



LEMBAGA BANTUAN HUKUM  
MASYARAKAT

# POLICY PAPER

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Mechanisms  
for enforcing  
international law  
on trafficking in  
persons for forced  
criminality

LBHM  
2025





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**Mechanisms for enforcing international law on trafficking in persons for forced criminality**

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# Introduction

**INDONESIA** remains a high-risk country for individuals to become victims of human trafficking. According to official data from the Indonesian National Police, 1,061 cases of Trafficking in Persons (*Tindak Pidana Perdagangan Orang – TPPO*) were successfully investigated in 2023, involving a total of 3,363 victims.<sup>1</sup> Civil society organizations within the National Network against Trafficking in Persons (*Jaringan Nasional Anti Tindak Pidana Perdagangan Orang – Jarnas TPPO*) further highlight the gravity of the issue, having assisted in 248 trafficking cases throughout 2024.<sup>2</sup>

One of the most authoritative sources of data on human trafficking is the annual report issued by the United States government. In its 2024 edition, Indonesia is placed on Tier 2 of the U.S. Trafficking in Persons (TIP) Report ranking system. This designation indicates that, while the Indonesian government has made notable efforts to combat trafficking, it does not yet fully meet the minimum standards for the elimination of trafficking as outlined in the U.S. Trafficking Victims Protection Act (TVPA).<sup>3</sup> Among the key concerns highlighted in the report is the limited capacity of Indonesia’s Trafficking Task Force—an inter-agency team established by presidential decree—which has faced persistent challenges related to insufficient funding and poor inter-agency coordination.<sup>4</sup>

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1 Coordinating Ministry for Human Development and Culture, “Penguatan Data dan Inovasi dalam Penanganan Korban Tindak Pidana Perdagangan Orang (TPPO)” October 3, 2024, accessed at <https://www.kemenkopmk.go.id/penguatan-data-dan-inovasi-dalam-penanganan-korban-tindak-pidana-perdagangan-orang-tppo>

2 Firda Janati, Novianti Setuningsih, “Jarnas Anti TPPO Catat Ada 248 Kasus Perdagangan Orang Sepanjang 2024, 87 Korbannya Anak-anak,” Kompas.com, January 9, 2025, accessed at <https://nasional.kompas.com/read/2025/01/09/20140941/jarnas-anti-tppo-catat-ada-248-kasus-perdagangan-orang-sepanjang-2024-87>.

3 U.S. Embassy and Consulates in Indonesia, “2024 Laporan Perdagangan Manusia: Indonesia,” accessed at <https://id.usembassy.gov/id/2024-laporan-perdagangan-manusia/>

4 *Ibid.*

In addition to conducting effective law enforcement in trafficking cases, the government also holds an obligation to continuously identify new threats and modes of trafficking to prevent them. One emerging mode is trafficking in persons for forced criminality, where victims are coerced or exploited through their vulnerabilities to commit crimes. The complexity of trafficking involving criminal coercion often leads to a case-handling approach that focuses more on criminalizing the acts committed rather than identifying the victim's status. As a result, victims are frequently treated as offenders and subjected to prosecution, instead of being recognised and protected as victims of trafficking.

The situation becomes even more difficult when trafficking for forced criminality takes place across countries or becomes a transnational crime. In such cases, there is a significant risk that Indonesian citizens may be detained and criminalized in other jurisdictions, as they are viewed as offenders, even when evidence from Indonesia indicates that they are, in fact, victims. In the context of transnational crime, it is essential to implement effective cross-border law enforcement mechanisms.

This policy paper will examine cases of trafficking in persons for forced criminality and assess the extent to which Indonesia has utilised existing international legal mechanisms to protect victims. The objective is to support necessary policy reforms that would enable the application of the non-punishment principle in trafficking cases and ensure that victims can access their rights.



# Modes of Human Trafficking with Elements of Forced Criminality

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**H**UMAN trafficking for forced criminality is a form of exploitation in which traffickers compel or manipulate victims into engaging in criminal activities for the traffickers' benefit.<sup>5</sup> A 2024 report by the United Nations Office on Drugs and Crime (UNODC) highlights a growing trend in this mode of trafficking.

What distinguishes trafficking for forced criminality from other forms of trafficking lies in the exploitation. In this mode, exploitation involves explicitly forcing the victim to engage in criminal activity, regardless of whether the act constitutes a criminal offense under the country's domestic laws.<sup>6</sup>

This element of forced criminality can be accommodated within Indonesia's legal definition of human trafficking as outlined in Law Number 21 of 2007 on the Crime of Human Trafficking (UU TPPO). The law recognises the element of exploitation as a key component of the crime of trafficking. Exploitation is defined in the regulation as: "acts with or without the consent of the victim, which include but are not limited to prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, exploitation of physical, sexual, or reproductive organs, or the unlawful removal or transplantation of

<sup>5</sup> United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons 2024*, (United Nations Publication, 2024, Sales No: E.24.XI.11).

<sup>6</sup> United Nations Office on Drugs and Crime (UNODC), "Key Indicators of Trafficking in Persons for Forced Criminality to Commit Cyber Enabled Crimes," accessed at [https://www.unodc.org/roseap/uploads/documents/Publications/2023/UNODC\\_Key\\_Indicators\\_of\\_TIP\\_for\\_Fforced\\_Criminality\\_FINAL\\_September\\_2023.pdf](https://www.unodc.org/roseap/uploads/documents/Publications/2023/UNODC_Key_Indicators_of_TIP_for_Fforced_Criminality_FINAL_September_2023.pdf)

organs and/or body tissues, or the use of another person's labour or abilities for material or immaterial gain." The use of the phrase "include but are not limited to" in the definition of exploitation allows for the interpretation that forcing a victim to commit a crime can be considered a form of exploitation under the law.

