

IDENTIFYING THE CRIME OF INSIDER TRADING FERIENJOB IN GERMANY AND LEGAL PROTECTION FOR INDONESIAN STUDENTS

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Article	Abstract
Keywords: Climate Change; Global Warming; Environmental Law; Economic Activities. DOI: 10.28946/scls.v2i2.4206	<p>The phenomenon of ferienjob (seasonal work) in Germany is increasingly attractive to international students, including those from Indonesia, as it offers income opportunities and work experience abroad. However, behind the legality and attractiveness of this work, some loopholes can be used for exploitation, which in some instances can lead to the crime of trafficking in persons. This study aims to identify modes of exploitation in the context of ferienjob and evaluate the level of legal protection available to Indonesian students, both from German and Indonesian law perspectives. The study reveals the existence of covert forced labor practices, violations of labor rights, and a lack of supervision of employment agencies facilitating Indonesian students. In addition, the different legal regimes in the two countries often cause uncertainty regarding legal protection, mainly when violations occur outside the home country's jurisdiction. The results show that despite applicable legal instruments, the implementation of protection for Indonesian students working in Germany still needs to be improved.</p>

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A. INTRODUCTION

Human trafficking has become a global phenomenon involving millions of victims worldwide. Trafficking cases, especially those involving migrant workers and students, have shown a significant increase in the last decade. In 2021, the International Labor Organization (ILO) noted that more than 50 million people were trapped in forced labor and sexual exploitation as part of human trafficking.¹ This is not only the case in developing countries but also in developed countries such as Germany, which is a frequent destination for seasonal workers and international students seeking work experience through *ferienjob* schemes.

According to the Law, trafficking in persons violates fundamental human rights, including the right to work in fair and decent conditions, free from exploitation. *Ferienjobs*, jobs often offered to international students, are seen as an attractive opportunity for Indonesian students looking to gain international experience and additional income during their studies. However, behind the opportunity, the scheme is often a guise for human trafficking and labor exploitation, especially against students who are not well-informed about their rights as migrant workers in foreign countries. Many students are trapped in this situation due to a lack of understanding about their rights as migrant workers in foreign countries. They often do not realize that recruitment agencies' information can be misleading or even false.² KOMNAS HAM data shows that as many as 1,047 Indonesian students have been victims of trafficking in persons (TPPO) in the context of *ferienjobs* in Germany, with the *modus operandi* involving deception regarding working conditions, salaries, and promised facilities.³ While not all part-time jobs abroad have poor working conditions, many cases of exploitation occur due to a lack of regulation and supervision.

Theoretically, human trafficking in the context of employment involves various human rights violations, including modern slavery and forced labor. This scheme of human trafficking is regulated internationally through the 2000 Palermo Protocol, which binds member states, including Indonesia and Germany, to prevent, punish, and prosecute trafficking in persons, as well as provide sufficient protection for victims. Indonesia has ratified this protocol through Law No[A4]. 21/2007 on the Eradication of Trafficking in Persons, which provides legal protection for victims.⁴ Unfortunately, implementing this protection for Indonesian students working abroad, including the *ferienjob* program in Germany, still faces significant challenges. Although Indonesia and Germany are bound by the Palermo Protocol and the UN Convention on Transnational Organized Crime (UNTOC), there is currently no specific bilateral agreement between Indonesia and Germany governing law enforcement related to human trafficking cases. The absence of this agreement hinders coordination between the two countries in handling trafficking cases and providing protection to victims. These international legal instruments are also not directly applicable or implemented nationally. In many cases, criminal law judges in both countries tend to use only national laws and rarely refer to state responsibilities following these international legal instruments. This results in gaps in law enforcement and protection for victims.

¹ International Labour Organization (ILO), "Global Estimates of Modern Slavery: Forced Labour and Forced Marriage," 2022, <https://publications.iom.int/books/global-estimates-modern-slavery-forced-labour-and-forced-marriage>.

² CNN Indonesia, "Fakta Kasus Ferienjob, Perdagangan Orang Berkedok Magang Di Jerman," 2024, <https://www.cnnindonesia.com/nasional/20240330102743-12-1080662/fakta-kasus-ferienjob-perdagangan-orang-berkedok-magang-di-jerman>.

³ KOMNAS HAM, "Keterangan Pers Nomor: 15/HM.00/III/2024," 2024, [https://www.komnasham.go.id/files/20240325-keterangan-pers-nomor-15-hm-00-\\$QWSLB.pdf](https://www.komnasham.go.id/files/20240325-keterangan-pers-nomor-15-hm-00-$QWSLB.pdf).

