

The Role of Local Government in Prevention of Human Trafficking Required from Bureau Cultural Legal Aspects: A Case in Sambas District, West Kalimantan, Indonesia

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Abstract: The most crucial issue in entering the 2015 AEC was the problem of human trafficking within the territory of ASEAN countries. It is an act of recruiting, transporting, sheltering, shipping, transferring or receiving a person with threats of violence, the use of force, abduction, capture, falsification, fraud, abuse of power of vulnerable positions, debt bondage or payment or benefit, to gain control of the person, whether committed within the state or between countries for the purpose of exploitation or exploitation of the persons. Thus, human trafficking is an act of exploiting humans for treating people not as human beings. If left unchecked, it will harm various aspects, either economic aspects, humanitarian aspects, social, political, legal or human rights violations. It is also one of the worst forms of violation of human dignity and prestige. This is evident from very few peoples reports on trafficking, but when repatriation of Indonesians who work illegally in Malaysia (illegal migrants according to Malaysian security officials) is proved to be a great deal coming from Sambas District. According to an official report by the Womens Empowerment and Family Planning Office of Sambas District, the case of trafficking of persons from Sambas District tends to increase, which are 17 cases (2011), 16 cases (2012), 18 cases (2013), and 39 cases (2014) and 1st year 2015 has reached 16 cases. The community usually reports to the local government and police officers if something has happened that resulted in the death of the victim (sick) or of being killed abroad.

1 INTRODUCTION

In The year 2015 was the hardest year for the government of president Joko Widodo and Yusuf Kala which just entered a year of their administration due to the global economic impact, in which the rupiah exchange rate against the US dollar continues to decline, even close to Rp. 15.000,00 per US \$ 1. On the other hand, there was an opportunity for improvement of the Indonesian economy because in 2015 Southeast Asia countries had ratified an agreement to build an integrated region in the field of economy known as the ASEAN Economic Community (AEC).

It is said as an opportunity because many people consider AEC as a great opportunity to promote the regional economy, one of which is the statement of East Java governor who actually sees AEC as an opportunity not a threat. Although many observers doubt Indonesia's readiness to enter the 2015 AEC.

2 TRAFFICKING AS A THREAT TO ASEAN

The most crucial issue in entering the 2015 AEC was the problem of human trafficking within the territory of ASEAN countries. It is an act of recruiting, transporting, sheltering, shipping, transferring or receiving a person with threats of violence, the use of force, abduction, capture, falsification, fraud, abuse of power of vulnerable positions, debt bondage or payment or benefit, to gain control of the person, whether committed within the state or between countries for the purpose of exploitation or exploitation of the persons. Thus, human trafficking is an act of exploiting humans for treating people not as human beings. If left unchecked, it will harm various aspects, either economic aspects, humanitarian aspects, social, political, legal or human rights violations. It is also one of the worst forms of violation of human dignity and prestige.

The International Organization for Migration (IOM) predicts that around 43 to 50 percent or approximately three to five million Indonesians abroad are victims of trafficking and come from various regions, mainly from Java, West Kalimantan, Lampung, North Sumatra and South Sumatra. Recognizing the urgency of preventing and combating human trafficking, the Indonesian government established Act Number 21 of 2007 on Combating Human Trafficking. Furthermore, it is mandated in the article 57 paragraph (1) that the government; local governments, communities, and families shall prevent the commission of human trafficking. To do so, it is requested that the government and local governments develop policies, program activities, and allocate budgets to carry out the prevention and handling of the trafficking issues. Then under the article 58, the government and regional governments are obliged to form task forces composed of representatives from the government, law enforcement, community organizations, non-governmental organizations, professional organizations, and researchers/ academics. The task force is a coordinating agency in charge of:

1. Coordinating the prevention and handling of human trafficking;
2. Conducting advocacy, socialization, training and cooperation;
3. Monitoring the development of the implementation of victim protection including rehabilitation, repatriation and social reintegration;
4. Monitoring the progress of enforcement and implementation;
5. Implementing reporting and evaluation.

Public participation is expected in the prevention and handling of victims of human trafficking which are manifested in providing information and/ or reporting of human trafficking to the law enforcement or authorities or participating in the handling of victims of human trafficking. In return of the community's participation, the government gives the public legal protection.