Unfortunately, data on the number of trafficking cases for forced criminality is not reflected in official reports in Indonesia. There is even a tendency for this mode not to be recognised as part of trafficking. This is evident in the Guidelines for Prosecuting Trafficking in Persons issued by the Attorney General's Office in collaboration with the International Organization for Migration (IOM) in 2021, which identify only six modes of trafficking: sexual exploitation, mail-order bride schemes, exploitation in the fisheries sector, child exploitation, exploitation of migrant workers, and exploitation for organ transplantation.<sup>7</sup>

The only form of trafficking for forced criminality that has begun to receive formal recognition is the exploitation of victims in overseas online fraud camps. In this trafficking scheme, Indonesian citizens are lured by job advertisements on social media, often with minimal requirements for registration. Once abroad, the victims are forced to work in online fraud operations. They are subjected to long working hours, physical abuse, and confinement within tightly controlled camp environments. As of May 2023, the Ministry of Foreign Affairs has assisted 2,438 individuals who have fallen victim to this mode of trafficking.<sup>8</sup>

Another *modus operandi* of trafficking for forced criminality is the recruitment or forced use of individuals as drugs mules. Various court rulings and international literature have highlighted the intersection between human trafficking and the global drug trade, where individuals prosecuted as drug mules are, in fact, victims of trafficking with elements of forced criminality.<sup>9</sup> The United Nations Office on Drugs and Crime (UNODC) has noted that "many victims of human

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7 Attorney General's Office and the International Organization for Migration (IOM) Indonesia, *Guidelines for Handling the Crime of Trafficking in Persons*, (International Organization for Migration, 2021), p. 33-35.

8 Ministry of Foreign Affairs and the International Organization for Migration (IOM) Indonesia, "Information on Cases of Forced Labor and Indications of Trafficking in Persons (TPPO) in Online Scamming Companies Abroad," accessed at <https://indonesia.iom.int/sites/g/files/tmzbd1491/files/documents/2023-08/infosheet-online-scams-indonesian.pdf>

9 Felicity Gerry, et al. (2016), "Is the Law an Ass When It Comes to Mules? How Indonesia Can Lead a New Global Approach to Treating Drug Traffickers as Human Trafficked Victims," *Asian Journal of International Law*, doi:10.1017/S2044251316000230

trafficking are used to ferry drugs across international borders.”<sup>10</sup> The high rate of criminalization in drug trafficking cases, combined with limited awareness among law enforcement officials regarding the element of forced criminality, increases the risk that trafficking victims involved in drug trafficking will be prosecuted rather than protected.

Women drug mules are the primary targets of this mode of trafficking. Many are recruited through deception, coercion, or emotional manipulation—often by partners or spouses—creating financial and emotional dependency before being forced, knowingly or unknowingly, to transport drugs. Indonesia’s legal framework, which remains gender-blind and is mainly influenced by patriarchal norms, rarely recognises women drug mules as potential victims of human trafficking.<sup>11</sup> A 2019 report compiling data from online news sources identified 159 cases involving women acting as drug mules, 13 of which involved situations where the woman was asked by her partner, indicating a clear power imbalance.<sup>12</sup> Nevertheless, this does not preclude the possibility that male drug mules may also be victims of trafficking in similar circumstances.

Terrorism cases, particularly those involving Indonesian nationals abroad, can also be examined through the lens of human trafficking. For instance, several Indonesian citizens have been recruited by the Islamic State of Iraq and Syria (ISIS) as Foreign Terrorist Fighters (FTF). They are often treated solely as perpetrators of terrorism-related crimes. However, there is a possibility that many of these individuals were recruited through deception and the exploitation of social vulnerabilities and subsequently subjected to sexual and other forms of exploitation.<sup>13</sup> In such circumstances, these FTF may also fall within the definition of trafficking victims, specifically in cases for forced criminality.

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10 United Nations Office on Drugs and Crime, “Drug mules: Swallowed by the illicit drug trade,” [https://www.unodc.org/southasia/en/frontpage/2012/october/drug-mules\\_-swallowed-by-the-illicit-drug-trade.html](https://www.unodc.org/southasia/en/frontpage/2012/october/drug-mules_-swallowed-by-the-illicit-drug-trade.html)

11 Sulistyowati Irianto, Lim Sing Meij, Firlana Purwanti, Luki Widiastuti, *Perdagangan Perempuan dalam Jaringan Peredaran Narkotika*, (Jakarta: Yayasan Pustaka Obor, 2005).

12 Novia Puspitasari, *Kerentanan Kurir Narkotika Perempuan dan Hukum yang Tak Peka*, (Jakarta: Lembaga Bantuan Hukum Masyarakat, 2020).

13 Jordan McConville, (2024), “Human Trafficking and U.S. Repatriation of Foreign Terrorist Fighters from Northeast Syrian ISIS Detention Camps,” *Towson Journal of International Affairs* Vol. LVII, No. 2

The specific nature of human trafficking cases for forced criminality highlights the need for targeted attention and regulation in Indonesia. As long as existing legal frameworks and the prevailing legal culture among law enforcement officials fail to recognise that certain criminal acts may be the result of prolonged trafficking processes, the suffering of victims will remain unacknowledged. More critically, these individuals face a significant risk of criminalization and punishment if they are not correctly identified and recognized as victims of trafficking.

# The Principle of Non-Punishment in the Trafficking in Persons for Forced Criminality

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**T**HE human rights dimension is a fundamental component of any response to trafficking in persons. Efforts to prevent trafficking, prosecute perpetrators, and protect victims must be grounded in a human rights-based approach. This principle is clearly articulated in the first provision of the Recommended Principles and Guidelines on Human Rights and Human Trafficking, issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) as a complement to the Palermo Protocol.

The Seventh Principle of the Recommended Principles and Guidelines on Human Rights and Human Trafficking states that victims of trafficking should not be detained, charged, or prosecuted for their involvement in unlawful activities if such involvement is a direct consequence of their status as trafficking victims. This principle exists to address the widespread reality in which victims are criminalised, despite clear evidence that they lacked the intent or freedom to commit the illegal acts in question. Such criminalisation often stems from the state's failure to properly identify victims of trafficking, instead misclassifying them as smugglers, undocumented migrants, or irregular migrant workers.<sup>14</sup>

It goes without saying that not all unlawful acts committed by trafficking victims are exempt from legal accountability. For instance, if a victim commits a crime with independent criminal intent, unrelated to their status as a victim,

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<sup>14</sup> Office of The High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, (Geneva: United Nations Publication, 2010), p. 129.

such as engaging in violence or robbery for personal gain, the non-punishment principle does not apply. In such cases, the individual must be held accountable and prosecuted under applicable law.<sup>15</sup>

The non-punishment principle for victims of trafficking is also affirmed in various international legal instruments. Article 14, paragraph (7) of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, to which Indonesia is a party, urges states to consider refraining from criminalizing or imposing administrative sanctions on victims of trafficking for unlawful acts committed as a direct consequence of their exploitation. This principle is further reinforced by recommendations from UN Treaty Bodies, including the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women, which emphasise the importance of protecting vulnerable groups—particularly women and children—from criminalization when they are victims of trafficking.<sup>16</sup>

In addition to aligning with human rights principles, the non-punishment principle also offers practical benefits in combating trafficking. By ensuring that victims will not face prosecution, it reduces their fear of reporting the trafficking they have experienced. Traffickers often exploit this fear by threatening victims with criminal charges, thereby keeping them trapped within the trafficking network.<sup>17</sup>

There are two main models used to apply the non-punishment principle. The first is the coercion model, which holds that a person cannot be held criminally liable if they were forced to commit an unlawful act. However, a limitation of this model is that coercion is often interpreted narrowly, as requiring overt force, and may not account for situations in which victims commit offenses due to their vulnerability or lack of alternatives.<sup>18</sup> The second is the cause-and-effect model, which asserts that a person should not be criminalised if the unlawful act is directly connected to their trafficking situation, specifically, if the offense is a manifestation of the intended exploitation.<sup>19</sup> This model is generally easier to

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<sup>15</sup> *Ibid.*, p. 133.

