

**THE POLITICS OF TRAFFICKING IN INDONESIA:
GENDER, NATIONAL RHETORICS AND POWER**

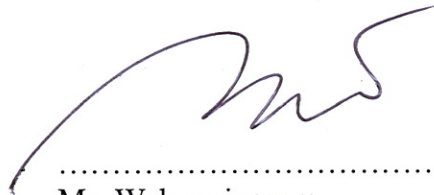
WAHYUNINGRUM

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR
THE DEGREE OF MASTERS OF ARTS
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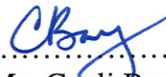
2007

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Thesis
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**THE POLITICS OF TRAFFICKING IN INDONESIA:
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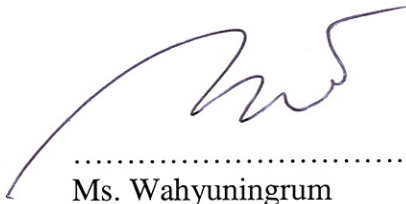


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Wahyuningrum

THE POLITICS OF TRAFFICKING IN INDONESIA: GENDER, NATIONAL RHETORICS AND POWER

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M.A. (HUMAN RIGHTS)

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ABSTRACT

This study centers on discourses concerning trafficking after the Palermo Protocol in Indonesia (2000-2007). In doing so, the study poses two questions regarding debates on trafficking. The first is about the current shifting focuses in the debate and the second concerns dominant discourses. This study employs documentary research to reveal the cultural, historical and political construction of the trafficking concept in Indonesia. In order to answer these two research questions, respondents were interviewed and texts from newspapers, parliament's political statements, governmental and NGO reports, minutes of meetings, and seminar papers were analyzed. This study also includes observations based upon a seminar that attempted to explain the way trafficked victims are gendered and characterized.

The discussion of shifting focuses in trafficking reveals: (1) gender negotiation concerning the phrase "women, children and persons"; (2) the interaction between global and local dynamics; and (3) the criminalization of trafficking. Nevertheless, the contemporary debate as it is reflected in Law No. 21 (2007) continues to reinforce stereotypes of women as passive victims.

The dominant discourses concerning trafficking in contemporary Indonesia highlight sexual exploitation and the abuse of migrant workers. In this regard the discourses repeat and continue the discourses from the 1980s. The dominant discourses are characterized by notions of 'national dignity' and 'international images'. The discussion on human rights and domestic workers is marginalized and the debate on male domination, sex work and women's agency is eclipsed.

The acceptance of the Palermo Protocol influences the "what" and the "how" trafficking should be conceptualized in Indonesia. However, a foreign government's intervention contributes to the "when" trafficking should be defined. Through the analysis of documents and of interviews, this study concludes that it is not 'women' who are the target of protection under national law but the majority-imposed set of values and the nation's dignity. Textual analysis and the observations reveal that the law actually reinforces the paternal power of the state over women. Finally, the study's conclusion is that the new way of debating trafficking has been utilized as a vehicle to idealize women as wives and mothers.

KEY WORDS: TRAFFICKING/ SEXUAL EXPLOITATION/ DISCOURSE/
GENDER

154 pp.

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GLOSSARIES

<i>Anak</i>	A child
Commission VIII	A Commission under the House Representative which consists of different political party members to discuss issues related to religion, social and women empowerment
<i>Dharma Wanita</i>	Civil Servants' Wives Association
<i>Dharma Pertiwi</i>	Police and Army's Wives Association
<i>Dusun</i>	Is a smaller unit than village
<i>Gema Perempuan</i>	Women's Echo (Voice)
<i>Jugun Iafu</i>	(Japanese) Comfort Women
<i>Kodrat</i>	An appeal to justify the suitability of men and women for different tasks; this provides a separated function and entity based on biology and to keep women in their place in the home. This implies that women should be submissive, self-sacrificing, nurturing, sexually shy, modest and politically passive. In sort, women are expected to take role as wives and mothers (Suryakusuma 2004)
<i>Komnas HAM</i>	National Commission for Human Rights
<i>Komnas Perempuan</i>	National Commission on the Elimination of the Discrimination Against Women
<i>Laki-laki</i>	A man
<i>Naskah Akademis</i>	Literally mean an academic concept in English. This paper is for the basic argument or proposal explaining the need to have a new law or amend the existing law(s). The "Naskah Akademis" is usually a result of an academic research done either by a university or the government (I use <i>Naskah Akademis</i> in this report without translating it because I have not found similar words for the meaning)

GLOSSARIES (Cont.)

New Order Regime	Regime under Suharto presidency from 1966 to 1998
<i>Ngenger</i>	The practice is similar to the idea of an ‘internship’ in the house of a family or relatives or those who have no familial tie but are considered richer families (most residing in big cities) than the family of the intern. This practice can be found in Batak, Minang, Makasar and the Bugis ethnic group Indonesia
Old Order Regime	Regime under Sukarno presidency from 1945 – 1965
<i>Orang</i>	Persons
Palermo Protocol	Is another name of United Nations Convention against Transnational Organized Crime Supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children because it was agreed by UN members in Palermo, Italy
<i>Pamong Praja</i>	Provincial Security Officer
<i>Pancasila</i>	is national five pillars consist of (1) The believe in one and only God, (2) Just and Civilized Humanity, (3) Unity of Indonesia, (4) Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives, (5) Social justice for the whole of the people of Indonesia
<i>Perdagangan</i>	Literally means “trade” as an act of buying and selling or exchanging goods or services, but then this term got expanded in usage to include human trafficking
<i>Perempuan</i>	A woman
<i>Ruang Pelayanan Khusus</i>	Special Service Unit at the Police Station in each district in Indonesia
<i>Solidaritas Perempuan</i>	Women’s Solidarity

LIST OF ABBREVIATION

AALCO	Asia-Africa Legal Consultative Organization
ACILS	American Center for International Labor Solidarity
CATW	Coalition Against Trafficking in Women
CEDAW	Convention on the Elimination of All forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CMW	Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
CRC	Convention on the Rights of the Child
DPR	<i>Dewan Perwakilan Rakyat</i> , House of Representative
DPRD	<i>Dewan Perwakilan Rakyat Daerah</i> , Provincial House of Representatives
ECSEC	the Elimination of Commercial Sexual Exploitation of Children
GAATW	Global Alliance Against Trafficking of Women
GOLKAR	<i>Golongan Karya</i> , Functional Group
ICCPR	International Covenant of Civil and Political Rights
ICESR	International Covenant on Social, Economic, and Cultural Rights
ICMC	International Catholic Migration Commission
ILO	International Labor Organization
INGO	International Non-Government Organization
IOM	International Organization for Migration
IWORK	Institute for Migrant Worker
JKP3	<i>Jaringan Kerja Prolegnas (Program Legislasi Nasional) Pro Perempuan</i> , The Network for National Legislation Program Pro Women

LIST OF ABBREVIATION (Cont.)

KPI	<i>Koalisi Perempuan Indonesia</i> , Indonesian Women Coalition
LBH Apik	<i>Lembaga Bantuan Hukum Anak – Asosiasi Perempuan Indonesia untuk Keadilan</i> , Legal Aid Foundation – Indonesian’s Women Association for Justice
MPR	<i>Majelis Permusyawaratan Rakyat</i> , The Council of People Assembly
NGO	Non-Government Organization
NPA	National Plan of Action
P4A	<i>Perkoempoelan Pemberantasan Perdagangan Perempuan dan Anak-anak</i> , The Association to Suppress Trafficking of Women and Children
PAN	<i>Partai Amanat Nasional</i> , National Mandate Party
PBD	<i>Partai Bintang Rakyat</i> , Star Democracy Party
PBP	<i>Partai Bintang Pelopor</i> , Star Pioneer Party
PDIP	<i>Partai Demokrasi Indonesia Perjuangan</i> , The Fights for Indonesia Democracy Party
PKRD	<i>Perlindungan Kelompok Rentan Diskriminasi</i> , Vulnerable Group Protection and Discrimination
PKS	<i>Partai Keadilan dan Kesejahteraan</i> , Prosperity and Justice Party
PPII	<i>Persatoean Perkoempoelan Isteri Indonesia</i> , The Alliance of Indonesian Wives Association
RI	<i>Republik Indonesia</i> , Republic of Indonesia
TDH	<i>Terre des Hommes</i>
TIP	Trafficking in Persons
TVPA	Trafficking Victims Protection Acts
UN	United Nations
UNICEF	United Nation Funds for Children

LIST OF ABBREVIATION (Cont.)

UU PTPPO	<i>Undang-undang Pemberantasan Tidak Pidana Perdagangan Orang</i> , The Law on the Suppression on the Crime Acts of Trafficking in Persons
YPHA	<i>Yayasan Pemerhati Hak Anak</i> , Monitoring Child Rights Foundation

CHAPTER 1

PROBLEMATIZING TRAFFICKING DISCOURSES IN CONTEMPORARY INDONESIA

1.1 Introduction

Trafficking is not a new issue in Indonesia. It has been discussed since eighty-five years ago with the rise of women organizations under the Dutch colonial period. Its continuity, however, has been dependent on the political situation that governs what to say and not to say. The period from 1997 to 2007 is marked by the fall of the New Order Regime in 1998, economic crises, political reforms, social and political chaotic situations, and ethnic conflicts in many parts of Indonesia and terrorist acts. The economic crises led to massive unemployment, a rise in crime and social breakdown. Many people decided to migrate to seek a better life and planned to return with enough capital to build their own businesses or buy new properties. At the same time, the new era had created spaces and opened political, social and cultural opportunities for people to challenge, redefine, and reshape their way of thinking from the mainstreamed one, to include their understanding about the state's relation to citizens, gender relations, national identity and nationalism. Trafficking debates started to re-emerge in this period. One of the reasons was because as a transition period had provided a political opportunity for new civil society organizations¹ to grow rapidly. The literature published in this era mainly linked trafficking to prostitution, migration abuses, criminal and human rights violations.

During this period, Indonesia became a State Party to many international treaties related to trafficking such as the International Labor Organization (ILO) Convention No. 182 on the Worst Forms of Child Labor in 1999, and to the United

¹Some of the women's organizations established in this period included: Women's Coalition for Justice and Democracy (KPI), National Commission for the Elimination of Violence and Discrimination Against Women, Tjut Nyak Dien Association (for Domestic Helpers), Kalyanamitra Foundation, Legal Aids for Women (LBH APIK), and Tribuana Tungga Dewi Foundation, etc.

Nations (UN) International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1999. It also became a Signatory Party of the UN Convention against Trans-national Organized Crime Supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereafter, Palermo Protocol) in 2000, the Optional Protocol of the UN Convention on the Elimination of All forms of Discrimination Against Women (CEDAW)² in 2000, the Optional Protocol of the UN Convention on the Rights of the Child (CRC)³ on Sale of Children, Prostitution, Pornography in 2001, Signatory Party of UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) in 2004, and a State Party to the International Covenant of Civil and Political Rights (ICCPR) in 2006 and the International Covenant on Social, Economic, and Cultural Rights (ICSECR) in 2006.

A number of national laws were enacted related to trafficking in persons such as Law No. 39 (1999) on Human Rights, Law No. 01 (2000) on the Ratification of ILO No. 182 on the Worst Forms of Child Labor, Law No. 23 (2002) on Child Protection, Law No. 13 (2003) on Labor (as amended), Law No. 23 (2004) on National Education, Law No. 32 (2004) on the Elimination of Domestic Violence, Law No. 39 (2004) on the Placement and Protection of Indonesian Overseas Workers, Law No. 12 (2006) on Citizenship and Law No. 21 (2007) on the Suppression of Crime Acts of Trafficking in Persons. Currently, there are three draft laws on Pornography, Political Party and Ministries still sitting in Parliament house.⁴ Debate of these laws influence, determine and shape the way policy makers, governments, civil society and the general public perceive certain issues. In addition, the way the media brings trafficking into the debate has also shaped the way people in general conceptualize trafficking. These debates have also influenced the discourses by the time Law No. 21 (2007) was discussed and the way the understanding of trafficking in persons is currently constructed, defined, and understood.

² Indonesia became a State Party of CEDAW in 1984.

³ Indonesia became a State Party of CRC in 1989.

⁴ Many non-government organizations are concerned about the content of the two draft laws that are being discussed in the Parliament. The draft law on the ministries does not mention the urgency of having the Ministry of Women Empowerment. This is worrisome, as this particular ministry is, as mandated by the law, the focal point of measures to suppress human trafficking in Indonesia. The other concern is with the draft law on pornography which put women's actions and bodies at risk of being identified as pornography and thus criminalized. The latter has been discussed from 2002.

The purpose of this chapter is to explain the importance of problematizing trafficking discourse in the Indonesian context. It questions the shifting focus from “trafficking of women and children” to “trafficking in persons” and the dominant discourses in conceptualizing trafficking. This chapter also describes the research methodology and data analysis that is employed to address and answer the questions raised

The premise of this thesis is that women, children and men experience different realities of trafficking. Seeing them in monolithic way does not really help to understand the phenomenon better. There should be a firm recognition in conceptualizing the issue by mentioning “trafficking in persons, especially women and children”. Situating gender neutrality to the term ‘trafficking’ with the term ‘persons’, and putting gendered subtext in the discourse does not provide an explanation for the complex realities of trafficking. The main argument of this thesis is that trafficking debates have (1) been used to (re)authorize power between the state over women, (2) been used to reproduce gender assumptions about women as passive, incapable of making decisions, weak and in need of protection and (3) demonstrated that it is not ‘women’ that is the target of protection but the majority-imposed set of values and the nation’s dignity. The succeeding chapters will provide description and analysis as evidence to support my arguments. However, I shall start with contextualizing trafficking in Indonesia and stating the research problem.

1.2 The Context of Trafficking

1.2.1 Trafficking in Persons in Indonesia: The Situation

Similar to other countries, the extent of trafficking incidences in Indonesia has been difficult to estimate (Dasgupta 2006), not only because there is no consistent method of data collection but also because of the clandestine nature of the problem. Moreover, before March 2007 there was no sufficient legal definition to constitute

trafficking⁵, so the new patterns of trafficking cases had been conflated with migration issues, prostitution, the worst forms of child labor and also domestic workers abuse cases. However, trafficking is codified as a crime under two different laws in Indonesia. Article 87 of Law No. 23 (2002) on Child Protection penalizes anyone who traffics, sells and abducts a child for one's own benefit by fifteen years in jail but does not provide the definition on what constitutes trafficking. Article 297 of Indonesia's Penal Code stipulates that "Trafficking of women and underage boys is liable to a maximum imprisonment of six years". By only covering adult women and boys, the article is considered as incapable to deal with the current phenomenon of trafficking (Hamim and Rosenberg 2003).

Currently there are different statistics on the number of victims made available by governments, national and international non government organizations, universities and media⁶. Nevertheless, trafficking in persons in Indonesia can be classified into domestic and international. While less has been said about men trafficked internally, women and girls are trafficked primarily into prostitution - both brothel-based and otherwise and into servitude as domestic helpers. Boys are mainly trafficked to fishing platforms, plantation estates, and begging⁷. In the international level, women and girls are not only trafficked to the sex industry and domestic work but also to agriculture and construction, whereas men are trafficked to agricultural work⁸. In one of my interviews in December 29, 2005, Anna Sulikhah of Bandungwangi Foundation, an organization working for prostitutes, said that there is a common practice for some rural parents to force their daughters to work as domestic workers in urban areas while taking advance payments of their salary. She also works with many girls who were asked to sell bottled tea on the street as a ploy of selling

⁵ Trafficking of women and boys ("*perdagangan perempuan dan anak laki-laki*") were mentioned in Article 297 of the Criminal Code to include sexual exploitation and also Article 87 of the Law No. 23 (2002) mentioned child trafficking without providing a definition.

⁶ Such as the Department of Social Welfare, Ministry of Women Empowerment, and Ministry of Labor and Transmigration, ICMC, Solidarity Centers, LBH Apik, IOM

⁷ See Irwanto, Nugroho, F. & Imelda, J. D. (2001) *Perdagangan anak di Indonesia* (Child Trafficking in Indonesia), ILO IPEC: Jakarta, Indonesia; Rosenberg, R. (ed.) (2003) *Trafficking of Women and Children in Indonesia*, Jakarta: ACILS and ICMC; Silawati, H. (2004). *Nightmare in Border Areas: a study on child trafficking in Indonesia for labor exploitation*. Yogyakarta: Galang Press; Sofian, Ahmad, et al (2003) *Jermal Reviewed: Summary Report*. Medan: PKPA

⁸ See Rosenberg, R. (ed.) (2003) *Trafficking of Women and Children in Indonesia*, Jakarta: ACILS and ICMC

sexual services. The girls mainly come from Indramayu (West Java). She further asserts that the parents of the girls sold them to the pimps who make frequent visits to the village. This practice, according to her, is culturally acceptable in Indramayu. Another form of trafficking in Indonesia is mail-order brides of mainly Chinese-Indonesian women from Singkawang, West Kalimantan trafficked to Taiwan and Hong Kong⁹.

The United States (US) Trafficking in Persons (TIP) Annual Reports categorize Indonesia as a source and transit country to Malaysia, Saudi Arabia, Kuwait, United Arab Emirates, Hong Kong, Taiwan, Japan, South Korea, Singapore, and Australia¹⁰. Agustinanto & Kailola (2006) state that Indonesia is also a destination country of women and girls from China, Thailand, Taiwan, Uzbekistan, Poland, Russia, Venezuela, Spain and Ukraine for sexual purposes, despite the unavailability of dependable estimates of numbers.¹¹

The Trafficking in Persons (TIP) report is an annual assessment of countries in their efforts to tackle trafficking around the world. This report is published by the US Department of State (DOS) as mandated by the Trafficking Victims Protection Acts or TVPA 2000. The report has also been used as a diplomatic tool of the US government for continuing dialogue and encouraging action on trafficking and as a guide to help focus resources on prosecution, protection, and prevention programs and policies (TIP Report 2006:28). In the report, countries are divided into three groups or tiers. Tier One means that a country fully meets the requirements of the TVPA. Tier Two means countries do not yet meet the standards fully but are working to improve. Tier Three means countries face possible restrictions in American aid or other measures. In 2003, the law was reauthorized and added a tier-two watch list.

⁹ See Yentriani, A. (2004) *Politik Perdagangan Perempuan* (The Politics of Women Trafficking), Jakarta: Yayasan Galang; Silawati, H. (2004). *Nightmare in Border Areas: a study on child trafficking in Indonesia for labor exploitation*. Yogyakarta: Galang Press; Sikwan, A. & Triastuti, M. R. H. (2004) *Tragedi Perdagangan Amoi Singkawang* (The Trafficking Tragedy of Amoi in Singkawang), Yogyakarta, Gajahmada University and Ford Foundation.

¹⁰ See Trafficking in Persons (TIP) Report 2005; Rosenberg 2003

¹¹ Agustinanto & Kailola (2006) describe that women were promised jobs as karaoke assistants in Jakarta promising them to earn up to US\$ 55 per night. Upon arrival, they found that they had to provide sexual services to clients. Also, earnings were much less than what was promised.

This tier means that countries do not fully comply with the minimum standard¹² but are making significant efforts toward compliance (TIP Report 2006:29).

Indonesia was ranked in Tier Three in two consecutive years in 2001 and 2002 for its failure to fully comply with the minimum standards and for not making significant efforts to do so (TIP Report 2001; TIP Report 2002). This means that Indonesia faces possible restrictions to access US funds, not only for countering trafficking in persons but also for other measures such as non-humanitarian aid and non-trade financial support. After passing the National Plan of Actions (NPA) on the Elimination of Trafficking in Women and Children in 2002, Indonesia's position was upgraded to Tier Two in 2003 until 2005 for making improvement although not yet completely meeting the standards (TIP Report 2003:15; TIP Report 2004:39; TIP Report 2005:42). Subsequently, the US State Department perceived that Indonesia is making no progress in compliance with the minimum standards and the government lacked serious determination to improve the situation. Therefore, in the TIP report of 2006, Indonesia was downgraded to the Tier Two Watch List to indicate Indonesia's failure to provide evidence of mounting efforts to combat severe forms of trafficking in persons from the previous year (TIP Report 2006:140). One of the reasons given in the report is that Indonesia has not yet passed the three-years pending draft law on anti-trafficking (p.140-142).

1.2.2 The Discourses on Trafficking in Persons in Indonesia

With the deficiency of legal definitions, trafficking discourses are mainly linked to the trade of women and children for sexual purposes. Different reports about

¹² Section 108 in TVPA (2000) stipulates the minimum standard as:

“(1) the government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.

(2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.

(3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.

(4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons

sexual exploitation of women and girls started appearing in the Indonesian press from the 1980s onward. It is also believed that while trafficking in Indonesia involves men, children, and women, trafficking of men is rarely reported in the media or figured in public discussion. In addition, there is no study dedicated to this particular issue and there is also no specific funding available to provide services for men victims. Nevertheless, there is no rejection or public acceptance of the possibility that men can be victims of trafficking. Apart from the fact that men trafficking debates are absent in media reports, this is also because men mainly possess the quality of being masculine, namely strong, independent, savvy and with the ability to defend and help themselves. In fact, the studies of male migrant workers¹³ in Malaysia and Singapore show the contrary¹⁴. Conversely, the public tends to accept easily the fact that women are usually the victims. Women are conceived as possessing the feminine qualities passivity, needing protection, weak, innocent and sexually vulnerable. As trafficking involves the process of movement either within or across borders, the idea of women crossing the boundary of private spheres, i.e. their house, suddenly comes into the picture. The combination of being women and being in public reveals the long standing public/private distinction which idealizes the private realm as the best place for women and their children. Therefore, women are seen as being in danger when they step outside of the house. This is also a case in the trafficking discourse -- not only in the way trafficking is perceived based on public and private features but also based on gender assumptions and on the role of women and men that are believed in and applied in society.

The rise of human rights discourses, however, puts the government as the violator of human rights when it fails to respect, fulfill, protect and promote the human rights of its citizens. Human rights concepts target government as the main providers of rights. Trafficking in persons is categorized under the crime prevention

¹³ By stating this, I am aware that migration and trafficking are distinguished from one another by the notion that migration is characterized by choice and trafficking by coercion, deception or force. However, in today's global economy, migration and trafficking exist along a continuum.

¹⁴ See for instance: Wibawa, Y. B. (2004). *Bekerja di Singapura (Working in Singapore) Seri Panduan untuk buruh migrant Buku 3* (Guide Book Series for Migrant Workers, Book 3), Jakarta: Migrant Care Press; Wibawa, Y. B. (2004). *Bekerja di Malaysia (Working in Malaysia), Seri Panduan Buruh Migran Indonesia Buku 2* (Guide Book Series for Migrant Workers, Book 32), Jakarta: Migrant Care Press; Purwanto, E. & Sumpeno, S. (2004). *Menangani sendiri kasus-kasus buruh migrant Indonesia*. (Dealing with Migrant Cases ourselves) Jakarta: KOPBUMI.

convention that urges the state to criminalize trafficking and trafficker(s). Government's obligation under this convention is not 'to respect, fulfill, protect and promote human rights' but to criminalize trafficking and cooperate with other (foreign) institutions in handling trafficking. This approach presumes that by stopping the crime this will end the violation and exploitation against trafficked people. Sadli (2006) argues that women in Indonesia had been victimized by the state's ignorance (act by omission) and government's lack of good political will to address trafficking seriously.

On the other hand, putting trafficking in persons in the frame of organized crime, according to Wijers and Doorninck (2002) reflects a problematic risk to target individuals while leaving aside structural issues. They further explain that the prosecution of offenders, then, does not automatically include the protection of the rights of the victims. The trafficked women and children are valued as "evidence" for a case. Even though temporary protection may be offered by giving them a short term residence permit, this is usually totally dependent on the usefulness of victims to the purpose of case investigation and prosecution.

The tier system and economic sanctions implemented by donor countries retain a "stick (as in carrot and stick)" approach to a state's performance in handling trafficking. This situation provides an occasion for a state to exercise the means to reduce trafficking cases, i.e. by controlling their citizens' movement and immigration or cracking down on bars and brothels, in order to maintain access to humanitarian and non-humanitarian funding. Indonesia received \$2 million from the US government from 2001 to 2003, and the amount increased 10 times to \$20 million for the project years 2003 until 2007, which is equivalent to \$5 million per year.¹⁵ In total, the US has allocated \$50 million since 2001 to eradicate trafficking in persons in Indonesia.¹⁶

¹⁵ Email communication with USAID (US AID for International Development) personnel, June 6, 2006.

