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Criticising the Implementation of the ACTIP in Southeast Asia

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Article	Abstract
<p>Keywords: ACTIP; Asean; Human Trafficking; Southeast Asia; Women and Child.</p> <p>Article History Received: Dec 22, 2022; Reviewed: Jul 20, 2022; Accepted: Jul 30, 2023; Published: Jul 31, 2023.</p> <p>DOI: 10.28946/slrev.Vol7.Iss2.2542.pp350-367</p>	<p>The legal framework for ASEAN cooperation in combating the crime of trafficking in persons, particularly women and children, led to the establishment of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP). This convention recognises that trafficking constitutes a violation of human rights and a crime against human dignity. However, the implementation of ACTIP faces numerous challenges that require strategic solutions. This research aims to examine the implementation of the ACTIP policy concerning human trafficking, assess ASEAN's efforts in tackling trafficking in women and children in the Southeast Asian region, and criticise the implementation of ACTIP. The research adopts a descriptive-normative method. The ACTIP Convention regulates provisions for dealing with trafficking problems, both prevention and handling, which are the responsibility of the central and local governments as well as the community by establishing various task forces in the implementation of prevention and control of human trafficking that occurs. ASEAN has taken several steps in the fight against human trafficking. Many obstacles must be faced to eradicate the criminal act of trafficking in persons. So, it is necessary to take several actions in implementing the ACTIP. ASEAN Members must cooperate either bilaterally or multilaterally so that the ACTIP arrangement can be implemented effectively.</p>
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INTRODUCTION

Human trafficking is the practice of buying and selling individuals and the recruitment, transportation, transfer, storage, or receipt of individuals for exploitation. The international

community has forged joint agreements through international papers to establish a legal framework for policing this illegal activity because it is aware of the dangers associated with this sort of activity and the need for international cooperation for the prevention and the trafficking of persons.¹ Human trafficking in the field of slavery is also one of the important highlights because it has a large number. Southeast Asia is also inseparable from the existence of modern slavery.² Human trafficking offences, particularly those involving women and children, have recently become a concern on a global scale and are extremely complex.³ Human trafficking activities, together with the drug and weapon trade, have generated enormous profits for traffickers worldwide. The trafficking of children, especially girls, has recently increased, where they are treated as commodities and exploited in various sectors, notably the sex industry. Although precise data on the number of girls trafficked for the sex industry is lacking, it is evident that child trafficking also involves forced labour and services, leading to physical and psychological harm and effectively enslaving them under the control of others.⁴

The impact of human trafficking, particularly on women and children, reflects the crisis faced by Indonesia in the modern era. This global issue has become a lucrative business for perpetrators, with an estimated 2 million people trafficked annually, mostly women and children. The alarming rise in the involvement of minors, especially Indonesian children, is deeply concerning, as children are entitled to the same human rights as adults. The transnational nature of human trafficking complicates efforts to address it, requiring international and national policies and the collaborative work of states and various stakeholders, including law enforcers, NGOs, and activists. The states should do so through a bilateral or multilateral agreement that specifically regulates the prevention and eradication of cross-border crime, including the human trafficking case.⁵ Despite these efforts, complete eradication of all forms of human trafficking remains elusive. With the increasing complexity and prevalence of trafficking, it has become a significant humanitarian problem affecting nearly every country worldwide.⁶

Indonesia is a source country for international human trafficking and a destination country for human trafficking. In paragraph (3), the Palermo Protocol defines trafficking activities to encompass

¹ T. L. Hoang et al., "Inter-Agency Cooperation to Raise Awareness on Human Trafficking in Vietnam: Good Practices and Challenges," *Asian Journal of Criminology* 13, no. 3 (2018): 251–74. H. Stockl et al., "Trafficking of Vietnamese Women and Girls for Marriage in China," *Global Health Research and Policy* 2, no. 28 (2017).

² Rininta Gustiyani, Zaid, and Yeni Widowati, "The Role Of International Organizations And The Indonesian Government In Eradicating The Transnational Crime Of Modern Slavery," *International Journal Of Social Science And Buusiness* 7, no. 1 (2023): 161.

³ Tran Quang Huyen, "International Cooperation in Prevention and Combating Human Trafficking in Southeast Asian Region: A Case Study of Vietnam," *Journal of Law, Policy and Globalization* 94 (2020): 19, <https://www.iiste.org/Journals/index.php/JLPG/article/view/51729%3E>.

⁴ Yanuar Farida Wismayanti, "Trafficking in Children as a Form of Violating Children's Rights," *Journal of Sosio Informa Journal: Study of Social Problems and Social Welfare Efforts* 14, no. 3 (2009).

⁵ Belardo Prasetya Mega Jaya, "Transnational Criminal Case Settlement Through International Cooperation (A Case Study of Harun Masiku)," *AJUDIKASI: Jurnal Ilmu Hukum* 4, no. 1 (n.d.): 79, <https://doi.org/10.30656/aju%0Adikasi.v4i1.2203%0A>.