<sup>16</sup> *Ibid.*, p. 132.

<sup>17</sup> Maria Grazia Giammarinaro, “Trafficking in persons, especially women and children: Report of the Special Rapporteur on trafficking in persons, especially women and children,” Human Rights Council, 6 April 2020, A/HRC/44/45.

<sup>18</sup> Marika McAdam, *Implementation of the Non-Punishment Principle for Victims of Trafficking in Persons in ASEAN Member States*, (ASEAN-Australia Counter Trafficking, 2022), p. Sec. 39.

<sup>19</sup> *Ibid.*, p. Sec. 43.



apply in practice and is supported by the UN Special Rapporteur on Trafficking in Persons, Maria Grazia Giammarinaro. She emphasizes that trafficking networks often rely not only on direct coercion but also on the exploitation of victims' vulnerable circumstances.<sup>20</sup>

Indonesia has adopted the coercion model in its application of the non-punishment principle. Article 18 of the Anti-Trafficking Law (Law No. 21 of 2007) states that (*translated*): "Victims who commit criminal acts because the perpetrators of human trafficking force them shall not be punished." This model is also reflected in both the old and new Criminal Codes. Under the old Criminal Code, Article 48 provides a legal basis for exempting trafficking victims from punishment through the principle of *overmacht* (force majeure or coercion). Similarly, Article 42 of Law No. 1 of 2023 on the New Criminal Code stipulates that a person shall not be held criminally liable if they commit a crime due to irresistible force, coercion through threats, or unavoidable pressure or violence.

There is a philosophical distinction between the non-punishment principle and the concept of *overmacht* (force majeure) as defined in the Indonesian Criminal Code. According to legal scholar Remmelink, three forms of *overmacht* are recognised. The first is absolute coercion (*vis absoluta*), in which the individual has no will or ability to act independently—for example, when the person is physically restrained or caught in a natural disaster. The second is psychological coercion (*vis compulsiva*), where evasion is technically possible but threats, such as the risk of violence, compel the individual. The third is a state of necessity (*noodtoestand*), in which a person is exempt from punishment due to acting in a critical situation involving public interest, for example, entering a prohibited area to rescue a drowning person.<sup>21</sup> Among these, the concept of psychological coercion is arguably the most reflective of the situation faced by victims of trafficking involving coercion to commit crimes. However, it does not fully align with the non-punishment principle and the cause-and-effect model, particularly because coerced offenses may occur well after the initial act of recruitment. This temporal gap challenges the traditional application of *overmacht*. Therefore, further legal analysis is needed to assess the extent to which the concept of *overmacht* under Indonesian law aligns with the non-punishment principle as outlined in the Palermo Protocol.

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20 Maria Grazia Giammarinaro, *Op. Cit.*

21 J. Remmelink, *Introduction to Material Criminal Law 1*, (Yogyakarta: Maharsa Publishing, 2014), p. 274-278.

In addition to the conceptual limitations of the non-punishment principle, practical challenges also hinder its implementation. A research report by ASEAN-ACT found that law enforcement officials in Indonesia have uneven levels of understanding regarding the non-punishment principle. In many cases, their knowledge of punitive legislation—such as the Drugs Law—is more comprehensive than their familiarity with the protective provisions of the Anti-Trafficking Law. Furthermore, Article 18 of the Anti-Trafficking Law can only be invoked once a victim has already been treated as a perpetrator, and only if the trafficker has been identified and prosecuted. This significantly limits the scope and effectiveness of the provision in offering timely protection for victims.<sup>22</sup>

The limitations of the non-punishment principle are further compounded by the lack of clear legal precedents to guide its application. As a result, the scope of the principle is often questioned by various stakeholders. In cases involving trafficking victims forced to work in online fraud camps, for instance, the Ministry of Foreign Affairs has raised concerns about whether there should be a limit to how many times a person can be considered a victim. These concerns arise from instances in which individuals, after being repatriated to Indonesia, return to work for the same fraudulent companies abroad, prompting doubts about their victimhood.<sup>23</sup> However, as highlighted by the UN Special Rapporteur on Trafficking in Persons, individuals who have been repatriated remain highly vulnerable to re-victimisation due to factors such as gender, migration status, and economic hardship.<sup>24</sup>

Disparities in the understanding of trafficking and the application of the non-punishment principle also exist between Indonesia and other countries. A notable example is the case of Mary Jane Veloso, a Filipino woman who was a victim of trafficking but was sentenced to death in Indonesia for her involvement in a drugs-related offense. Indonesian authorities did not recognise her status as a trafficking victim. At the same time, legal proceedings in the Philippines against her traffickers were hindered, as Mary Jane was required to testify in person before a Philippine court.<sup>25</sup>

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22 Marika McAdam, *Op. Cit.* p. 63-65.

23 “Cerita WNI korban sindikat perdagangan orang di Myanmar diduga ‘disekap, disiksa dan dimintai tebusan ratusan juta Rupiah’ – Mengapa berulang dan bagaimana upaya membebaskannya?” *bbc.com*, August 14, 2024, accessed on <https://www.bbc.com/indonesia/articles/c703kdwd8zxo>

24 Siobhán Mullally, “Implementation of the non-punishment principle Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally,” 17 May 2021, A/HRC/47/34.

25 Marika McAdam, *Op. Cit.* thing. Fig. 66.



In the context of trafficking that crosses regional and national borders, international cooperation becomes essential. Unfortunately, Indonesia's efforts in transnational law enforcement related to trafficking are often viewed as ineffective and inconsistent, primarily due to their reliance on bilateral diplomatic relations.<sup>26</sup> In this context, Indonesia could make greater use of established international legal cooperation mechanisms such as Mutual Legal Assistance in Criminal Matters, prisoner transfer agreements, repatriation, and evacuation protocols. However, the effectiveness of these mechanisms depends on the extent to which human rights principles—notably the non-punishment principle—are recognised and integrated as fundamental components of such mechanisms.