¹⁶ Indonesia together with Cambodia, India, Mexico, Moldova, Sierra Leone, and Tanzania, faces significant challenges with human trafficking, and their governments have been receptive to anti-trafficking cooperation.

1.2.3 From ‘Trafficking of Women and Children’ to ‘Trafficking in Persons’

After signing the Palermo Protocol¹⁷ in 2001, the Government of Indonesia began the process of drafting the National Plan of Action, followed by the scrutinizing of existing criminal laws. The National Five-year Plan of Action 2002 – 2007 (NPA) was credited by Presidential Decree No. 88 (2002) under the title of ‘The Elimination of Trafficking in Women and Children’¹⁸. Among other things, the NPA prescribed that suitable legislation should be put in place to deal with trafficking in a more effective and comprehensive way. This mandate, however, should be fulfilled within 5 years, from 2002 to 2007.

In December 2002, the Ministry of Women Empowerment initiated the drafting law called the Suppression of Trafficking of Women and Children. This draft had been discussed among government institutions and civil society through various meetings and consultations. In 2005, the draft law was transferred to Parliament House (DPR) under the name “The Suppression of Human Trafficking” and claimed as DPR’s initiative.¹⁹ After passing through a long process of discussion, moving back and forth from the parliament’s priority list several times for more than 5 years²⁰, the draft bill on anti-trafficking has now materialized. In March 20, 2007, Indonesia’s Parliament passed the law on anti-trafficking that is called Law No. 21 (2007) On the Suppression of Criminal Acts of Trafficking in Persons (instead of women and

¹⁷ This is another name of the United Nations Convention Against Transnational Organized Crime Supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. It is called “Palermo Protocol” because it was agreed on by UN members in Palermo, Italy

¹⁸ Prior to the enactment of the NPA the Elimination of Commercial Sexual Exploitation of Children (ECSEC) had been discussed over a year earlier than trafficking and was passed with Presidential Decree No. 87 (2002)

¹⁹ Both DPR and Government can submit the draft of law, but in this case, DPR did not come up with their draft and used government draft as their initiative. I found this action to be politically competitive.

²⁰ Taking together the period with the previous DPR members, but under the lead of Mrs. Latifah Iskandar of PAN, the new composition of new members DPR took only 8 month to discuss the law. This is because in this particular period, Indonesia changed the Parliament members as a result of the election and there were draft bills that were considered to be ‘more important’ than the anti-trafficking bill or the protection for migrant workers and their family, such as the draft bill on terrorism.

children)²¹. The trafficking definition as stipulated in this law is claimed to be in compliance with a more extensive than the definition of trafficking in the Palermo Protocol.²² Article 1 (1) of the Law No. 21 (2007) defines trafficking in persons as,

The recruitment, transportation, harboring, transfer, or receipt of persons, by means of threat or use of force, of abduction, of incarceration, of fraud, of deception, of the abuse of power or of a position of vulnerability, of debt bondage or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within a country or cross-border, for the purpose of exploitation or which causes the exploitation of a person.²³

The definition, however, is a product of a long debate on many areas of concerns and involves national and international interest such as those on the identification of trafficked people (whether women, men and/or children²⁴), means of trafficking (such as debt bondage, coercion, abduction, falsification of documents), jurisdiction of the law (to cover domestic, international, or inter-state), definition of exploitation and its forms (in the sense of human labor, sexual purposes and/or for economic benefits) and end form of trafficking (to include prostitution, the exploitation of prostitution²⁵, child adoption, organs transplantation, bride selling,

²¹ Interestingly, there were 4 provincial laws in North Sulawesi, North Sumatra, West Nusa Tenggara and East Java that deliberated on anti-trafficking during the period (2002 – 2007) which stipulate the definition of trafficking in persons (some of the provincial laws only focused on trafficking of women and children). With the new law, these provincial laws need to be harmonized and to a certain extent amended. However, these initiatives are still in discussion in provincial governments and parliaments (DPRD II).

²² Article 3, Trafficking in Persons is the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use by force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving and receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

²³ Unofficial Translation by IOM Indonesia (the file with author)

²⁴ And to certain extent there was effort to redefine who is a woman and a man, as the definition of a child is already available in Child Protection Act No. 23 of 2002.

²⁵ While prostitution is not a criminal offence under the Indonesian criminal code or KUHP, gaining from the prostitution of others is criminalized. Several articles of the KUHP which criminalize the prostitution of others and which impose penalties on those who sexually exploit adult women and children, could be used to apply justice such as Article 285, 287, 288, 289 290 and 292.

mail-order brides). A broad range of sectors hugely influenced the discourses of legal content from organizations working on women's rights, child rights, migrant rights, the academe, individuals, nationalists and faith-based organizations as well as international interests and influential representation in Indonesia²⁶. All of them tried to push and nail down their agenda into the discussion²⁷.

1.3 Statement of Research Problem

The above description indicates that the discussion on trafficking re-emerged in Indonesia because there is a political opportunity available after the New Order regime, in which, people have freedom to discuss different social issues through various forums such as the media, seminars and research. At the same time this situation highlights three changes: (1) the shifting of terms, from "trafficking of women and children" to "trafficking in persons"; (2) the debates between criminalization and human rights paradigms in the approach to trafficking; and (3) the US unilateral monitoring system in evaluating a country's measures to tackle trafficking. The arrival of a new international instrument on anti-trafficking, Palermo Protocol in 2000 had invoked not only the trafficking debates in Indonesia more widely, but also introduced the new term: "trafficking in persons, especially women and children". Another emerging change is the shift in paradigm of understanding trafficking from a human rights violation to criminalization. On the other hand, the US unilateral monitoring system in trafficking to countries – excluding it self – had pushed governments to take measures to correct their records in handling trafficking at the national level.

Through close reading of the available literature on trafficking in Indonesia, there was found no study focused on the contemporary analysis of trafficking discourses in Indonesia before and after the Palermo Protocol. In fact, discourse, as argued by Foucault (1990; 1993) sets limits, by creating a system of exclusion,

²⁶ Such as International Organization, UN bodies, and Embassies

²⁷ Nonetheless, the Network for Legal Drafting Pro to Women (JKP3) praised the Parliament Committee members of this law as the most open-minded Committee in DPR in accommodating people's inputs, including from civil society organizations (NGOs Press Release: NGO response to the passing Anti-Trafficking Law, March 23, 2007, available online at www.jurnalperempuan.com.

interdiction and prohibition. According to this view, discourse dictates on what is 'say-able' and 'thinkable' on trafficking. Discourse also constitutes a particular society's social norms by creating the field of knowledge, which shapes one's world view (Foucault 1990; 1993). Therefore, scrutinizing the discourse will reveal the power relations that are imbued within the concept of trafficking.

Within this situation, this study poses two primary investigations. The first is about shifting focuses in debating trafficking in Indonesia after the Palermo Protocol along with the US trafficking monitoring system and its implications. The second concerns the dominant discourses within debates on trafficking after the New Order Regime in the process of the legal drafting of the Law No. 21 (2007) and its implications.

1.3.1 The Shifting in Problematizing Trafficking

As explained earlier, the NPA focuses more on women and children (instead of trafficking in persons). This can be traced back to 2001, when there were international precedents and pressures to specifically pay more attention to women and children as mentioned in the Palermo Protocol and the US Trafficking Victims Protection Acts (TVPA) (2000). Likewise, women and children are seen as more vulnerable than men in general. Secondly, there was no data that could be used to encourage government to focus on men, let alone on boys. Thirdly, there was a strong campaign from feminist movements to keep the focus on women because not only women experience trafficking differently, but also they had been victimized by gender inequality in accessing justice, political and economic power. Men, according to the feminists, appear to be perpetrators more than victims. The end result of the content and the title of NPA was highly debated and modified according to the inputs from consultation meetings in at least the five large cities of Surabaya, Jakarta, Pontianak, Medan and Bandung, as well as from letters to the Drafting Committee. What is remaining unidentified now are the debates and the push and pull factors of shifting the focus from 'trafficking of women and children' to 'trafficking in persons', as well as its implications. Another shifting is on the paradigm in perceiving trafficking. Although trafficking is criminalized under Article 297 of Indonesia's Criminal Code,

the way trafficking has been discussed in Indonesia's forum is as a women's human rights violation. The enactment of Law No. 21 (2007) introduced trafficking as a special crime acts. Within this shifting of paradigms from human rights violation to criminalization, this study examines the way the shifting was discussed among discursive participants in Indonesia and the process of making decision on changes in problematizing trafficking.

1.3.2 Discourses Surrounding Trafficking in Contemporary Indonesia

Taking the opportunity of the opening of the political situation in Indonesia after the fall of the New Order Regime and the newly dynamic relations between Indonesia, the UN and foreign countries, this study examines the dominant discourses that are invoked in trafficking debates among parliament members, the media, government and NGOs involved with the issue of trafficking. By determining the dominant discourse, this study also scrutinizes the resulting sub-dominant, marginalized and silenced discourses.

1.4 The Significance of the Study

Knowing and analyzing the shifting and dominant debates on trafficking in Indonesia at the current times allow this study to contribute to the existing knowledge on the issue. The analysis of the implications of: (a) the shifting debates in trafficking as well as (2) identifying which discourses are marginalized as result of the dominant discourse and (3) the way the debates portray women's relations to the state will help further research and the work of policy makers and practitioners from universities, non-government organizations and government institutions.

1.5 Objectives of the Research

- 1.5.1 To examine the factors, process of decision making and implications of the changes in problematizing trafficking in Indonesia

- 1.5.2 To examine in which process that discourses become dominant, sub-dominant, marginalized are eclipsed when trafficking in persons is discussed with its implications

1.6 Key Research Questions

- 1.6.1 What are the reasons for the shifting terms and paradigms in understanding trafficking in Indonesia? What is the process in which decisions on changes in terms and paradigm were made? And what are the implications?
- 1.6.2 Which trafficking discourses are dominant when the anti-trafficking law is discussed? How do the dominant discourses affect how trafficking is understood? What is the process in which a discourse becomes dominant in the trafficking discussion?

1.7 Research Methodology

1.7.1 Overall Research Methods

This research employs a qualitative method. Primary data was collected through interviews, observation and textual analysis. Secondary data was gathered from documentary research. There were twenty four interviews during the fieldwork with the key actors on trafficking discursive practices in Indonesia. The key actors in this study included thirteen different staff members from national and international non governmental organizations (NGO/INGO) that mainly work on women, media, child's rights, migrant workers' issues, and domestic worker's rights; staff members of related ministries in trafficking discursive practices such as a staff member from the Department of Justice and Human Rights and three staff members under the Ministry of Women Empowerment; a journalist of the most influential nationwide newspaper in Indonesia, *Kompas* daily; two staff members of the National Commission for Human Rights (Komnas HAM) and National Commission of Women (Komnas Perempuan), a member of a political party in Commission 8 (the

commission focuses on women and religious issues under the House of Representatives) which is mandated to discuss Law No. 21 (2007), a staff member of the House of Representatives and two non-affiliated individuals.

Based on the knowledge I have gathered by working in an NGO involved in the trafficking issue from 1998 to 2004 in Jakarta, I identified four main players in discursive practices. They are the staff members of NGOs, government officials, journalists and the members of parliament. Players from NGOs are divided into individual staff (such as those who identify themselves as having no affiliations like freelance consultants, or individuals who are concerned about the issue of trafficking and legal drafting but working in an organization that focuses on another issue), individual NGOs (non-members of the coalition), and JKP3 (The Network for Legal Drafting Pro to Women). Members of Parliament are also distinguished by their role in the House of Representative or DPR as legal staff, expert staff and the party members. This distinction is helpful to maintain the balance of voices in the study. I also interviewed the non-participants²⁸ in discursive practices in the field work, whose names are anonymous based on their request. Nevertheless, as this part of the interviews was unplanned, I prefer to call it as conversations. The reason for having the voices of the non-participants in discursive practices is because I was curious if the debates on trafficking actually only sounded among certain members of the 'public' (members of NGOs, the media, parliament and government). These conversations provided me with the confirmation on the dominant discourses in trafficking.

Interviewing key actors in trafficking discursive practices in Indonesia enables me to answer the first and second research questions by narrating the insiders' opinions, observations and insights on trafficking discussion before, during and after the enactment of Law No. 21 (2007). All interviews took one to two hours and mainly utilized Bahasa Indonesia²⁹ as the medium of conversation and are recorded in MP3 which can be transferred and saved to a personal computer. Before the interview, the questions were sent to the resource persons. Nevertheless, there were three actors who

²⁸ The non-participants in discursive practices that I had interviewed are one taxi driver, my older sister (she is a teacher) and her 17-year old daughter age

²⁹ Some of resource persons spoke in Indonesian mixed with Javanese, which I understand without the need for translation.

were unable to find time to have a face-to-face interview and preferred to answer the questions through e-mail.

I divided the duration of the fieldwork into: pre-interview (first month) and interview (second month) sessions. Although I sent notification e-mails before I went to the field to identified organizations and key actors, I felt there was an urge to establish a rapport with them before the actual interviews. I also needed to map out the recent dynamics among players in their relations to each other and I wanted to grab the sense of their engagement in debating trafficking. The pre-interviews were done in a casual manner and mainly conducted in their offices. Conducting the pre-interview³⁰ session enabled me to: (1) explain the intention of the study to the key players; (2) collect materials related to the study; (3) arrange the interview date; (4) help in drafting guided questions; and (5) identify new players (with as detailed by contact persons) that I had not known before. Overall, there were thirteen pre-interviews conducted before the face-to-face interviews. I cross-checked the obtained information from one resource person to another to clarify, verify and get the bigger picture. The data gathering was mainly conducted in Jakarta as this city is the central to the decision-making process and most of the players in constructing the discourse on trafficking in persons reside there.

During the two months of fieldwork, I managed to collect 199 newspaper articles, 10 policy documents (including the draft laws from 2002 to 2007, the passed laws, national plan of actions, and ministerial decrees), 47 minutes of the meetings and 31 reports of NGOs, 21 minutes of the meetings and 11 reports from governments, 97 public seminar papers, 38 parliament statement papers, and 25 existing studies related to trafficking in persons in Indonesia.

There were four seminars related to trafficking that I attended during the fieldwork, which allowed me to make observations and experience the ambiance of trafficking discussions among key actors. The seminar held by Terre des Hommes, a donor organization from the Netherlands, in May 23, 2007 gave me an occasion to meet more key actors from outside of Jakarta such as from Batam, Bandung (West

³⁰ I also found that applying a pre-interview as a strategy in data collection made the interview more focused on the research questions and eased the session. This is because personal conversation (as I was away from Indonesia for more than three years) between friends was exercised in the pre-interview period.

Java) and Solo (Central Java) and investigate their opinion regarding Law No. 21 (2007). The second seminar held by Gema Perempuan, an organization working on domestic workers' rights based in Jakarta, together with the Ministry of Women Empowerment on forced labor and trafficking in domestic work. In this seminar, I noted the disappointments and criticisms from NGOs of the domestic work debate exclusion in Law No. 21 (2007). The third seminar was about drafting the government regulation to establish an 'integrated service center' as mandated by Article 46(2) of Law No. 21 (2007) which was held by the Ministry of Women Empowerment. This seminar was attended by about thirty-five staff representatives from different departments in the government. Therefore, I was asked to act only as an observer who had no right of posing questions. Nevertheless, this seminar enabled me to understand how victims were gendered and characterized in the discussion, and also how they were expected to use the so called 'integrated service center'. Lastly, the final seminar was the National Public Discussion to amend the Criminal Code that was hosted by the National Commission for Human Rights or Komnas HAM and LBH Apik (Legal Aids Foundation – Indonesian's Women Association for Justice). In this public discussion, the emergence of trafficking as a special crime code (which will be separated out from the general criminal code book) was discussed and categorized under moral crimes and deprivation of individual freedom. Listening to the debates allowed me to feel the tension between women organizations³¹ and the legal practitioners in general.

I analyzed the texts of almost all gathered materials and interview transcriptions to reveal the frequent arguments and discourses that appear in the discussion of different groups. Analyzing the text enabled me to identify the dominant and marginalized discourses in trafficking issues. In this study, I also conducted a documentary research which allowed me to explain the historical, social and cultural context of trafficking in Indonesia.

³¹ I use "women organization" here to refer to individuals or staff (men and women) working in the organization as well as to the institutions.

1.7.2 Data Analysis

This study involves two segments: determining the dominant discourse which is constructed in a given period of time and analyzing it. To identify the dominant discourses, this study employs critical discourse analysis to examine the use of language, its forms, functions and assumptions beneath what is discussed in newspaper articles, minutes of meeting, reports, and in interview transcriptions, in order to get the surface (denotative) meanings and examine more implicit (connotative) social meanings of trafficking in persons' discursive formulation during 1997-2007. This study uses the term discourse in its Foucauldian sense (Foucault 1990; 1993), whereby discourse constitutes a particular society's social norms by creating the field of knowledge, which help in turn, to produce identities and interests thus influencing and shaping one's world view. Therefore, by defining objects, spheres of inquiry and field of research, discourse sets limits in creating a system of exclusion, interdiction and prohibition. This study, then, applies discourse systematization (Johnstone 2002: 9-27) to conclude that discourse is shaped and, in turn shapes: (a) the world, (b) the language, (c) the participants and their interpersonal relationships, (d) the possibilities of future discourse and how it is shaped by prior discourse, (e) the medium, and (f) the purpose. Furthermore, by looking at Indonesia's situation on trafficking discourse, this study also looks at the way discourse is shaped by (g) the availability of political opportunities. One of the key premises in discursive analysis is that it is historical and cultural specific (Burr in Phillips & Jorgensen, 2002:5) and contextual bound (Johnstone 2002). This view perceives that knowledge on trafficking in persons is historical and contextual, based on historically situated and based on context in which people engage in interchange among each other.

1.8 Structure of the Thesis

This thesis is structured into seven chapters of which this chapter is the first. Chapter two lays down the conceptual framework of the thesis, and chapter three is about the historical and cultural context of trafficking by narrating the cultural practices that may contribute to the current practice and public perception on

trafficking, the distinction between the concept trafficking, prostitution and white slavery in the Netherlands and how it traveled to Indonesia. Furthermore, in chapter four, the historical explanation moves to the way trafficking was debated under Indonesia's women's movement from 1920 to 2000. This chapter aims to articulate the evolution of trafficking concept within middle class women's movements by pointing out different themes in different periods and political situations in Indonesia.

The contemporary debates on trafficking is described and analyzed in chapter five including the changes in using the term and applying the paradigm of criminalization of trafficking as well as its implications. This chapter also discusses about the way women are conceived of in Law No.21 (2007) as trafficking victims. Further, this chapter discusses the global-local dynamic in standardizing the trafficking definition which involves efforts to describe the history of Indonesia's particularity in the trafficking concept. The sixth chapter describes the dominant discourses in trafficking debates and their implications. This chapter points out that the dominant discourses in contemporary Indonesia are framed by the notion of sexual exploitation and migration abuse abroad. The articulation of the dominant discourses, however, is shadowed by the notion of national dignity and Indonesia's international image as viewed by the world community. Chapter seven is the conclusion.

CHAPTER 2

CONCEPTUAL FRAMEWORK

2.1 Introduction

The process of understanding trafficking problems in Indonesia and framing the thesis questions involves the examination of different concepts. This chapter aims to provide the analysis of the concepts that are used as a framework in discussing and answering each research question. The analysis included in this chapter is an attempt to clarify and point out problems in the Palermo Protocol as the main source for a standard in defining trafficking. Secondly, it also includes the discussion on the implications of using a crime approach in trafficking in comparison to a human rights framework. As trafficking is actually an old problem, the third section discusses the evolving concept of trafficking in International agreements from 1904 to 1993. This chapter also includes a gender critique to the international conventions.

Trafficking has been “baptized” as one of the most important women’s rights issues (de Vries 2005) therefore, this chapter discusses the way the rights argument has divided the women’s movement globally and explains the difference among women’s interests in the trafficking issue. In this chapter, I combine my observations gathered while working in countering trafficking in Indonesia with a review of literature available on this subject. Working as one of the members of the Drafting Committee for the National Plan of Action (NPA) in 2001-2002 had provided me with the opportunity to read closely the related international instruments for the purpose of designing a five-year plan of action.

The main argument of this chapter is that the concept of trafficking continued to be confused with other issues such as prostitution and migration. The debates on trafficking are characterized by multiple meanings from various interests. The evolving definitions reflect different interests in regulating prostitution, informal and unregulated labor, and migration, often clamping down the issue of “trafficking of women” with the state’s agenda in controlling immigration. The arrival of the new

definition in the Palermo Protocol has provided the legal international standard to constitute trafficking, but still some issues remain unsolved, thereby leaving the states to decide the most appropriate trafficking definition at the national level.

2.2 The Palermo Protocol and Its Discontents

Much of the renewed interest in trafficking among western governments is an extension of the growing concern with transnational crime, particularly with such activities as money laundering, drug trafficking and trafficking in persons (Coontz and Griebiel 2004). With the new instrument called the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime³² that was agreed to in Palermo, Italy in 2000 (the Palermo Protocol), trafficking in persons is defined under Article 3(a) as,

The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

The above definition indicates three elements that should exist in determining trafficking incidence. The first element is the process of movement to include the recruitment, transportation, transfer, harboring or receipt of persons. The use of “or”

³²According to Gallagher (2001) the origin of Palermo Protocol can be traced back to Argentina's interest in the issue of trafficking in minors and its dissatisfaction with the slow progress on negotiating an additional protocol to the Convention on the Rights of the Child (CRC) to address child prostitution and pornography. Argentina was also concerned that a purely human rights perspective to this issue would be insufficient and accordingly lobbied strongly for trafficking to be dealt with as part of the broader international attack on transnational organized crime. Therefore, along with general awareness that was developed among influential group of states, the need for holistic approach where the crime control aspect should be addressed together with traditional human rights concerned also occurred.

as conjunction in the definition demonstrates each act is a sequence of activities in the process of moving someone from one place to another. The second element is the 'means' in the process of movement, to include: the threat or use of force or other forms of coercion, of abduction, of fraud, deception, the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. The third element is the exploitation as the purpose of trafficking. The examples of exploitation that are given in the definition include at the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. Nevertheless, the definition does not provide the parameter on what constitute 'exploitation'. The new definition codifies 'trafficking', as a series of acts in the process of movement which involve the 'means' for the purpose of labor and sexual exploitation (and also the removal of organs), as criminal acts. The Palermo Protocol definition does not deal with the legality or illegality of the movement or the type of work that people are engaging with. In cases that I had encountered during my work with an NGO, many Indonesians enter Malaysia legally and work as migrant workers in the plantation or in houses. Their passports are then held by their employers to ensure that they will not leave the work until the contract termination. Some migrant workers run away when they found the work was exploitative. If they were caught by the Malaysian authorities without being able to provide legal documentation, they would be considered as undocumented migrant workers or as illegal aliens.

Nevertheless, the definition provides for some special treatments if the victim is a child (under 18 years old – Article 3[d]). The element of 'means' is not important in child trafficking as stipulated in Article 3(c): "The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article."

The definition also adds that the provisions of consent of the victims shall be irrelevant where the 'means' have been used as stated in Article 3(b),

The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

For the purpose of victim protection, the Interpretative Notes for Official Records or the *travaux préparatoires* (A/55/383/Add.1 para.68) elaborates that consent “should not be interpreted as imposing any restriction on the right of accused persons to a full defense and to the presumption of innocence. They should also indicate that it should not be interpreted as imposing on the victim the burden of proof. As in any criminal case, the burden of proof is on the state or public prosecutor, in accordance with domestic law”.