The local government of West Kalimantan and the Sambas regency government are adjacent to neighboring Malaysia (Sarawak and Sabah), Brunei Darussalam, and Singapore are the most potential border areas of origin as well as transit areas for trafficking. There are several possible causes of human trafficking in the border areas of West Kalimantan and Sarawak-Malaysia. First, the economic gap which can be seen from Gross Domestic Product (GDP) or in Indonesia is better known as Gross Regional Domestic Product

(GRDP) between West Kalimantan, Sarawak and Brunei Darussalam. The GDP of West Kalimantan is relatively very small, only 0.32% of Indonesia's GDP or only ranks 21st out of 33 provinces in Indonesia. Meanwhile Sarawak's GDP is almost 9 times higher than that of West Kalimantan and that of Brunei Darussalam which is almost 43 times the GDP per capita of West Kalimantan. Secondly, culturally and ethnically, West Kalimantan, Sarawak, Sabah and Brunei Darussalam have a very strong linkage. Many Indonesian citizens live in the neighboring country for work or marriage reasons. There are fewer formal workers in neighboring countries (especially in Malaysia) than the informal ones who are registered on immigration records since they come to the country as travelers doing part-time jobs. Based on the records of the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI), the numbers of formal workers from Sambas Regency working in Malaysia are: 76 in 2008, 442 in 2009, 2,151 in 2010, 825 in 2011, 821 in 2012, 5,577 in 2013 and 2,639 in 2014. In comparison, the population record of Sambas Regency based on statistical data from BPS of Sambas regency in 2015 was recorded at 515,572 people, while the records from the Population and Civil Registry Agency used as the basis for determination of Identity Card and Temporary List of Voters was 627,432 people in the first half of 2015. Although the differences in the population data cannot be ascertained that all of them work in Malaysia and in other ASEAN countries because they have not been recorded by Sambas regency government, but it is believed that some of them are informal workers without the provisions applicable as workers in other countries. Referring to the opinion of IOM above, it is estimated that 40,000 to 50,000 of Sambas District residents work as illegal workers abroad. This estimate is often conveyed by former Sambas Regent (Burhanuddin A. Rashid) in an International seminar on August 1, 2015 in Sambas. Third, there is an assumption that public participation in the prevention of trafficking practices in border areas (Sambas - Malaysia) is very low. This is evident because there are very few people's reports on trafficking. However, when there is repatriation of Indonesians who work illegally in Malaysia (illegal migrants according to Malaysian security officials), it is proven that there are a great number of people coming from Sambas District. Based on the official report by the Board for Woman Empowerment and Family Planning of Sambas district, trafficking cases from the district tend to increase, which were 17

cases in 2011, 16 in 2012, 18 in 2013, and 39 in 2014 and the first half of 2015 it has reached 16 cases. The community usually reports to the local government and police officers if something has happened that resulted in the death of the victim(s) due to illness or being killed abroad. They (the illegal workers from Sambas District) deliberately did not report to the security apparatus either in Indonesia or in Malaysia, among others, because they work illegally who are always intimidated with harsh words that they will be reported to the Malaysian police if they report their existence. On the other hand, they are often treated inhumanely, among others, they do not get salary since the employers told them that the salary is collected or saved by the company. Meanwhile, their passports are held by the company and in many cases that happened the company deliberately do so in order to gain big profit because after the illegal workers work for so long, the company then intentionally reported them to the Malaysian police that they are illegal workers. Therefore, when there is an unannounced police raid, the workers run and leave their salaries and passports behind. Is it not the act of modern slavery? Upon arriving in Indonesia (through the secret passages), they are afraid or perhaps feel unnecessary to report it to the police because even if it is reported they will not be able to process the case because their case took place in another country, and so on. The government officials (government bureaucracy) such as police, immigration officers and even local government officials know about the slavery but cannot do much and even tend to blame the people who are willing to be treated as slaves by Malaysian businessmen. As members of the task force, the officers' main task is simply to sensitize the public to not become the object of human trafficking, and not to find a way out to overcome major problems of the society, like poverty and ignorance. According to Aminuddin Ilmar the government should not solve problems after they happened but their functions and tasks must be more than that, namely how to find out the source of the problem in order to able to parse the problems so that they are not recurring.

Indonesia's Human Development Index (HDI) in 2013 was recorded in 121st from 187 countries. Meanwhile, West Kalimantan province is ranked 28th from 34 provinces in Indonesia and Sambas regency is ranked 14th from 14 districts/ cities in West Kalimantan. From this data, it can be said that the HDI of province of West Kalimantan and Sambas especially is low which means that the population is poor, low educated and the public

health status is low. It is believed that the poverty and ignorance are the main causes of trafficking in West Kalimantan. Therefore, whatever attempt to tackle human trafficking will not succeed because the people will keep working abroad to try their luck, although illegally with the risk of being imprisoned in Malaysia, because it is expensive and involves convoluted fees and many requirements that are certainly difficult to meet by such unskilled workers if they try to be legal migrant workers. If this condition continues to be ignored, the state is said to fail in realizing the ideals of the prosperity for the people as set forth in the 1945 Constitution. The people's dissatisfaction people in many countries to their government is rooted in the problem of poverty, and the corrupt behavior of the government apparatus.