⁴ Bayu Aji Pramono and Mahrus Ali, *Perdagangan Orang: Dimensi, Instrumen Internasional Dan Pengaturannya Di Indonesia* (Jakarta: Citra Aditya, 2011), 20.

Indonesian students working under the *ferienjob* scheme often face significant obstacles in obtaining proper legal protection. One of the main obstacles is the lack of awareness of labor rights in the destination country and the lack of access to information on labor regulations in Germany. However, it is essential to note that Germany has rules and regulations for temporary employment that provide legal protection for workers. Unfortunately, many students are unaware that they have the right to a living wage, as well as protection from exploitative working conditions, including inhumane working hours and excessive workloads. This ignorance leads to vulnerability to exploitation, which can negatively affect their physical and mental health, and a lack of understanding of labor rights can lead to students accepting unfair working conditions. In addition, the Indonesian government's weak oversight of employment agencies that recruit students to work abroad further exacerbates the situation. Many agencies operate without official licenses or do not provide adequate information on the actual working conditions in the destination country.

On the German side, while the country has a strong legal framework to protect migrant workers, in practice, international students are often victims of exploitation due to ignorance of their rights. It is important to distinguish between legal migrant workers and illegal workers, those who enter the country without a work visa or stay illegally. These unlawful workers often do not receive the same legal protections and are more vulnerable to exploitation. Students recruited and sent abroad to work under *ferienjob* schemes are supposed to be protected by German labor regulations governing the rights of temporary workers. However, many of them are unaware of these protections and are thus trapped in inhumane working conditions, such as excessive working hours and inadequate wages. This lack of understanding points to gaps in law enforcement and the need for cross-border coordination to prevent human trafficking and protect students from exploitation. Collaborative efforts between Indonesia and Germany are essential to ensure that international students can work in safe and fair conditions.

The obstacles to legal protection for Indonesian students trapped in human trafficking situations are due to various internal and external factors. Internally, the lack of education and outreach about labor rights in the destination country, as well as weak cooperation between the Indonesian and German governments, are significant obstacles in protecting students from exploitative practices. Externally, the differences in legal systems between the two countries and the complexity of cross-border cases make it increasingly difficult to enforce the law against human trafficking cases. Therefore, a more systematic and comprehensive effort from both countries is needed to provide optimal legal protection for Indonesian students working in Germany.

B. RESEARCH METHODS

This research uses the normative method to examine relevant legal issues. This method, often called doctrinal legal research, focuses on the written rules in legislation that guide society. However, the question posed in this study implies a broader approach: to identify the empirical and legal issues that prevent the government from adequately responding to the real issue of trafficking in Indonesia. To achieve this goal, the study applied a statute approach and a conceptual approach. The statutory approach involves reviewing all laws and regulations relevant to the legal issue under study to determine the *ratio legis*, ontological basis, and philosophical foundation of the protection arrangements.

Meanwhile, the conceptual approach is used to understand the context and implications of the regulation in practice. The data in this research was collected through library research to solve the research problem. Through the analysis of existing documents and literature, this research aims to identify the barriers faced by the government and provide recommendations to improve the response to the problem of human trafficking.

C. ANALYSIS AND DISCUSSION

1. Legal Protection Provided By The German Government To Victims Of Human Trafficking Involved In Ferienjob In The Trade Sector

On March 25, 2024, in an article published by HERALD.ID titled "Germany, an Advanced and Attractive Country Exploited by Certain Individuals," Aswad Syam discussed the alleged case of Human Trafficking involving students through a program in Germany known as "ferienjob." Ferienjob isn't an internship program but a manual worker position. It's used for student's who are willing to work while getting a holiday from the university.

In this case, several elements of human trafficking have been found. They are the focus of the Indonesian National Police's Criminal Investigation Agency, particularly the element of fraud in the recruitment process of students. The police investigation has already set five suspects, one of whom is a professor. The information provided did not match the reality, such as working conditions, wages, facilities, and worker's rights. This indicates that there was fraud in the recruitment process. The university should protect their student from the fraud that happened to their student, while fraud claim it's an internship from the program of Merdeka Belajar Kampus Merdeka (MBKM) by the Kementerian Pendidikan Kebudayaan Riset dan Teknologi (Kemendikbud Ristek).

