, she asked him to go and come back on the next day. After her uncle and her parents came home,she told her family that she was raped by Tono and soon after that, accompanied by her uncle they went to police station to make complaint about rape accusation. She does not make a complaint to the police about the trafficking crime because she and her family never knew about the trafficking issue.

(Lembaga Advokasi Perempuan Damar 2003)

From this case, we can conclude even the victim has successfully escaped to the local leader of neighbourhood (Ketua RT) but then he let her go together with the trafficker because the leader of neighbourhood only resolved the personal problem of both sides with no suspicion and assumption that there have been the trafficking crime. Law enforcement still needs the help of the community to identify the trafficking victim. If the community especially the community leader aware about the trafficking crime, they can help the victim or in this case they will not let the trafficker bring the victim back and he will report the case to the police.

Besides the constraint faced by police related with the report/complaint toward trafficking crime, this study also has identified that there is also the constraint related to the evidence and witnesses.

4.2.2 The constraint related to evidence and witness

As explained previously, to determine the suspect and continue the criminal justice process of criminal case which has been reported to the police, the police examiner (penyidik) has to collect evidences based on the fact and trusted information that the suspect is the offender of this crime and it is impossible to continue the case if there is not enough evidence to support the case.. The evidence from the victim is not sufficient to process the suspect through the criminal justice process, if it is not followed by other evidences. (M.Yahya Harahap 2000a).

In many cases, the police examiners face barriers to presenting the witness and collecting evidences .Informants from the special unit service (unit RPK) in the police of Bandar Lampung city and South of Lampung, acknowledge that in trafficking case for the purpose of sexual exploitation , it is very difficult to present other witness besides the victim. In their experience, it is difficult to present other witnesses who listen and see the victim's condition directly while she did works as prostitute .

The turn over system of the prostitutes in localization made the police found difficulty to find other witness which had been mentioned by the victim, who strongly supposed seeing that the victim had been the trafficking victim for the purpose of sexual exploitation. That turn over system made the police staff lose track of other witnesses because in that system, no one knows when, where, and how their partner were moved from one place to another.

In some cases, which involved the victim's partner as the witness, most of them are reluctant to be the witness because they were intimidated by other pimp and their bodyguards in the prostitution network, so they were afraid of their safety and their family safety. Moreover, it is also difficult to collect other evidences such as the transportation ticket from the victim's original place to trafficking destination, place of interception, transit location, labour contract, travel document, identification document, etc (Syafira Hardani 2004:43) to support the witnesses of the victim because the victim never received a receipt of travel expenses.

Even, in some cases, they did not know obviously the address and the location before they finally arrived in the Trafficking destination (Lada-Damar 2003). This case also made the police and prosecutor get difficulty to find strong evidence to make the defendant get maximum sentence from the court.

The identification of the suspect is often hampered by the traffickers act to change their address. Case 3 above illustrates this point. Thus, It required maximal political will and institutional capacity from law enforcement agencies in order to find the suspect and put him in the prison (Irwanto et al. 2000).

In addition, other constraints faced by law enforcement agencies to give maximum punishment to the trafficker are:

4. 3 Corruption by both government apparatus and law enforcement agencies.

The “Mafia” in the criminal justice process in Indonesia has been institutionalized and it has formed strong network connection. Mafia in the court also becomes a constraint to get justice. In the legal process of woman and child trafficking cases, there is also an indication of law enforcement agencies by having collusion with the defendant and his legal attorney in order to reduce the sentence (Syafira Hardani 2004:16). In addition, (Irwanto et al. 2000), added that law enforcers are among those who have very low income so their involvement in illicit activities have been part of their survival strategies for years. Although, in the case the indication of the corruption of law enforcement agencies can not be proved, it illustrates some discordance that suggest there was corruption or collusion in legal process in handling the woman and child trafficking case.