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26 Meidi Kosandi, Nur Iman Subono, Vinita Susanti and Evida Kartini, (2017), "Combating Human Trafficking in the Source Country: Institutional, Socio-cultural, and Process Analysis of Trafficking in Indonesia," *Advances in Social Science, Education and Humanities Research*, Vol. 167; First International Conference on Administrative Science, Policy and Governance Studies.







# Mutual Legal Assistance in Criminal Matters

**O**NE of the most promising avenues for international cooperation in protecting trafficking victims is the utilization of Mutual Legal Assistance (MLA) mechanisms. Law Number 1 of 2006 on Mutual Legal Assistance in Criminal Matters outlines 11 forms of assistance related to the investigation, prosecution, and adjudication of criminal offenses. Among these is the ability to request the presence of individuals to provide testimony or information. This provision is particularly valuable in trafficking cases where the presence of victims is essential, for instance, to give testimony as in the case of Mary Jane Veloso, or to establish that individuals involved in drugs or terrorism-related offenses are, in fact, victims of trafficking abroad.

Despite being a country with a significant number of trafficking victims, Indonesia has not yet fully utilised the Mutual Legal Assistance (MLA) mechanism. A 2014 report noted that between 2006 and 2012, Indonesia submitted only 47 MLA requests, primarily directed to Singapore and Malaysia.<sup>27</sup> In the United Kingdom, for example, a separate report indicated that from 2015 to 2019, Indonesia did not submit any formal MLA requests. Instead, it made six requests categorised as “Service of Process”; a separate legal procedure concerning the transmission of procedural documents, such as court decisions, and distinct from MLA requests that support investigative or prosecutorial cooperation.<sup>28</sup>

In cases of trafficking for forced criminality, Indonesia has also been relatively inactive in utilizing MLA to expose trafficking networks and protect victims

<sup>27</sup> Anna Christina Sinaga, Jacob Phelps, Dadang Trisasongko and Muji Kartika Rahayu, (2014), “Reciprocal legal assistance to strengthen Indonesia-ASEAN forest governance,” *Cifor Brief No. 109*.

<sup>28</sup> Julinda Begiraj and Richard Mackenzie-Gray Scott, (2022), “Mutual Legal Assistance (MLA) in criminal matters in the UK and in developing countries: A scoping study”, *Bingham Centre for the Rule of Law Report*.

abroad. Since 2018, the Lembaga Bantuan Hukum Masyarakat (LBHM) has been assisting in the case of a Malaysian couple sentenced to death in Indonesia, where there are indications that the woman may be a victim of trafficking. Although aspects of the case remain unresolved, including the status of individuals still at large and listed in the Person Search List (*Daftar Pencarian Orang-DPO*), there is no indication that MLA requests have been initiated to pursue leads outside Indonesia. Through its Malaysian partner organisation, Hayat, LBHM submitted a formal question via a member of the Dewan Rakyat representing Balik Pulau to the Prime Minister of Malaysia, inquiring whether Indonesia had submitted any MLA requests related to drugs cases. In response, the Malaysian government clarified that since 2006, it has not received any Mutual Legal Assistance requests from Indonesia concerning drugs-related offenses.

One of the factors contributing to the underutilisation of Mutual Legal Assistance in Criminal Matters is the ongoing debate over which institution should serve as the central authority—the body responsible for submitting assistance requests to other countries and receiving such requests from abroad. Law Number 1 of 2006 designates the Ministry of Law and Human Rights as the central authority, based on the rationale that this ministry is less prone to sectoral competition, as it is not a law enforcement body directly involved in investigations or prosecutions.<sup>29</sup> However, over time, some stakeholders have argued that law enforcement institutions, particularly the Attorney General's Office, may be better suited to serve in this role. Their view is that such authorities are better equipped to assess both the formal and substantive aspects of MLA requests.<sup>30</sup>

The reluctance to optimise the Mutual Legal Assistance mechanism may also stem from concerns about jurisdictional conflicts in law enforcement. Many anti-trafficking activists in Indonesia have voiced concerns over the government's adherence to the principle of non-intervention, particularly when they attempt to advocate for trafficking cases involving Indonesian victims in Malaysia.<sup>31</sup> For countries in the Southeast Asian region, the Indonesian

29 Suharyo, et al., *Central Authority dan Mekanisme Koordinasi Dalam Pelaksanaan Bantuan Timbal Balik Dalam Masalah Pidana*, (Jakarta: Badan Pembinaan Hukum Nasional, Kementerian Hukum dan HAM, 2012).

30 Agus Budijarto and Endang Sulistyaningsih, (2023) "Kewenangan Kejaksaan RI Sebagai Central Authority/Otoritas Pusat\*) Terhadap Penanganan Perkara Tindak Pidana Lintas Negara Terorganisasi (Transnational Organized Crime) Melalui Mekanisme Bantuan Hukum Timbal Balik Dalam Masalah Pidana (Mutual Legal Assistance in Criminal Matters/MLA) Dan Ekstradisi," *The Prosecutor Law Review*, Vol. 1 No. 3.

31 Nur Iman Subono and Meidi Kosandi, (2019), "The Regionalism Paradox in the Fight against Human Trafficking: Indonesia and the Limits of Regional Cooperation in ASEAN," *Journal of Leadership, Accountability and Ethics* Vol. 16(2).



government could utilize its participation in ASEANAPOL, a regional police association established to address transnational crime, as a channel to request Mutual Legal Assistance in trafficking cases. However, the same principle of non-intervention, as affirmed in the ASEAN Charter, has discouraged many ASEAN member states from actively using this cooperation mechanism under ASEANAPOL. As a result, the potential for effective regional collaboration in addressing cross-border trafficking remains underutilised.<sup>32</sup>

Jurisdictional conflicts in identifying trafficking cases for criminal coercion can be addressed through a human rights-based lens, particularly by referring to the concept of *jus cogens* norms in international law. *Jus cogens* refers to peremptory norms recognized as fundamental principles of international law, from which no derogation is permitted. Crimes that fall within this category are considered extremely serious and pose a significant threat to global peace and security. These include acts such as aggression, genocide, crimes against humanity, war crimes, piracy, slavery, and practices similar to slavery, and torture.<sup>33</sup> Trafficking cases that involve forced criminality elements and torture may therefore qualify as practices like slavery, bringing them within the scope of *jus cogens* norms. The recognition of trafficking as a *jus cogens* violation also triggers the principle of *obligatio erga omnes*, which establishes obligations owed by states to the international community as a whole. One implication of this principle is the universal jurisdiction over such crimes, allowing any state to prosecute perpetrators, regardless of where the crime was committed or the offender's nationality.<sup>34</sup> Indonesia can invoke this legal framework to strengthen its position in advocating for the protection of its nationals who are victims of trafficking in other countries.