⁶ Syamsuddin, "Forms of Human Trafficking and Psychosocial Problems of Victims," *Journal of Sosio Informa* 6, no. 1 (2020), <https://doi.org/10.33007/inf.v6i1.1928>.

recruiting, sending, transferring, hiding, or accepting people through threats, violence, coercion, kidnapping, fraud, deception, abuse of power, or abuse of a prone position.⁷ This issue strongly violates Human Rights, particularly as it is closely associated with women and minors. The complexity arises due to its cross-country nature and the involvement of well-organised elements, making it extremely challenging to combat.⁸ Disturbingly, human trafficking has persisted even during the COVID-19 Pandemic, with Indonesia being both a country of origin and a destination for trafficking in persons. According to the International Organization for Migration (IOM) records in Indonesia, the number of Trafficking in Persons (TIP) cases increased to 154 in 2020, and interestingly, some of these cases occurred within the country. Eny Rofiatul Ngazizah, the Project Assistant for Counter Trafficking and Labor Migration at IOM in Indonesia, highlighted that unsafe and irregular migration contributes to TIP cases, with most victims experiencing sexual exploitation.⁹

Around 6–8 million Indonesian citizens, mostly women, work abroad, making it intolerable to tolerate the crime of trafficking in persons, especially considering that child sex trafficking accounts for 30% of the estimated 8 million illegal migrants. Victims of human trafficking are found in various sectors, including manufacturing, factories, construction, oil palm plantations in Malaysia, and fishing boat crews. Taiwan and the Middle East also see many women and girls from Indonesia becoming victims of sexual trafficking. Shockingly, the number of human trafficking cases increased during the pandemic. The press release from the Ministry of Women's Empowerment and Child Protection on July 29, 2021, mentioned that the data from the online information system for child and women's protection showed a 62.5% increase in 2020.¹⁰ In response to this pressing issue, ASEAN¹¹ has agreed to establish the ASEAN Convention Against Trafficking in Persons, especially Women and Children (ACTIP), aiming to address and combat trafficking in persons and recognise it as a violation of human rights and a crime against human dignity. Indonesia's ratification of this convention demonstrates its acknowledgement of the trafficking in person problem, especially within the scope of ASEAN.¹² The adoption and implementation of ACTIP mark a developing trend

⁷ Bibit Santoso, "Responding to Human Trafficking," 2017, <https://www.google.com/amp/s/amp%0A.kompas.com/nasional/read/2017/03/29/19382151/mensikapi-perdagangan-humanon%0A>.

⁸ Sanofta DJ Gunting, Nirmala Waty, and Alwan Alwan, "Criminal Law Policies in Overcoming the Crime of Trafficking in Persons (Human Trafficking)," *Mahupiki Journal* 2, no. 1 (2013), <http://jurnal.usu.ac.id/index.php/jmpk/article/view/6336/2667>.

⁹ Indah Handayani, "Cases of Trafficking in Persons in Indonesia Are Increasingly Worrying," n.d., <https://investor.id/national/kases-perdatangan-orang-di-indonesia-make-eat-a-lot>.

¹⁰ Kendra Umi Kulsum, "Data and Facts on Trafficking in Persons in Indonesia," 2021, <https://kompaspedia.kompas.id/baca/paparan-topik/data-and-facts-trade-people-in-indonesia#:~:text=Jumlah%25>.

¹¹ ASEAN is a regional cooperation organisation consisting of the countries Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, The Republic of Singapore, The Kingdom of Thailand, and the Socialist Republic of Viet Nam. (Prasetyo Hadi Purwandoko. Sasmini, "Prospek Pembentukan Asean Intergovernmental Commission On Human Rights (AICHR) (Harapan Baru, Kelemahan Dan Solusi," *Yustisia* 1, no. 2 (2012): 122, <https://doi.org/10.20961/yustisia.v1i2.10636>.

¹² Association of Southeast Asian Nations, "ASEAN Responses to Trafficking in Persons, Ending Impunity for Traffickers and Securing Justice for Victims," *ASEAN Secretariat Jakarta: AusAID and Cardno Acil*, n.d., 2.

in ASEAN treaty practice, particularly on matters of global and regional importance, where hard and soft obligations are combined to encourage ratification and, ultimately, the potential timely entry into force of some binding instruments. To improve ACTIP's efficacy, additional measures, such as the recommendation of a more robust compliance mechanism, must be taken. The ASEAN member has to research other ways to improve the effectiveness of ACTIP in order to determine whether it reflects a growing trend in ASEAN treaty practice.¹³

As a member, Indonesia is directly related to Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. The role of Indonesia as an ACTIP member country is to realise the objectives of this convention as a commitment. Indonesia has strengthened regional cooperation and acted as the initiator of the ACTIP convention's formation. However, the State of Indonesia faces obstacles in dealing with the trafficking of persons in Southeast Asia, including a lack of common understanding and interest in addressing poverty issues in the region and coordination between ASEAN countries.¹⁴ Internally, according to Muhammad Kamal's book "Combating Human Crimes in Indonesia," economic factors play a significant role in human trafficking, linked to conditions of poverty and difficulties in finding employment due to the abundance of job seekers compared to available positions. These issues force people to seek work opportunities away from their places of origin. Extreme poverty and limited opportunities also drive individuals to take desperate measures to improve their lives and those of their families.

Areas vulnerable to human exploitation tend to be urban and heterogeneous, with a focus on industries that continue to grow alongside development. This shift from rural to urban areas indicates a desire to improve living standards in this modern era of high consumption. Exploiting this situation, human traffickers deceive potential victims with promises of better jobs and more favourable outcomes. As a result, victims find themselves trapped in makeshift stages in rural areas. The increasing number of human trafficking cases in Southeast Asia, especially in Indonesia and other regions involved in the trafficking process, threatens regional stability and security. Therefore, the objectives of this research are: 1) to investigate the implementation of the ACTIP policy concerning human trafficking, 2) to examine ASEAN's efforts in tackling the crime of trafficking in women and children in the Southeast Asian region, and 3) to criticise the implementation of the ACTIP.¹⁵

RESEARCH METHODS

According to Sugiyono, the research method are scientific approaches to obtaining valid data to discover, develop, and demonstrate specific knowledge. These methods enable understanding, solving, and anticipating problems.¹⁶ The research used normative legal research, procedures used

¹³ R Yusran, "The ASEAN Convention Against Trafficking in Persons: A Preliminary Assessment," *Asian Journal of International Law* 8, no. 1 (2018): 258, <https://doi.org/10.1017/S2044251317000108>.