Case 5

The story began when Santi’s family was visited by broker, Fajar, form Employment agency (PJTKI) who was accompanied by her father’s nephew . According to Fajar, they asked Santi (14 years) to work abroad based on her own willingness .All documents were filled in by Santi. Other documents like Identity card was promised to be made in Jakarta. Her family it self never gave written permission, it was only oral permission because they knew him, and they believed that the he would be responsible. To her family, Fajar promised to give Rp.500.000 and so did to Santi. But until now, that promised money

has not been given yet. Two days later, Santi went to Jakarta together with him without bringing any documents. Fajar promised to her family to take her to Jakarta but she was entrusted to his friend in order to be sent to Jakarta. He promised to visit her in Jakarta, but never showed up.

When trained in Jakarta, Santi did medical check up and the result stated that she was in a good condition so she can join the training as a servant and wait until all documents needed such as passport, identity card, etc ready. The absence of Santi at the school for a week made the headmaster of her school instructed Budi (her teacher and also her neighbour) to ask about Santi's condition to her family. The school got the response that Santi has gone to Jakarta and then worked in Malaysia. Santi's teacher then reached her via phone. In the conversation with her, she said that she wanted to leave the training place. She also said, if she could go from that place, she wanted to go, but she was afraid that her parents would be charged by the agent because she has filled in all the forms based on her own willingness.

Her family who heard that matter, along with one of NGO's staff in her neighbourhood, report this case to another NGO in Bandar Lampung which gives advocacy to woman and child trafficking victim. After listening to the story, NGO staff in Bandar Lampung did collaboration with her family, media and also police to release Santi who has been staying in PJTKI place in Bekasi, Jakarta. Because of that news, The Employment Agency that takes care of her in Jakarta afraid and tried to send her back home. Accompanied by two staffs of NGO and also journalist from local newspaper, Santi's family went to Jakarta to see her.

When they arrived in Worker service company (PJTKI) which took her, this company stated its apology and admitted that there was a mistakes (with documents reason, etc) about Santi's acceptance as Indonesian worker candidate. His party showed good willingness which was ready to send her back to her home town. PJTKI party showed written permission from Santi to indicate that there was no compulsion and she had filled the form based on her willingness.

PJTKI also blamed the broker and gave opportunity to the family to take legal process, but PJTKI suggested that it would be better if there is win-win solution between them so that Santi's family can stop the news about this case. On the next day, the family makes a complaint to the local police. After having complaint from victim's family that the trafficking crime has occurred, along with the team from NGO, police who dealt with the case went to PJTKI location in Bekasi. On the way to that place in Bekasi, the team heard that the victim has been taken back by the staff of PJTKI in Bekasi to their branch office in Bandar Lampung.

That is why, police and its team went back to Bandar Lampung meanwhile NGO team was still continuing its investigating to gain further explanation of victim's repatriation from PJTKI in Bekasi. Eventhough the victim was returned safely to her family, the case was still processed by the police through the criminal justice process. However, the media publish the news that the police investigate the case without arrested the suspect. In spite of this, the police investigator said that the reason why there was no arrest because there was a discretion by the police that they do not have to

arrest the suspect as long as the suspect has to do regular report to police. But, because of the pressure from the NGO and media, the police finally arrested the recruiter and the head of PJTKI in Bekasi.

After gaining complete investigation from Police, then the case was sent to the prosecutor before finally it was transfer to the district court. Based on the revealed proof in the court, the suspect who recruited the victim was found guilty because he broke law article 297 Indonesian Criminal Code and was punished with 20 months in prison. While the leader of Employment Agency (PJTKI) was given 8 months sentence in prison. The agreement to be recruited as worker (even though victims were under 18 years) become the reason which was lighten the defendant

(Source : (Children Crisis Centre Lampung 2007)

In this case, NGO that assisted the victim stated that the verdict was not satisfying, considering the verdict towards the defendant was very low compared by the suffering experienced by the victim. Another indication of corruption and collusion in this case is the prosecutor attitude was not cooperative; more over the prosecutor seemed to cover the things related to the charge prepared by the prosecutor in the court process. The prosecutor accepted the verdict automatically without considering having appeal to the higher court towards that verdict (Interview with the staff of Children Crisis Centre Lampung)

Besides the corruption indication done by law enforcement agencies, the government apparatus also did the same thing. As an example, (Parjoko et al. 2003:45-46) mention the involvement of the apparatus from village/ district administration in the manipulation of identity card for the purpose of human trafficking who are still remain as children. (Hairiah 2003), also argued that the identity of the victim on children and woman trafficking cases were manipulated, such as their name, age, or address.