However, there are issues in the new trafficking definition which pose challenges to the legislator. The process of “recruitment”, for example, can involve different forms of activities in the country of origin, transit or destination, involving legal or semi-legal private recruitment agencies. Current incidences in trafficking show that the initial recruitment can be voluntary and that the coercive mechanism to keep a person in an exploitative situation may come later³³. So, conditioning all acts in the process of movement with the element of ‘means’ will not be able to address cases of trafficking when the consent is obtained in the first place and then coercion, deception and force to be in exploitative situation occur at a later stage. “Transportation” may involve the traffickers but it may also be exercised in the absence of traffickers, for instance, by using land, sea or air vehicles which are operated with sincere intentions. The people who work for the transportation companies may be accused as responsible for transporting trafficked victims or for failing to report the cases to the authority. Finally, the “transferring”, “harboring” and

³³ This is evident and widely explained in various studies such as: Sugiarti, K. L., Davis, J. & Dasgupta, A. (eds.)(2006) *When They were Sold: Trafficking of Women and Girls in 15 Provinces in Indonesia*, Jakarta: ICMC & ACILS; Darmoyo, S. & Adi, R. (2004). *Traficking anak untuk pekerja rumah tangga: kasus Jakarta (Child Trafficking for the purpose of domestic work)*, Jakarta: Pusat Kajian Pembangunan Masyarakat Unika Atmajaya; Dzulhayatin, S. R. & Silawati, H. (2002) *Indonesia: Migration and Trafficking in Women* in Raymond, J. A. et al. *A comparative Study on Women Trafficked in the Migration Process, Patterns, Profiles and Health Consequences of Sexual Exploitation in Five Countries (Indonesia, the Philippines, Thailand, Venezuela and the United States)*, CATW; Irianto, S. et al (2005) *Perdagangan Perempuan untuk Obat-obatan Terlarang in Indonesia (Women Trafficking for Drugs in Indonesia)*, Jakarta: Yayasan Obor Indonesia; Rosenberg, R. (ed.) (2003) *Trafficking of Women and Children in Indonesia*, Jakarta: ACILS and ICMC;

“receipt” of trafficked persons also present the sensitive issue about the knowledge of the accused persons³⁴. The process of transferring trafficked victims may involve, for instance, staying at a hotel, motel, guest house or in a room in transit cities or countries whose inhabitants may or may not be involved in trafficking. The innocent people who seek money for renting rooms in hotels, motels, or houses are not identified by the concept of “transferring”. This is also the case with the employers who employ trafficking victims without the full understanding of the history of movement of the victims and who can be accused as harboring and receiving trafficked persons³⁵.

Another critical element in trafficking is the notion of ‘exploitation’. This refers to the intention of the traffickers. The law enforcer may find it difficult to prove that the intention is present in the first place. The definition recognizes the realities of an individual who voluntarily works as a prostitute and includes an individual who employs prostitutes depending on whether the employment relationship falls within the definition of the exploitation. Nevertheless, the inclusion of “exploitation for the prostitution of others” creates separate difficulties. States, under this protocol, have no obligations to standardize their measures regarding prostitution,

The terms “exploitation of the prostitution of others” or “other forms of sexual exploitation” are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws (the Interpretative Notes for Official Records or the *travaux préparatoires* A/55/383/Add.1 para. 64).

Regarding the issue of child trafficking, the Palermo Protocol is also found in conflict with other international instruments, such as the ILO Convention No. 138 (1973) on the Minimum Age of Child Labor, and the ILO Convention No. 182 (1999)

³⁴ Similar observations on “recruitment”, “transferring”, “harboring” and “receipt” are also provided by ILO SAPFL’s study on *Human Trafficking and Forced Labor Exploitation: Guidance for Legislation and Law Enforcement* (2005:10).

³⁵ Apparently, similar views on the confusing meaning of “transferring”, “harboring” and “receiving” had also been expressed and shared by the participants in trafficking discussion groups in reaction to Law No. 21 (2007) at the Terre des Hommes’s partners meeting that I attended on May 23, 2007 in Jakarta. Nevertheless, the participants said that they would have to wait for the actual implementation of the law with some sample of cases of trafficking to form their final opinions.

on the Worst Forms of Child Labor. As described earlier, the ‘means’ and consent in child trafficking are irrelevant. This notion illustrates that a child under 18 years old is regarded as a child trafficking victim whenever s/he has been recruited or transported with the intention of labor or sexual exploitation. Article 1 of the ILO Convention No. 138 urges states to “ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons”. Further, in Article 2(3), the convention states that the aforementioned minimum age means the child shall “not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years”. Similarly, the study of the ILO Special Action Program to Combat Forced Labor (ILO SAPFL) on *Human Trafficking and Forced Labor Exploitation: Guidance for Legislation and Law Enforcement* (2005:24) found:

This would make the distinction extremely delicate in some cases between child trafficking and migration for employment of adolescents above the minimum working age. This is not only a legal issue but also has implications for practical action, such as data gathering and identification of the victims

Furthermore, the ILO Convention No. 182 declares that the sale and child trafficking of girls and boys under 18 years old is one of the worst forms of child labor (Article 3) and calls for immediate measures including prevention, withdrawal and rehabilitation (Article 1). ILO Convention No. 182 also covers trafficking within a national territory and does not involve an organized criminal group. Article 7 of Convention No. 182 sets out “provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions”, as well as “effective and time-bound measures” to prevent child trafficking, to withdraw children from it and rehabilitate them. Hence, criminal provisions in the Palermo Protocol are the single and ultimate way to deal with child trafficking³⁶.

³⁶ Similar observation on child trafficking in Palermo Protocol and ILO Convention No. 182 is also provided by ILO SAPFL’s study on *Human Trafficking and Forced Labor Exploitation: Guidance for Legislation and Law Enforcement* (2005:24).

2.3 Criminalization Versus Human Rights Framework in Trafficking

Gallagher (2001) argues that criminalizing trafficking under the Palermo Protocol makes prevention, protection and the promotion of state cooperation³⁷ more important than the rights of trafficked people. In addition, Gallagher (2001) also notes that the Palermo Protocol³⁸ fails to acknowledge the right of access to information and remedies, which undermines its effectiveness as a law enforcement instrument. Human rights concerns may have provided some momentum to a collective action to social justice; in addressing trafficking in persons, however, it is sovereignty and security issues that are the true forces behind the Palermo Protocol (Gallagher 2001).

Wijers and Doorninck (2002) argue that trafficked people presences will be totally dependent on the usefulness for the purpose of case investigation and prosecution. Secondly, even though the protocol reflects a global acknowledgment that mostly women and children are trafficked, Coontz and Griebiel (2004) argue that there is a lack of an international accord about what constitutes trafficking that will be applicable across countries. This limitation raises question about the extent to which the Palermo Protocol (and other international instruments) can be effective tools to combat trafficking. Apart from that, the Palermo Protocol missed the opportunity to standardize victim identification as well as the mechanisms for complaints and supervision of the implementation of the protocol at the country level (Lin-Chew 2001).

Influenced by such critiques, scholars and organizations have provided studies to re-connect trafficking to a human rights framework (see Obokata 2006; Haynes 2004; Gallagher 2001; Lin-Chew 2001; Pearson 2000; GATW 1999). The United Nations High Commissioner on Human Rights (UNHCHR) submitted a report to the Economic and Social Council on 20 May 2002, *Recommended Principles and*

³⁷ Article 2 mentions that the objectives of the protocol are: (a) to prevent and combat trafficking in persons, particularly on women and children; (b) to protect and assist the victims of such trafficking with full respects of human rights; and (c) to promote cooperation among State parties in order to meet those objectives.

³⁸ To date, this protocol has been signed by 120 countries, including Indonesia, and they are bound to integrate the provisions of this protocol in the framework of the provisions of the Crime Convention, into domestic legislation, and to implement the recommendations contained therein. Palermo Protocol calls for Signatories State to (1) penalize trafficking; (2) protect trafficking victims; and (3) grant victims temporary residence in the countries of destination.

Guidelines on Human Rights and Human Trafficking as companion to the reading of the Palermo Protocol³⁹.

Within the human rights framework, trafficking in persons represents the situation of someone under another's control due to lack of economic choices and access and individual capability to choose. Economic instability, social dislocation, bureaucratic chaos and gender inequality are perceived as conditions that make trafficking ripe (Chapkis 2005; Haynes 2004; Henderson 2004; Coontz and Griebel 2004; Warner 2002). Living in a conflict area, or in poverty, lack of job opportunities, lack of access to education or being in a debt situation are the factors of human trafficking. Conditions of being insecure, tortured, maltreated, discriminated, and a number of other violations drive vulnerable people to escape these degrading and inhumane situations, and they easily fall prey to a trafficker's false promises. While in the trafficking cycle, trafficked people have no freedom to move, and they are abused, exploited, malnourished, sold and resold. In one way or another, trafficking in persons is a violation of human rights. Trafficking violates the right to work (ICECSR Article 6), freedom from slavery (ICCPR Article 8), freedom of movement (ICCPR Article 12[1], CMW Article 8[1]), freedom from discrimination (ICCPR Article 2, CMW Article 25[1]), and so on. Human rights violations in a country further contribute to the context in which trafficking in persons occur. Additionally, the lack of status and rights guaranteed by international human rights law also increases people's vulnerability to trafficking. Human rights violations are both a cause of trafficking and a result of trafficking. It is worth noting, however, that there is asymmetrical linkage between trafficking in persons and human rights. The first character of such is trafficking in person is a crime against individual which requires the state to take measures to criminalize trafficking.

2.4 The Evolving Concepts of Trafficking in International Agreements

The effort to standardize a trafficking concept, according to Wijers and Lap-Chew (1997:23–45), had been initiated since the 1900s. Wijers and Lap-Chew (1997:

³⁹ See the United Nations the High Commissioner on Human Rights (2002) *UN Recommended Principles and Guidelines on Human Rights and Human Trafficking*, available online at: [http://www.unhcr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/caf3deb2b05d4f35c1256bf30051a003/\\$FILE/N0240168.pdf](http://www.unhcr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/caf3deb2b05d4f35c1256bf30051a003/$FILE/N0240168.pdf).

23–45) documented that there are five themes that can be extracted from the process of providing a legal definition of trafficking at the international level from 1904 to 1994. The first theme is from ‘recruitment to exploitation’. The conceptualization of trafficking in persons in the International Agreement for the Suppression of the White Slave Trade (1904) focused merely on recruitment to international trafficking. In this convention, the exploitative condition of trafficked women was explained as a result of their recruitment. The concept of trafficking was expanded in the 1910 convention to include domestic trafficking of women. There is an important point that is demonstrated when comparing these two conventions. It reflects the idea of seeing recruitment as a discrete act into a more sophisticated notion of trafficking as a process that includes both an act of recruitment and the ultimate working conditions that recruits experience. The second theme is from coercion to ‘with or without consent’. The 1949 Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others recognizes that a woman can be a victim of trafficking even if she has consented to her own recruitment and transportation. The third theme is from prostitution to informal and unregulated labor. The 1994 UN resolution no. 49/166 of the General Assembly (UN Doc.A/Res/49/166) on “Trafficking in Women and Girls” broadens the definition of trafficking to include exploitation not only for the purpose of prostitution but for all types of forced labor. This resolution states that trafficking can be defined by the “end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations”. The fourth theme is from violence against women to violation of human rights. This paradigm demonstrated a shift in thinking of trafficking as an issue which had been considered as beyond the jurisdiction of the state to the violation of human rights which requires states to be accountable. This evolving perspective of women’s rights as human rights was most visible at the 1993 UN World Conference on Human Rights and the 1979 Convention of the Elimination of All Forms of Discrimination against Women. The last theme is from trafficking in women to illegal migration. Within this perspective, the receiving countries perceived trafficking as an issue of illegal migration and human smuggling. Wijers and Lin-Chew (1997:39-40) argue that this changing framework ignores the fact that many women also enter the destination country legally. They further argue that the perception dismisses the

possibility of domestic trafficking, and most importantly, this framework shifts the focus away from the victim. The crime becomes one of illegal migration in which the victim is the perpetrator and the state becomes the victim (Wijers and Doorninck 2002).

Further, criminalization of trafficking in the Palermo Protocol marks the move of discourse from illegal migration to crime prevention. This protocol had ended the two-decade debate to clarify what constitutes trafficking by taking four strands all together. First, the theme takes a different approach from that of the outdated convention on the elimination of trafficking and the exploitation of the prostitution of others (1949). Secondly, it distinguishes between ‘forced’ and ‘voluntary’ prostitution. Thirdly, it addresses “exploitation of others and other forms of sexual exploitation” only in the context of trafficking in persons. Lastly, the terms “forced labor or services, slavery and practices similar to slavery, servitude” covers all situations, including forced labor in the sex industry.

2.5 Gender Critics to the International Instruments

Overall, the international agreements, according to Kaufman-Henever (in Coontz and Griebel 2004), can be considered in three categories of legal paradigms. It includes protective, corrective and non-discriminatory conventions. Protective conventions, Kaufman-Henever argues look at how women as they step outside their societal boundaries (whether they are physical, conceptual or geographical) need protection from their ‘paternal power’ (state) which actually prevents them from certain areas of activities.⁴⁰ Furthermore she asserts that corrective conventions attempt to address disparities between women and men through international legal instruments. Kaufman-Henever emphasizes that these categories of conventions perceive women not as victims but rather as seekers of genuine equality before the

⁴⁰ These include: Convention Concerning Night Work of Women Employed in Industry drafted by ILO in 1919, 1935 and the 1946 ILO Convention Concerning the Employment of Women on Underground Work in Mines of All Kinds

law.⁴¹ Non-discrimination conventions aim to revise the legal systems in such a way that sex will be no longer a basis for treatment and benefits in society⁴².

Stienstra (in Jeffrey 2003:10) asserts that actually all these conventions “consolidated many of the gendered assumptions of the time, both about the role of women and men in society as well as about the role of the state in sexual relations”. She further argues that within such an ideology, women are seen as passive victims who require protection from (the paternal) state rather than as social and sexual agents. Accordingly, the conventions criminalized procurement even when it occurred with women’s consent. The result of these policies was the regulation of the mobility of women and the careful monitoring of women’s migration for employment (Chapkis 2005). Clients, on the other hand, appearing either as procurers, pimps or protectors, become conspicuously absent in the agreement and the discussion around them (Chapkis 2005). The emphasis of these provisions, therefore, does not provide women with social and sexual independence but, rather, reforms them and places them within their proper gender roles as wives and mothers.

The idealization of women’s place at home, according to Kapur (2005), is still bold in the Palermo protocol. She argues that by conflating trafficking with migration and prostitution, the definition in Palermo fails to distinguish between trafficking and voluntary consensual migration, often “conflating women’s migratory movement with trafficking” (Kapur 2005). She further asserts that this constant conflation reinforces the assumption that women and girls are incapable of decision-making or giving consent, and are therefore in need of male or state protection. The logical consequence of this assumption is the curtailment of a women’s right to movement or right to earn a living in the manner she chooses (Kapur 2005).

2.4 Women’s Gender Interests in Conceptualizing Trafficking

As elsewhere, trafficking in Indonesia has been tackled by the women’s movement. For this line, Wieringa (1999:67) suggests looking at the practical and strategic women’s gender interests. Within the women’s movement, she argues that

⁴¹ See such examples as the UN series of agreements addressing prostitution in 1904, Convention on Nationality and Married Women (1957), ILO Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery (1956).

⁴² The 1979 CEDAW is the pioneer of this category.

the definition of what constitutes the practical and strategic women's gender interests, however, should not be determined in advance. Rather, they should be defined by the women themselves (Wieringa 1999:67). In this view, the practical and strategic women's gender interests vary, along with the changes in the context of the political, economic and social configuration. Applying Molyneux's idea, Blackburn (2004:14) defines the women's practical gender interests as "The requirements of women to fulfill their gender roles as determined in any particular place of time, without challenging the gender status quo. Thus, in order to be good wives and mothers according to prevailing gender ideology, women may consider the need for better health facilities for infants or better science education in schools". She continues that the women's strategic gender interests include the elimination of discrimination against women, eradicating women's oppression and of guaranteeing women's rights which are famously labeled as feminists' interests (Blackburn 2004:15).

Based on women's rights arguments, there are two different schools in seeing women trafficking for sexual purposes. The debates highlight the differences in perceiving women's strategic gender interests in trafficking within the global women's movement. The first stands for an anti-violence position which regards prostitution as inherently involving sexual violence against women because it exploits women's sexuality and reduces them to a mere sexual commodity in market exchange. Therefore, it is essential to eliminate prostitution to free women from male oppression. This abolitionist position sees prostitution as sexual slavery. In this discourse, being 'forced' is perceived as the nature of the prostitution and leaves no room for the notion of 'voluntary' prostitution. Prostitution and sex trafficking are viewed as violating women's dignity and as violations of human rights because they violate women's right to choice⁴³, to live one's life the way one wants to, to a quality of life befitting a human being, and the right to sexuality⁴⁴. The second position,

⁴³ This includes: at the micro level, women "deciding" go into prostitution or to run the risk of being trafficked are not really "choosing prostitution" but choosing to survive; at the macro level, women's choices are conditioned and pre-determined by patriarchal culture/society, whereas in this situation no options are open to women; women who enter the trade do not even have freedom to choose to leave the trade. They are stigmatized by society, and they are unable to leave because they are in bondage to a huge loan that has to be paid to the traffickers/pimps/procurers.

⁴⁴ From Proceeding of the "Human Trafficking Conference on the Trafficking of Asian Women", April 2-4, 1993 in ISO, Ateneo de Manila University, Quezon City, convened by CATW Asia and Katipunan ng Kababaihan Para sa Kalayaan (KALAYAN) p. 169.

which is usually called pro-rights, sees prostitution as a strategy of survival taken by women which should be respected. Women have the right to self determination as well as the right to work in the sex industry and to migrate in order to do so. This position does not view prostitution as a problem, but the excess is. This excess includes 'forced prostitution', exploitation of prostitutes and stigmatization of prostitutes (or sex workers), which should be combated. Sex work is perceived as one of the jobs that require protection as does other work. In Indonesia, however, the abolitionist position appears to be the dominant in the current political situation.

Wieringa (1999:xxv) suggests that applying gender analysis on the evolution of the concept of "men" and "women" and their relations will make the way such concepts have been constructed, reconstructed and deconstructed apparent. Additionally, a gender framework according to Scott (1988) signifies two prepositions: social and institutional relations and power construction. She further explains that gender offers a primary way to articulate, determine, negotiate and construct power in social and institutional relationship between sexes.

2.5 Conclusion

The above discussion suggests that trafficking has been discussed as an important issue for many states in the world. However, the effort to conceptualize trafficking continues to be a challenging one. It touches upon the various negotiations and conflicts among paradigms and ideologies such as human rights, migration, crime and labor. It is also enmeshed in gender assumptions on the relations between women and states, and between women and men.

The arrival of a new definition and approach to trafficking can be considered as an answer to the long term debates in linking trafficking, prostitution and labor issues, nevertheless, its lack of clarifications in the definition still leaves some problems for the operation of the concept unsolved. It also appears that approaching trafficking as a human rights violation is in doubt; on the other hand, applying a crime prevention approach does not really seem to be the ultimate solution.

CHAPTER 3

CULTURAL AND HISTORICAL CONTEXT OF TRAFFICKING IN INDONESIA

3.1 Introduction

As a social and historical constructed concept, the meaning given to the term trafficking evolves along with social, historical and political experiences and realities across time. Within this line of thought, trafficking discourse constitutes particular social norms of society by developing knowledge which in turn shapes a view on the issue. The focus of this chapter is the situation before and during the colonial period in Indonesia, because the foundation of later discourses was laid in this period. This chapter involves the historical and cultural context in which trafficking was coined by a middle class group in the Netherlands and how this influenced the character of the issue in the daily life of villagers in the Dutch East Indies. The relevance of putting the Dutch situation in explaining Indonesia is because white slave politics in the Netherlands was also infused with racial and colonial issues.

By examining the available literature on trafficking and its related issues such as prostitution, labor, migration, and domestic workers practices in the context of pre-colonial and then Dutch colonization, I argue that the interactions between foreigners and locals not only change the pattern of the traditional practices of trading women, but also problematizes the practices. Nevertheless, it does not challenge the traditional value on women as commodities, property, representing a site of morality and as slaves that can be traded, exchanged, owned, profited from, controlled and used as dispensable laborers. In so doing, this chapter begins with a cultural construction of trafficking and its continuity. After that, follows a section that discusses historical construction and its distinctions in the concept of trafficking, prostitution and white slavery in the Netherlands. The discussion then moves to the trafficking situation to Dutch East Indies.

3.2 Cultural Construction of Trafficking

Hull et al (1997:1) argue that the trade of women had been practiced in many kingdoms in Java and many places in Indonesia (presently organized) as a part of the feudal government system. The feudal system, according to Hull et al (1997:3), did not necessarily constitute the meaning of the practice of trafficking and prostitution as we understand it now; yet it grounded the current development of the sex industry. This condition could be identified through the way society valued women as tribute to the king, the object of male sexual desires, and as exchanged goods that can be sold and bought to show power and wealth (Hull et al 1997:3). The king had unlimited power over territory, wealth and the lives of the people. The task of the king was to determine the law and enforce order and all subjects had to obey without reservation. This unlimited power of the king was also reflected in the number of his wives and concubines⁴⁵. Having many concubines, the king was seen as possessing physical strength and divinity elements. The more wives and concubines, the more power and respect he would obtain from the people or his enemies.

Some of the concubines might come from different classes and backgrounds. They might be princesses from different kingdoms as parsimony in order to show loyalty, or as war plunders or tributes. Some of them also came from the lower classes who were sold and given by their family with the intention of having a tie to the royal family. This situation, according to Hull et al (1997:2), was considered as a way to upgrade a family's status as their daughters would give birth to the king's children. Concubinage in Bali took a slightly different practice. A widow from the lower caste would automatically become one of the king's concubines unless the king did not want her. In this case, she would be sent to the city to work as a prostitute and send her earnings to the King on a regular basis. The king's concubines also came from different areas famous for the beauty of young women. Koentjoro (in Hull et al 1997:2) identifies eleven districts in Java as the supplier of pretty women to the kingdom including Indramayu, Karawang and Kuningan (in West Java presently),

⁴⁵In the Mataram Kingdom (Central Java presently), the king was restricted by Islamic teaching to have only four wives. Nevertheless, the king had more concubines as Islam did not regulate this rule in practice.

Pati, Jepara, Grobogan and Wonogiri (Central Java presently), Blitar, Malang, Banyuwangi and Lamongan (East Java presently). Concubinage was not only practiced by the kings but also by the mayors or other high ranking officials in the government.

Another practice in the feudal system that may contribute to trafficking is called “ngenger”. ‘Ngenger’ has been practiced in Javanese society as part of the traditional culture. With different names, this practice can be found in Batak, Minang, Makasar and the Bugis ethnic group⁴⁶. The following description is my understanding of ‘ngenger’ in Javanese culture as my parents are Javanese.

The practice is similar to the idea of an ‘internship’ in the house of a family or relatives or those who have no familial tie but are considered richer families (most residing in big cities) than the family of the intern. This practice, actually, serves two practical interests. For the parents, this practice is to guarantee that their children will have enough food, a safe place to sleep and get a proper education as well as learn life skills. In return, the children should ‘help’ the family with the household chores. For the ‘family or relatives’, their household chores will be taken care without paying additional salaries for the ‘internship’ children. Within this practice, the relations between employee and employer is not clear let alone the job descriptions. Currently, many trafficking incidences use “ngenger” as a pretext⁴⁷. The extended family members would ask permission from the parents to bring the child to the city but the child “intern” ends up in prostitution, begging or being exploited in the houses of the relatives as domestic workers⁴⁸

In Singkawang, West Kalimantan, there is a tradition of marriage with Chinese men. This tradition started in the thirteenth century when the Sambas (the capital district of Singkawang) sultan, Umar Akamudin, invited Chinese immigrants to dig gold in his territory (Sikwan and Triastuti 2004:19-20). Under the permission of the sultan, the Chinese stayed and created families in Singkawang. In a recent practice, many Chinese men in Taiwan and Hong Kong commissioned middle-men to find them brides in Singkawang. This particular demand is because there are religious,

⁴⁶ Indonesia is a diverse country with approximately 201 million people in 33 provinces who comprise more than 1,000 ethnic groups with over 500 languages.

⁴⁷ Interview with Aida Milasari of Gema Perempuan (June 8, 2007).

⁴⁸ Interview with Aida Milasari of Gema Perempuan (June 8, 2007).

cultural and ethnic similarities between Chinese (in Taiwan and Hong Kong) and Singkawang (Sikwan and Triastuti 2004:33-36). After marriage registration in the local government office, the bride will be brought to Taiwan or Hong Kong. Literature on this issue does not identify which process of this marriage match-making practice can be categorized as women vulnerable to trafficking. Nevertheless, for women, this practice is one of the ways to escape poverty (Yentriani 2004:168).