Beyond deception, exploitation has also come under scrutiny. Students are placed in jobs that do not align with their contracts or fields of study and are forced to do manual labor. Based on the student's confession who reported it, when they arrived in Germany, they were immediately handed a contract letter by the migrant worker placement company (PM3I) and a working permit to be registered with the German Ministry of Manpower. The letter was in German, which the students did not understand. The method used by the perpetrator was the promise of a ferienjob internship program in Germany with a high salary that could be converted into 20 credits. They are exploited for the profit of certain parties who fail to fulfill their contractual obligations, indicating a breach of the employment agreement.

Victims of human trafficking undoubtedly require special legal protection. Thus, there are two aspects of legal protection: juridical protection and non-juridical protection.

a. Judicial Protection

Based on the legal aspects undertaken by the government to provide legal protection, Specifically, the protection of the victim ruled in UU No. 13/2006 about the protection of the victim, all about the protection of victim are ruled in here except ruled differently by UU No. 21/2007. In UU No. 21/2007, victims get protection from the government from Article 44 until Article 55, which is all about protecting the victim's rights. They get restitution and rehabilitation if they get traumatic or any other disease caused by the criminal act.

According to Barda Nawawi, victim protection is abstract or indirect in positivist states rather than direct.⁵ As a result, various formulations of criminal offenses have been included in legislation to protect human rights. Therefore, due to the vagueness and lack of specificity in the Criminal Code regarding provisions for victims and the absence of specific criminal offenses related to restitution or

⁵ Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana* (Citra Aditya Bakti, 1998), 55.

compensation for victims and their families, judges can offer optional, non-coercive, and non-imperative options for offenders to protect victims from criminal acts as stipulated in the Criminal Code. Because the Criminal Code does not explicitly regulate this matter, more specific regulations are needed to protect victims from perpetrators. Therefore, the *Lex Specialis Derogat Legi Generalis* principle applies, allowing more specific regulations to override general regulations. In international law, This is regulated in CEDAW (Convention on Elimination of All Forms of Discrimination against Women) and protocol to prevent, suppress, and punish trafficking in persons. In the national law, This is regulated in Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 on the Protection of Witnesses and Victims. Article 5, paragraph (1) states that the rights are granted by the state to be owned by victims and witnesses, including:

- 1) The right to be protected regarding personal, family, property, and freedom security without intimidation or threats related to witnesses who will, are, or have given their testimony;
- 2) The right to participate in determining and deciding the type of protection and security supported by law enforcement. The right to provide information without being under pressure;
- 3) The right to obtain translator services;
- 4) The right to be exempt from questions that are misleading or manipulative;
- 5) The right to obtain information on the progress of the case;
- 6) The right to receive information on the progress from the court;
- 7) The right to be notified if the prisoner has been released;
- 8) The right to have their identity protected and kept confidential;
- 9) The right to obtain a new identity if necessary;
- 10) The right to obtain temporary accommodation;
- 11) The right to obtain a new residence;
- 12) The right to receive compensation for transportation costs, which is replaced by the state budget (APBN);
- 13) The right to obtain legal counsel in the legal process;
- 14) The right to receive living expenses assistance until state protection ends and
- 15) The right to receive legal assistance throughout the process.

Article 5, paragraph (1) stipulates that witnesses and/or victims may be granted Compensation if it is following the decision of the LPSK. While the regulations explicitly state the rights of victims and witnesses, the reality is that there is often an overlap in regulations, where there is no synchronization between each law. Consequently, the existing laws merely become decorations or obligations, but their enforcement is poorly implemented.

In reality, the state only bears the transportation costs, while medical expenses require state assistance to restore the victim to their original condition. There is a need for recovery from the incident that befell them. As a country adhering to its own legal system, Indonesia has a rigid legal procedure, leading many to believe that legal products are a law unto themselves.⁶

Specifically, Article 43, paragraph (1) stipulates that the state can provide compensation, medical and social rehabilitation, and reunification to victims who have suffered physical, psychological, and social harm as a result of such acts. Furthermore, these provisions are detailed in Articles 44, 47, 48, and 51-54, which

⁶ Siswanto Sunarso, *Viktimologi Dalam Sistem Peradilan Pidana* (Jakarta: Sinar Grafika, 2012), 304.