One of the key challenges in optimizing the use of Mutual Legal Assistance in Criminal Matters is the lack of attention given to the victim's position within this centralized mechanism. Law Number 1 of 2006 explicitly designates only three authorities as eligible to submit Mutual Assistance requests: the Chief of the Indonesian National Police, the Attorney General, and the Chairperson of the Corruption Eradication Commission. These parties must submit their requests

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32 Ni Komang Desy Arya Pinatih, Yustika Citra Mahendra, Asih Purwanti, (2023), "ASEANAPOL dan Tantangan Human Trafficking di Kawasan Asia Tenggara: Studi Kasus Thailand dan Kamboja," *Jurnal Ilmu Sosial dan Ilmu Politik* (JISIP), Vol. 12 No. 3.

33 M. Cherif Bassaiouni, (1996), "International Crimes: Jus Cogens and Obligatio Erga Omnes," *Law and Contemporary Problems* Vol. 59 No. 4: 63-74.

34 *Ibid.*

through the Ministry of Law and Human Rights, which then forwards them to the relevant authorities in the requested country. This structure results in a lengthy process that involves multiple layers of administrative and substantive requirements.

In trafficking cases for forced criminality, it is difficult to expect that either the Police or the Attorney General's Office will initiate a request for Mutual Legal Assistance. This is because, under current procedures, the mere existence of a victim is insufficient to trigger an investigation; the presence of an identified suspect is generally required. However, in many cases of trafficking with elements of forced criminality, there is no identifiable perpetrator. For example, in trafficking cases involving online fraud camps, victims are often recruited by unknown individuals through internet advertisements, making it challenging for authorities to determine the perpetrator's identity.<sup>35</sup>

The passive role of victims has been partially addressed by the Witness and Victim Protection Agency (LPSK), which is authorised to identify victims of trafficking. Under Article 37 of Government Regulation No. 7 of 2018 on Compensation, Restitution, and Assistance, trafficking victims are entitled to medical and psychological support by applying to LPSK. However, Article 38 paragraph (2)(d) of the same regulation requires a police-issued certificate confirming the applicant's status as a trafficking victim. This requirement raises the same issue: access to protection is conditional on identifying a perpetrator, reinforcing a system where the victim's recognition depends on the existence of a suspect.

The role of LPSK as an institution authorised to identify trafficking victims, including those subjected to criminal coercion, needs to be fully utilized. Moving forward, LPSK should also play a role in the Mutual Legal Assistance process, either by being granted the authority to submit requests directly or by actively supporting and encouraging the Police or the Attorney General's Office to initiate Mutual Legal Assistance in relevant trafficking cases.

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<sup>35</sup> International Organization for Migration, (2024), "IOM's Regional Situation Report in Trafficking In Persons into Forced Criminality in Online Scamming Centres in Southeast Asia," accessed at [https://roasiapacific.iom.int/sites/g/files/tmzb-dl671/files/documents/2024-02/iom-southeast-asia-trafficking-for-forced-criminality-update\\_december-2023.pdf](https://roasiapacific.iom.int/sites/g/files/tmzb-dl671/files/documents/2024-02/iom-southeast-asia-trafficking-for-forced-criminality-update_december-2023.pdf)

# Prisoner Transfer

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**T**HE repatriation of several foreign nationals from Indonesia through the prisoner transfer mechanism between late 2024 and early 2025 demonstrates another potential avenue to protect trafficking victims. Prisoner transfers can be utilised not only for humanitarian reasons but also as a means of addressing cases involving trafficked individuals. Since 2023, the government, through the Ministry of Law and Human Rights, has taken concrete steps to advance the Prisoner Transfer Bill. The National Legal Development Agency has also completed the bill's academic manuscript, marking a significant step toward formalizing this legal framework.

The academic manuscript for the Prisoner Transfer Bill highlights an ongoing debate regarding the punishment model to be applied once a prisoner is transferred back to Indonesia. Two models, based on international practice, are under consideration. The first is the Continued Enforcement Model, in which the transferred individual serves the remaining sentence as imposed by the foreign court, unless it exceeds Indonesia's maximum allowable penalty. For example, a person sentenced to 40 years abroad would have their sentence reduced to 20 years upon transfer, in line with Indonesia's maximum prison term. The second model is the Conversion Model, in which the requesting state imposes a new sentence in accordance with the provisions of existing law, with the note that the punishment may be lighter but not more severe.<sup>36</sup>

The Conversion Model places greater emphasis on humanity and human rights. It allows for greater flexibility in adapting sentences and aligns with the principles of decriminalization and proportionate punishment in appropriate cases. This model is exceptionally responsive to the needs of vulnerable groups, such as women and children, for whom imprisonment should be considered a last resort.<sup>37</sup>

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36 National Legal Development Agency of the Ministry of Law and Human Rights, "Academic Manuscript of the Bill on the Transfer of Prisoners," accessed at [https://bphn.go.id/data/documents/na\\_tentang\\_transfer\\_narapidana\\_final.pdf](https://bphn.go.id/data/documents/na_tentang_transfer_narapidana_final.pdf), p. 126-127.

37 *Ibid.*, pp. 71-72

In the context of trafficking cases, the Conversion Model offers a more equitable solution for victims, as it allows them to seek parole by presenting arguments based on their status as trafficking victims. However, this raises a critical question: can the new sentencing mechanism under the prisoner transfer scheme adequately account for the unique circumstances of trafficking cases for forced criminality? It would be deeply concerning if the revised sentencing process focused solely on the material facts established during foreign trials, without considering new evidence presented in Indonesia that demonstrates the individual's experience of trafficking. To ensure justice, the mechanism must be flexible enough to incorporate such evidence and recognise the victim's circumstances.