However, the aspect of identity that was commonly manipulated was their age. Although their real age was between 14-18, but their age in the identity card was between 20-25. Identity manipulation in children and women trafficking often causes the differentiation on number of children who were became a victim and published in mass media and the data from NGO (Hairiah 2003) .

The interview result with the informant from NGO who handled the woman and child trafficking conclude that the victim's rights were unprotected because of data manipulation. For example, the victim of trafficking was 19 years stated in Mass media (based on fake identity card of the victim) but then based on the investigation done by NGO, the victims age was 16 years. This condition surely suffered the children because there is different treatment between children victim and adult victim in the trial process to prove the element of trafficking.

On the child trafficking cases, even though the children are “, willing” recruits, i.e. if the dimension of “the threat or use of force or other forms of coercion, of abduction, of fraud, of deception ...” (see above) is absent, The trafficker who has filled the “process” element (start with recruitment process, and followed by transportation, transfer, harbouring or receipt of persons) and for the purpose of exploitation in child trafficking case has to be proceed as the trafficker.

In addition, this case also shows that as an official Employment Agency, PJTKI, has a role in helping workers to help their family to get better life and also help the country to earn foreign exchange income. In fact, PJTKI often takes advantages from various limitation of their workers. They do not provide sufficient information about the situation and condition of the “future” jobs which was offered by them. Since the recruitment process, most of child worker and their family really relied their wish and trust on the sponsor. They believe that their life and safety will be protected by their agency in the place of destination. But in general, they have a very little knowledge about their rights as a worker (Irwanto et al. 2000).

4.4 The constraints related with the capacity of law enforcement agencies in responding women and trafficking cases.

4.4.1 Insufficient knowledge and skill of law enforcement agencies to respond to women and child trafficking cases

Even though Indonesia already has the Laws which regulates that trafficking towards woman and children is a crime, however the laws are not sufficient to punish the trafficker if it is not followed by sufficient knowledge

and skills of law enforcement agencies in responding trafficking issue. High knowledge of law enforcement agencies toward the laws and the trafficking issue are needed in order to protect the victim's rights.

In Fact, the police and other law enforcement agencies often have insufficient understanding to protect the trafficking victims (Syafira Hardani 2004:15), In addition, the informant from the middle rank prosecutor in Bandar Lampung stated that lack of socialization to the law enforcement agencies particularly who located in remote places towards trafficking issue causes insufficient understanding from law enforcement agencies toward this problem. Moreover, in responding the trafficking case, no available standard of operational procedure in handling the trafficking case often affect the law enforcement agencies to take an action toward the case.

Insufficient understanding and skill from law enforcement agencies to handle the trafficking crime causes personal bias of official regarding this crime (Syafira Hardani 2004:15). The law enforcement agencies such as police, prosecutor and judge who handling the case often insensitive regarding the victim's rights, even to the extent of blaming and putting the victim on the corner. As we saw in case 4 above, Judge was insensitive to the victim's rights and needs , and even she blamed the victim for this crime to happened.

From the experience following the Trial process in the court in case 4, NGO staff who assisted the victim said that in the court the judge even used inappropriate language to the child victim . She said to the child victim:

“ ini akibat dari ulahmu! Karena kamu semua orang harus ada disini (di pengadilan), benar-benar bikin susah!”

“This is the result of your action! Because of you all these people are in the court and you are really causing a trouble.”