discuss victims' rights and the mechanism for claiming such rights.⁷

The government has subsequently enacted new laws in response to the increasingly rampant and widespread nature of human trafficking in Indonesia, particularly after the enactment of Law Number 14 of 2009 concerning the Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women, and Children. This is not a small-scale crime but is well-organized. In addition, the Legislative Body has enacted Law Number 15 of 2009 concerning the Protocol against the Smuggling of Migrants by Land, Sea, and Air. At a convention meeting, the United Nations also expressed strong opposition to the transnational crimes currently taking place. After the government ratifies the UNTOC and the convention, the impact is giving access to international partnership to prevent and eradicate organized criminal acts and building framework law that effectively prevents transnational criminal acts.⁸

b. Non-Judicial Protection

Beyond the provisions outlined in the law articles, a clear definition, limitations, and terminology are needed for related narratives, such as medical assistance and counseling. The government must be able to provide access to specialized institutions dealing with law enforcement and the execution of victims' rights, thereby fostering a sense of security and public trust in law enforcement and encouraging victims to report crimes. There is rehabilitation for the victim, and LPSK has the right to protect the victims of TPPO. This is because it is human nature to defend one's interests. Furthermore, information should be shared with the public to encourage them to partner with law enforcement, such as the police, as this can serve as a form of social control and allow the public to monitor the effectiveness of law enforcement.

2. Obstacles Experienced By Indonesian Students In Germany In Accessing Legal Protection Related To Human Trafficking Cases Through Ferienjob And Solutions

There are various obstacles in law enforcement efforts to combat human trafficking, including:

a. Internal Factors

1) Lack of Optimal Coordination Among Government Agencies

Coordination of the eradication of TPPO involves many agencies or institutions, such as law enforcement agencies of the Police, Prosecutor's Office and Court, and other government agencies such as Ministries.. All of these agencies are members of the Task Force for the Prevention and Handling of Trafficking in Persons, which is a coordinative institution tasked with coordinating efforts to prevent and handle trafficking in persons. However, the number of agencies involved in the TPPO Task Force sometimes creates disharmony because it creates difficulties in coordination and the emergence of sectoral egos between institutions that stand alone.⁹

In the case of *ferienjob*, the perpetrator claims that the program has been officially registered at the Ministry of Education, Culture, and Research. This program is claimed to be an internship program in Germany. So many

⁷ Aziz Syamsudin, *Tindak Pidana Khusus* (Jakarta: Sinar Grafika, 2011), 63.

⁸ *Ibid.*, 65.

⁹ Meysasi Kirana Resa and Nyoman Serikat Putra Jaya, "Problematisasi Gugus Tugas Dalam Upaya Pencegahan Dan Penanganan Tindak Pidana Perdagangan Orang (Human Trafficking)," *Masalah-Masalah Hukum* 50, no. 2 (2021): 165, <https://doi.org/10.14710/mmh.50.2.2021.161-171>.

students are tempted to join this program. This program is not following reality, where students are used for the benefit of certain parties without considering their rights as workers.¹⁰ After the case was investigated further by the Police Criminal Investigation Unit, it was found that the program was never registered with the Ministry of Education and Culture, Research and Technology or as a labor recruiter at the Ministry of Manpower. This reflects the lack of advocacy and socialization of the Law on Trafficking in Persons in the community, and the prevention and eradication of TPPO have not been maximized.¹¹

From the *ferienjob* case, it can be concluded that there is still a lack of coordination between agencies, in this case, law enforcement officials, the Ministry of Education, Research Culture and Technology, the Ministry of Manpower, and the Ministry of Foreign Affairs in monitoring the potential for TPPO fraud.

2) Limited Resources and Facilities

The effectiveness of human trafficking prevention and law enforcement efforts is significantly hindered by inadequate resources and infrastructure. Law enforcement agencies, particularly the police, often lack the necessary tools to effectively carry out their duties, such as data and information technology and transportation.¹²

3) Insufficient Human Resources

Law enforcement agencies often face challenges due to a shortage of qualified personnel, particularly those with expertise in information technology. The ability to trace initial data on human trafficking cases is significantly dependent on IT skills, and the lack thereof can hinder investigative efforts.¹³

b. External Factors

1) Lack of victim understanding

Students who participate in the *ferienjob* program are first given a work contract and work permit by the perpetrator. These documents were in German, which the students did not understand. So many signed without understanding the contents and conditions of the contract. This came to light when representatives of the Republic of Indonesia in Germany received several reports about complaints and problems of students participating in *ferienjob*. So the Indonesian Embassy in Berlin said that the Ministry of Education, Culture Research and Technology called on all universities to stop participating in *ferienjob*. Then, the government, through the Police Criminal Investigation Unit, followed up by conducting an investigation related to the alleged TPPO with the *ferienjob* mode.¹⁴

2) Technology and Information

¹⁰ Burdin Hambali, "Penanganan Tindak Pidana Perdagangan Orang," *Jurnal Litbang Polri* 22, no. 4 (2019): 44, <https://doi.org/10.46976/litbangpolri.v22i4.36>.