The practice of bonded labor and other forms of servitude were also prevalent in Dutch East Indies (Surtees 2003:130). Bonded labor is the practice of lending or renting out one's own labor, or that of a family member, to pay off a debt or earn income as a survival strategy. The phenomenon of loaning one's labor to pay a debt was famously filmed in the 1980s. One of the films was entitled "Gadis" which is also the name of the main character. The film is about a love story between different classes in Javanese society around the 1880s in which the mother of Gadis (literally means young woman) had to rent her labor to pay a debt to a higher class noble family. She worked without having the opportunity to rest and finally she died. Because the debt was not considered as fully paid, Gadis had to replace her mother's role as a domestic worker in the family's house⁴⁹. This practice was rampant in feudal systems in Java. Osborne (in Surtees 2003:130) describes bonded labor (or 'slavery') in Southeast Asia as traditionally practiced on three levels: "slaves who would always be slaves; slaves who could buy or earn merit for their freedom; and slaves who had temporarily sold their labor".

3.3 Historical Construction of Trafficking and White Slavery in the Netherlands

The evolvement of the discourses on trafficking in Indonesia cannot be separated from the way trafficking was historically constructed in the Netherlands. Consequently, it is imperative to understand the phenomenon of the white slave trade in order to understand trafficking. Doezema (2003) emphasizes that trafficking is a concept that has been built by the myth⁵⁰ of white slavery. She articulates that the way

⁴⁹ In the film, the daughter as the domestic worker meets the rich man who becomes infatuated with her.

⁵⁰ By saying the myth here she refers to a distortion of the truth in considering that myth as metaphor is a way of explaining a complicated and threatening reality.

trafficking is perceived now is a manifestation of the way Western historians characterized white slavery. Accordingly, trafficking is a result of the white slavery phenomenon which is mostly about prostitution and involves migration. Internationally, trafficking has been exclusively linked to prostitution hence various international agreements were passed in the spirit of controlling prostitution and its movement across land border countries such as Europe.⁵¹ Thus controlling prostitution has been the main goal of anti-trafficking measures.

A historian at the University of Amsterdam, Petra de Vries (2005) argues that trafficking and white slavery is not identical but related. White slavery, she contends, is a historical construction -- born out of a particular interpretation of sexual danger in a specific social and historical context -- that gave rise to a powerful image to make the term meaningful as a political concept. White slavery involves the discourses of innocent, middle class girls who are lured (or kidnapped) by foreign men to cross the border -- away from the paternal shield of the home, pure society and protected country - who end up in prostitution⁵². Hysteria, moral panic and sensationalism of the white slave continue to appear in novels, newspapers and movies which portrayed a dangerous space for women and became a symbol of sexual danger for women. De Vries (2005) further points out that the emergence of the white slave was a symbol and cultural image in the nineteenth century discourse about prostitution, slavery and 'otherness', taking together the assumption of gender, race and sexuality at that time⁵³. In contrast, the term trafficking constitutes the involvement of transnational organized crime networks. The trafficking term, according to Oncko Swinderen, a Netherlands lawyer, in 1902 (in de Vries 2005), evokes the image of a regular and organized worldwide traffic of women supported by the increased rapid means of transportation and communication. Because of the flow of information about young

⁵¹ This is also argued by M. Farid of the National Commission for Human Rights (Komnas HAM) in Jakarta, Indonesia in the interview of June 13, 2007.

⁵² The stories -- first circulated in 1900s -- sometime include the death of the girls and young women

⁵³ De Vries (2005) shows the way white slavery and prostitution was described in atypical booklet distributed in 1900s as follows:

As we observe that prostitution is thriving in civilized states, it is forcibly suggested to us that the foundation of that higher civilization of which we Westerners are so proud of, must indeed be false, otherwise wouldn't woman, the jewel of creation, the mother of the human race, the cornerstone of society be doomed to the most degrading slavery as priestess of venal love (Jonathan [pseudonym], 1902:54).

women who fell into the hands of traffickers, traffic in women acquired growing importance as well.

By the 1900s the term white slave emerged as a powerful social image, and ‘traffic in white slaves’ had taken on different meanings. De Vries (2005) suggests “it might signify either prostitution itself or criminal practices in trafficking across borders”. Quoting Sherhad (1890), she continues “In some English texts it even becomes the exploitation of workers in the ‘murderous pits of capitalism. This conflating of terms shows that there is a very thin line to distinguish between merely recruiting consenting women for prostitution and the violent practice of deception and intimidation”. The term white slave, however, gradually assumed a different identity in comparison to the ‘prostitute’⁵⁴. This view created the distinction between ‘white slave’, trafficking and prostitution, by identifying the participating actors in the network. The profile of the white slave and trafficked individuals, however, are similar: young women, middle class, innocent, and victimized at the hand of criminals.

Prostitution by contrast, was framed by the abolitionist movement as ‘sin’, ‘debauchery’, ‘sickness’, ‘moral decay’, an outrage of all womanhood, and an archetype of sexual abuse. The body of the prostitute was symbolized as a cancer of the social body, a poisonous fruit on the rotten tree of capitalism. This view draws a boundary between white slave and prostitution to distinguish ‘good and bad woman’. At the same time, it also creates the understanding that no good women would be willing to be in the sex industry unless they are deceived, kidnapped or sold, but in reality however, there are good women who may consent to work as prostitutes. Nevertheless, by highlighting the working conditions and system in the brothels where many prostitutes were kept forever in ‘debt’, the Evangelical Protestantism in Netherlands had established the link of prostitution to slavery (de Vries 2005). This approach had an intricate network of professionals and charity institutions to create numbers of safe homes which sought to rescue poor prostitutes and other ‘fallen women’. On the other hand, the abolitionist movement continued to fight against

⁵⁴ However, Doezeema (2005) argues that trafficking has been encoded in the complicated and threatening narratives: fear of women’s sexuality. In turn, this myth had obscured the realities of migrant sex workers.

sanitary regulation of prostitution by the state (de Vries 2005). Its primary goal was to abolish the system of compulsory medical inspection and treatment of prostitutes, a widespread state practice, targeting prostitutes as contagious bodies while protecting customers (de Vries 2005).

Jeffrey (2002:9) describes that the growing political salience of the first wave of feminism and the social purity movement of the late Victorian era in Europe and North America soon put trafficking for prostitution a problem on the international agenda. The League of Nations paid particular attention to the issue of the international trade of prostitution and women's condition within the sex industry (Ringdal 2004:315). Between the years 1924–1927, a team commissioned by the League of Nations visited 28 countries and 112 cities and conducted 6,500 interviews. In 1929, the commission brought out a major report, which according to Ringdal (2004:315–317), was ingrained in racist bias. He explains further that the League of Nations' report as well as the newspapers was only interested in the situation of Western white women in prostitution in many parts of the world.

The abolitionist movement in the Netherlands was manifested in the government regulation in 1852 in Dutch East Indies to commercialize prostitution only in brothels (de Vries 2005). Several regulations also accompanied this act, such as criminal acts that might have been committed as a result of prostitution activities (Hull et al 1997:5). Jeffrey (2002:9) argues that actually this act did not do much as regards the elimination of trafficking, but rather tried to avoid the possibility of having mixed race children in interracial marriage and also to minimize concubinage. Additionally, Hull et al (1997:4) explain that interracial marriage or interracial concubinage was prohibited by both colonial society and local people. As a colonizer nation, the Netherlands considered itself as part of a natural order that put the white race at the apex of civilization. The Dutch East Indies was considered as one of the 'primitive' societies on the lower plane of the evolutionary hierarchy (Gouda in de Vries 2005). Prostitution of local women was constituted as a threat to the civilized Dutch nation. Several policies also were enacted to protect Dutch soldiers from venereal diseases and having mixed race children (Hull et al 1997:5).

3.4 Trafficking in Dutch East Indies

The arrival of foreigners to Indonesia had changed some practices in labor and sexual services. The study of ILO IPEC⁵⁵ on child domestic worker in Indonesia (2004:10) illustrates that the division between the work, the workers and the employers along with the salary and time of working is relatively clearer and more explicit. Nevertheless, many traditional practices were still exercised among locals. The sex industry was more organized under Dutch colonization. The interaction between foreigners with locals created a system where sexual needs of the traders in different part of the country, Dutch soldiers and delegations could be satisfied. Hull et al (1997:4) state that local people and foreigners found this situation a dilemma. On one hand, there was the sexual services demand which local people provided as they sold their daughters in return for money, but on the other hand, both locals and foreigners considered it dangerous to have sexual relations with different races (Hull et al 1997:4)⁵⁶.

The Dutch government had also abolished the practice of slavery in the East Indies in 1860; nonetheless, forced labor was still practiced (Stoler 1995:51-54). In 1870, the government privatized plantation estates in Central Java, East Java, and East Sumatra. This opening of plantation estates led to the recruitment of male and female workers from different areas to work in the estates (Hull et al 1997:8-7). The percentage, however, was not even. Stoler (2005:51-54) explains that women were paid lower than male workers on the ground that women's jobs were easier and lighter compared to male workers. Also, women were conditioned to labor through use of their sexuality and gender to work as domestic helpers in male workers' houses and as sexual service providers to meet daily needs (Stoler 2005:51-54). Nevertheless, this particular period was the beginning of seeing migration as a solution to channel social unrest as a result of economic exploitation and population pressures in many parts of rural Java (Komnas Perempuan, Solidaritas Perempuan and CARAM Indonesia 2002:1).

The widening plantation areas also created the demand for prostitution activities (Hull et al 1997:7). Stoler (1995:51-54) states that women from Java island

⁵⁵ This stands for International Labor Organization–Special Program on the Elimination of Child Labor

⁵⁶ There were not only Europeans migrating to Indonesia but also people from South Asia and the Middle East.

were transported to provide labor and at the same time sexual services. Moreover, because the company store offered unlimited credit selling goods at a high price compared with the village market this became a factor to bond laborers in the plantation. Besides adding local female workers to work in the plantation, the estates owners also transported women from China, Malaysia and Hong Kong (Stoler 2005:49).

In the 1870s, the abolitionist movement in Netherlands paid attention to concubine practices in the Dutch East Indies and the spread of venereal disease as the response to the report on morality of the Dutch East Indies soldiers, published by the Association for the Improvement of Morality in the Dutch Overseas Possessions. However, according to de Vries (2005), not everybody was ready to accept native women as victims of colonial powers. It was colonial men who were seen as in danger. The report concluded that the involvement of local concubines posed a threat to soldier's health and soul and thus to the army and the nation (de Vries 2005). Nevertheless, prostitution practices continued to exist even after the government prohibited the practices in the late 1880s (de Vries 2005).

3.5 Conclusion

As indicated in the above discussion there is a continuation of the past cultural practices in the present phenomenon of trafficking. This situation informs that such practices do have social and cultural meaning in Indonesian society, which to a certain extent, cannot simply be changed into a human rights abuses concept. Unfortunately, people's familiarity with such concepts and meanings of the past practices in trade of women, slavery and cross-marriage has been used by the traffickers of the present to manipulate the movement of people for exploitation. The concept of trafficking had traditionally been linked to migration and prostitution in the past which marked the political and cultural image of women's sexuality. This marker also involves race, class and morality to distinguish the value of being good and bad women within a nation. Significantly, the past cultural discourses provide a framework to understand the presence phenomenon and at the same time help us with the skills to comprehend the nature of the issues.

CHAPTER 4

TRAFFICKING DEBATES IN INDONESIA'S WOMEN'S MOVEMENTS

4.1 Introduction

The literature on trafficking debates in the 1920s to 2000s suggests that the women's movements were the main actors in constructing trafficking discourses in Indonesia. However, there are different themes in debating trafficking within the period. The discussion in this chapter focuses trafficking themes in Indonesia's women's movements from 1920 to 2000. I use the phrase 'women's movement' here to refer to the collective articulations and activities initiated, implemented and forwarded by women for the benefit of women in order to uphold their interest and rights. However, it is necessary to distinguish the character of the women's movement from the 1920s to 1950s with the period of the 1980s up to now. In the 1920s – 1950s, women – mainly coming from the educated middle class affiliated themselves with organization as members (Blackburn 2004:15). The membership-based organizations sought members from among the groups that they claimed to represent. These organizations then built coalitions either at national or provincial levels to determine the agenda for women's actions, including assigning certain meanings to trafficking. The character of women organizations in the period of 1980s to 2000s is varied. Membership organizations still exist but there are also other forms. Individual woman of a different background and class can be a part of the organization by working as the organization's staff. There is no national or local forum to decide what the important national agenda is for women. Each organization decides what issue or agenda they think is important. The coalition of women organizations is based on the needs in campaigning for a particular issue, which usually is dissolved after the fulfillment of the objective. Nevertheless, Blackburn (2004:15-16) categorizes Indonesia's women movement based on religious, non-religious, membership, and geography.

The main purpose of this chapter is to establish the evolution of the concept of trafficking in Indonesia amidst a situation where no national legal definition is provided⁵⁷. In this chapter, I argue that the discourses on trafficking within the women's movements were influenced by many aspects such as: (1) Indonesia's political situation which provides the venue and opportunity to debate the issue; (2) women's interaction within the women's movements; (3) women's interaction with the state; and, (4) interaction with the international agenda through the international women's movement and/ or international legal instruments. Within the women's movements from the 1920s to 2000s, the debates on trafficking had been alive, but still linked to their conventional roots -- prostitution and migration. As this chapter will describe trafficking and prostitution was successfully distinguished by the notion of coercion in the 1920s-1940s, however the marker gradually blurred in the 1950s–1970s even though there was evidence to the contrary (i.e., Comfort Women cases). Until recently, trafficking was lumped with prostitution, and equated to prostitution. To support my arguments, I examined available literature on Indonesia's history, minutes of meetings, unpublished reports and news articles as well as interviews of women activists during my fieldwork. These materials allowed me to separate four periods based on themes. However, the periodization division does not always align with the end of the regimes.

4.2 Contextualize the Periodization of Discourse Construction

The first period is the entry point of trafficking as a women's issue was in the 1920s. This period is a landmark in the development of trafficking debates as well as the establishment of the connection between trafficking and the women's movement in Indonesia. In Indonesia's history, this period is also marked as nationalist awakening. Wieringa (1999:89) writes that there were many organizations established for different purposes i.e., by groups such as those from the middle classes, Muslims, peasants, women and other groups from economic and social sectors but all flagged

⁵⁷Indonesia's Criminal Code -- adopted from the Dutch Penal Code in 1958 – mentions trafficking in Article 297 on women and boys trafficking penalties but there is no definition on what constitutes trafficking.

the same campaign of nationalism and freedom from colonization. On October 20, 1928, the groups came together in the *Kongres Pemuda* (Young People's Congress) which declared one nation, the nation of Indonesia; one language, Bahasa Indonesia; one land, Indonesia; these declarations were known as *Sumpah Pemuda* (the Young Oaths). On December 28, 1928, the first *Kongres Wanita* (Women's Congress) was held to talk specifically about women's issues.

The formative period of the Indonesian nation continues to the 1940s. Bertrand (2004:30) writes that in this period many groups debated openly over various political agendas to define the character of being Indonesia(n) and the political goals of the nation. He further described "self-defined nationalists focused on independence and a nation based on modern, European principles of self-determination, democracy, and modern political institutions. Islamists preferred an Indonesian nation that would build unity around Islam as the common characteristic of the diverse peoples of the archipelago". These debates influenced the way trafficking was discussed in the women's movement in the second periodization: 1930s-1940s. Trafficking was debated in competition with issues such as concubinage, polygamy and prostitution which illustrated the idea of the idealization of being Indonesian women, women's morality, women's self-determination, Islamic teaching on polygamy and poverty. Following this period, the Japanese occupied Indonesia in 1942-1945 and established a military regime that benefited the on-going nationalist projects by propagating the "Free Asia" campaign (Bertrand 2004:31; Wieringa 1999:149). Indonesia proclaimed its independence in 1945 and continued the nation-building project under the leadership of President Sukarno. Wieringa (1999:160) writes that nationalist male leaders acknowledged women's roles in building the nation, and one of them was Sukarno who described women's role in his book entitled *Sarinah* (first published in 1947)⁵⁸.

In the 1950s, Indonesia started to develop political institutions and had a general election in 1955. The focus of the debates was mainly about establishing the political instruments and their operations in legislative and executive bodies in which

⁵⁸ Nevertheless, in 1947 the Dutch seized territorial control in Indonesia and created a federal system (Bertrand 2004:32). In 1949, the Dutch departed from Indonesia and accepted Indonesia's independence.

women organizations were involved actively in the discussion. After ten years of independence, the government formulated the first Five-year Development Plan from 1956-1960 which focused on internal migration or so-called transmigration (Komnas Perempuan, Solidaritas Perempuan and CARAM Indonesia 2002:4). Transmigration was considered as one of the solutions to reduce the number of the population in Java Island as well as to serve another three objectives of the development projects: (1) to provide labor in sparsely-populated provinces, (2) support military strategy and (3) to accelerate the process of assimilation (Komnas Perempuan, Solidaritas Perempuan and CARAM Indonesia 2002:4). In the New Order Regime, transmigration was also meant to speed up the process of national integration⁵⁹.

After the failed coup in 1965, Suharto seized the power of the armed forces and gave himself greater power to restore order and national security. In 1968, the New Order Regime began and called the previous regime Old Order. “Development” became the keyword of the New Order Regime (Bertrand 2004:39). Nevertheless, Valentina (2006) argues that the development concept in the New Order Regime was based on economic growth and centralized in Java Island. Moreover, development projects envisioned the creation of “modern” Indonesians who still kept intact the cultural characteristics of the Western industrialized world (Bertrand 2004:39).

Indonesia’s most radical change came with economic development from oil and gas revenues in the 1970s (Gross 2003:2). This situation enabled Indonesia to build public facilities infrastructures such as roads and communication networks. At the same time, Indonesia was also seen as a politically safe place for international investment with a variety of cheap and controlled labor force (Gross 2003:4). However, in 1983, the price of oil dropped which pushed the government to seek other compensation through economic policies, in an attempt to generate foreign revenue (Komnas Perempuan, Solidaritas Perempuan and CARAM Indonesia 2002:4). This drove the government to build its economics based on cheap labor at home to attract foreign investment and on a labor export program abroad. By Ministry Decree No. 1307/Men/1988 on the regulation of the management of exporting labor

⁵⁹ I remember in the 1980s, the government had a special program on TVRI (the state-owned television company) to propagate the ideas of successful living in transmigration areas such as Kalimantan, Sulawesi, and Nusa Tenggara Island.

to the foreign markets, Indonesia started to send laborers abroad. Nevertheless, the management of sending migrants was tasked to private sectors instead of the state. In the mid-1980s Indonesia was under international scrutiny on its performance of human rights⁶⁰ (Jetschke 1999). On the other hand, Indonesia also wanted to boost its record in the international level (Jetsche 1999). This combination motivated Indonesia to ratify the international instruments such as CEDAW in 1984 and CRC in 1990, and establish the National Commission for Human Rights in 1993⁶¹. The last theme was influenced by the international instrument CEDAW in framing trafficking as a form of sexual exploitation and also a women's human rights violation.

The economic crisis in 1997 rapidly changed the pattern of economic and social development in Indonesia. Gross (2003:3) illustrates that at the beginning of the crisis forty percent of the population was working in the formal sector such as in offices, factories or the civil service and sixty percent was still rural and working in the agricultural sector. After the crisis, the situation was reversed. Many of the new unemployed workers have had to find new ways to make a living. Since 1997, the informal sector has grown to seventy percent of the non-agricultural working population (Gross 2003:3). Many unemployed have also had to return to hometowns and villages to work as casual laborers on the land (Gross 2003:3). One sector that has been a channel for the rural unemployed is migrant labor.

The lack of protection measures, monitoring mechanisms and state control on managing migrant workers in Indonesia, Rosenberg (2003:17) argues, results in abuse and exploitation of migrant workers throughout the migration process, from recruitment to pre-departure processing, while working, and upon their return⁶². Men,

⁶⁰ Some human rights issues successfully became international matters such as the East Timor occupation, Kedung Ombo Dam Project in Yogyakarta in 1985. For further discussion on this please see Jetschke, A. (1999) *Linking the Unlinkable?: International Norms and Nationalism in Indonesia and the Philippines* in Risse, T., Ropp, S. C., & Sikkink, K. (eds.) (1999); *The Power of Human Rights: International Norms and Domestic Change*. Cambridge: Cambridge University Press pp134-171; Eldrige, P. J (2002). *The Politics of Human Rights in Southeast Asia*. London: Routledge.

⁶¹ This establishment not only diverted international criticism to Indonesia after the Indonesian military massacre in East Timor but also showed to the world that Indonesia submitted itself to the current International politic of human rights. It was also claimed as a follow up action after the second UN workshops for the Asian and Pacific Region on Human Rights Issues in Jakarta on January 1993 on the establishment of National Institutions in the Asia and Pacific region to be one of vehicles to ensure the implementation of rights at the national level (International Council on Human Rights Policy 2004).

⁶² Further discussion on the forms of abuses can be read in Komnas Perempuan, Solidaritas Perempuan and CARAM Indonesia (December 2003) *Indonesian Migrant Workers: Systematic Abuse at Home*

women and children are recruited through both legal and illegal channels and often migrants are unaware of the difference. In fact, many of these forms result in voluntarily recruited migrant workers becoming victims of trafficking (Rosenberg 2003:17).

Within the above context of social and economic conditions, the trafficking discourse was shaped in the public debates. The following section will describe the evolution of the discourse along with the women's movements and political situation in each period.

4.3 Framing Episodes of Trafficking Discourse in Indonesia

4.3.1 The Entry Point: Trafficking as a Women's Issue, 1920s

As in other parts of the world, trafficking is also one of the important women's movement agendas in Indonesia. Trafficking has been perceived and discussed from different aspects of the issue and in several forums that were conducted by women organizations. Through strong voices, activism and influences of women-membership organizations in the Dutch East Indies, the issue of trafficking became visible in the national arena in the midst of the struggle for national independence, concerns about polygamy and education for girls. Organizations such as *Wanita Taman Siswa* (Student Garden of Women) established in 1922 to reform the education system, *Dames Afdeling Jong Islamieten Bond* or Women's Section of the Association of Young Muslims (established in 1925) and many other women's organizations were concerned not only with the issues of education, and irregular education⁶³ for girls but also issues that they categorized as social problems, like trafficking and forced prostitution (Wieringa 1999:110-133). In this period, there were organized protesting

and Abroad, Indonesian Country Report to the UN Special Rapporteur on the Human Rights of Migrants, Kuala Lumpur 2 June 2002, Jakarta: Komnas Perempuan, Solidaritas Perempuan and CARAM Indonesia.

⁶³ The term irregular education refers to the alternative education which was conducted by many organizations to educate young girls from the lower classes to write, read and calculate. These schools were prohibited by the Dutch government because of their strong nationalism, utilizing Bahasa Indonesia as medium, and that they also promoted and sang the hymn of Indonesia Raya (the Great Indonesia).

activities directed toward the Dutch government against prostitution and trafficking in women (Wieringa 1999:110-113).

At the second Congress of *Persatoean Perkoempoelan Isteri Indonesia* (The Alliance of Indonesian Wives Association) or PPII⁶⁴ in 1930 in Surabaya, East Java province, the participants found it difficult to reconcile the view of secular and Islamic women organizations (Martyn 2005:175). The issue of polygamy and divorce were not tabled to maintain a fragile unity among women organizations but as a confirmation of accord with the concerns of Isteri Sedar⁶⁵ (Conscious Wives), a progressive secular women organization. Failing to get consensus on the contentious issues, the congress came up with an agreement on several new issues (Wieringa 1999:132). This strategy actually had allowed political opportunities for the issue of trafficking of women⁶⁶ to enter the women's agenda. This event and this particular year were important milestones in putting trafficking of women on the national agenda of women organizations. Following the congress, the PPII established *Perkoempoelan Pemberantasan Perdagangan Perempoean dan Anak-anak* (The Association to Suppress Trafficking of Women and Children) or P4A (Wieringa 1999:132).