For this reason, clear procedural rules are needed to determine which judicial or legal institutions are authorised to carry out sentence conversions. Several options may be considered, including the Supreme Court, the Attorney General's Office, or a dedicated *ad hoc* body assigned this responsibility. Furthermore, the relevant procedural framework should be integrated into the Criminal Procedure Code (KUHP) to ensure consistency and alignment with other procedural provisions.

Legislators and the government may be hesitant to adopt the Conversion Model due to the greater complexity of its implementation. This model requires the establishment of procedures for sentence conversion and possibly retrial, which can be administratively and legally demanding. Additionally, it may lead to reluctance from foreign countries to approve prisoner transfer requests, as they may perceive sentence modification as a challenge to the authority or validity of their judicial decisions. In contrast, the Continued Enforcement Model is often viewed as more favorable in terms of diplomatic relations, as it preserves the integrity of the original sentence and is seen as more respectful of the sentencing country's legal system.<sup>38</sup>

If the Continued Enforcement Model is ultimately adopted in the draft bill, victims of trafficking for forced criminality will be left with the responsibility of asserting their status as victims through independent legal efforts. In such

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38 *Ibid.*, p. Sec. 81.

cases, the appropriate legal avenue is the judicial review (*Peninjauan Kembali* or PK). According to Article 263 of Law Number 8 of 1981 on the Criminal Procedure Code (KUHAP), convicts or their heirs may submit a PK request to the Supreme Court. For trafficking victims who have undergone prisoner transfers, a PK request may be based on judicial errors, such as the failure to consider the victim's vulnerability or status as a trafficking victim. It may also include new evidence related to the recruitment methods or patterns of exploitation that substantiate their victimhood.

However, the right to pursue further legal remedies, such as judicial review (PK), may face significant administrative barriers. Article 264, paragraph (1) of the Criminal Procedure Code (KUHAP) requires the applicant to submit a PK request to the clerk of the court that issued the original first-level decision. This is practically impossible for trafficking victims who were convicted abroad, as it would require applying to a foreign court. Furthermore, Article 265, paragraph (2) mandates the presence of both the applicant and the prosecutor during the PK hearing. This creates an additional obstacle, as the Indonesian prosecutor was not involved in the original prosecution and thus lacks procedural standing. These administrative requirements must either be removed or adapted if the government is serious about upholding the rights of trafficking victims.

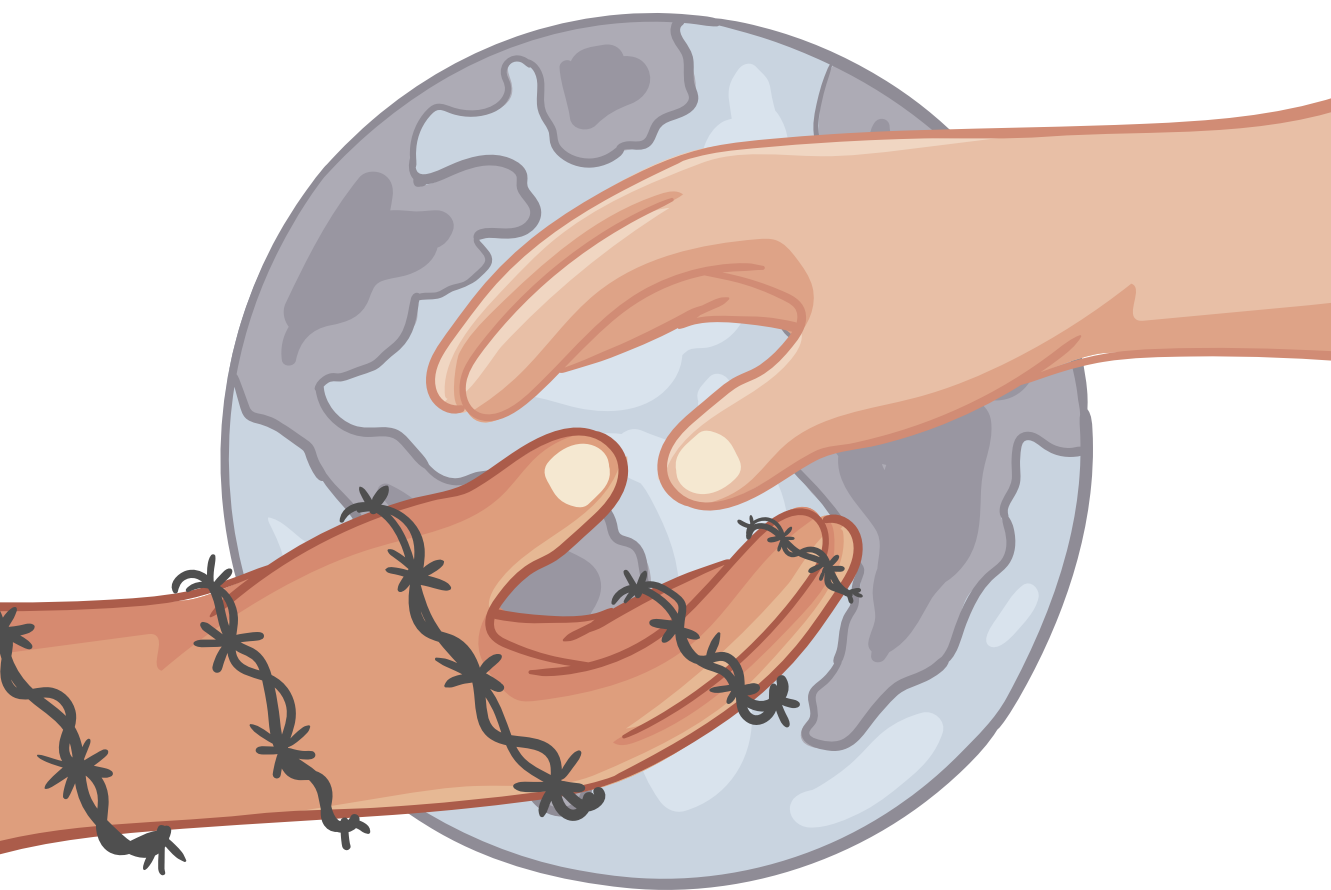
In addition to PK, convicts transferred to Indonesia under the prisoner transfer mechanism should also have access to other sentence reduction mechanisms available under Indonesian law, such as clemency, remission, amnesty, and abolition. To align with the non-punishment principle, amnesty and abolition are the more appropriate remedies. Amnesty eliminates all legal consequences of a specific criminal act, while abolition halts ongoing prosecutions and annuls convictions.<sup>39</sup> According to Article 14, paragraph (2) of the amended 1945 Constitution, the authority to grant amnesty and abolition lies with the President, upon consideration by the House of Representatives.