¹⁴ Suwarti Sari, "Indonesia's Role in the Implementation of the ASEAN Political-Security Community," *Journal Global Dynamics* 4, no. 1 (2019): 24–65, <https://doi.org/https://doi.org/10.36859/jdg.v4i01.100>.

¹⁵ Muhammad Kamal, *Tackling the Crime of Human Trafficking in Indonesia* (Makasar: CV. Social Political Genius (SIGn), 2019).

¹⁶ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris*, 2016.

to convey the truth based on the scientific logic of law from a normative perspective.¹⁷ The main characteristics of normative legal research in conducting legal studies lie in the data source, namely secondary data sources. It consisted of primary legal materials, secondary legal materials, and tertiary legal materials.¹⁸

Normative legal research deals with legal norms in national laws and aligns with the statutory approach. It discusses doctrines or principles in the science of law. According to Soerjono Soekanto, normative legal research can be carried out by examining literature or secondary data, studying legal principles, investigating legal systematics, analysing vertical synchronisation, conducting horizontal comparisons of law, and exploring legal history.¹⁹

ANALYSIS AND DISCUSSION

Implementation of the ACTIP Against Women and Children Trafficking in Southeast Asia

The ACTIP is an instrument that binds and becomes the basis for eradicating human trafficking in ASEAN and with dialogue partners. This convention was adopted in Kuala Lumpur, Malaysia. ACTIP acts as (1) a form of cooperation between ASEAN countries to combat the problem of trafficking, (2) a guideline for ASEAN in dealing with trafficking problems that occur in ASEAN. ASEAN recognises the importance of regional instruments to combat trafficking issues regarding strategies and priorities that are legally binding, which can assist ASEAN member countries as areas or places of origin, transit, and destination for trafficking.

This convention shall enter into force on the thirtieth (30th) day following the date deposit of the sixth (6th) instrument of ratification or approval.²⁰ ACTIP officially entered into force on March 8 2017, after The Philippines ratified it on February 6 2017.²¹ After that, Indonesia also ratified this convention. According to human trafficking, ASEAN will have to deal with the national interests of different countries. ACTIP was made with consideration of the principles of human rights as contained in the Charter of the United Nations, the Universal Declaration on Human Rights, ASEAN Charter, the ASEAN Human Rights Declaration, the United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, as well as following up on ASEAN's commitments in the ASEAN Declaration Against Trafficking in Persons Especially Women and Children, the Criminal Justice Responses to Trafficking in Persons, ASEAN Practitioner Guidelines, the ASEAN Leaders' Joint Statement in Enhancing Cooperation against Trafficking in Persons in Southeast Asia 2011.

¹⁷ Laina Rafianti, *Perlindungan Hukum Dan Pemanfaatan Hak Ekonomi Ekspresi Budaya Tradisional Oleh Pelaku Seni Pertunjukan* (Bandung: Alaumni, 2022).

¹⁸ Belardo Prasetya Mega Jaya et al., "Republic of Indonesia Sovereign Right in North Natuna Sea According to United Nations Convention on the Law of the Sea 1982," *Australian Journal of Maritime & Ocean Affairs*, 2023, <https://doi.org/10.1080/18366503.2023.2206261>.

¹⁹ Ateng Karsoma, *Perlindungan Hukum Hak Paten Alpahankam* (Bandung: PT Alumni, 2021).

²⁰ ASEAN.org, "ACTIP," n.d., <https://www.asean.org/wp-content/uploads/2015/12/ACTIP.pdf>.

²¹ ASEAN, "ASEAN Welcomes Entry into Force of ACTIP," n.d., <https://asean.org/asean-welcomesentry-into-force-of-actip/>.

Convention against Trafficking in Persons, Especially Women and Children, is different from human rights treaties, even though they are influenced by elements of human rights, such as the object being to protect human rights. As a result of the many forms of human rights violations, such as trafficking issues, as well as the encouragement of the international community related to political interests in abolishing slavery, several legal instruments were made to regulate trafficking issues. ACTIP functions as a regional instrument in handling trafficking issues in ASEAN. Conventions that have been mutually agreed upon require a ratification process by the countries that have agreed to them. International criminal law is needed to harmonise the national criminal law of one country with another. International criminal law is a good solution for dealing with problems related to transnational crimes. For this reason, ACTIP was created to tackle the problem of human trafficking in ASEAN, considering that overcoming the problem of human trafficking requires regional cooperation. In this convention, the legal principles are handed over to countries with extradition agreements, namely to countries that have made extradition treaties to prosecute perpetrators of human trafficking.²²

The principle of international law that applies to transnational crimes is the *aut dedere aut punere* principle, or the perpetrator of a crime can be sentenced by the locus delicti country or handed over or extradition to the requesting country, which has jurisdiction to try the perpetrator.²³ The convention also offers protection for victims of crime from human trafficking and witnesses. As in Article 14, member countries make procedures related to the identification of trafficking victims and collaborate with the private sector to create maximum protection for victims of human trafficking crimes; the country of origin must be notified as soon as possible from the receiving country of the existence of victims or witnesses of human trafficking, the state must protect the identity and privacy of the victim.