The participants in PPII conceived that poverty has a direct causal link to trafficking. Poverty is a factor of trafficking and thus trafficking leads to poverty (Wieringa 1999:132). PPII referred to poverty as a hard situation that is experienced by peasants in rural areas (Wieringa 1999:132). Further, debt bondage is blamed as a cause of their poverty. PPII analyzed that the poverty has a very bad impact on girls and women, because they are considered as assets of the family (Wieringa 1999:132).

⁶⁴ This name is used after the second women congress in Jakarta in 1929 (the first one was in 1928 right after the Young Declaration Conference) to represent the collective membership of the congress. Therefore this congress became the first Congress on PPII.

⁶⁵ Established in 1930, Isteri Sedar refused to join PPII, believing that PPII as federation would not be able to act on issues of marriage because of its diverse religious and social interests within its membership. Isteri Sedar felt that working with the Islamic women's group would weaken the sting of their stance against polygamy, as would work with the Catholic women's group on divorce. On the other hand, many women's organizations were reluctant to work with Isteri Sedar and protested against its demand for abolition of polygamy and women's rights to divorce as these positions were opposed to their religious beliefs. To appease Islamic and Catholic women's group, the 1930 Congress did not discuss polygamy or divorce, confirming Isteri Sedar's concerns.

⁶⁶ This was along with rights to the vote for women, the need for establishing an information center of women in the labor force and the importance of conducting research on the increasing infant mortality rate.

In this regard, the body of the girls and women are typically defined not only as the property of men⁶⁷, but also as a profitable commodity, exchange goods, family investment, the site of pleasures and as a payment of debt. Kartowiyono in Wieringa (1999:132) asserts that a peasant's poor situation, which was a result of high debt to their landlords and working conditions, was also very bad for women and children. In describing the trafficking situation at that time, one of Isteri Sedar's members recalled (Wieringa 1999:127):

... I was also a very active member of Isteri Sedar. We campaigned against trafficking of women. There were trader-men who provided a lot of money to certain families with girls and asked if they could marry them. The peasants were so poor. They would do anything to be able to pay their huge debts. If they got about ten girls then the trader-men took them to Jakarta or Singapore. There, the girls were sold. We, from Isteri Sedar, had to scrutinize the activities of those men by gathering all evidence so that they could be caught. Sometimes we rescued the girls from the ship. In 1935, I had to go to Singapore myself for this⁶⁸

The above description reflects the way trafficking was understood in relation to the crime network which operated using the poor situation of the family and involved movement from one place to another. Trafficking was explicitly linked to women, poverty, prostitution and gender inequality between men and women in the private sphere. The above description also illustrates that peasants would do anything to free themselves from debt including letting their daughter(s) go in return for cash money. Women in trafficking, in the above description, were portrayed as innocent and the burden of the family. However, the act of the family in letting the girls go was not perceived as wrong with poverty as the justifiable reason. Women and poverty were in the heart of women's agenda in the 1930s. With that, trafficking continued to be the main concern of women's organizations.

⁶⁷ This was worked either through their father, husband, the king or even brother and uncle

⁶⁸ Translated from Bahasa Indonesia to English by Wahyuningrum

The movement of the young women from one place to another, deploying tricks (marry the young women) and making use of someone's position of vulnerability (in debt situation), giving payments or benefits to achieve the consent of a person under the control of another person were marked as part of the trafficking process in the period of 1930s. On the other hand there was another pattern of movement in the same period. As Stoler (2005:323) observes, under the colonial government's economic liberalism policy, women and men, either individually or organized were encouraged to migrate to other villages or countries to earn a better living by working in a plantation or as domestic workers. She further describes that the system of work applied in the plantation had conditioned women to exchange as labor their sexuality and gender to work as domestic helpers in male workers' houses and as sexual service providers. Trafficking was almost always connected to migration within the country or across the border.

Moreover, economic conditions, once again, was perceived as a factor in trafficking and forced prostitution. The chair of P4A for several years, Mrs. C.S Datu Tumenggung, a Minangkabau⁶⁹ woman, argued that it was not possible to single out factors to trafficking because it was a complicated issue. She explained that apart from the economic condition, one sided-divorce⁷⁰ and polygamy should be seen as factors as well as they had propelled young women to be trapped to the arms of those who find earnings by persuading innocent girls to marriage (Wieringa 1999:133). Mrs. C.S Datu Tumenggung further stated that "the efforts to change the situation can only be successful if women are economically stronger and independent therefore, what these women need are education and job opportunities as well as ending the practice of concubinage at the same time"⁷¹ (Wieringa 1999:133). These three practices reflected the structure in the culture that makes women powerless to control their lives and incapable to reject the practices. Concubine practices, according to women activists, were degrading women's dignity and they were not acceptable to religious values (Hull et al 1997:4). In addition, the practice of concubinage involves

⁶⁹ This is one of the ethnic groups in West Sumatra. They mainly follow a matrilineal system of family. Many women from West Sumatra are famously known to be as progressive as their feminist sisters in Java.

⁷⁰ One sided-divorce refers to a practice where only the husband is allowed to file a divorce in the court.

⁷¹ Translated from Bahasa Indonesia to English by Wahyuningrum.

women of different classes and races, too⁷². There were numerous works of fiction telling the stories of this particular practice⁷³.

4.3.2 Trafficking in Competing Discourses of Concubines, Polygamy and Prostitution: 1930s – 1940s

It is interesting that in 1925, there were two women organizations devoted to tackling trafficking in the West Java province that had laid a claim that trafficking was a criminal act (Wieringa 1999:110). They were *Majoe Kemoeliaman* (Toward Dignity) and *Hati Soetji* (Pure Heart) based in Bandung (Blumberger in Wieringa 1999:110). Apart from framing trafficking as a crime, this issue continued to compete with polygamy and divorce issues, too, within the women's movement. At some point, even accepting polygamy was perceived as a way to stop trafficking and prostitution. For instance, at the 1928 Women Congress, right after the Young People Congress, a Muslim delegate opined in defense of polygamy on the grounds that it would stop 'surplus' women from entering prostitution and being trapped into a trafficking network (Martyn 2005: 175). This view enraged the rest of the participants of the congress. When challenged on why unmarried women would necessarily become prostitutes, she changed her position⁷⁴ (Martyn 2005: 175).

The question indicated the feminists' position on prostitution at that time, namely that no good unmarried women would decide to choose to be in prostitution⁷⁵. Accepting the condition was unthinkable. The claim was also based on the unequal statistical number of women and men, and therefore, the marital institution was seen as the solution for too many women. The debates implicitly conveyed the idea of the legality of sexual relations and activities between women and men in different spheres: public and private. The question posed in that forum, however, showed that prostitution was seen as a deviant practice in comparison to polygamy. This is

⁷² The practice was not only exercised by local men but also by colonial men. (Hull et al 1997:4).

⁷³ For one instance is *Hikayat Siti Maria* (The Saga of Siti Maria) was published as a series in *Medan Prijaji* Bandung's newspaper during 1910 – 1912; another instance is a novel, *Nyai Dasima* by G. Francis, first published in 1898 and filmed in 1920, and then re-told in different versions by Ardan in the 1960s and Pramoedya Ananta Toer in the 1980s.

⁷⁴ Discussions then were carefully crafted about polygamy to avoid further conflict.

⁷⁵ But perhaps it is accepted to divorced women because they have to survive

because polygamy was backed up by religious teaching while this was not the case for prostitution.

Furthermore, the trafficking debates engagement within the women's movement in Indonesia involved understanding of the concept in the way Mrs. Ruswo (Wieringa 1999:133) described trafficking in the 1932 PPII Third Congress in Surakarta (now Solo), Central Java province:

[Trafficking of women and children] is the ill of the world... it has been so before and remains so until now... from the East to the West... This ill spreads out in each corner of human relations, from low class to high ones, from white people to people of color⁷⁶.

This statement indicates the understanding that trafficking is a global problem and a continuing, old, unresolved issue. There is an acknowledgment that trafficking can also occur to women of all backgrounds regardless of their class, sexuality, race, and without border boundaries. The above statement also illustrates that trafficking is not an easy issue to deal with as it exists in every kind of human relations. Nevertheless, the statement assumes that all women experience same or similar realities of trafficking. However, trafficked women and prostitutes were also blamed for their laziness, shallowness, low morality, consumerist attitude and stupidity that lead them to trafficking. Mrs. C.S. Datu Tumenggung wrote, "besides that, flightiness, laziness and frivolity"⁷⁷ had also contributed as factors to trafficking (Wieringa 1999:133).

The campaign against trafficking and condemnation against forced prostitution reached many places in Indonesia (Wieringa 1999:133). In addition to advocacy, many women organizations provided different services for women who were victimized by forced prostitution and trafficking. An organization such as *Putri Boedi Sejati* (Truly Good Woman) built a women's dormitory to shelter the "abandoned" women. M.A Abdoel Rachman noted in *Indisch Vrouwenjaar Boek* (Annual Book of East Indies Women) that women were trained to sew, cook, and master household

⁷⁶ Translated from Bahasa Indonesia to English by Wahyuningrum.

⁷⁷ Translated from Bahasa Indonesia to English by Wahyuningrum.

work in the shelter⁷⁸ (Wieringa 1999: 133). In 1933 at the PPII Fourth Congress in Bandung, West Java, the participants of the meeting agreed to re-establish *Kongress Wanita Indonesia* or Indonesia Women Congress or KPI⁷⁹ with the goal to achieve gender equality between women and men (Wieringa 1999:136). In the same year, PPII disbanded the organization. Then, in 1938 KPI Third Congress, the debates on forced prostitution came into the discussion together with the issues of women labor (Wieringa 1999: 139).

On the other hand, the engagement with the international women's movement was also another area of importance. In 1931, PPII sent their delegation to attend the Congress of Asian Women in Lahore (*Kongres Wanita Indonesia* or Indonesian Women Congress in Martyn 2005: 175). In this conference the 1930's PPII Congress agenda was discussed including trafficking of women and children. In 1937, PPII also sent their delegation to participate in the League of Nations International Conference on Trafficking of Women and Children of the Far East held in Bandung, West Java (Martyn 2005:175). In this conference women discussed trafficking and forced prostitution in relation to poverty. They made a statement that as long as poverty is not eradicated; it is unclear how they could meet the ending of these two, although all people strongly condemn trafficking (Martyn 2005:175). The recommendation of this conference to integrate women's issues into the police force was adopted by P4A Congress only in 1940 (Suwondo in Wieringa 1999:134).

The period of Japanese occupation (1942–1945) shows a slightly different movement from the 1920s and 1930s. The Japanese Government disbanded women's organizations and established new ones such as *Fujinkai* (Women's Organization) and *Hokokai* (Professional Association) (Wieringa 1999: 149). The main objective of *Fujinkai* was to mobilize the women's labor force to support Japanese soldiers. Women were asked to visit and treat wounded soldiers, sew their torn uniforms and socks, maintain public kitchens and entertain soldiers (Wieringa 1999:149). Discussion on trafficking in this period was almost non-existent. Sabaroeddin in 1993

⁷⁸ It was unclear at this point the use and reasons for providing such skills training. Whether it was for women to be able to earn money independently by applying such skills, or based on the assumption that mostly poor girls, unskilled and uneducated were mainly trafficked and forced to prostitution, or skills aimed to discipline women, or for working at the domestic sphere i.e. as domestic workers were perceived as safer and securer for women(?)

⁷⁹ Indonesian Women Congress was the original organization before it was changed to PPII in 1928.

argued that women were forced to work as domestic workers and also as forced prostitutes or “*Jugun Ianfu*” or comfort women, whereas men were mandated to be soldiers to ‘free Asia’ and forced into labor to build roads and train rails and mining (CATW Asia 2002:82–85; Wieringa 1999:149)⁸⁰. Educated girls were promised a higher education abroad or in the city but apparently they did not go anywhere. Hartono and Juliantoro’s study (1997) found that women were recruited through official agents that were organized by the Japanese government to channel women to work as domestic workers, waitresses and in drama productions and through local governments such as village government units (*Lurah*) to gather women from one *dusun*⁸¹ to another, especially those who were Javanese and originated from Java Island. Applying familial approaches made the process of recruitment less problematic as the heads of the village were seen as good and respected people. Not only locals were forced to work as prostitutes, but also white women from the Netherlands and England that were housed in the camps⁸² (Suyono 2005:282-287). Hull et al (1997:14) asserts that the Japanese government also transported women from China, Singapore, Malaysia and Hong Kong to provide sexual services for high ranking soldiers. Moreover, women activists in this period were paralyzed to prevent other women from registering as nurses or to attend to scholarship calls from the Japanese government⁸³ (Wieringa 1999:150–151). It was in this period that trafficking was associated with forced prostitution and reinforced the idea of white slavery in Indonesia, but the element of crime was absent.

⁸⁰ Sabaroeddin further argues that under the Dutch colonial regime (1577 – 1942), trafficking of women for prostitution was used to maintain the Dutch government’s colonial system and Dutch interest politically and economically. While under Japan occupation (1942 – 1945), *Jugun Ianfu* were used as instruments to win the “War of Great East Asia” by keeping up the spirit of Japanese soldiers at the time serving the country (from the Proceeding of the Coalition Against Trafficking in Women–Asia Conference [CATW Asia] in April 2-4, 1993 in Quezon City, Philippines. Indonesia was represented by LBH Apik Jakarta along with Empower (Thailand), The Center for Women Studies (Vietnam), and CPDSK (Burma) from the Southeast Asia chapter in CATW Asia conference, the file is with the author).

⁸¹ *Dusun* is the smaller form of a village.

⁸² They were mainly the wives of Dutch soldiers, the staff in Dutch government offices or the family members or staffs in the plantation estates office who did not manage to leave Indonesia during the Japanese occupation period.

⁸³ These offers actually were pretexts. Women then ended up working as sex slaves or *Jugun Ianfu*

4.3.3 From 'New Emerging Forces' to a Non-issue: 1950s – 1970s

In the years that followed, trafficking of women returned to occupy public discussion, even though it was done in limited forums. One of the organizations which persisted to talk about trafficking is GERWANI⁸⁴ (Wieringa 1998:21). Apart from bringing political issues into public discussion, they also conducted various activities related to issues that were considered feminist issues, such as prostitution, child marriage and women trafficking. Women organizations in this period divided their focus to also tap the issue of marriage law reformation, stiff penalties for rapists, the rights of women laborers and actively engage women in economic empowerment programs and conducted literacy activities for women and girls (Wieringa 1999:21) both in urban and rural settings. Nevertheless, President Sukarno, at that time, urged women to prioritize equality issues between women and men in which he categorized as the 'emancipation' stage (Wieringa 1999:132). He further elaborated that women have equal responsibilities as men to contribute to the nation's struggles into a full national independence from international influence and funding⁸⁵.

Wieringa (1999:256) notes that there was a list of suggested programs that was circulated within the women organizations in preparation to the general election in 1955, to include advancing the marriage law, education and health, price controls and adding numbers of police to deal with prostitution. However, Sabaroeddin (CATW Asia 2002:84–85) asserts that trafficking and prostitution practices were still rampant, together with the nationalist rhetoric of Sukarno. She explains that women had been trafficked to prostitution but also for "other activities such as commercial marriage practices, domestic labor trades, and clandestine employments" (CATW Asia 2002:82–85). She further says that many women were found in bars and restaurants, discotheques, as well as in the plantation estates. She distinguishes two regime's attitude toward prostitution. In the Old Order Regime (1945–1966), Sabaroeddin argues that prostitution was seen as part of the force and incentive in building the

⁸⁴ This stands for *Gerakan Wanita Indonesia* or Indonesian Women Movement, established in 1954.

⁸⁵ Sukarno explains that women should follow two facets of struggles: (1) feminism facet in which women can forward their interests, (2) emancipation facet in which women should fight for equality between women and men. Included in this is equal role in the struggle toward nation building (Wieringa 1999: 32).

nation within the political campaign of “New Emerging Forces”. While in the New Order Regime (1966–1998), prostitution was seen as an unavoidable impact of modernization. She further argues that “Trafficking is a non-issue. Tourism and export of labor are sources of economic development of the country” (CATW Asia 2002:84– 85).

At the same time, a gender idealization project was also ongoing, although in different ways (Wieringa 2003; Blackburn 2004:9). In the Old Order, women were told to participate in the development of the socialist state as another wing of Garuda (national symbol of the country). Garuda could not fly only with one wing therefore women should support men's aspiration in order for the country to fly⁸⁶. Whereas in the New Order, women were idealized to become the queen of the house, educator for the next generation, husband's comforter, alternative source of family economy, the culture keeper, and as member of society⁸⁷. Within this gender ideology, the trafficking concept was rarely heard of or even mentioned in public discussion or media. Moreover women's organizations were only allowed to deal with the domestic affairs of women like arranging flowers, cooking and conducting sessions on how to shape the morality of the children⁸⁸. Women organizations were mainly linked according to the husbands' profession such as *Dharma Wanita* (for civil servant's wives), *Dharma Pertiwi* (for police and army members' wives) and *PKK* (for wives whose husbands work in private sectors)⁸⁹. A prostitute was perceived as ‘the other’, in contradiction with the nationalist's project of portraying the ‘ideal woman’. People tended to blame trafficked women as something of their own fault and their bad fate

⁸⁶ See Wieringa, S. E. (Spring 2003). The Birth of the New Order State in Indonesia: Sexual Politics and Nationalism. *Journal of Women's History*. Vol. 15 No. 1, pp 70-91.

⁸⁷ See Suryakusuma, J. I. (2004). *Sex, Nation and Power*. Jakarta: Metaphor; Wieringa, S. E (1999) *Penghancuran Gerakan Perempuan di Indonesia* (The Politization of Gender Relations in Indonesia Women's Movement and Gerwani Until the New Order State. Transl. Hesri Setiawan, Jakarta: Garba Budaya; Wieringa, S. E. (Spring 2003). The Birth of the New Order State in Indonesia: Sexual Politics and Nationalism. *Journal of Women's History*. Vol. 15 No. 1, pp 70-91; Blackburn, S. (2004) *Women and the State in Modern Indonesia*, Cambridge: University of Cambridge.

⁸⁸ My mother, together with the mothers in the neighborhood, is a member of *Dharma Pertiwi*. This list of activities is taken from activities that my mother used to join, although she was also a teacher. So she has to divide times acting as a member of *Dharma Pertiwi*, teacher, mother, a wife, a member of the neighborhood, a part of big family and so on. This sample of activities is not exhausted.

⁸⁹ See Suryakusuma, J. I. (2004). *Sex, Nation and Power*. Jakarta: Metaphor; Wieringa, S. E (1999) *Penghancuran Gerakan Perempuan di Indonesia* (The Politization of Gender Relations in Indonesia Women's Movement and Gerwani until the New Order State. Transl. Hesri Setiawan, Jakarta: Garba Budaya; Wieringa, S. E. (Spring 2003). The Birth of the New Order State in Indonesia: Sexual Politics and Nationalism. *Journal of Women's History*. Vol. 15 No. 1, pp 70-91.

as to why they ended up in prostitution in different provinces of the country (Sabaroeddin in CATW Asia 2002:84–85).

The debate on prostitution as a public nuisance started in the 1970s (Sabaroeddin in CATW Asia 2002: 84–85). This discourse also marked women as suffering from a moral disorder⁹⁰. Prostitutes were depicted as disrupting the family institution, linked to criminal acts and drugs and as threat to public hygiene⁹¹. It represented prostitution as an activity that brings danger and threatens social order in the heart of the local community. In 1999, the Minister of Women Empowerment under the Wahid Presidency cabinet (1999 – 2000) suspended the second biggest *lokalisasi* (similar to a brothel) in Jakarta on the grounds that prostitution is violence against women's dignity. *Lokalisasi* was seen as a venue where women get sexually exploited and therefore should be cracked down on. This effort created another problem in public health as it made health control a challenge. Nonetheless, this action should also be seen as a political measure as the party was eager to attract conservative voters⁹². Although the closing of *lokalisasi* was not followed in other cities, the absence of feminist protests indicated conformity to such a decision⁹³. One impact of this action was that women prostitutes became disorganized, and they were visible on the street. Afterwards, the Jakarta provincial government conducted raids on the street to transfer women (and street children) to rehabilitation centers. Even though the raids caused a great deal of protests from many NGOs, the Jakarta government perceived the action as a necessary effort to deal with social ills⁹⁴. Until recently, this raiding operation was still practiced (*Media Indonesia*, March 7, 2006). Media reported that several women in Tangerang, West Sumatra, South Sulawesi and

⁹⁰ In contrast, male customers or female and male pimps are not necessarily associated with having a moral disorder.

⁹¹ See Sedyaningsih-Mamahit, E. R (1999) *Perempuan-Perempuan Kramat Tunggak* (Kramat Tunggak Women), Jakarta: Sinar Harapan and Ford Foundation; Hull, T. et al (1997) *Prostitusi di Indonesia: Sejarah dan Perkembangannya* (the Prostitution in Indonesia: History and its Developments), Jakarta: Pustaka Sinar Harapan and Ford Foundation.

⁹² In this period, Indonesia had just open up the multiparty election (more than three existing political parties: Golkar, PDI and P3). So, any events that were beneficial to raise the number of voters were likely to be executed. The Minister of Women Empowerment was from PKB which aimed to attract more voters beyond NU.

⁹³ Dian Kartika Sari's personal Note on Policy Advocacy to eliminate trafficking in persons especially women and children, 1998 – 2004. (the file with author), p.3.

⁹⁴ Dian Kartika Sari's personal Note on Policy Advocacy to eliminate trafficking in persons especially women and children, 1998 – 2004. (the file with author), p.3.

Aceh were arrested by provincial security officers or *Pamong Praja* because they were seen in the middle of the night without companions (usually men). According to the local ordinances, such women should be suspected as prostitutes⁹⁵. Despite the criticisms, the Mayor of Tangerang city⁹⁶, for instance, argued that the raiding operation was to 'rescue' women's morality from sinful activities. He further asserted that he received many reports from the community members who felt annoyed with the presence of prostitutes on the street. Therefore, he reasoned, the raids aimed to maintain security, and he rejected the idea that these actions are categorized as violating human rights⁹⁷.

Currently, there are thirty-six local ordinances to maintain order in the region by specifically addressing activities considered as immoral and breaching religious tradition and traditional sets of values⁹⁸. However, no more discussion on criminal acts of trafficking or that trafficking is not equal to prostitution could be found in this era. Moreover, as Wieringa (1999:37) noted, during 1960s–1970s, talk about women's oppression was discouraged because it equated with questioning the government's policies and led to an accusation of committing a subversive act.

4.3.4 From Sexual Exploitation and/to Women's Rights Violation: 1980s – 2000s

Although Indonesia ratified CEDAW in 1984, the issue of trafficking did not necessarily come to public discussion immediately. It took some time to bring the

⁹⁵ This occurred on the street, park or other public site. Women in Tangerang were arrested when they were waiting for public transportation at 24:00. One of them was a teacher and the other a worked in manufacturing . Media also reported that many women laborers were afraid to be outside in the night although they worked the night shift. As a result they asked the administration to dismiss the night shift for women but the media did not report on the response.

⁹⁶ Larangan Pelacuran lebih ke arah moral (the prohibition of prostitutes weight on moral), *Media Indonesia*, March 7, 2006. He also said that many district government officers had come to him and discussed replicating such an operation in their districts.

⁹⁷ He even challenged women activists to debate on this matter as he was convinced that he had the mandate from his position to secure public order (*Media Indonesia*, March 7, 2006).

⁹⁸ To name a few: Local Ordinance No.6 of 2003 on Prohibition of Homeless and Beggars as well as Immoral Practices in Medan city (North Sumatra); Local Ordinances No. 4 of 2004 on Prohibition of Prostitution and Immoral Acts in Lampung; Local Ordinances No. 7 of 2005 on the Prevention and Prohibition of Trafficking in Children for Commercialized Sexual Exploitation in Indramayu; Local Ordinances No. 58 of 1998 on Prohibition of Immoral Acts in Bekasi; Local Ordinances No. 8 of 2005 on the Prohibition of Prostitution; Local Ordinances No. 39 of 1999 on the Control of Prostitution in Kupang and so on.

subject into the women's agenda, too, because of the lack of the freedom of expression, assembly and speech. Nevertheless, CEDAW explicitly provides the international legal concept on trafficking (Article 6) that many women in Indonesia came to learn. Human rights instruments, including CEDAW, had been successful in separating the role and function of the state and non-state actors and pointed out the responsibility holders and rights holders. In this framework, women activists tried to attract the government's attention to the issue of violence against women by pointing out the phenomenon of prostitution as one form of sexual exploitation. However, according to Dian Kartika Sari, a woman activist, now working at INFID⁹⁹, denial was the government's common attitude to such an inquiry¹⁰⁰. She recalled that she had collected evidence and categorized cases that she found in *Pucangsari* and the biggest brothel in Surabaya, *Dolly*, of an emerging trafficking phenomenon but the government said that she exaggerated.