¹¹ Muhammad Kamal, *Human Trafficking: Penanggulangan Tindak Pidana Perdagangan Manusia Di Indonesia* (Makassar: Social Politic Genius, 2019), 53.

¹² Risca Gladis Ratnasari and Ariyanti, "Penegakan Hukum Tindak Pidana Perdagangan Orang Terhadap Pekerja Migran Indonesia Secara Non Prosedural," *Merdeka Law Jurnal* 4, no. 1 (2023): 49, <https://doi.org/10.26905/mlj.v4i1.11157>.

¹³ Resa and Jaya, "Problematika Gugus Tugas Dalam Upaya Pencegahan Dan Penanganan Tindak Pidana Perdagangan Orang (Human Trafficking)," 167.

¹⁴ Penny Naluria Utami, "Penanganan Kasus Tindak Pidana Perdagangan Orang Oleh Pemerintah Provinsi Nusa Tenggara Timur," *Jurnal HAM* 10, no. 2 (2019): 197, <https://doi.org/10.30641/ham.2019.10.195-216>.

The rapid advancements in technology and information have facilitated human traffickers' ability to access potential victims. These criminals prey on children and adolescents through online platforms by recruiting and selling them.¹⁵

3) Extensive Criminal Patterns

Human trafficking exhibits broad criminal patterns, often involving transnational operations. Perpetrators utilize a variety of deceptive tactics to ensnare victims. Standard modus operandi includes the pretense of "recruitment," frequently leading to the illegal trafficking of victims across international borders.¹⁶

Several solutions can be offered regarding *ferienjob* cases, such as:

- a) Improvement of Oversight and Regulation by Authorities: the governments of Indonesia and Germany need to enhance their oversight of part-time job recruitment agencies (*ferienjob*) to ensure that Indonesian students are not subjected to exploitation or human trafficking;
- b) Dissemination of Rights and Protection Procedures to Indonesian Students, the Embassy of the Republic of Indonesia (KBRI) should provide clear information regarding the rights of students in Germany and the procedures for filing complaints in case of violations. This information can be delivered through seminars, guides, or webinars before their departure;
- c) International Collaboration in Law Enforcement: collaboration between the governments of Indonesia and Germany is essential in tracking and prosecuting perpetrators of human trafficking through bilateral agreements and international legal mechanisms;
- d) Strengthening the Legality and Certainty of Employment Contracts, all employment contracts for students should be reviewed by the KBRI or related institutions to ensure compliance with applicable labor laws in Germany;
- e) Establishment of a Crisis Hotline and Support Services, a dedicated hotline for Indonesian students in Germany should be established to address threats of exploitation or trafficking, accompanied by legal and psychological assistance;
- f) Pre-Departure Education Enhancement, the Indonesian government, and universities should provide training or information about German work culture, local laws, and potential risks to help students stay vigilant;
- g) Evaluation and Improvement of Regulations on Part-Time Work Permits, regulations related to part-time work permits for international students in Germany should be revisited to prevent legal loopholes that criminals can exploit; and;
- h) Monitoring and Verification of Recruitment Agencies, a verification system for agencies or companies recruiting students for jobs should be implemented to ensure transparency and avoid illegal practices.

D. CONCLUSION

While Indonesia has laws in place to protect victims of human trafficking, enforcement is often weak. Existing laws, including the Criminal Code and Law Number 21 of 2007,

¹⁵ Resa and Jaya, "Problematika Gugus Tugas Dalam Upaya Pencegahan Dan Penanganan Tindak Pidana Perdagangan Orang (Human Trafficking)," 169.

¹⁶ Muchammad Eko Hidayat dan Tolib Effendi, "Tantangan Dalam Melindungi Hak-Hak Korban Perdagangan Orang Di Indonesia," *Rechtsidee* 11, no. 2 (2023): 197, <https://doi.org/10.21070/jjhr.v12i2.1009>.

frequently favor perpetrators over victims. Law enforcement faces many challenges, such as poor coordination between agencies, a shortage of trained personnel, and victims' fear of reporting crimes due to social stigma. Furthermore, the restitution process is inefficient, leaving many victims without compensation. A lack of public awareness and concern about human trafficking exacerbates the problem. Indonesian students participating in the Ferienjob program are vulnerable to this practice because they often do not fully understand local laws or may become unintentionally involved in their work environment. A lack of legal education is one of the main factors increasing this risk. To protect Indonesian students, international cooperation between Indonesia and Germany is needed to provide legal protection for students facing legal issues and raise awareness about legal obligations in the countries where they work.

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