This convention does not specify the practice of human trafficking if crossing national borders is classified as a crime of human trafficking, nor does it specify the situation of victims being trafficked in it, so that this convention does not provide a loophole for perpetrators where human trafficking within the country is allowed or under certain circumstances. If this collaboration is successful, it is hoped that there will be a decrease in the level of human trafficking practices in the ASEAN region, appropriate treatment for victims of human trafficking, appropriate punishment for perpetrators of human trafficking, and legal equality in ASEAN. At the national and regional level, especially in North Sulawesi, the role of ACTIP is still normative, whereas a binding legal instrument to help resolve existing human trafficking problems.²⁴

The ACTIP Convention regulates provisions for dealing with trafficking problems, both prevention and handling, which are the responsibility of the central and local governments as well

²² Tri Citra Aprilianti, "Peran Asean Convention Against Trafficking in Persons Especially Women And Children (Actip) Terhadap Permasalahan Perdagangan Manusia Di Indonesia," n.d.

²³ Hugo de Groot in Novalinda Nadya Putri, "Penerapan Prinsip Aut Dedere Aut Judicare Dalam Penegakan Hukum Pidana Internasional," *DE LEGA LATA: Jurnal Ilmu Hukum* 6, no. 1 (2020): 148, <https://doi.org/https://doi.org/10.30596/dll.v6i1.5537>.

²⁴ Muhammad Reza, *Implikasi Asean Convention Against Trafficking In Persons Especially Women and Children (ACTIP) Terhadap Penanggulangan Tindak Pidana Perdagangan Anak Di Indonesia* (Palembang, 2019).

as the community by establishing various task forces in the implementation of prevention and control of human trafficking that occurs. In addition, ACTIP can help Indonesia exchange information with other countries and provide training to the authorities as well as socialisation related to the practice of preventing and overcoming human trafficking, as well as rehabilitating victims of human trafficking. The practical role of ACTIP is still not much, considering that this convention is still in the implementation and socialisation stages, especially for agencies outside the relevant government (NGOs) and the community. The problem with trafficking in women is that the existing definitions are inadequate.²⁵

Trafficking in women is a very dynamic problem. The concept of trafficking in women continues to evolve along with the complexity of trafficking in women itself. Part of the complexity is the confusing overlap between migration and trafficking in women and the unclear debate over their definitions.²⁶ The international community began to recognise trafficking in women as a global issue in 1900, and since then, international conferences have been held to discuss the prohibition of trafficking in women. From these international conferences, international agreements were born that regulate the prohibition of trafficking in women: (1) *International Agreement for the Suppression of the White Slave Traffic*, which was formed in 1904 and regulated the prohibition of trafficking in white women, (2) the *International Convention for the Suppression of the White Slave Traffic*, created in 1910 and complementing the *International Agreement for the Suppression of the White Slave Traffic*, (3) *International Convention for the Suppression of the Traffic in Women and Children*, which was formed in 1921 and regulated not only the prohibition of trafficking in women but also the prohibition of trafficking in children, (4) *International Convention for the Suppression of the Traffic of Women of Full Age*, which was formed in 1933 and only regulates the prohibition of trafficking in adult women.

The four agreements were then consolidated by the *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*, which was formed in 1950. With the convention's entry into force, the four previously existing agreements are no longer valid for countries that have become parties to this new convention.²⁷ However, the *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* does not cover all aspects of trafficking in women. This convention only addresses prostitution as a form of trafficking in women and does not encompass other forms of trafficking. In 2000, the *Convention Against Transnational Organized Crime* was formed, and trafficking in women was included in its scope as part of transnational organised crime. The *Protocol* complements the *Convention Against Transnational Organized Crime*. It covers all aspects of trafficking in women, including forced labour and debt bondage, unlike the *Convention for the Suppression of the Traffic in Persons and*

²⁵ Sulistyowati Irianto, *Perdagangan Perempuan Dalam Pengedaran Narkotika* (Jakarta: Yayasan Obor Indonesia, 2005).

²⁶ Brown and Louise, *Sex Slaves: A Syndicate of Trafficking in Women in Asia* (Jakarta: Indonesia Torch Foundation, 2005).

²⁷ Article 28 *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* 1950.

the Exploitation of the Prostitution of Others, which focuses only on prostitution. This Protocol consists of three core provisions: criminalisation of trafficking in women and other related crimes; protecting victims of trafficking in women, including legal, medical, and psychological assistance; and prevention of trafficking in women. Participating countries that have ratified this Protocol must establish laws and regulations prohibiting trafficking in women and containing these core provisions.²⁸

With the existence of international legal instruments that regulate the prohibition of trafficking in women, especially the Protocol on Trafficking in Women, countries are expected to be able to apply the provisions individually and collectively to combat trafficking in women. To eradicate trafficking in women collectively, it is not enough to be solely coordinated by global international organisations; regional international organisations also play a crucial role. The Southeast Asian region has ASEAN as a regional international organisation, and thus, ASEAN also has a significant role in eradicating trafficking in women in the area.²⁹ ASEAN serves as a forum for cooperation among countries in the Southeast Asia region, originally aimed at creating regional stability and fostering the national economies of member countries. The Bangkok Declaration outlines the seven goals of ASEAN, which are as follows:³⁰ (1) Accelerate economic growth, social progress, and cultural development in the Southeast Asian region through joint efforts, fostering equality and friendship, to strengthen the foundation of a prosperous and peaceful society among Southeast Asian nations, (2) Promote regional peace and stability by respecting justice and the rule of law in relations between countries in the Southeast Asian region and adhering to the principles of the United Nations Charter, (3) Promote active cooperation and mutual assistance on issues of common interest in the economic, social, technical, scientific, and administrative fields, (4) Provide mutual assistance in the form of training and research facilities in the fields of education, professions, engineering, and administration, (5) cooperate more effectively to increase the use of agriculture, expand trade, study international commodity problems, improve transportation and communication facilities, and enhance people's living standards, (6) Promote research on Southeast Asia (7) Maintain close and fruitful cooperation with various international and regional organisations sharing similar objectives and explore all possibilities for collaboration with each other.