From the illustration of the case above, it can be pointed out that a sensible and sufficient knowledge of law enforcement agencies are needed to enforce the law and protect the victim's right, so that the victim is not blamed for the crime that has occurred.

Legal advisor of the victim said that insufficient knowledge of the law enforcement agencies toward the trafficking issue can cause the law enforcement agencies not being able to apply the exact articles in the laws to accuse the traffickers. This will influence the outcomes of criminal justice process because the traffickers/defendant will be charged based on the articles in the laws toward the crime. This will influence the result of the judge decision at the end, and it is not impossible that this will result in an unfair decision for the victims. In addition, lack of law enforcement agencies understanding of the trafficking issue cause difficulty in identifying who is the traffickers.

Moreover, The Head of State Court Tanjung Karang also mention that the high degree of staff's mutation within law enforcement agencies (moving from one place to another) also has negative effects concerning trafficking issues. The police, prosecutor and judge who had joined kind of training about trafficking issue sometimes has mutation to work in different place. And often they do not have time or inclination to share their knowledge on trafficking issues before they leave.

4.4.2 Lack of coordination among the law apparatus

Eventhough they are responsible for handling the cases , because of lack of coordination with other law enforcement agencies in different place outside their jurisdiction, the police can not pursue the trafficker if the traffickers are outside their jurisdiction (Syafira Hardani 2004:15). Besides, in accordance with (Clawson et al. 2006), police staff of special unit service stated that the law enforcement agencies find difficulty in coordination with other law enforcement agencies in handling the trafficking issue. Because of a lot of people carried out this work and maybe unknowingly working with the same victims but different traffickers , make the coordination problematic.

The coordination between the police investigators and the prosecutors (based on Articles 109 and 110 KUHAP) begins when the police examiner informs the prosecutor that he has started the examination, and the examiner has to give the case file to the prosecutors after the police investigation is finished. In fact, in some cases, lack of coordination between the police

examiner and prosecutor makes the case go back and forth over and over between the prosecutor and police examiner because of unclear information and instruction. The case which needs additional examination sometimes is not sent back by the police examiner to the prosecutor because of unclear instruction in which part the examiner should complete the examination result.

In addition, the police informants stated that the lack of coordination among law enforcement agencies also causes weak case monitoring among them. Besides, according to some informants from NGO, the police seemed reluctant to follow the case until that case was tried in the court. However, the police informants opposed this statement; he said that this kind of situation occurs because police seldom received the copy of the verdict toward the case from the court. Because of technical problems, such as limitation of time and imbalance between the case and number of police who carried out the investigation, made the police find difficulty to monitor the progress of human trafficking case in the court. The informant said that actually without being asked the police have to receive the copy of verdict that had been investigated. But the fact, it rarely happened.

Finally, other finding of this study also found out that reconciliation between trafficker and the victim (and her family) also play important role to lighten the sentence toward the trafficker.

We consider this in more detail in the next section.

4.5 Reconciliation between trafficker and the victim and his/her family

In giving punishment to the defendant, the judge always consider the facts in the trial process in which can lighten or make heavier the punishment toward the trafficker. From the legal case review, one thing that can lighten the trafficker punishment is reconciliation between trafficker and the victim (and her family).

Based on the case analysis that has been done by the writer, reconciliation between trafficker and the victim (and her family) can also be a consideration for the judge in giving sentence to the trafficker. In the case 1 (see case 1 above), since the victim has been home, then it was made a

conciliation letter (Surat Perdamaian) between the victim's parent who represent the victim and the trafficker who was also the victim's relative.

The purpose of the conciliation letter was to show that the victim has forgiven the trafficker for all that have happened. They rebuilt good relationship which was almost broken. The victim and her family were willing to withdrawn her complaint to the police that she has made and promised that they would never make a new complaint on the case in the future. However, the conciliation between the two parties did not stop the legal process towards the trafficker since human trafficking is not a crime that requires a complaint in which the case can be stopped anytime if the complainer draws her complaint regarding the case.