Documents gathered from women organizations suggest that the period of 1980s was the beginning of framing prostitution as sexual exploitation¹⁰¹. This strategy was chosen to challenge the discourse on 'moral disorder of women' in the 1970s. The main goal of the strategy was to change the social perception of prostitutes from 'condemned women' to 'victims'. Women's organizations also campaigned for punishing the clients and pimps rather than the women. Women's organizations expected that by situating women as victims, this would result in protection of women from harm, minimizing the stigma of 'fallen women', having health services and economic programs for women as alternative income sources. The efforts faced big constraints because local and national governments perceived prostitution as a public nuisance and as representative of women's moral decay. For instance, the Jakarta

⁹⁹ This stands for International NGO Forum for Indonesia's Development based in Jakarta but the head office is in Belgium.

¹⁰⁰ Interview, June 14, 2007.

¹⁰¹ Such as Koalisi Perempuan Indonesia (2003) *Refleksi Lima Tahun Koalisi Perempuan Indonesia: Perempuan Indonesia 1998 – 2003: Dalam Bayang-bayang Antara Reformasi dan Represi* (Five Year Reflection of Indonesia Women Coalition: Within the Shadow of Reformation and Repression) Jakarta: KPI. Unpublished document.; Sari, D. K. (2001) *Upaya pencegahan dan penanggulangan perdagangan perempuan dan anak: kertas posisi* (The Efforts to prevent and tackle trafficking of women and children: a position paper), Jakarta: KPI; Koalisi Perempuan Indonesia (KPI) and LBH Apik (Legal Aid Foundation – Women Association for Justice) (21 November 2002) Dialog Publik Menuju Pendekatan Manusia terhadap Prostitusi (Public Dialogue Toward the Human Approach to Prostitute), Jakarta: KPI and LBH Apik. Minutes of Meeting.

Local Ordinance No. 11 of 1988¹⁰² stated that women prostitutes were disrupting public order. As a result, there were many raids initiated to clear the streets of prostitutes¹⁰³. The arrested prostitutes were sent to a rehabilitation center for three months and filled with religious teaching to fix their moral disorder as well as being trained in sewing, cooking, gardening and other household work to give them decent job choices after the period of rehabilitation. Some officers blamed consumerism, the tendency of women's nature to sin and 'sex addiction' for those who returned to prostitution.

The media mainly reported the sensational aspect of brothels and the adventure of pimps. Prostitutes in this period were portrayed as the threat to a happy family, as a sinner, dirty and lacking in morality. Some newspapers changed their point of view by considering the means through which women engage in prostitution, the humanitarian aspect of the industry, poverty as well as the patriarchal system, but the image that no women intended to or would give consent to work as prostitutes was never absent. But through NGO campaigns, many of the media began seeing prostitutes as victims and not as immoral actors, although the old perception of prostitution could still be found in some print media¹⁰⁴.

To a certain extent, during the 1980s to 1990s, the issue of trafficking was gradually discussed, but only in relation to prostitution. Through cases that were reported to their organizations, NGO staffs observed that there was a crime network involved in prostitution which they then noted as trafficking¹⁰⁵. Dian Kartika Sari made this distinction by returning to the situation in the 1920s, whereas others

¹⁰² This is not the first of its kind. Using this local ordinance, the Jakarta government removed street children and prostitutes to the rehabilitation center in Jakarta. During my work in the National Commission for Child Protection (1998-2000), I collected data on these particular cases from NGOs and media. The data was included in the National Commission for Child Protection' press conference and annual reports (1999 and 2000).

¹⁰³ Especially when the city becomes a host of national, regional and international meeting, the frequency of such operations was intensified. Most state officials were ashamed if their localities were identified as supplying prostitutes (such as Indramayu, and Banyuwangi) or were the center of prostitution (such as Bali, Surabaya and Batam).

¹⁰⁴ Based on my working experience, newspapers such as *Pos Kota* (Jakarta) and some local newspaper such as *Batam Pos* (Batam) are still portraying women as sexual objects especially when they report rape cases. These two newspapers mainly report on criminal cases such as murder, rape, robbery and so on. These two newspapers are not included in the data collection of this study.

¹⁰⁵ Interviews with Dian Kartika Sari of INFID (June 14, 2007), Ratna Batara Munthi of LBH APIK (June 19, 2007), Salma Safitri of Solidaritas Perempuan (June 11, 2007), Emmy LS of Indonesia Acts (June 14, 2007), Mike Tawang of KPI (June 7, 2007) and Aida Milasari of Gema Perempuan Jakarta (June 8, 2007) who provided this observation.

emphasized on movement within and beyond borders. The local term for trafficking of women, “perdagangan perempuan” or “perdagangan wanita”, was started to be used again in many women NGO forums¹⁰⁶ to address the issue of trading women into prostitution (further discussion on this is in the next chapter, section 5.4).

At a regional conference organized by CATW Asia in April 1993, Sabaroeddin of LBH Apik (Legal Aid Foundation – Indonesian’s Women Association for Justice), defined trafficking of women to mean:

The transportation, sale, and purchase of women for purposes of violence and exploitation within the country as well as outside. It includes all kinds of activities to which women may be forced to be involved not only in prostitution, but also in other activities as commercial marriage practices, domestic labor trades, and clandestine employments¹⁰⁷.

Within this boundary, she explains three important elements of trafficking: (1) the transportation within and across borders, (2) the purpose of violence and exploitation, and (3) the element of force. However, the above definition explicitly assumed that all women were forced to enter prostitution¹⁰⁸. Furthermore, it also expanded the coverage on which forms of “violence and exploitation” can be manifested in other activities such as commercial marriage practices, domestic labor trades, and clandestine employments”. Additionally, Sabaroeddin argues that sex workers, contract workers in plantation estates, *Jugun Ianfu*, entertainers, bar and restaurant waitresses, and women who work in nightclubs, discotheques, karaoke pubs, beauty parlors, fitness centers, modern and traditional massage centers, and as entertainers (snake dancers, strip teasers, singers), movie stars, sales girls, escort girls, public relations (PR) service women, domestic helpers and nurses should be seen as

¹⁰⁶ Such as by Solidaritas Perempuan in telling the case in 1988 of an Indonesian woman who was married to a Dutch man, moved to Amsterdam and sold to an international network within the sex industry in *It is time to take Action to stop trafficking of Women and Children*, Seminar Paper presented by Nunuk P. Murniati in 26 December 2000 (file with author).

¹⁰⁷ From Proceedings of the “Human Trafficking Conference on the Trafficking of Asian Women”, April 2-4, 1993 in ISO, Ateneo de Manila University, Quezon City, convened by CATW Asia and Katipunan ng Kababaihan Para sa Kalayaan (KALAYAAN) p. 86 (Emphasis added).

¹⁰⁸ This point reinforced the discourse on “no good women would work as prostitutes” in the 1920s – 1930s.

“clandestine employments” (CATW Asia 2002:82–85). By the end of the workshop, CATW Asia came up with defining prostitution as sexual exploitation, “The sale, purchase, use and exchange of human body in cash, kind and special favors. It is an industry that feeds on the sexual exploitation of women and *serves the interest of a particular group*” (CATW Asia 2002:169. Emphasis added). Sex trafficking was conceptualized as “The movement of women across national and international borders with the goal of putting women in sexually exploited situations, as one distinct *form of which of prostitution*” (CATW Asia 2002:169, Emphasis added). This definition does not recognize the element of means of the recruitment¹⁰⁹ to prostitution which draws a direct link to movement, and therefore equates prostitution with trafficking. This notion had also obscured the idea of sex work as a job and possibility that women may enter prostitution voluntarily¹¹⁰.

Apart from framing it as sexual exploitation against women, NGOs began to talk about trafficking as a violation of women's rights in the 1990s. Trafficking and prostitution were claimed as violating women's dignity and right to choose¹¹¹. Thus it became the government's obligation to provide for and guarantee such protection for women's dignity and right to choose. Academic studies gradually established the explanation of the phenomena of trafficking in women to include who is being trafficked, who is doing the trafficking, how is it happening, and what can be done¹¹².

¹⁰⁹ This includes of being deceived, kidnapped, forced, subject to abusive power or debt.

¹¹⁰ In 1994, the UN General Assembly adopted a resolution on traffic in women and girls condemning “the illicit and clandestine movement of persons across national and international borders, largely from developing countries to some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations for the profits of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labor, false marriages, clandestine employment and false adoption.

¹¹¹ There are three dimensions of viewing this. One is at the micro level that women “deciding” to go into prostitution or to run the risk of being trafficked are not really “choosing prostitution” but survival. Next is at the level of macro where women's choices are conditioned and pre-determined by patriarchal culture/society. In this situation, there are no real choices open to women. And the third is that women who enter the trade do not even have the freedom to choose to leave the trade. They are stigmatized by the society, or they unable to leave because of huge debts that they have to be paid to trafficker/procurer/pimps. Prostitution and sex trafficking also violated the right to life and rights to sexuality.

¹¹² To name of few: Irwanto, Nugroho, F. and Imelda, J. D. (2001) *Perdagangan anak di Indonesia* (Child Trafficking in Indonesia), ILO IPEC: Jakarta, Indonesia; Demmallino, E. B & Wicaksono (2004) *Utang Budaya Perempuan Tana Toraja*, Yogyakarta: Ford Foundation & UGM; Firdous (2004) *Respons LSM terhadap perdagangan anak perempuan*, (NGO Responses toward Trafficking of Women and Children), Yogyakarta: Ford Foundation & UGM; Imelda, J. D., Marthini, T. & Setyawati, L. (2004) *Utang Selilit Pinggang: Sistem Ijon Dalam Perdagangan Anak Perempuan* (Debt Rounding the Waist: Peonage in Girls Trafficking), Yogyakarta: Ford Foundation & UGM; Mulyanto (2004)

Among these studies are reports on street children (boys and girls), child prostitution in five big cities (Jakarta, Bandung, Surabaya, Makassar and Medan) and pedophilia cases in Bali in 1995¹¹³. NGOs reported that they deal with the issue intensively. Trafficking was conceptualized in its relation to the powerlessness of innocent girls, who were trapped to work as sexual slaves for someone's benefit, as Dian Kartika Sari¹¹⁴ recalls her first case working at LBH Apik as an Advocacy Officer in 1996:

She was young and a smart girl who originated from Palembang City, South Sumatra. She was in her second year at junior high school. She joined a computer course in Depok City, West Java. She was given a drink by her male friend and soon after became unconscious. She was photographed naked and asked to have sex with him and serve other clients as well, otherwise the photographs would be distributed to families and friends both in Depok and Palembang. She also had to take care of his male friend's friends homework. She had to do this job for 4 years until one day she realized that she was sold by her male friend. She told her brother-in-law about what happened to her. Instead of getting support she was raped by him. She ran away to Palembang and she told her story to her father, and he raped her as penalty for her inability to take care of herself while being away from the family. She went back to Depok and appeared in LBH Apik office in Jakarta. For a couple of years we had to hide her from her family and male friends. The police came to our office after receiving the report from the parents and snatched her out from us. We do not know what happened to her until the present.

The story may seem debatable to be categorized as trafficking, but instead as sexual abuse of a young woman. Nevertheless, it highlights, once again, similar characteristics; in this instance of a middle-class innocent girl who is exploited by her male friend. During this period, however, trafficking tends to be characterized as

Melacur demi hidup: fenomena perdagangan anak perempuan di Palembang (To prostitute in order to survive: girl trafficking phenomenon in Palembang), Yogyakarta: Ford Foundation & UGM.

¹¹³ The research was conducted by University of Gajah Mada, Faculty of Demography and Population.

¹¹⁴ Interview, June 14, 2007.

sexual exploitation grouping many forms of abuses and exploitation into one big categorization¹¹⁵.

Meanwhile during 1996 to 1998, Solidaritas Perempuan, a women's organization focusing on trafficking in women migrants actively engaged with Global Alliance Against Trafficking in Women (GAATW) along with several women's organizations in Thailand, Vietnam, Cambodia, Philippines, Malaysia and Burma¹¹⁶. GAATW perceived that trafficking in women is considered as a contemporary form of slavery and gross violation of women's basic human rights that occurs within and across borders¹¹⁷ and which involves the process of migration (GAATW 1999:5). Trafficking of women according to GAATW is:

All acts and attempted acts involved in the recruitment, transportation within or across borders, purchase, sale, transfer, harboring, or receipt of a person involving the use of deception and coercion including the use or threat of force or the abuse of authority or debt bondage for the purpose of placing or holding such person, whether for pay or not, in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labor, or in slave-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.

Further, GAATW conceives that trafficking is not merely for the purpose of *forced prostitution* or sex trafficking but also includes forms of exploitation, forced labor and slavery-like practices in other sites within the informal sector, such as domestic work, and mail-order brides (GAATW 1999:5). From this perspective, prostitution is not seen as the sexual exploitation of women. Consent is discussed in relation to the process of movement, not in the stage of entering prostitution.

¹¹⁵ This includes prostitution, pornography, rape, sexual harassment; some activists perceived that women working in bars, nightclubs, discotheques, karaoke establishments are also sexually exploited women.

¹¹⁶ To name of few: Foundation for Women (Thailand), Migrant Assistance Program (Thailand), Foundation for Child Development (Thailand), Center for the Protection of Children's Rights Foundation (Thailand), Batis Center for Women (Philippines), Cambodia Women's Crisis Center (Cambodia), and Tenaganita (Malaysia).

¹¹⁷ However, GAATW suggests there not be too 'strict' or 'correct' application on the definition of border. It could be the movement from one place to an unfamiliar milieu, disconnected from family, community, friends, language and cultural background (GAATW 1999:10).

GAATW sees trafficking as a coerced form of forced migration in which trafficked people are being recruited and transported to another place by force, threat of violence or deception. Therefore, GAATW argues that consent, in this case, is irrelevant. As it is occurring in many parts of the world, the perception of prostitution is split into two camps. Although both camps agree that trafficking is a violation of women's human rights, one side sees prostitution as sexual exploitation against women and the other sees it as one of women's options. The dominant idea is, however, that trafficking for prostitution is sexual exploitation of women by involving movement from one place to another. Esthi Hudiono, a woman activist who is involved in pro-sex work, based in Surabaya City, said "... I don't think it's going to happen anytime soon. This society still stigmatizes sex workers." (Jakarta Post, 11 August 2006). Nevertheless, placing trafficking in relation to prostitution or forced prostitution grabs public sympathy in Indonesia on the ground that sex should not be practiced commercially. Moreover the 'sexual exploitation of women' in prostitution provides a way of familiarizing a discourse on trafficking.

4.4 Conclusion

The above historical overview suggests that for more than eighty-five years, trafficking stayed linked to "women" and prostitution. The element of migration and the debate on sexual exploitation were inaugurated in the 1920s but then disappeared in the 1960s but returned in the 1980s. The discussion on trafficking is in the two periods, in particular, the 1920s and 1930s shows how trafficking appeared as an issue in competition with other major women's issues such as polygamy, one sided-divorce, prostitution and poverty which were significantly based on gender and sexuality assumptions in that period.

The above discussion also demonstrates that the debate on polygamy fractured the movement in Muslim, Non-Muslim and Secular women's organizations; the debate on trafficking, however, united them. To this end, the strategy of focusing on women's gender interest has implicitly served a strategic alliance within women's organizing. Women's gender strategy also served another strategic purpose to protect women's rights (i.e. by providing shelters). On the other hand, employing the mixed

arguments of the strategic and practical women gender interests of: (1) male sexual domination in unequal relations between women and men in trafficking and forced prostitution, and also (2) the fact that women should be perceived differently from men, had championed the agreement within the movement too. In this regard, women seemed to see themselves as having a higher standard of morality than men, and as the result, women had to bear the burden of the efforts to counter bad morality (read: men). Women who possess a different set of morality were mostly trapped in prostitution and trafficking (seen as abandoned women) and needed to be saved. The discourse on women's moral disorder still colored the discourse on trafficking of women. This dynamic of women's gender interests, however, had not been demonstrated from the 1980s until 2000 as it seemed like the main focus of the women's movement in this period was about strategic women's gender interests on advancing women's human rights. Moreover, as for the human rights framework, trafficking was framed as a women's rights violation which depicted and understood trafficked women as victims.

Significantly, trafficking continued to be linked to prostitution and perceived as a crime, while the issue of prostitution framed its own debates. Prostitution was seen as a non-option for women's work and as immoral conduct. No good women would agree to work as prostitutes, they only did it when they were forced by the need to feed their children or when under someone's control. However, women who were kidnapped, used as a debt payment for their parents or deceived and moved from their hometown to work as prostitutes, should be defined as being trafficked. This concept actually formulated trafficking differently from prostitution, by the element of means of recruitment and movement. Women condemned forced prostitution and trafficking and regarded them as crimes.

Trafficking was also beginning to be distinguished from prostitution based on the criminal element and migration. But then the markers got blurred along with the lack of political opportunity available and venues to discuss trafficking in public debates. Nevertheless, the way trafficking and prostitution was really fused makes the gender assumptions that were applied at the time apparent. Besides that the element of poverty as a factor in trafficking, prostitution and forced prostitution - appeared to be sustained in women's arguments.

There are two similarities that can be found in this long period. First is the discourse on “no good woman will choose to work as prostitutes”. The idea has been reinforced along this period of time. Second is the programmatic response to prostitution. This has not changed from the focus on sewing, cooking, gardening and enhancing household skills as alternative sources of income¹¹⁸. This pattern of programmatic responses still can be found in present activities for women in many rehabilitation centers. Further, there is a shifting of depicting women as victims of trafficking in this span of time. This is different from the white slavery phenomenon, where victims were portrayed as innocent, middle- class young women who were kidnapped and who ended up as slave sexes; in the 1920s-1930s the depiction was of poor, innocent women who were used as payment for debt. The innocent, middle - class victims came into Indonesian realities with the Japanese occupation and was changed again to innocent, poor rural women in the 1980s to 2000s.

¹¹⁸ I remember the banner posted on the wall of OXFAM Hong Kong in Phnom Penh, Cambodia, in 2001, “Do not give us sewing machines, give us our rights”. The staff of Oxfam Hong Kong said that the words came from the prostitutes themselves.

CHAPTER 5

GENDER, GLOBAL-LOCAL DYNAMICS AND CRIMINALIZATION: INDONESIA'S DEBATES ON TRAFFICKING AFTER THE PALERMO PROTOCOL

5.1 Introduction

The Palermo Protocol grounds the momentum of trafficking debates in a slightly different form from the past discussions. The definition does not move from its traditional focus – prostitution – but gets expanded to slavery, slavery-like practices, servitude and even removal of organs. This chapter focuses on the development of discourses in trafficking in Indonesia after the Palermo Protocol. In this period two policies were enacted: The National Plan of Action (NPA) on the Elimination on the Trafficking of Women and Children (2002-2007) and Law No. 21 (2007) on the Suppression of the Criminal Acts of Trafficking in Persons. Taking the opportunity that these two developments provide, this chapter examines dominant discourses that were invoked in the discussion. This chapter identifies various levels of changes in the contemporary trafficking debates, which are different from the past evolution of discourses. First is the shift in term as it is appeared in the title of the National Plan of Action (NPA) and in Law No. 21 (2007). Second is the way in which the discussion of women and children moved from main-text to sub-text. Third is the effort to acknowledge local realities and history in trafficking to differentiate it in line with other experiences. Fourth is the change in paradigm from human rights violation and crime approach to “special crime” point of view. From gathering opinions and insights from discursive participants that I interviewed and by examining texts in NPA and Law No. 21 (2007), as well as in the media, collecting and reviewing minutes of the meetings and party political statements related to this study, I argue that the changes made in trafficking debates do not necessarily shift the subjectivity of the victims of trafficking. In fact, they reinforce previous debates on women gender-stereotypical biases.

5.2 Gender Critics in Trafficking Shifting Terms (from ‘Women and Children’ to ‘Persons’)

5.2.1 The National Plan of Action on the Elimination of Trafficking in Women and Children (2002 – 2007)

As a Signatory State of the Palermo Protocol, the first measure that was taken by the Indonesian government was to draft a five-year National Plan of Action (NPA). This plan identified specific roles for the government and civil society at both the national and local level. Recognizing that NPA (English version) has no legal power to define trafficking, it utilizes a broad definition as:

All acts of a trafficker which consist of one or more of the following activities: recruiting, transporting between regions and between countries, transferring, departing, receiving and accommodating in temporary places or in destination human beings by way of threatening, using verbal and physical violence, kidnapping, deceiving, doing cunning tricks, taking advantage of someone’s vulnerable position (when someone has no other choice, isolated, drug addicted, in debt bondage etc.), giving or receiving payment or profit where a human being is used for prostitution and sexual exploitation (including pedophilia), legal and illegal migrant workers, child adoption, working in offshore fishing platforms, mail-ordered brides, domestic workers, beggars, pornographic industry, distribution of illegal drugs, sale of human organs and other forms of exploitation.

This definition is to install frameworks to eliminate trafficking, especially for vulnerable groups such as women and children.¹¹⁹ The NPA - crafted after consulting with NGOs and governments at provincial and districts level - mandated

¹¹⁹The document also recognises set of problems reflecting the challenges that would have to be attended to in activating the NPA on the Elimination of Trafficking of Women and Children: glitches in the population census administration; rampant forgery of ID cards; lack of awareness of trafficking both among villagers, community leaders, government personnel; errant recruitment agencies; insufficient budget allocation; weak capacity; weak laws and regulations.

several activities such as establishing national and provincial task forces of inter-departmental bodies, police forces, national commissions and NGOs for drafting a comprehensive law to suppress trafficking and make anti-trafficking as part of a national agenda. The task force is responsible to document and present annual reports of the achievements, constraints and the way forward, as it is planned in the NPA, to the president¹²⁰.

Although the NPA is entitled “the Elimination of Trafficking of Women and Children, 2002 – 2007”, it is criticized as being not in favor of women’s rights. Instead of perceiving women as subjects, NPA sees women as the powerless victims (Krisnawaty 2005)¹²¹. Krisnawaty, one of the commissioners in the National Commission for Women, further argues, “They are seen as spoilt women who need to be rehabilitated. Moreover, women are perceived as passive individuals who do not know how to migrate safely therefore they need to be channeled in the process of migration. These two perceptions reinforced the unequal position which resulted to sustain women in the position of victims and vulnerable”. Krisnawaty continues to argue, “Such a condition creates a worry that this will separate women from justice, the principle of human dignity and from their fundamental rights to decide where they want to work”. According to this view, perceiving women as vulnerable and defenseless victims detached women from their rights and to a certain extent may potentially violate their rights. This is the case illustrated in the letter from the Ministry of Human Rights and Justice No. F.U.M.02.02-104B dated June 25, 2003 to control the issuance of Indonesian passports. As the manifestation in the NPA stated, the letter instructed the Head of Immigration offices in Indonesia to take five preventive actions, and one of these is to control the issuance of Indonesian passports to women, especially those who are young, and who requested a passport through

¹²⁰ It is interesting to note that the reports of 2003 – 2004 and of 2004 – 2005 were titled ‘trafficking in persons’, while the report of 2005 – 2007 was titled ‘trafficking of women and children’. During 2002 till 2005, people keep referring trafficking to women and children, whereas in 2006 onward people and the media shifted the name into ‘trafficking in persons, although both terms actually are addressing women and children. One of the officials admitted that he did not notice o the differences.

¹²¹ Presented by Tati Krisnawaty, Commissioner in National Commission for Women at *Parliament Forum for Population and Development, DPR RI, Kebijakan-kebijakan yang perlu dikaji dalam upaya menghentikan perdagangan perempuan di Indonesia (Policies that need to be studied in the effort of stopping trafficking of women in Indonesia)*, Jakarta, December 2, 2005 (the file with author).

labor recruitment agencies.¹²² Not only is the right to freedom of movement of young women restricted but also their rights to get their identity document are curtailed. In fact, the NPA was initially designed to set up the activities to provide additional protection for women's rights. With the same objectives – women's protection - the new Law No. 21 (2007) criminalizes trafficking and introduces a genderless term, "persons".