Undeniably, ASEAN has experienced various internal and external problems in achieving its goals. The rise of trafficking in women in the Southeast Asian region is one of the internal challenges that pose a significant obstacle for ASEAN, a regional international organisation accommodating countries in the area. In response to these challenges, ASEAN has taken several actions to eradicate trafficking in women, including establishing declarations related to its prohibition and creating ASEAN human rights bodies. With the declarations mentioned earlier and human rights bodies, ASEAN has effectively functioned as a forum for Southeast Asian countries to cooperate in tackling trafficking in women and achieve its goal of maintaining and enhancing regional stability.

²⁸ Article 5 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children 2000.

²⁹ Syahmin A.K., *Pokok-Pokok Hukum Organisasi Internasional* (Jakarta: Binacipta, 1985).

³⁰ "ASEAN Directorate General of ASEAN Cooperation and Ministry of Foreign Affairs of the Republic of Indonesia," in *19* (ASEAN Selayang Pandang, 2010), 15.

However, the efforts to eradicate trafficking in women also necessitate concrete actions at the national level and need to be seen within the context of the national legal systems of each ASEAN member country. International organisations can serve as a tool to enforce international law compliance,³¹ and thus, ASEAN needs to encourage the application of international legal provisions related to the prohibition of trafficking in women among its member countries. The initial steps that ASEAN can take are to urge member countries that have not yet ratified the Trafficking in Women Protocol to do so promptly and encourage the establishment of laws and regulations specifically aimed at eradicating trafficking in women within their respective countries. Moreover, ASEAN should promote the implementation of international human rights standards in its member countries, as this will contribute to resolving human rights issues at the regional level, including trafficking in women.³²

In implementing ACTIP, ASEAN established a cooperation area in dealing with cases of human trafficking under the ASEAN Regional Forum (ARF) framework. The addition of this area of cooperation is also intended to increase understanding and mutual trust, and promote intensive capacity building and quality management of cross-border cooperation to address the problem of human trafficking, especially in the context of early detection, prevention, prosecution and protection of victims of human trafficking. ARF itself has a broader scope, which covers the Asia Pacific region, with as many as 27 member countries participating in the Asia Pacific region. In carrying out its cooperation, each ARF participating country must uphold and respect the values of cooperation listed in the Treaty of Amity and Cooperation (TAC).³³ The cooperation carried out by ARF uses the Preventive Diplomacy (PD) approach, where the aim is to prevent or fight against the great powers and build ASEAN.³⁴

The challenge faced by ASEAN in tackling the issue of Trafficking in Persons in the region is its multidimensional nature, involving human, economic, and socio-cultural aspects, among others. Comprehensive countermeasures require considerable time and sustainability due to the need for coordination and collaboration between stakeholders at both national and regional levels. The complexity of the challenges faced by ASEAN members highlights the necessity for a joint commitment to initiate and maintain cooperation among member countries. The concept of regionalism fostered through cooperation among member countries, is key to realising the goals of the formation of ASEAN. Indeed, ASEAN stands as an exemplary and well-developed regionalism model in Southeast Asia, prioritising security and stability and respecting the diverse values of its members.³⁵

Indonesia is a member of the ASEAN Convention on Trafficking in Persons, Especially Women and Children (ACTIP). It is one of the countries in the world that serves as the origin, transit, and

³¹ Sri Setianingsih Suwardi, *Pengantar Hukum Organisasi Internasional* (Jakarta: UI-Press, 2004).

³² L. M. Gandhi Lopian, *Aspek Hukum Penghapusan Trafiking (Perdagangan Manusia) Khususnya Wanita Dan Anak*, 2006.

³³ *Ministry of Foreign Affairs* (Jakarta : Kementerian Luar Negeri: ASEAN Selayang Pandang, 2012).

³⁴ Liftihar Rafitri, "Implementation of Asean Regional Forum (ARF) on Trafficking in Persons in The Asia Pacific Area," *Jurnal Diplomasi Pertahanan* 7, no. 1 (2021): 90, <https://doi.org/https://doi.org/10.33172/jdp.v7i1.670>.

³⁵ Sekretaris KPP dan PA, *Pencegahan Dan Penanganan Tindak Pidana Perdagangan Orang Laporan*, 2015.

destination for trafficking in persons. Despite the Indonesian government's efforts to overcome these obstacles, trafficking in persons has not been eradicated to its fullest extent, necessitating cooperation from all parties involved. Establishing the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons should play a vital role in optimising the country's response. This calls for contributions and cooperation from various parties, including international and national efforts. Eradicating human trafficking poses a challenge not only to Indonesia but also to other ASEAN member countries. Some countries are considered destination countries, while others are origin and transit countries. As a result, each member country's national and strategic priorities may differ depending on their role in trafficking.³⁶ Human trafficking is a serious and widespread concern in Indonesia, as well as in Asia and globally. It takes place not only within Indonesia, like inter-island trafficking, but also extends beyond its borders to other countries. Indonesia has gained international attention due to its prevalence as a hub for human trafficking.³⁷ Human trafficking constitutes a gross violation of human dignity and requires the collective effort of the nation to combat it. As the United States Department of State data indicates, Indonesia ranks third among suppliers of trafficking in women and children.³⁸