Therefore, the conciliation letter should not stop the legal process of the trafficking crime but it can only be one consideration for the judge in passing the sentence toward the trafficker. From the cases that I have been reviewed, another consideration in which can lighten the punishment for the trafficker are trafficker behaviour in the trial process (such as giving accurate information about the crime), the suspect's feel guilty, the suspect has never been punished before and in another case, the defendant promise to the victim to marry her.

Conclusion :

In a line with the purpose of this research, that is to figure out the problems faced by the law enforcement agencies to enforce the law and punish the traffickers, case study review and interview with some informants, The writer found out that not only weak legal mechanism became the obstacles against the traffickers but also lack of law enforcement agencies capacity in handling women and child trafficking case. This can be seen from insufficient knowledge and skill of law enforcers in handling the trafficking case and lack of coordination among them. In addition, the corruption indication and the effort of reconciliation outside the court between the trafficker (and his lawyer) with the victim cause the traffickers only get a light sentences.

Chapter 5

CONCLUSION and RECOMMENDATIONS

As mentioned in chapter one, the concealed nature of human trafficking makes it difficult to recognize the exact number of women and children trafficked, the number of the cases handled by the police, and the number of cases which result in punishment of traffickers . By applying qualitative research methodology, case study method and interview with key informants from law enforcement agencies officer and NGO who handle women and children trafficking cases, this study has suggest that the police, prosecutors, judges, lawyers, victims, witnesses, NGOs, and media, all have important roles in the criminal justice process in bringing the traffickers into punishment, but in the reality, their role is not as ideal as what people think about them due to corruption and a weak judiciary system.

Even though the law enforcement agencies attempt to eliminate the number of women and child trafficking cases, there is still a problem in bringing the trafficker into justice. The problems of bringing the traffickers into punishment begin with the failure of most trafficking cases to result in a complaint. Only a small minority of cases result in a complaint being made to the police. As this study found out, the difficulties of the victims to escape, the gender bias in the society which makes the victims feel ashamed if the case known by public, and lack of community awareness regarding women and children trafficking issues, all may contribute to the unwillingness of the victims to make a complaint.

Further, problems also a raise when a complaint is made by the trafficking victim to the police. Lack of evidence and unwillingness of the witness to testify regarding the trafficking cases cause many complaints do not result in a charge/indictment at the prosecution stage. This study also indicated that many cases brought to the court do not result in an appropriate outcome and justice for the victims. The 12 cases presented in this study suggest that many women and children trafficking cases brought to court is result in either a failure to convict or the traffickers being found guilty but given minimum/inappropriate punishment.

In the attempt to identify constraints faced by law enforcement agencies in giving appropriate punishment of trafficker in women and children trafficking cases, this study also reveal that these constraints are related to the weak capacity of law enforcement agencies, for example by their insufficient knowledge and skills to respond the trafficking issue properly, lack of coordination among law enforcement agencies in handling this crime, and indication of corruption by either the law enforcement agencies or other government officials.

Besides the constraints mentioned above, from legal case review, this study found that the reconciliation between the victims and her family and the promise of the trafficker to marry the victims can be a reason to lighten the sentence for convicted the traffickers.

Finally, to address several issues that caused the problems in bringing the trafficker to justice, the writer purpose three recommendations:

1. Judicial reform to make the legal system more effective (punish the law enforcement agencies who are suspected gain financial benefit from the trafficking cases, implement the new anti human trafficking law that can help law enforcement agencies give the minimum standard punishment for traffickers, etc)
2. Address the law enforcement capacity problem in responding women and children trafficking cases by giving training about the current situation in women and children trafficking, the training about investigation skills, sensitive interview methods of the victims, etc, to improve the skills and knowledge of law enforcement agencies in responding the trafficking cases. In addition, strengthen the coordination among law enforcement agencies, NGO and the community and allocate sustainable fund to support law enforcement agencies in handling human trafficking cases are also important.

3. Create public awareness toward trafficking issue through media and schools, and giving training to community members in selected target regions about human trafficking, its causes and danger.

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