Ultimately, affirming the non-punishment principle by providing alternative avenues for sentence reduction can help persuade trafficking victims and

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<sup>39</sup> Marwan and Jimmy, *Kamus Hukum Rangkuman Istilah dan Pengertian Dalam Hukum Internasional, Hukum Pidana, Hukum Perdata, Hukum Islam, Hukum Perburuhan, Hukum Agraria, Hukum Administrasi Negara, Hukum Pajak dan Hukum Lingkungan* (Surabaya: Reality Publisher, 2009).

their families to consent to prisoner transfers—a requirement for such transfers to proceed.<sup>40</sup> This consideration is crucial when reflecting on the precedent set by the case of Mary Jane Veloso. During public discussions around her potential repatriation, her family expressed concerns about the conditions of detention in the Philippines, which they feared would be less secure than those in Indonesia.<sup>41</sup> Therefore, the prisoner transfer mechanism must continue to offer hope for trafficking victims by clearly upholding the principle of non-punishment.



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40 National Legal Development Agency of the Ministry of Law and Human Rights, *Op. Cit.* p. 123.

41 Rifqah, "Orang Tua Cemas Jika Mary Jane Veloso Pulang ke Filipina, Kenapa?" *tribunnews.com*, November 23, 2024, accessed on <https://www.tribunnews.com/internasional/2024/11/23/orang-tua-cemas-jika-mary-jane-veloso-pulang-ke-filipina-kenapa>



# Repatriation and Evacuation

**OTHER** mechanisms that can be used to protect victims of trafficking in persons for forced criminality include repatriation and evacuation. These mechanisms are supported by Article 21 of Law Number 37 of 1999 on Foreign Relations, which states that Indonesian representatives abroad are authorised to repatriate citizens in danger, at the expense of the state. In line with this mandate, the Decree of the Director General of Protocol and Consular Affairs, Number 01209/B/PK/07/2023/10 of 2023, on Public Service Standards at the Directorate for the Protection of Indonesian Citizens (*Perlindungan Warga Negara Indonesia-PWNI*), outlines various types of repatriation services available through the Ministry of Foreign Affairs. These facilities may be utilised to return Indonesian citizens who are victims of trafficking to Indonesia.

However, one of the key obstacles for trafficking victims subjected to forced criminality lies in the general conditions governing repatriation. According to existing provisions, repatriation is only permitted if it “does not take over the criminal and/or civil responsibility of Indonesian citizens.” As a result, Indonesian victims of trafficking who are already in criminal detention abroad are unable to access repatriation services, effectively preventing them from exercising their rights.

The PWNI Service Standard Decree outlines four types of repatriation: independent repatriation, repatriation of deceased persons, repatriation of distressed Indonesian citizens, and evacuation. These services are available upon application by Indonesian citizens, their families, or legal representatives through the Indonesian Citizen Care Portal, accompanied by the required supporting documents. The PWNI Directorate then reviews the application,

which verifies the submission and determines whether the request is approved or denied.

The evacuation mechanism has been effectively used in trafficking cases involving forced labour in online fraud operations, such as those in Myanmar. In March 2025, the Indonesian government evacuated 564 Indonesian migrant workers from Myanmar and facilitated their return to their respective hometowns.<sup>42</sup> Due to the high-profile nature of these trafficking cases, the Ministry of Foreign Affairs was able to verify the victims' status, coordinate with the Indonesian Embassy in Yangon, and carry out the evacuation. The operation proceeded smoothly, and the migrant workers were successfully repatriated to Indonesia.

On the other hand, there appears to be a lack of clear distinction between Evacuation and Repatriation of Distressed Indonesian Citizens within the PWNI Service Standard Decree. Repatriation of distressed citizens involves more stringent requirements, including the submission of documents such as the identity of a responsible party in Indonesia, flight schedules, and health certificates related to COVID-19, particularly for those affected by the Pandemic. This category of repatriation implicitly suggests that the individual has committed an error or caused administrative complications, thereby requiring a responsible party in Indonesia, such as a sponsoring company, school, university, or family member, to assume responsibility upon their return.

This model was also applied in trafficking cases similar to those in Myanmar, such as in Cambodia, where in May 2025, the Indonesian government repatriated distressed citizens who local authorities had detained for participating in illegal online fraud operations.<sup>43</sup> The lack of a clear distinction between Evacuation and Repatriation of Distressed Citizens risks creating confusion for victims and their families in determining the most appropriate repatriation mechanism for their circumstances.

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42 "564 Korban TPPO dari Myanmar Dipulangkan, Kementerian P2MI Imbau Berangkat Resmi ke Luar Negeri," bp2mi.go.id, March 20, 2025, accessed at <https://www.bp2mi.go.id/index.php/berita-detail/564-korban-tpo-dari-myanmar-dipulangkan-kementerian-p2mi-imbau-berangkat-resmi-ke-luar-negeri>

43 Asri Mayang Sari, "KBRI tinjau proses repatriasi WNI bermasalah di Kamboja," antaranews.com, May 10, 2025, accessed at <https://www.antaranews.com/berita/4826125/kbri-tinjau-proses-repatriasi-wni-bermasalah-di-kamboja>

In making decisions regarding the repatriation of trafficking victims, the Indonesian government continues to exercise caution in some instances. In 2020, discussions were held concerning the possible repatriation of Indonesian Foreign Terrorist Fighters (FTFs) who had joined ISIS, but the proposal was widely opposed. At the time, the government ultimately declined to repatriate former combatants, citing concerns about potential threats to national security and the risk of spreading extremist propaganda upon their return.<sup>44</sup> Nevertheless, in subsequent years, Indonesia accepted the deportation of 576 of its citizens previously affiliated with ISIS and repatriated four children and two families who had fled ISIS.<sup>45</sup> Moving forward, there must be clarity regarding the procedures used by Indonesian government representatives abroad to identify the status of 639 Indonesian nationals currently residing in three camps in Syria, approximately 188 of whom are women,<sup>46</sup> and to assess the possibility that some may be victims of trafficking for forced criminality.

In this context, it is important to reaffirm the non-punitive nature of evacuation and repatriation processes. Upholding the non-punishment principle can encourage victims or their families to report their cases through the Indonesian Citizen Care Portal. At the same time, national security concerns must be carefully balanced with the rights of trafficking victims. The government should avoid hastily rejecting repatriation requests and instead carry out proper identification procedures, in coordination with the Witness and Victim Protection Agency (LPSK), to ensure that trafficking victims' rights are recognized and protected.