Meanwhile, the behavior of the apparatus is based only on a legalistic-normative view in which what he has done to the society has always been considered to be in compliance with the applicable regulations. The law enforcement is interpreted only to apply what is in the applicable legislation. The law perspective of the apparatus (bureaucracy) is referred by Friedman as the legal culture. He further explains that, "legal culture refers then to those parts of general culture-customs, opinions, ways of doing and thinking that bend social forces toward or away from the law and in particular ways. The term roughly describes attitudes about law. The current law enforcement culture in this beloved country is a liberal one, which is oriented towards individual interests that are inconsistent with the collective culture of Indonesia society. The law is for man, not vice versa. Therefore, the law that is applicable should be the law that makes people happy (prosperous). The apparatus (government bureaucracy) should not see the society as the object of law which must be subject to the prevailing laws and regulations (as a consequence of the rule of law) if the law does not favor the interests of the people, especially the poor and those left behind like in border areas of Indonesia and Malaysia. They also need to recognize and realize in their everyday actions that the society as the citizens who should be served and treated as human beings and not as production tools.

In this regard, the bureaucratic apparatus should act as public servants in socializing various laws and regulations, as well as listening to the complaints and aspirations of the people. Thus, when there is a trafficking case, they do not directly impose sanctions in accordance with the laws and regulations. It is the duty of the government to

protect its citizens wherever they may be. In other words, if there are many citizens seeking employment abroad as illegal workers who are treated as slaves, the government must not blame them. They do it because they are poor, stupid and have no skills. They still have self-esteem as citizens of Indonesia, still have a conscience because they still want to work (not corrupt nor rob), even if they have work in another country (because there are no good and prospering jobs available in their own country).

3 THE ROLE OF LOCAL GOVERNMENT IN PREVENTING HUMAN TRAFFICKING

Based on the mandate in Act No. 21 of 2007 on the Eradication of the Criminal Act of Human trafficking, both the Provincial Government of West Kalimantan and the Sambas Regency Government have made regional policies in the form of regional regulations namely West Kalimantan Provincial Regulation No. 7 of 2007 on the Prevention and Eradication of Human trafficking, especially women and children who are followed up with Sambas District Regulation No. 3 of 2015 on the Prevention and Handling of Victims of Human trafficking. The local regulation asserts that local governments and communities are obliged to prevent human trafficking. Prevention of trafficking is done through: mapping human trafficking issues; program planning and budget allocation for prevention and handling of human trafficking; disseminating communication, information and education (CIE) with regard to the prevention of human trafficking; socializing and campaigning in the prevention of human trafficking; encouraging the integration of the issue of criminal human trafficking into the learning process in formal and non-formal education; provide education and training life skills for the community; establishing a communications-based supervision and protection mechanism against human trafficking; and institutional capacity building.

Meanwhile, efforts to prevent human trafficking as regulated in West Kalimantan Provincial Regulation No. 7 of 2007 regulate among others: that worker wishing to work outside their regions or abroad are obliged to report to the head of villages/ lurahs, the head of sub-districts and regents/ mayors; that children are prohibited to be workers either outside the region or abroad, except for art workers,

regional ambassadors and mild workers; that Indonesian labor service providers (PJTKI) are required to educate prospective migrant labors before being departed outside the region and abroad.

These two Regional Regulations seem to be sufficient to serve as the guidelines for the prevention of human trafficking in West Kalimantan. However, we still, in fact, found human trafficking cases which tend to increase each year. It is necessary that there be real efforts to prevent human trafficking, namely: first, the improvement of bureaucratic work culture by actualizing service culture, i.e. the bureaucracy is the servant of society. According to Denhardt and Denhardt in the framework of public service, the public officials ought to be well aware that the public interest is the result of public dialogue, not a collection of individual wishes, and public services are aimed at serving the citizens not customers. Therefore, the public officials when serving and acting for the public's benefit are accountable for the citizens or community groups. This practice is based on the applicable legislation, values living in the society, political norms, professional standards and public interest. Thus, the paradigm developed so far with respect to the role and function of government in which only the government who can administer governance without the involvement of the stakeholders will only produce a service as it is. In a sense, the existence of government is merely to carry out its respective matters (as a facilitator) without ever understanding the demands of aspirations and the increasing importance and necessity of the community is a failed government. Suing a state for not carrying out its constitutional obligations is a constitutional act.

Second, in order to formulate the action plan as the implementation of the mandate of the regional regulation, it is important to review the background of the problem of why human trafficking takes place in the border area of West Kalimantan, especially in Sambas District. By knowing the background of the problem, it is expected that the government can find permanent ways to prevent human trafficking. Uneducated and poor people are relatively easy to be lured and promised with good jobs and earnings because they want to get out of the poverty they have been feeling, whereas in developed countries like Malaysia, unskilled labors are definitely not accepted, even for menial works. Moreover, those unskilled or uneducated workers are certainly not able to speak foreign languages. The action plan that will be made ought to cover various causes of human trafficking. This means, in order to prevent the criminal acts of trafficking from taking place we

should examine the cases from various aspects, such as economic aspects (especially poverty), skills aspects (education and technical and communication skills), etc. to clarify the problems and to achieve clearer ways to overcome them.