Indonesia has already enacted Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, which was further strengthened in 2017 with the ratification of the regional instrument, the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP), into Law Number 12 of 2017. The ratification of ACTIP is expected to increase the effectiveness of preventing and eradicating the crime of trafficking in persons, especially women and children, as well as provide protection and assistance to victims of the crime of trafficking in persons, especially women and children.³⁹ This legal framework is expected to serve as an umbrella for combating transnational crimes, particularly human trafficking. To mitigate the impact of this criminal act, the government collaborates with local governments, community organisations, the business world, and international organisations by establishing the Task Force for the Prevention and Handling of Trafficking in Persons.⁴⁰ However, the fundamental reason behind the ratification is due to its alignment with the national purpose as stated in the First and Fourth Alinea of the Preamble of the 1945 Constitution of the Republic of Indonesia.⁴¹

³⁶ Everd Scor Rider Daniel, Nandang Mulyana, and Budhi Wibhawa, "Human Trafficking Di Nusa Tenggara Timur," *Social Work Journal* 7, no. 1 (2017), <https://doi.org/10.24198/share.v7i1.13808>.

³⁷ Agus Takariawan Sherly Ayuna Putri, "Understanding of Protection for Victims of Trafficking and Child Labor in West Java," *Journal of Science and Technology Applications for Society* 6, no. 3 (2017), <https://doi.org/10.24198/dharmakarya.v6i4.14839>.

³⁸ Sakroni, "Trafficking in Person An Overview of the Social Aspects of Trafficking in Women and Children," *Scientific Journal of Social Work* 11, no. 2 (2012), <https://doi.org/10.22219/kembara.v7i2.17649>.

³⁹ Nony Woro Pangastuti dkk, "Indonesian Obstacles In Combat Trafficking In Person To Realise Asean Convention Against Trafficking In Persons Especially Women And Children," *Jurnal Lex Suprema* 1, no. 2 (n.d.), <https://jurnal.law.uniba-bpn.ac.id/index.php/lexsuprema/article/view/85>.

⁴⁰ Paul SinlaEloE, *Tindak Pidana Perdagangan Orang* (Malang: Setara Press, 2017).

⁴¹ Ministry of Law and Human Rights of the Republic of Indonesia, *Naskah Akademis RUU Tentang Pengesahan ACTIP* (Jakarta, 2016).

The ACTIP has been accommodated by Indonesia's current legislation, which covers a wide range of the compounds specified and depicted in the convention. The government should take more steps to implement the convention to increase its effectiveness, such as encouraging the regional governments to establish provincial regulations specifically formed to eradicate TIPs, as each province faces different challenges due to its circumstances. Although the existing regulations have sufficiently accommodated ACTIP for the current circumstances, the government should take more initiatives to implement the convention. To level up the advantages and purposes of this convention, it is also necessary to provide a better compliance mechanism.⁴²

ASEAN's Efforts in Combating the Crime of Women and Children Trafficking in the Southeast Asian Region

The ACTIP addresses issues related to the crimes of smuggling and trafficking in persons. It has four main focuses: prevention of smuggling and trafficking; enforcement of laws and punishment for offenders; protection of victims; and fostering cooperation and coordination among ASEAN member countries and internationally. This special attention from ASEAN demonstrates its active commitment to combating smuggling and human trafficking. By implementing ACTIP, ASEAN aims to safeguard the rights and dignity of all individuals in its member countries without exception.⁴³

ASEAN's initial efforts to combat the issue of transnational crime are seen in The ASEAN Declaration Against Human Trafficking in Persons, Particularly Women and Children, which was adopted in 2004. This declaration signifies ASEAN's commitment to the United Nations Convention on Combating Transnational Organized Crime. Several steps have been taken by ASEAN in the fight against human trafficking, including:⁴⁴ (1) Establishing various regional networks in Southeast Asia to prevent and eradicate trafficking in persons, especially women and children, (2) Implementing measures to strengthen and protect the legitimacy of passports, identities, and other official travel documents in each ASEAN country, making fraud more difficult, (3) Regularly exchanging information and views between ASEAN countries, sharing data on migration flows, trends, and patterns, as well as enhancing border controls, monitoring mechanisms, and enforcement of relevant laws and regulations, (4) Strengthening cooperation between immigration authorities and other law enforcement agencies, (5) Ensuring the separation of trafficking victims from perpetrators, identifying their countries of origin and nationality, providing necessary humanitarian assistance such as medical aid, and ultimately repatriating victims to their countries of origin, (6) Taking various actions to protect the human rights and dignity of victims of human trafficking, (7) Implementing coercive measures against individuals, organisations, or syndicates involved in human

⁴² Jevlin Solim, "The Accommodation of ASEAN Convention against Trafficking in Persons (ACTIP) in Indonesia Regulation," *Fiat Justisia* 13, no. 2 (2019): 170, <https://doi.org/10.25041/fiatjustisia.v13no2.1680>.

⁴³ Hartana and Ni Luh putu Marta Puspita Yanti, "ASEAN's Role as an International Organization Against Transnational Crime (Cross-Country Crime Cases)," *Journal of Pacta Sunt Servanda* 3, no. 2 (2022), <https://ejournal2.undiksha.ac.id/index.php/JPSS>.

⁴⁴ "ASEAN Declaration Against Trafficking in Persons Particularly Women and Children," 2021.

trafficking and imposing punishments for these criminal activities, (8) Strengthening regional and international cooperation to prevent and eradicate human trafficking practices.