5.2.2 Law No. 21 (2007) on the Suppression of the Criminal Acts on Trafficking in Persons

As one of the planned activities in NPA, during 2003 – 2005, the Ministry of Women Empowerment intensively discussed the drafting of the anti-trafficking law and consulted the draft document with other actors and stakeholders during different meetings with national-level government agencies and NGOs as well as with those at the provincial level. The core issues remained to be the abolition of sexual exploitation of women along with the discourse on labor exploitation. In 2006, the draft law moved to the House of Representative or DPR, and in 2007 the new law was introduced under the title "Pemberantasan Tindak Pidana Perdagangan Orang" or "the Suppression of the Criminal Acts on Trafficking in Persons", otherwise known as Law No. 21 (2007). The law was passed by the House of Representatives or DPR on March 20, 2007. Within such a new terminology, trafficking was understood as not only happening to women and children but also to men, although there was very limited evidence to support such a claim. Hence, during the discussion, parliament members stated that they gradually began to believe the fact that many men are also victimized by trafficking such as those who work as sailors. They were provided examples of men working for more than 12 hours, confined and unpaid in foreign countries with no legal protection¹²³. Although I acknowledge that men can become trafficking victims, yet the given examples cannot be categorized as trafficking but the abuse of worker's rights. Another example were the cases of the boys who were

¹²² Coordinating Ministry for People's Welfare (2004) *the Elimination of Trafficking in Indonesia 2003 – 2004*, Jakarta: Menkokesra RI, p.27.

¹²³ Interview with Anis Hamim, June 11, 2007

trafficked to work in plantation estates, far way from family and school and forced to work without pay for more than 18 hours a day.

The discursive participants in debating the anti-trafficking law from 2006 to 2007 in Indonesia produced the term ‘persons’ to replace ‘women and children’. Choosing “persons” as the title of the new law promulgated in 2007 did not happen suddenly. Some people insisted on utilizing the term ‘women and children’ while others advocated using the term ‘trafficking in persons, especially women and children’¹²⁴. In fact, the term had been changed eight times¹²⁵ before the discursive participants came up with the final: “The Suppression of the Criminal Acts on Trafficking in Persons”. The debate on the title of the law was terminated when legal experts from the Law Faculty of the University of Indonesia and the National Commission for Human Rights or Komnas HAM stated that a law should accommodate many principles, one of them being non-discrimination¹²⁶. According to this view, the law should be able to protect women and men, adults and children, and citizens and non-citizens. This proposition was agreed upon by all key actors¹²⁷.

Many of the resource persons that I have interviewed argue that the title of the law is not important, but the content is, and that addresses the protection of women and children.¹²⁸ Additionally, Lisa Noor Hamidah¹²⁹ of the National Commission for Women asserts that using the word ‘persons’ in the title of the law does not reduce the emphasis of women’s realities and experiences in trafficking. Although, she admits that ambivalence still persists. She illustrates the point as follows:

As we have noted so far the women’s movement progressed with much advancement in Indonesia, and this resulted in various mechanisms for

¹²⁴ The debates also include whether using “human trafficking” or “trafficking in persons” as the title of the law. Using the word “human” according to law experts at DPR constitutes biological terminology. The word “persons” is seen as more appropriate.

¹²⁵ Interview: Dewita Hayu Shinta (June 12, 2007), Mike V. Tawang (June 7, 2007), Suharyono (June 11, 2007), Anis Hamim (June 11, 2007), Nurul Gufron (June 4, 2007), Ratna Batara Munti (June 19, 2007).

¹²⁶ Interview: Suharyono (June 4, 2007), Sumarni Dawam Rahardjo (June 15, 2007), Eva Sundari (July 2, 2007), Anis Hamim (June 11, 2007), Nurul Gufron (June 4, 2007) and Ratna Batara Munti (June 21, 2007)

¹²⁷ Interview: Suharyono (June 4, 2007), Sumarni Dawam Rahardjo (June 15, 2007), Eva Sundari (July 2, 2007), Anis Hamim (June 11, 2007) and Ratna Batara Munti (June 21, 2007).

¹²⁸ Interview: Nurul Gufron (June 4, 2007), Suharyono (June 4, 2007), and Mujiwati (June 11, 2007)

¹²⁹ Interview of June 13, 2007.

women's protection that are now provided in districts, provinces, and at the national and international level. Therefore, using a gender neutral term in this law does not really affect women's interests. However, it is true indeed that emphasizing on 'women' indicates that the demand be fully attentive to women and the recognition of the fact that women are still in unequal relations with men in this society. But we have to always expend our efforts to ensure that justice should reach both sexes without discrimination.

The principle of non-discrimination has been employed to conceive "persons" in similar capabilities. M. Farid of Komnas HAM argues that "capability of persons is, in reality, different from one to another"¹³⁰. In an NGO-based women's journal, *Jurnal Perempuan* Vol. 51¹³¹, he wrote, "The notion of the exception has always to be used, for instance, for the people who have limitation in giving or receiving consent, as it would imply his/her condition to take responsibility for the committed act". In the case of children, he continues, "There is a limitation of giving or receiving consent because they are still in their process of mental, physical and moral development". Emmy LS from Indonesia Acts, a national network on anti-child trafficking, opined:

It is true that children are also persons, yet children cannot be treated and seen in a similar view with adult persons. A child is not an adult and has different capability than an adult. With his/her limited knowledge and vulnerable position, a child is very easy to be manipulated. The law failed to distinguish children from adults by not mentioning that the 'means' is irrelevant for children in the definition¹³².

The basis of this criticism is that Law No. 21 (2007) does not make any distinction between adults and children in defining trafficking (Article 1[1]). This refers to the required element of 'means' in identifying trafficking. Article 1(1) of Law No. 21 (2007) defines 'means' as "of threat or use of force, of abduction, of

¹³⁰ Interview of June 13, 2007.

¹³¹ Farid, M (2007) Perdagangan Hak Azasi Manusia (The Trafficking of Human Rights), *Jurnal Perempuan* Vol.51 pp 19 – 31.

¹³² Interview of 14 June 2007, Pre-interview, May 24, 2007 and in June 26, 2007.

incarceration, of fraud, of deception, of the abuse of power or of a position of vulnerability, of debt bondage or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within a country or cross-border”. Although Article 6 mentions “child victim”¹³³, there is no express provision that the ‘means’ should be seen as irrelevant to children. In fact, the Palermo Protocol stipulates that the ‘means’ should be omitted when the victim is a child (Article 3[c]), “The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article”.

Apart from the non-discrimination argument, the issue of conformity with international instruments also came up in the interviews and documents assessment. Suharyono from the Ministry of Human Rights and Justice said that the title of the law was chosen in compliance with the Palermo Protocol.¹³⁴ Furthermore, the Star Democracy Party’s (PBD) political statement argued that the Palermo Protocol should always be the minimum standard of an anti-trafficking law not only in the naming but also in the drafting (as read by PBD representative member, Mr. Zuhizwar, September 18, 2006:1-2). Further PBD stated, “The draft law on anti-trafficking should be able to deal with transnational crimes and in compliance with the Palermo Protocol, which has inherent concerns and law consequences toward this similar issue”. This conformity is important to show the acceptance of an international standard within the national norms and to augment the cooperation among the states¹³⁵. The preamble of the law (d) stipulates,

Whereas, the desire to prevent and address the crime of trafficking in persons is based upon noble values and national as well as *international commitments* to undertake efforts to effect prevention, prosecution of perpetrators,

¹³³ Article 6 of Law No. 21 (2007) states: “A person who effects the transfer of a child within the country or to another country using any means, thus causing such child to be exploited, is punishable by prison sentence of a minimum period of 3 (three) years and a maximum of 15 (fifteen) years and a fine amounting to a minimum of Rp120,000,000.00 (one hundred and twenty million Rupiah) and a maximum of Rp600,000,000.00 (six hundred million Rupiah)” (IOM Unofficial translation, the file with author).

¹³⁴ Interview, June 4, 2007.

¹³⁵ Interview: Suharyono (June 14, 2007) and Nurul Gufron (June 14, 2007).

protection for victims, and enhancement of collaborations (Emphasis added)¹³⁶.

Responding to the fact that the complete name of the Palermo Protocol put persons, women and children in its title, Suharyono of the Ministry of Human Rights and Justice¹³⁷ said that putting ‘women and children’ in the preamble (b)¹³⁸, rather than in its title, does not mean that Indonesia does not conform with international standards. He further said that the most important thing is the criminalization of trafficking as suggested by the Palermo Protocol. Apparently, conformity has a condition too. Functional Group Party (Golongan Karya or Golkar), the biggest political party in Indonesia, stated in its political statement:

The Palermo Protocol may not fit our local realities related to culture, economic and social condition of the society that ground the modus operandi and factors to trafficking in Indonesia” (11 October 2006:3)¹³⁹.

A similar view also can be found in the NGO forum. Dian Kartika Sari¹⁴⁰, a woman activist, argues that embracing the international norms does not mean that trafficking history in Indonesia should be erased.

Another reason for applying the word “persons” is to widen the concept of trafficking. Eva Sundari from the Fights for Indonesia’s Democracy Party or PDIP argues that although there is convincing evidence that women and children are trafficked more than men, using the word “persons” in the law provides the ground to anticipate the new possibilities of the phenomenon in the future¹⁴¹. She further explains that the anti-trafficking law was drafted with the intention to balance generality and particularity, “Because we want this law to be a comprehensive one. Not too small or too wide. It is like a dress, it should fit the size of the body.”

¹³⁶ IOM unofficial translation (the file with author).

¹³⁷ Interview, June 14, 2007.

¹³⁸ The Preamble of Law No. 21 (2007) stipulates: “Whereas, trafficking in persons, especially the trafficking of women and children, constitute a crime which violates human dignity and respect and human rights, thus should be eliminated.

¹³⁹ Translated to English by Wahyuningrum (the file with author).

¹⁴⁰ Interview, June 26, 2007.

¹⁴¹ Interview, July 2, 2007.

Suharyono from the Ministry of Human Rights and Justice said that the anti-trafficking law is an attempt to project years ahead with embracing the possibilities that men can also be victims of trafficking and accommodate the new trend of trafficking cases in the future to include the recruitment process, the abusive means or other kind of sexual and labor exploitation, “So we do not have to keep drafting a new law or amending the existing laws because the laws cannot answer the new problems”¹⁴². He further asserts:

If the title is trafficking of women and children, so, how about trafficking in men? I know that the Palermo Protocol uses affirmative action by mentioning persons, women and children, but well...it is not a good thing if in drafting the law, we name the title with particularity [like Palermo Protocol]...it is better to use ‘trafficking in persons’. In fact the word “persons” obscures gender differences. Gender biases should be eliminated by the ‘genderless title’. The content, however, is to protect women and children.

Eva Sundari of the Fights for Indonesia’s Democracy or PDIP¹⁴³, nonetheless, argues that using the term “persons” opens the possibility of discussing new incidences that may happen to both genders in the future, including sexual and non-sexual forms of exploitation. She further states:

Suppose we are talking about women migrant workers who work like a slave in a foreign country, this includes forms of *non-vaginal exploitation*. That is the point that we like to make. This is a gender-based violation. It has happened to women and men as well as to children. Nevertheless, we keep emphasizing that eighty percentages of the cases usually have to do with women. (Emphasis added)

¹⁴² Interview, June 4, 2007.

¹⁴³ Interview, July 2, 2007.

She continues “So, it will also help the public to imagine trafficking beyond sexual exploitation”¹⁴⁴. It is interesting to note that Eva Sundari uses the phrase “the non-vaginal exploitation” to replace to the word “labor exploitation”. When asked whether she used the word in the debate forums for legal drafting in the House of Representatives, she said, “Yes”. She reasons that the term [the non-vaginal exploitation] is applied because it is the fastest way to give the idea of labor exploitation phenomenon in trafficking to the rest of the parliament members.

Lisa Noor Hamidah of the National Commission for Women further asserts, “Law No. 21 (2007) actually is one of the attempts to highlight the abuse and exploitation that deserves more attention, not the sex”. Power, according to Lisa Noor Hamidah, can move between sexes (in adults). Women can abuse, exploit and traffic men and vice versa. Nonetheless, Lisa Noor Hamidah also warns that the specific characteristic of impact to women seems to be obscured as a consequence of posing “persons” such as, the absence of reproductive impact to men (i.e., pregnancy, disrupted menstrual cycle) as a result of sexual exploitation or abuse.

Ita Nadia, one of the Commissioners in the National Commission for women, articulates that shaping trafficking as violence against women’s rights has reduced the transnationality of the issue (KPI 2004:11-12)¹⁴⁵,

The impact of economic globalization can be seen in the increasing number of the incidences of migrant workers abuses. In this context, exploitation, abuses, and discrimination to the female migrant workers had potentially allowed trafficking to occur. This is a part of the big setting of economic globalization. This phenomenon, however, does not happen only partially but also systematically, starting from the family, society, state until the international level.

She explains, “For example, during and after the crises, the industry dynamic had changed and many women in Indonesia experienced different roles: as head of the

¹⁴⁴ Interview with Eva Sundari on July 2, 2007.

¹⁴⁵ From Koalisi Perempuan Indonesia (14 March 2004) National Seminar on Trafficking Issues and State Policy in Jakarta. Minutes of Minutes. This seminar was also reported by Jurnal Perempuan online at <http://www.jurnalperempuan.com/yjp.jpo/?act=berita%7C-326%7CP>.

family when their husband got laid off from their jobs. Nevertheless, the government policies did not change” (KPI 2004: 11-12). The policies still look at men as the head of the family which led women to seek alternative jobs – usually categorized as three Ds: Dirty, Discriminatory and Dangerous – beyond their village, province or country. Further, Ita Nadia argues that there was no system or procedure ready to address the situation and specific needs of women. Finally, the economic changes either in the country or beyond put women as victims first. In this line of thought, Lisa Noor Hamidah perceives that the shifting term to “persons” will move the attention from sex injustice to gender injustice¹⁴⁶. She says “using ‘persons’ in trafficking is a breakthrough”. The word “persons”, she continues, takes away the concept of one sex becoming superior to another sex. Nevertheless, Azhar Asihin of YPHA (The Foundation of Child Rights Monitoring), a child-rights organization based in Jakarta, insisted that using the word “persons” does not send the message that injustice practices in patriarchal culture is the root factor of trafficking¹⁴⁷.

Women’s organizations members of JKP3 (The Network for Legal Drafting Pro-Women)¹⁴⁸ come up with different perspectives. A staff member of Indonesian Coalition for Women or KPI, Sri Agustini¹⁴⁹, argues that the close link between ‘women’ and ‘children’ in many issues, including trafficking, had clamped down the two categories together as a single entity and gave the meaning that women are children or children are women. According to this view, women are seen as having the same legal capacity as children. This observation also affirms the notion that the social construction of women’s role is dependent on the control of others. In the case of minors, because of their immature nature, they are seen as incapable in making a

¹⁴⁶ Interview, June 13, 2007.

¹⁴⁷ Email, July 12, 2007.

¹⁴⁸ JKP3 is the main player in legal drafting of Law No. 21 (2007) from NGOs. JKP3 is a coalition of a number of women organizations which are mainly based in West Java and Jakarta. It was established in 2005 as a response to the lack of women organizations focused on public policy advocacy. In achieving its goal, JKP3 divides task among its members to react to drafting law in the House of Representatives. The members of JKP3 are: Aliansi Pelangi Antar Bangsa (APAB), Bupera FSPSI Reformasi, CETRO, Derap Warapsari, ICMC, ICRP, Insitut Perempuan, Kakilima, Kalyanamitra, Kapal Perempuan, Komnas perempuan, KePPaK Perempuan, KPI-Jabotabek, KOHATI PB HMI, LBH APIK Jakarta, LBH Jakarta, LKBH PeKa, Mitra Perempuan, Perempuan Mahardika, PKT RSCM, PP Fatayat NU, PP Muslimat NU, PSHK Indonesia, Puan Amal Hayati, Rahima, Rekan Perempuan, Rumpun Gema Perempuan, Rumah Kita, Seknas KPI, Senjata Kartini (SEKAR), SIKAP, Yayasan Kesehatan Perempuan (YKP), Yayasan Pulih, YATRIWI, AJI, LSPP, ELSAM, Solidaritas Perempuan (SP), Solidaritas Buruh Migran Karawang (SBMK), YLBHI.

¹⁴⁹ Discussion on April 30, 2007 in KPI office.

decision related to legal issues. Children are also perceived as in need of adult's protection. She further elaborates that the link also suggests that women and children shared similar vulnerability. She argues that using the term "persons" as the title of the law will correct this situation. Similarly, Salma Safitri¹⁵⁰ from Solidaritas Perempuan asserts that putting 'children' after 'women' conveys the idea of women's role to motherhood, the role as educator and as culture keeper, therefore she argues "The word 'persons' will see women as individuals". On the other hand, she adds, today's victims actually were girls when they initially got caught up by a trafficking ring. Addressing issues as early as possible will add to the possibilities of reducing the number of adult women victims¹⁵¹.

Among other women activists, it is understood that if the law was framed for women's issues from the beginning, fewer parliament members would fight for the enactment of the law¹⁵². This law had been sitting before the parliament for four years along with other so-called important draft laws such as anti-terrorism, and money laundering. In fact, the word "persons" helps establish allies across issues (such as in the migrant workers issues citizenship and health), mobilizes resources and obtains political concurrence among key players in DPR, NGO, and government to step through the process of drafting the law¹⁵³. On the other hand, it is also observed that this law was considered as a "dry area" which connotes less money to support the discussion compared with the capital investment law, migrant labor law or citizenship law¹⁵⁴.

The above discussion provides a critique of the different capacities of men, women and children in resisting and experiencing trafficking. Applying the word "persons" in Law No. 21 (2007) also fails to address specific problems like, if in trafficking men, women and children experience and get effected by trafficking

¹⁵⁰ Interview on June 11, 2007.

¹⁵¹ Interview: Salma Safitri (June 11, 2007), Emmy LS (14 June 2007 and in June 26, 2007).

¹⁵² This view is shared by Salma Safitri (June 11, 2007), Ratna Batara Munti (June 19, 2007), Eva Sundari (June 21, 2007) but Lisa Noor Hamidah (June 13, 2007) disagrees with this observation.

¹⁵³ Interviews: Ratna Batara Munti (June 19, 2007), Salma Safitri (June 11, 2007).

¹⁵⁴ Interview with Salma Safitri (June 11, 2007). She also argued that a part of money politics, entrepreneurs, manpower agent company and other who would be influenced by the content of the law, usually will pay for some dinners and other benefits which could not be seen as bribery to members of DPR, or fund r meetings in luxurious hotels.

differently, and how far can the principle of non-discrimination be applied? Does utilizing the word “persons” really serve the objective of non-discrimination?

Non-discrimination is a concept of treating people in a same manner in order to enjoy rights regardless of their race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and other markers¹⁵⁵, which perceive ‘person’ in a single way. Applying the word ‘persons’ to respect and fulfill the principle of non-discrimination is apparently overly simplistic. The absence of scrutiny to the principle on non-discrimination had marginalized the notion of children. The law discussion ignored the fact that the media keep reporting girls under 18 years old victimized in trafficking. The law was also framed as adult business in which children’s interests were not voiced. This notion does not comply with the principle “the best interest of a child” contained in the UN CRC which also contradicts the rhetoric for supporting the next generation. In many legal and policy documents, children are seen as the ‘the hope of nations’, ‘national assets’, ‘future leaders’ and ‘the future of the nations’¹⁵⁶.

The above given reasons indicate an expectation that utilizing the word “persons” in Law No. 21 (2007) will correct gender injustices and biases in the law. However, at the same time the law failed to portray men as victims of sexual exploitation or prostitution practices, even though the definition had covered sexual and labor exploitation. This is also the case of assigning victim services at government level, this law failed to mentioned services for men victims. The Articles under Protection of Witness and Victims provision only mention services for women and not men. Article 45(1)¹⁵⁷ stipulates ‘a Special Service Unit’ or *Ruang Pelayanan Khusus* or known as RPK¹⁵⁸. This special unit at the Police station is particularly established to serve reports on women’s issues such as rape, domestic violence and

¹⁵⁵ Office of the High Commissioner of Human Rights at Thirty-Seventh Session (1989) General Comment No. 18: Non-discrimination; 10/11/89.CCPR General Comment No. 18 available online at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3888b0541f8501c9c12563ed004b8d0e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3888b0541f8501c9c12563ed004b8d0e?Opendocument).

¹⁵⁶ This idea is present in such as the 1945 Constitution, Child Protection Law No. 23 (2002), NPA to Eliminate Child Labor (2002), NPA to Eradicate Child Commercial Sex Exploitation (2003).

¹⁵⁷ Article 45 (1) of the Law No. 21 (2007): “To protect witness and/or victim, a special service unit at the local police station must be established in each province and district/municipality for the purpose of examining of witnesses and/or victims during investigations of cases of trafficking in persons”.

¹⁵⁸ RPK is run by trained women police officers to only deal with women issues. Each district now has, at least, one RPK in the Police Station. It has special rooms to receive the report individually and to temporary house women, too, apart from working together with women shelters and hospitals.

other forms of abuse toward women. This end actually demonstrates that the non-discrimination principle has not transformed the way gender divisions are perceived, as reflected in the law. It appears that discursive participants did not question further the principle of non-discrimination or remember this principle when they drafted the provisions of services to trafficked persons. It seems like the proposition on non-discrimination stops at identifying sexes and ages. It also appears that agreeing on the non-discrimination principle does not necessarily treat and respect all people's capabilities. The lack of inquiries in applying this principle has potential to treat people in a monolithic way, which may open the possibility that certain people will be discriminated against with this view. This concept is so powerful and questioning it, perhaps, will lead to an accusation of being anti-human rights.

Second, the above debates show the negotiation between conformity with international standards and local identity. The international route of the Palermo Protocol highlights the distinction of social, cultural, political and economic condition in Indonesia, in comparison with the situation in the West.

Lastly, the above responses reflect the debates on interpreting gender relations among discursive participants. On one hand, using the word "persons" is seen as a positive development in correcting unequal relations between women and men in Indonesia's society. The statement from the staff of the Ministry of Human Rights and Justice indicates the assumption that applying the word "persons" will achieve the two objectives of eliminating gender biases. Nevertheless, one of the discursive participants was doubtful about such expectation. Research on trafficking revealed that gender inequality between men and women and poverty in Indonesia are the factors contributing to trafficking as well as the result of trafficking¹⁵⁹. Gender inequality and poverty have left women with very little choice of earning income, other than engaging in domestic work within or across the country or sex work to

¹⁵⁹ See Yentriyani, A. (2004) *Politik Perdagangan Perempuan* (The Politics of Women Trafficking), Jakarta: Galang Press; Sugiarti, K. L., Davis, J. & Dasgupta, A. (eds.) (2006) *When They were Sold: Trafficking of Women and Girls in 15 Provinces in Indonesia*, Jakarta: ICMC & ACILS; Dzulhayatin, S. R. & Silawati, H. (2002) *Indonesia: Migration and Trafficking in Women* in Raymond, J. A. et al, CATW; Indonesian Women Coalition (2001) *Upaya Pencegahan dan Penanggulangan Perdagangan Orang, khususnya Perempuan dan Anak* (The Efforts to Prevent and Tackle Trafficking in Persons, especially Women and Children), *Naskah Akademis*, compiled by Dian Kartika Sari, unpublished document; Irianto, S. et al (2005) *Perdagangan Perempuan untuk Obat-obatan Terlarang in Indonesia* (Women Trafficking for Drugs in Indonesia), Jakarta: Yayasan Obor Indonesia; Rosenberg, R. (ed.) (2003) *Trafficking of Women and Children in Indonesia*, Jakarta: ACILS & ICMC

ensure their survival or that of their family. Expectation in employing the word “persons” for promoting gender justice in this case sounds so ambitious.

It appears that the historical linkage between trafficking and ‘women and children’ had been changed. Instead of highlighting women and children in trafficking, Law No. 21 (2007) moves them from the main picture (the title) to their new positionality or location in the second and third layer of the text: the preamble and in general provision section (Article 1). Obscuring ‘women and children’ from the title of the law may have specific implications for women and children. The title of any documents usually conveys a message on what and which group and problems that are covered by the book. This title may be seen as reflections of the idea that the important places of women (and children) are not in public (or in the title of the law) but in private (inside the body of the law - although limited to one point in the preamble and one point under Article 1). It also can be read that the entity of women and children is significant.