Thirdly, the socialization of regulations on human trafficking crimes must be done because it is expected that it can make the public know what is regulated (prohibited or authorized) in the regulation. It is also expected, through the socialization, that the public grow awareness to try to prevent trafficking crimes from taking place. When our prevention efforts are not synchronized with that of our neighboring countries, it is difficult to combat human trafficking. Therefore, there must be an intensive communication between neighboring countries to solve cases of human trafficking, for example, by including it in one of the Sosek-Malindo agreement items, which so far has been a forum for economic cooperation discussions. In addition, we can stabilize the ASEAN Convention on Human Trafficking Forum which was formed in 2011 whose member, at present, have agreed that human trafficking is one of the crime forms that cannot be solved by a country individually but by a collection of countries. There is an urgency for real actions as what have been done by the government of the Republic of Indonesia and the United Arab Emirates that agreed to combat human trafficking. The agreement consists of three items of cooperation, namely: law enforcement to prevent trafficking through early detection, investigation and prosecution; protection, rehabilitation and assistance including repatriation of the trafficking victims; and capacity building and preventive measures.

4 CONCLUSIONS

Human trafficking today is so difficult to overcome because it is complicated by problems of poverty and ignorance happening in our beloved country. It is worsened with strong liberalism and capitalism which are found in the land of Pancasila that is said to be communalism. Humans are considered as a tradable means of production like in the era of slavery.

The government apparatus (bureaucracy) is considered successful if it has implemented the applicable legislation, even though the laws and regulations do not side with the people. The term "public servant" is only on paper. It does not go deep into the real public interest. The discretion given by the legislations is only a figment. When dealing with

the law, the legalistic-normative will prevail. Therefore, it is necessary to increase the role of bureaucracy, especially those in outer regions in the framework of preventing criminal acts, especially that of human trafficking. This was done in response to a change of government paradigm, i.e. bureaucracy as the public servants..

REFERENCES

- Aminuddin Ilmar. 2014. *Hukum Tata Pemerintahan* (Governance Law). Kharisma Putra Utama. Jakarta
- Daron Acemoglu and James A. Robinson. 2012. *Why Nations Fail: The Origins of Powers, Prosperity, And Poverty*. Propile books Ltd. London
- Gordon Antony, et al. Editor. 2011. *Values in Global Administrative Law*. Oxford and Portland. Canada
- Grec Bustin. 2014. *Accountability: The Key to Driving A High-Performance Culture*. Me Graw Hill Education. New York.
- Tribune Daily Pontianak, September 15, 2015
- Hesti Pupitosari, et.al. 2011. *Filosofi Pelayanan Publik : Buramnya Wajah Pelayanan Menuju Perubahan Paradigma Pelayanan Publik* (Philosophy of Public Service: The Blur of the Service Towards a Changing of Public Service Paradigm). Setara Press. Malang
- Janet V. Denhardt and Robert B. Denhardt. 2003. *The New Public Service: Serving, not Steering*. M.E. Sharpe. New York.
- Lawrence M. Friedman. 1975. *The Legal System: A Social Science Perspective*. Russell Sage Foundation. New York
- Manto Saidi. 2015. *Peluang dan tantangan Wilayah Perbatasan Dalam menghadapi Masyarakat Ekonomi Asean : Sebuah Pendekatan Sosial Budaya dalam Pembangunan Pulau Kalimantan*. (Opportunities and challenges of Border Areas In the face of the ASEAN Economic Community: A Socio-Cultural Approach in Development of Kalimantan Island). The paper was delivered in the 1st International Conference on ASEAN Economic Community: Change and Challenge of the Countries in Borneo Island, in Sambas, West Kalimantan August 1, 2015.
- Media Publication of the Directorate General of ASEAN Cooperation, Ministry of Foreign Affairs. Issue 8/ June 2015
- Richard A. Clarks. 2008. *Your Government Failed You*. Harper Collins Publishers. New York.
- Satjipto Rahardjo. 2009. *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Progressive Law: A Synthesis of Indonesia Law). Genta Publishing. Yogyakarta.
- Satjipto Rahardjo. 2010. *Penegakan Hukum Progresif* (Progressive Law Enforcement). Kompas. Jakarta.
- Suparto Wijoyo and Prasetyo Rijadi (editors). 2015. *Pakde Karwo: Pintu Gerbang MEA 2015 Harus Dibuka* (Pakde Karwo: 2015 AEC Gate Must Be Open). P.T. Kharisma Putra Utama. Jakarta