The next effort made by ASEAN is to form the ASEAN Pillars, one of which is the Political and Security Pillar, known as the ASEAN Political-Security Community (APSC). In 2009, the blueprint for this pillar was developed. The initial blueprint covered the issue of human trafficking, but its significance was not adequately emphasised. It addressed non-traditional security issues and aimed to strengthen cooperation in the non-traditional security sector, particularly in combating transnational crimes and other challenges. The blueprint seeks to encourage a stronger response to human trafficking and ensure the protection of its victims, aligning with the principles stated in the ASEAN Declaration Against Trafficking in Persons, Especially Women and Children, and other international conventions and protocols related to human trafficking. Several policies have been implemented to address this problem:⁴⁵(1) Strengthening the rule of law and border control between ASEAN member states, (2) Intensifying efforts to prosecute traffickers, (3) Enhancing ASEAN regional cooperation to effectively address the demand and supply associated with human trafficking crimes, (4) ASEAN's efforts to combat human trafficking are also outlined in the Bohol TIP Work Plan 2017–2020, which can be described as the ASEAN Multi-Sectoral Plan. This plan was designed by the Senior Officials Meeting on Transnational Crime (SOMTC) in collaboration with the ASEAN Sectoral Bodies.

The Bohol TIP Work Plan is expected to promote ASEAN's efforts to combat human trafficking and is designed to be implemented over the period 2017–2020. This Work Plan encompasses various policies that must be implemented by ASEAN members, including:⁴⁶ (1) Improving campaigns to raise awareness and educate the ASEAN community about the issue of human trafficking, as this crime violates human rights. This involves active participation from the mass media, relevant non-governmental organisations (NGOs), the private sector, and community leaders both locally and internationally, (2) Continuously developing the quality of law enforcement, community welfare, education, local immigration agencies, labor, and officials to enhance government measures in preventing human trafficking This effort is expected to encompass aspects of respect for human rights, children, and gender-sensitive issues, and the results should encourage cooperation and support among civil society, non-governmental organisations, and other relevant entities, (3) Implementing an effective mechanism to prevent the movement of perpetrators engaged in human trafficking and to protect the victims This entails an appropriate border control system, issuing identity papers and travel documents, and controlling measures that are susceptible to counterfeiting or fraudulent use of identity and travel documents, (4) Pressuring ASEAN countries to adopt and implement effective labor laws or other mechanisms that promote and protect the interests and rights of workers, thus reducing the risk of them being trafficked, (5) Adopting and ensuring the implementation of action plans by each ASEAN member country aimed at identifying and

⁴⁵ J. Foo, *Cost of Human Trafficking in Southeast Asia*, n.d., http://www.vietstudies.info/kinhte/cost_of_human_trafficking.html.

⁴⁶ ASEAN, “Bohol TIP Work Plan 2017-2020,” n.d., https://www.aseanrokfund.com/lib/upload%0A/files/resources/02_-_Final-Version-of-Bohol-TIP-Work-Plan-2017-2020_13Nov2017.pdf%0A.

prioritising policies and programs to prevent human trafficking, as well as strengthening the implementation and coordination of the monitoring mechanisms for these plans, (6) Strengthening preventive measures to address the root causes that encourage the exploitation of humans, especially women and children, leading to human trafficking. Additionally, implementing policies to protect victims of human trafficking and facilitate their return to their countries of origin.

ASEAN has undertaken several initiatives to advocate for the rights of its community, with a particular focus on human security, particularly personal and political security. Personal security pertains to safeguarding individuals from threats and violence, such as human trafficking, affecting ASEAN community members, especially women (rape) and children, both within and outside Southeast Asia. These heinous acts are often perpetrated in an organised manner. On the other hand, political security relates to the infringement of human rights by traffickers, who deny victims essential freedoms, behaviours, the right to life, and protection from violence.⁴⁷

Criticising the Implementation of the ACTIP

Human Trafficking is influenced by various factors, namely economic factors, social factors, External environmental, and the structure and culture of society. Economic factors, namely the accumulation of poverty with a lack of available jobs and low levels of education. Their income is insufficient, and they become migrant workers without skills or knowledge. Socio-cultural factors, namely community values, consider children as assets who can work to ease the burden on the family, so employing children is considered normal. External environmental factors outside of human control, such as natural disasters, ethnic massacres, economic crises, or gender-biased policies, then lead to child labour, economic crises, or gender-biased policies that force them to migrate without documents and a specific destination.⁴⁸ That problem made human trafficking to be a complex case. Even though it has been regulated in several international regulations, as discussed earlier, in implementing these rules, countries face several obstacles. There are many obstacles that must be faced in efforts to eradicate the criminal act of trafficking in persons; these obstacles are:⁴⁹ (1) Many community members continue to live below the poverty line; (2) prospective Indonesian migrant workers must complete a minimum level of education and training before they can work abroad; (3) there are no facilities for hiring local workers; (4) legalising marriage at a young age is still widely accepted in society; (5) debt bondage is still prevalent in the recruitment and repatriation of workers, creating the possibility of trafficking-related crimes; (6) After being brought home, victims of the crime of human trafficking are still at risk of being re-trafficked because there are still no supportive programmes in place; (7) The community's and its leaders' minimal involvement in the fight against human trafficking; (8) The prevention of human trafficking lacks an integrated

⁴⁷ ASEAN, "Human trafficking thriving in ASEAN", accessed at <https://theaseanpost.com/article/human-trafficking-thriving-asean>.