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44 Muhammad Kamarullah, (2023), "The Dilemma of the Indonesian Government Rejecting the Repatriation of Ex-ISIS Indonesian Citizens: Between Human Rights or National Security," *Politica* Vol. 14 No. 1: 53-74.

45 "As Thousands Remain in Detention Camps in Syria, Repatriation Must Be Prioritized," May 23, 2024, The Soufan Center IntelBrief, accessed at <https://mailchi.mp/thesoufancenter/as-thousands-remain-in-detention-camps-in-syria-repatriation-must-be-prioritized?e=f761bb24da>.

46 Mohammad Hasan Ansori, et al., *Eradicating Terrorism in Indonesia: Practices, Policies and Challenges*, (Jakarta: The Habibie Center, 2019).



# Conclusions and Recommendations

**L**EGAL frameworks and practices in Indonesia have not yet provided adequate recognition of trafficking for forced criminality. Newer patterns of exploitation, such as victims being used as drug mules, operators of online fraud, or participants in acts of terrorism, highlight the urgency of formally acknowledging this mode of trafficking. Such recognition is essential to promote a broader application of the non-punishment principle, which should no longer focus solely on direct coercion but must also take into account the vulnerabilities resulting from a person’s social, economic, health, or gender status.

Overall, this policy paper has identified both legal substance issues and implementation challenges. The following section outlines the key legal issues identified:

**Table 1. Summary of Legal Issues**

Area	Problems
Definition of Trafficking in Persons	It did not explicitly acknowledge ‘forced criminality’ as a form of exploitation in Law No. 21/2007 on Trafficking
The principle of non-punishment	The principle of non-punishment in the Anti-Trafficking Law (Article 18) and the Criminal Code is only based on forced elements or coercion ( <i>overmacht</i> ), and does not accommodate the cause-and-effect model as recommended by the human trafficking literature
Mutual Legal Assistance in Criminal Matters	Law No. 1/2006 does not recognize the position of victims or LPSK as parties who can apply for Mutual Legal Assistance in Criminal Matters; there is no recognition that trafficking is an international crime that meets the <i>principle of jus cogens</i> to enable the state to act across jurisdictions.

Area	Problems
Prisoner transfers	There is no provision for the transfer of prisoners that allows the implementation of a conversion model for trafficking victims
Criminal Code and Review	The Criminal Code does not accommodate PK (judicial reviews) on foreign court rulings, thus preventing trafficking victims who are imprisoned abroad from filing a defense when they get a prisoner transfer mechanism.
Criminal abolition (amnesty/abolition)	There is no procedural mechanism that ensures access to convicted victims of trafficking to apply for amnesty/abolition

Meanwhile, the problems of legal implementation are as follows:

**Table 2. Summary of Implementation Problems**

Area	Problems
Identifications of the victim	Law enforcement officials lack understanding of the principle of non-punishment and are unable to adequately identify victims of trafficking. The verification of the victim by LPSK still depends on the process of determining the suspect in the police.
Inter-agency coordination	There is not optimal synergy between the Police, the Prosecutor's Office, LPSK, the Ministry of Law and the Ministry of Foreign Affairs in handling cross-border trafficking cases
The Use of Mutual Legal Assistance in Criminal Matters	Lack of initiative by the apparatus and complex bureaucracy to use the scheme of using mutual legal assistance in defending victims of trafficking
Implementation of repatriation and evacuation	Inconsistency in the implementation of evacuation versus repatriation mechanisms; often victims of trafficking are considered and stigmatized as perpetrators
Use of legal precedents	There is no precedent or jurisprudence that guides the consistent application of the principle of non-punishment
Diplomatic dependency	The international law enforcement process still depends on the will of other countries because of the principle of non-intervention, not through institutionalized instruments.



The non-punishment principle must serve as a core foundation in all of the state's cross-border law enforcement efforts. However, Indonesia's current legal framework and institutional practices in implementing Mutual Legal Assistance, Prisoner Transfers, Evacuation, and Repatriation still do not fully reflect this principle. The lack of alignment and coordination between state institutions in handling trafficking cases increases the risk that victims will go unidentified. As a result, they may be wrongly accused, stigmatised, or even discouraged from reporting their experiences.

The presence of victims in trafficking cases for forced criminality serves as a reminder of the state's obligation to protect those affected. According to the Second Principle of the Palermo Convention, states have a duty to exercise due diligence in preventing trafficking, investigating and prosecuting perpetrators, and ensuring the protection of victims. When a state fails to fulfil these responsibilities effectively, particularly in preventing individuals from becoming victims of trafficking, it constitutes a breach of the principle of due diligence.<sup>47</sup>

Based on the above situation, we provide some recommendations:

- Evaluate the work of the PP-TPPO Task Force in work involving cases of trafficking in persons with elements of forced criminality.
- Adding the mode of human trafficking with elements of forced criminality in the guidelines of law enforcement agencies, such as investigation guidelines and additions to the Guidelines for Handling Trafficking Crimes by the Attorney General's Office.
- Develop technical regulations or Standard Operating Procedures (SOPs) for handling trafficking cases for forced criminality, including procedures for victim identification, law enforcement responses, and victim protection measures. These SOPs should ensure a uniform understanding and approach among law enforcement officials when dealing with cases that may involve trafficking with elements of forced criminality.

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47 Office of The High Commissioner for Human Rights, *Op. Cit.*, p. 75-78.

- Revise the Anti-Trafficking Law by including the principle of non-punishment with a Cause-and-Effect Model that allows for a mechanism for trafficking victims to obtain the abolition of punishment by looking at the complexity and intersectionality of the identities of trafficking victims who cause exploitation.
- Revising the Law on Mutual Legal Assistance in Criminal Matters so as to accommodate the interests of victims with the involvement of LPSK as one of the parties that can apply for Mutual Legal Assistance in Criminal Matters.
- Conducting meaningful discussions for the Prisoner Transfer Bill by including a Conversion Model that enables victims of trafficking to abolish their crimes in accordance with the principle of non-punishment.
- Increase the capacity and understanding of frontline officers in the Trafficking Task Force and related officers about the available mechanisms, and provide overall handling from the beginning of identification, referral, repatriation, case handling, to integration and reintegration to reduce re-trafficking.
- Carry out non-discriminatory evacuation and repatriation for all victims of trafficking regardless of the type of criminal behavior they are forced to commit, together with LPSK to ensure that victim data collection takes place properly and without stigma to families and victims who are willing to report.



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