⁴⁸ Lilis Salamah, *Indonesia's Challenge in Value Implementation of ASEAN Convention Against Trafficking in Person, Women and Children (ACTIP-WC)* (Atlantis Press, 2018), <https://doi.org/https://doi.org/10.2991/icocspa-17.2018.16>.

⁴⁹ Rahmat Hi Abdullah, *Upaya Penanggulangan Tindak Pidana Perdagangan Orang Di Indonesia*, n.d. Sebagaimana dikutip oleh Nony Woro Pangastuti, "Indonesian Obstacles In Combat Trafficking In Person To Realize Asean Convention Against Trafficking In Persons Especially Women And Children."

monitoring and assessment mechanism; (9). There is no shared understanding of human trafficking among law enforcement; (10) Laws that make it challenging to show evidence; (11) There is still a lack of community involvement in campaigns to deter crime and bring offenders to justice; (12) Quality of human resources of law enforcement officials and infrastructure is not yet supportive; (13) legal aid for victims, especially victims who work abroad is weak; (14) There are technical difficulties in enforcing perpetrators who have the status of Foreign Citizens (WNA); (15) The role and function of the task force at the national, provincial and district/city levels is not yet optimal; (16) There is still a lack of accurate data on victims of the human Trafficking because new victims report when there is loss/suffering; (17) There are still obstacles in the bureaucratic process in handling victims, which can hinder prevention and law enforcement; (18) There are still obstacles in handling rehabilitation for victims of the Crime of Trafficking in Persons; (19) The Government has not optimally provided the budget for handling victims, especially for repatriation of victims who are abroad; (20) There is still a weak legal basis for representatives of the State of Indonesia abroad in efforts to accommodate migrant workers in destination countries.

The members of ASEAN view that the issue of human trafficking is not only a problem that occurs within a country but also involves countries, which must be handled together. In dealing with these obstacles, countries can make several efforts, namely:⁵⁰ (1) Do approach the other ASEAN countries still not on the same vision in eradicating trafficking in persons through lobbying, informal meetings, dialogue and consultations. Indonesia itself continues to strive to build synergy and strengthen ASEAN unity, as was last done through the implementation of the informal ASEAN Senior Official Meeting (SOM) in Bali in December 2016, (2) Encouraging ASEAN centrality in responding to dynamics in the region and the world, by coordinating with several ASEAN countries and Dialogue Partner members, (3) Actively encourage the streamlining and improvement of the ASEAN meeting format (streamlining of ASEAN Meetings) by submitting recommendations at each ASEAN High-Level Conference to reduce ASEAN high-level meetings which are usually held twice a year to only once a year. If this can be implemented, resource efficiency and the delivery of the interests of each country can be carried out optimally, (4) Optimising supervision to prevent human trafficking, (5) Tighten checks at Immigration Checkpoints (TPI) both at seaports, airports, border crossing posts, or other places as entry and exit points to the country's territory, (6) Countries impose strict sanctions on perpetrators of trafficking in persons

Thus, it is necessary to take several actions in implementing the ACTIP arrangements. ASEAN Members must cooperate with each other either bilaterally or multilaterally so that the ACTIP can be implemented effectively. Stopping human trafficking requires an effective regulatory framework, stronger law enforcement mechanisms, and cooperation between countries.⁵¹

⁵⁰ Rahmat Hi Abdullah, *Upaya Penanggulangan Tindak Pidana Perdagangan Orang Di Indonesia*.

⁵¹ Siti Rumlah, "Efforts To Handle Victims Of Human Trafficking In Indonesia," *Jejak: Jurnal Pendidikan Sejarah & Sejarah FKIP Universitas Jambi* 1, no. 2 (2021): 95–96.

CONCLUSION

According to the discussion above, the conclusions are: (1) The ACTIP Convention regulates provisions for dealing with trafficking problems, both prevention and handling, which are the responsibility of the central and local governments as well as the community by establishing various task forces in the implementation of prevention and control of human trafficking that occurs. In addition, ACTIP can help Indonesia exchange information with other countries and provide training to the authorities as well as socialisation related to the practice of preventing and overcoming human trafficking, as well as rehabilitating victims of human trafficking. The practical role of ACTIP is still not much, considering that this convention is still in the implementation and socialisation stages, especially for agencies outside the relevant government (NGOs) and the community. The problem with trafficking in women is that the existing definitions are inadequate, (2) Several steps have been taken by ASEAN in the fight against human trafficking, including: Establishing various regional networks in Southeast Asia to prevent and eradicate trafficking in persons, especially women and children; Implementing measures to strengthen and protect the legitimacy of passports, identities, and other official travel documents in each ASEAN country, making fraud more difficult; Regularly exchanging information and views between ASEAN countries, sharing data on migration flows, trends, and patterns, as well as enhancing border controls, monitoring mechanisms, and enforcement of relevant laws and regulations; Strengthening cooperation between immigration authorities and other law enforcement agencies; Ensuring the separation of trafficking victims from perpetrators, identifying their countries of origin and nationality, providing necessary humanitarian assistance such as medical aid, and ultimately repatriating victims to their countries of origin; Taking various actions to protect the human rights and dignity of victims of human trafficking; Implementing coercive measures against individuals, organisations, or syndicates involved in human trafficking and imposing punishments for these criminal activities; Strengthening regional and international cooperation to prevent and eradicate human trafficking practices, (3) there are many obstacles that must be faced in efforts to eradicate the criminal act of trafficking in persons. So, it is necessary to take several actions in implementing the ACTIP arrangements. ASEAN Members must cooperate with each other either bilaterally or multilaterally so that the ACTIP can be implemented effectively

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