The strategy to mobilize allies in applying the word “persons” and make the content of the law supportive of women’s rights, may indicate that the phrase “women and children” is undesirable. This point also reflects the way women and their issues are actually perceived by political leaders and general discursive participants. Women are conceived of as second-class citizens. It also appears that women’s organizations have to trade off their goal in ensuring that the rights of women are protected and respected by making women invisible from the surface to be visible inside the law. This situation can also be found in media reporting. The title of articles or news will be written as trafficking in persons but the content are mostly about women (and children).

The phrase ‘the non-vaginal exploitation’ that is used by Eva Sundari, conveys the essentialist idea that sexual exploitation is vaginal exploitation. It also passes on the idea that sexual exploitation always happens to women. In this case, woman is signified by her sexual and reproductive organ. On the contrary, the usage of Sundari’s phrase draws attention to the fact that labor exploitation is a form of male

exploitation. Women are seen not in connection with labor exploitation, which is not supported in reality.¹⁶⁰

5.3 Women (and Children) in Trafficking Debates

The word “persons” in the title of Law No. 21 (2007) also challenges the public discourses that had been built in the previous periods in which trafficking was traditionally considered as a women’s issues and involved prostitution (see Chapter Four). Taking this momentum into consideration, it is important to ask the questions - where are the ‘women and children’, and how are they depicted in the law? As an authoritative document, law dictates definitively certain concepts and how a situation or event should be understood. Finley (in Kapur 2006) argued that the law constitutes a power to set to reason the structure, organize the practice and construct the meaning. She further asserts that the law also has particular ability to shape accepted and authoritative understanding of the situation. Therefore, according to this view, the law is a site to authorize the definition on what constitutes trafficking and who are traffickers and trafficked persons and what is the treatment to traffickers and the trafficked.

Although the word ‘women’ is not frequently mentioned in the law, resource persons interviewed confirmed that ‘women’ is the main subject of protection by the Law No. 21 (2007). A staff member from the Ministry of Women Empowerment, Sumarni Dawam Rahardjo¹⁶¹ argues, “No matter what the title is, it is women that we targeted to be protected, when we talked about trafficking, as well as when we discussed that law”. Anis Hamim of the International Catholic Migration Commission who is also a member of the expert staff in Commission 8 makes an assertive argument that the participants in discursive practices are feminists, “If you notice, the motor of the drafting team is in favor of feminism. So the target, the spirit, and inspiration of this law had been and still is women”¹⁶². Suharyono of the Ministry of

¹⁶⁰ See Rosenberg, R. (ed.) (2003) *Trafficking of Women and Children in Indonesia*, Jakarta: ACILS and ICMC; Missiyah and Solidaritas Perempuan. (1997) *Perdagangan Perempuan di Indonesia*. Papers Presented at National Trafficking in Women Conference, Jakarta.

¹⁶¹ Interview on June 15, 2007.

¹⁶² Interview, June 11, 2007.

Human Rights and Justice asserts “The law that we had drafted was based on women’s problems. So actually it is ‘women’ that become the center of the talk and the law”¹⁶³. Further, Ms. Latifah Iskandar, the chairperson of Commission 8 in the House of Representative or DPR, explains, “We are sending a very important message to those involved in human trafficking to halt the exploitation of vulnerable groups such as women, children and the poor” (Jakarta Post, March 21, 2007: 2). In addition, Anis Hamim of ICMC illustrates, “The essence of trafficking talk has been on sexual exploitation and prostitution. These two issues are indeed ‘female’ in character, don’t you think?”¹⁶⁴. In one of the interviews, I asked the question, if this law is to protect women, why does the law not spell out “women”? Suharyono¹⁶⁵ explains, “Although the law’s title does not suggest the word ‘women’, it does not mean that we do not protect women. In fact this law was intended to protect women. You can trace it in the way the law elaborates mechanisms and urges government to provide specific protection measures for women in the law’s content”.

The above responses clarify that applying a genderless term like “persons” does not necessarily detach trafficking from women’s issues. Although the term “women” has been obscured in the prime text, it is revealed in the body of the text. Nevertheless, the meaning of the term ‘women’ appears in the body of law through words signifiers such as “become pregnant” in Article 7(1)¹⁶⁶ and “*Ruang Pelayanan Khusus* or RPK or Special Service Unit” in Article 45(1) and (2). As earlier explained, this desk is best known for receiving and acting to protect women based on incoming women’s complaints¹⁶⁷ at the police stations. The process of shifting the term “women” from the main text to sub-text can be seen as a way of legal drafters practicing their authority and using the law to direct the situation. Nevertheless it also involves a complex negotiation of adopting the genderless idea “persons” to trafficking. The debates reveal that although it seems there is a shift in focus from

¹⁶³ Interview, June 4, 2007.

¹⁶⁴ Interview, June 11, 2007.

¹⁶⁵ Interview, June 4, 2007.

¹⁶⁶ Article 7 (1) of Law No. 21 (2007), “If the criminal act as described in Article 2 paragraph (2), Article 3, Article 4, Article 5, and Article 6 results in the victim suffering major injury or major mental disorder, to contract a life-threatening contagious disease, to become pregnant, or damage or loss to her/his reproductive organs, the applicable punishment will be added by 1/3 (one-third)” (IOM unofficial translation, the file with author).

¹⁶⁷ Such as domestic violence, rape cases and now trafficking

“trafficking of women and children” to “trafficking in persons”, but actually this issue occupies the same terrain as previous discourses had suggested. Trafficking is gendered in concept, and discussion. The word ‘women’ disappeared in the prime text (the title of the law), but it becomes the main motivation of drafting and enacting the law. This point also indicates a contradiction in the intention of enacting the law, the way the law was discussed and the way the law is written. Why should “women” be invisible when the real intention to protect women is visible?

5.4 Global-Local Dynamics

Trafficking re-emerged in public debates through international directives such as CEDAW and the Palermo Protocol. This international route is seen in contrast with the existing local experiences and realities¹⁶⁸. The Palermo Protocol introduces new purposes in the trafficking definition to include labor exploitation, slavery, slavery-like and servitude. The definition also emphasizes the issue of consent and different types of exploitation. Unfortunately, the Palermo Protocol does not provide an explanation of those concepts and lets each State party (or signatory states) to define them to reflect the local realities. In interviews, discursive participants conveyed that they welcomed the new trafficking definition in the Palermo Protocol. However, they also believed that the past experiences on trafficking should be taken into account as they are part of Indonesia’s history, identity and particularity (unique). Dian Kartika Sari said, “We have our own history in trafficking. Trafficking had been recognized by women organizations in 1920s. So, the arrival of the new instrument should not make our history eclipsed. We have to always return to the incidences in the 1920s”¹⁶⁹. She further argues that the Palermo Protocol is based on women experiences and realities in the West and not in the East. She illustrates that trafficking in Indonesia has specific features. The victims do not necessarily move from one place to another. She articulates, “The mobility of the victim should be seen as a less important element of trafficking in Indonesia”. When challenged that the element of movement,

¹⁶⁸ Interviews: Dian Kartika Sari (June 26, 2007), Azhar Asihin’s Email (July 12, 2007), Ratna Batara Munti (June 2 19, 2007), Salma Safitri (June 11, 2007).

¹⁶⁹ Interview, June 26, 2007.

however, is one of the important elements after the ‘means’ and ‘purpose’ in the Palermo Protocol definition, she emphasizes that either with or without the movement such cases should be considered as trafficking¹⁷⁰. Further, she argues that the Palermo Protocol fails to acknowledge local realities. Additionally, Azhar Asihin of YPHA¹⁷¹ argues in his e-mail to me that “The rigid definition that is stipulated in the Palermo Convention [Protocol] has potential to negate national phenomenon. The element of crime acts had determined to be too definitive, which cannot cover the complexity of the local context”. However, he did not explain the meaning for the complex local context in his e-mail.

Nevertheless, the international route also highlights distinction of social, cultural, political and economic conditions in Indonesia, in comparison with other countries. In its written political statement dated October 11, 2006, Golkar, the biggest political party in Indonesia, argues that culture, the economic and social condition of women and children in Indonesia is so much different from the situation that is portrayed in the Palermo Protocol. Furthermore, Dian Kartika Sari said that she had submitted a recommendation to the Department of Foreign Affairs in 2002 for not ratifying the Palermo Protocol because there is an unequal position between rich and poor countries¹⁷². She further explains:

The division of responsibilities between countries is unfair. The destination countries are responsible to send the victims to the border or airport, whereas the sending countries are responsible to ensure and fund the travel of the trafficked women from the border or airport to their home. In fact, one of the reasons why women left the country is because of poverty. Poor countries which are mostly the sending countries will not be able to fulfill the standard stipulated in the Palermo Protocol. On the contrary, rich countries with their capability to bear the burden to protect and provide services for victims were

¹⁷⁰ When she said this, she recalled the situation in Dolly (largest brothel in Surabaya) or Kramat Tunggak (largest brothel in Jakarta, dissolved in 1999). She also argues that she traced the journey of several girls from Indramayu to Jakarta and found that some of the girls were forced to serve sex to visitors coming to the house in exchange for money. She also told the story about girls in Jepara (Central Java) which has similar patterns.

¹⁷¹ Email interview, received on July 12, 2007.

¹⁷² Interview June 26, 2007.

given lighter responsibilities. It is unfair. It is unfair. Another problem is the differences in the way states deal with prostitution. In the Netherlands, for instance, prostitution is legalized. Trafficked women from Indonesia to the Netherlands, then, will not be considered as victims; therefore, they cannot receive services as victims. The perpetrators, moreover, cannot be prosecuted as prostitution is legal there.

Commenting on the differences in culture, Golkar argues that in Indonesia, trafficking cases involve debt bondage practice¹⁷³ - which is not mentioned in the Palermo Protocol - that is prevalent in many villages. This practice, according to Golkar¹⁷⁴, makes people stay in the circle and unable to escape from the ring (October 11, 2006: 3-4). Golkar also refuses to consider 'mail-order bride'¹⁷⁵ as a form of trafficking because (October 11, 2006:7), "Marriage institution is mainly based on a good intention and demonstrates a good culture and practice. Marriage is one of highest values in Indonesia society". The law, according to Golkar, "should protect foreigners or Indonesia citizens, but priority should be given to Indonesian's women and children within and across border".

In relation to local terms, resource persons that I have interviewed embrace the need to localize the Palermo Protocol's definition of trafficking as the phenomenon is not new. Furthermore, the general public has already become familiar with the word "perdagangan perempuan dan anak" (trafficking of women and children). Dian Kartika Sari argues that using foreign term "trafficking" required socialization and

¹⁷³ Debt bondage in Indonesia is different from the practice in South Asia in which caste system is involved. In Indonesia "debt bondage" is known as "jeratan hutang". Debt as an instrument of coercion is also common in cases of human trafficking and forced labor, where an individual is forced to pay the perpetrator for the expense of being transported and transferred. In such cases, the "debt" is not an advance, but a false claim that the victim owes something to their perpetrator. Another form is the family receive money in advance to allow their daughters/sons/wives be taken to another place. Aida Milasari, an activist working for domestic workers' rights, said that many agents often look for parents who need immediate money and lend the money. In return they will ask their daughters to work for them or for others (Interview, June 8, 2007).

¹⁷⁴ Golkar agrees to use the term "persons" but Golkar highlights that women and children should be prioritized as they suffer the most and become the target of the traffickers (October 11, 2006).

¹⁷⁵ Golkar keeps using the word "anak" (child) to explain the situation of trafficking in relation to mail order brides.

explanation while the local term “perdagangan”¹⁷⁶ had specific meaning already which explains certain situations in what people call as trafficking now¹⁷⁷,

When I went to villages, people asked me why the parents wanted to *memperdagangkan* [to trade] their children while they have geese, chickens, goats and cows. So actually villagers knew what trafficking means in local language. What they did not understand is that *perdagangan* [trafficking] is an act of breaching the law.

On the other hand, many people believe that the local word “perdagangan” does not necessarily constitute the three element of trafficking as stipulated in the Palermo Protocol: the action of movement, means of and the purpose of exploitation. “Perdagangan” literarily means trade, the act of buying and selling which involves the exchange of goods or services and it does not articulate deception, fraud, threat, transportation, transfer and forced aspects. There is a movement of goods or services from one person or corporation to another. This word does not really address the situation in trafficking. While the goal of localizing the term trafficking is agreed on, a local term was not found. The NPA applied the assimilated word ‘trafiking’ instead of “trafficking” to bridge the gap¹⁷⁸. Since then, the word “trafiking”, “perdagangan”, “trafficking”, or “perdagangan (trafficking)” appeared in many official documents, newspapers articles¹⁷⁹ and NGO papers and reports, but Law No. 21 (2007) employs “perdagangan” in its title.

¹⁷⁶ “Perdagangan” was understood as trade, but now also as trafficking. The basic word for perdagangan is a noun of “dagang” (trade). A person who trade is “pedagang” (trader). Its verb is “mendagangkan” or “memperdagangkan” (to trade), the passive verb of the word is “didagangkan” or “diperdagangkan” (traded by, traded for, traded in), but there is no word in Bahasa Indonesia for a person who is trafficked. People do not say “traded person” or “orang yang didagangkan” as “trafficked person”.

¹⁷⁷ Interview, June 26, 2007.

¹⁷⁸ I remember that choosing the suitable word for the NPA title, between “trafficking” and “perdagangan” took months in the process of drafting the NPA in 2001-2002. At that time I served as Project Officer to Counter Trafficking in the Solidarity Center in Jakarta.

¹⁷⁹ Newspapers commonly put “perdagangan (trafficking)” to distinguish between perdagangan (economic trade) and perdagangan (trafficking in persons)

5.5 Criminalization of Trafficking

As explained earlier, even though trafficking is codified as a criminal act in Indonesia's Penal Code, trafficking is more widely regarded as a human rights violation (see Chapter Four). The absence of a legal definition and insufficiency of Article 297 of the Penal Code to deal with the current phenomenon of trafficking, demanded the need for a comprehensive criminal code in trafficking (Hamim and Rosenberg 2003). The discussion on the NPA and the anti-trafficking law occurred simultaneously with the ongoing process of amending the Penal Code that was adopted by Indonesia from the Dutch Penal Code in 1958. In interviews, discursive participants said that it is ineffective to wait until the new Penal Code is finished before discussing trafficking. Golkar's political statement said that "trafficking is a very serious problem so that the effort to address it cannot be delayed" (October 11, 2006:2).

As discussed in Chapter Two, there is a tension between the human rights and crime prevention perspective. Categorizing trafficking as a crime had relegated the human rights of the trafficked persons. Wijers and Doorninck (2002) argued that the victims' present situation will be seen as more important than their rights. Salma Safitri from Solidaritas Perempuan, said, "We will know whether Law No. 21 (2007) respects the rights of the trafficked people when this law is actually implemented"¹⁸⁰. Ratna Batara Munti, Coordinator of JKP3, a NGO network for legal drafting, asserted, "This law is very comprehensive! It includes human rights of the victims but also sees trafficking as a criminal act"¹⁸¹. Another limitation of framing trafficking as crime, according to Ashar Asihin of YPHA, an organization working on monitoring of child rights, is the absence of the state's obligation to provide compensation¹⁸². Sumarni Dawam Rahardjo of the Ministry of Women Empowerment said that the government has no responsibility to provide compensation to victims on the criminal act committed by an individual¹⁸³. She further said, "This country could be bankrupt!"

However, approaching trafficking through crime control creates the

¹⁸⁰ Interview, June 11, 2007.

¹⁸¹ Interview, June 19, 2007.

¹⁸² Email interview, received on July 7, 2007.

¹⁸³ Interview June 12, 2007.

assumption that by stopping the crime, the interests and the rights of the victims are automatically protected¹⁸⁴. Moreover, criminalization acts - especially in prostitution which is different from one country to another – cannot be applied universally, unlike human rights. Their application depends on the jurisdictions of the law and also based on geographical border unless there are inter-territorial agreements between two states or more. As a crime, trafficking identification solely becomes the responsibility of the police. Law No. 21 (2007) assigns power to the “authoritative officers” to revoke the travel of individual or groups of people anytime, anywhere (for instance in the airport). This is to satisfy the objective of prevention, suppression and protection of the Law. I argue that “the authoritative officers” should scrutinize the individual or company who sent the persons, not to restrict people’s rights to movement. The main target in the crime-control approach should be the traffickers, not the trafficked persons.

The crime approach looks at the act that is committed by an individual and not at the failure of government to provide and guarantee citizen’s rights. Law No. 21 (2007) does not include compensation, but restitution. Instead, restitution should be made available by the trafficker(s) regardless of their status. In the case of Indonesia, trafficking networks operate under loose-tied communication. More often than not, traffickers in the first line (the recruiter, or middle man in the *dusun*) are also poor, naïve and less educated. The provision on restitution will be very difficult to be enforced in this kind of situation. Finally, a repressive approach in crime control will drive fear of detection which, then, will force traffickers to operate underground. With this system, the victims become more and more inaccessible from being reached, and also farther away from social, health and support services.

Of the 67 Articles in Law No. 21 (2007), 24 Articles emphasize the crime acts and 14 Articles are about investigation, prosecution, and examination in a court proceeding; 14 Articles are on victims and witness protection, and the rest is about prevention and treatment, international cooperation, and transitional provisions. This composition reflects that the main import of the law is actually on the criminality and less focus on victim’s rights.

¹⁸⁴ This view is shared by Suharyono (June 4, 2007), Nurul Gufron (June 4, 2007) and Mike V. Tawang (June 7, 2007).

5.6 Debates on Trafficked Victims

Articles in the English language newspaper, *Jakarta Post*, personifies trafficked persons like “Cinderella” (Jakarta Post, May 23, 2006) or “Pretty Woman” (Jakarta Post, February 6, 2007)¹⁸⁵ or a local film “Bernafas dalam Lumpur”¹⁸⁶ (Breathing in the Mud) (Jakarta Post, February 6, 2007)¹⁸⁷. The main character from these three stories is depicted as a woman who is innocent, kind, and naïve who is struggling to reach her happiness. Through examining reports of local newspapers from 1997s to 2007s, trafficked persons commonly appeared as innocent girls who were injured, exploited, wounded, raped, mutilated, deceived, and kidnapped abroad. Most of girls were migrant workers in Kuala Lumpur, Hong Kong, and Saudi Arabia. They mainly came from provinces as West Kalimantan, Jakarta, East Java, West Java, Lampung, West Nusa Tenggara and Batam. Trafficked women in prostitution were constantly pictured as weak and less educated.

This depiction is similar with how a trafficking victim is imagined in the law as Anis Hamim (ICMC)¹⁸⁸ explains, “This law perceives the victim of trafficking to be a woman, poor, with lack of information, suffering, naïve, innocent, weak and have no idea on what is going on with her, and have no idea what to do next”. Victim, according to the Article 1(3) of the Law No. 21 (2007) denotes “A person suffering from psychological, mental, physical, sexual, economic, and/or social trauma caused by the crime of trafficking in persons”. Nevertheless, during the interview, resource persons occasionally use the word ‘women’ and ‘victims’ interchangeably¹⁸⁹.

In the inter-department meeting on June 26, 2007, during which I was allowed to observe, the government officials were asked to determine the procedure of the “Integrated Service Center” or “Pusat Pelayanan Terpadu” as mandated by the Law

¹⁸⁵ Article written by Chandra and Nobuto, the contributors.

¹⁸⁶ The film was directed by Turino Junaidi (1970s). I watched it on in TVRI (Government Television Channel) when I was a child. This film tells the story of a village woman who searches for her errant husband that leads to her eventual fall. In this film there are many vulgar dialogues, and it features sex and rape.

¹⁸⁷ Article written by Chandra and Nobuto, the contributors.

¹⁸⁸ Interview June 11, 2007.

¹⁸⁹ Interview with Anis Hamim (June 11, 2007), Nurul Gufron (June 4, 2007), Ratna Batara Munti (June 21, 2007), Suharyono (June 4, 2007). At some point women and children are also used interchangeably.

No. 21 (2007) Article 46(1) and (2)¹⁹⁰. The law also requests the government to prepare a separate government regulation document to govern the mechanism of the Integrated Service Center (or the Center). Suharyono from the Ministry of Human Rights and Justice presented a flow chart on how a victim can use the provided services in the center. In discussing this center, it appears that a woman is imagined to enter by herself or accompanied by NGO staff or a police officer or member of her family/community, received by the front desk, asked to fill in forms, and to tell her story of victimization, answer questions in response to the official queries, and be assigned to certain rooms for necessary checking (filing a crime case at the women's desk, health examination, and physiological assessment). During this process, a woman is not depicted to be able to choose which service(s) may suit her needs except to follow the procedures, or whether she can withdraw from attending the service, or to return to the service after withdrawal. The subjective position of the trafficked person takes the figure of a woman who is poor, defenseless, innocent, rural, and naïve. Along with this is a depiction of women's condition of being emotionally, economically, physically, sexually and mentally injured, damaged, wounded, and stranded¹⁹¹. They are imagined to appear as incapable to make a decision. Within this depiction of women, the law regulates a critical role in constituting subject. It is the police officer or so-called "authorized officer" that is mentioned in Article 40 (2 with the explanation section) of Law No. 21 (2007)¹⁹² who is authorized to identify the victim. Thus, a set of rehabilitation mechanism will work to assign the need of the victim.

¹⁹⁰ Article 46 (1) To protect witness and/or victim, an integrated service center may be established in each district/municipality for witnesses or victims of a trafficking in persons; (2) Further provisions on the operating procedures and mechanisms of the integrated service center as referred to in paragraph (1) is regulated by a Government Regulation

¹⁹¹ The analysis of Umi Farida of LBH APIK (2006) provides comparable observation that 60% media reports narrate trafficking in relation to sexual industry and prostitution in 2005. Secondly, the reports mainly portrayed occurred in the cities and district capital which has link to big cities like Jakarta, Surabaya and Medan, or which has land or sea border such Malaysia and Singapore in *Suara Apik* Ed.31 pp10-14

¹⁹² (1) Subject to the approval of the court, examination of child witness and/or victim may be conducted outside the courtroom using a recording media; (2) The examination as described in paragraph (2) is conducted before the authorized officer. In the explanation section, the term "authorized officer" means investigators or public prosecutors (IOM unofficial translation (file with author)

In responding to a question on when the so-called “authorized officer” can suspect those who are potential victims, or when the protection measure should be started, different resource persons have different opinions. Anis Hamim articulates that the police officer can stop the group of women that is suspected to be trafficking victims, like in the airport¹⁹³. Dian Kartika Sari asserts:

The protection has to be started when one is identified as victim, or potentially becoming a victim, for example poor people. Their poverty should be seen as vulnerable to deception. However, the people, I met during my work, are willing to change their life. That is why when they find an opportunity they take it without further questions”¹⁹⁴.

Salma Safitri from Solidaritas Perempuan¹⁹⁵ expresses, “We should be suspicious when the persuasion has occurred”. She further explains, “The protection should be started not when people are already traveling but when someone is offered a job abroad. This means when people were still in their villages, in their houses. That is what we call prevention”.

The above responses reveal the idea of poor women in the border (airport), outside of the house, receiving job offers, or thinking of traveling abroad, suggesting the paternal pattern of the relationship between women and the state. Within this relationship, the State and its apparatuses perform as the father or big brother in the family who are supposed to worry about and to a certain extent take action to prevent potential damage that can be occur when the daughter wants to leave her comfort zone, the home.

Assigning the police officer as the single “authorized officer” to identify the victims may encounter some problems in the implementation of the law. From my experiences working in counter trafficking in 2000–2004 in a nationwide NGO based

¹⁹³ Interview, June 11, 2007

¹⁹⁴ Dian Kartika Sari further said that the government should pay efforts to free people from poverty by conducting economic programs and also to educate people on their rights as well as laws and mechanisms that can be used to help their problems: “We cannot be reactive forever. This law is very sharp and has elements of prevention. Principally, this law attempts to prevent people from becoming a victim, but without socialization about the law, the prevention will not work.”

¹⁹⁵ Interview, June 11, 2007.

in Jakarta, I came across cases where many trafficked women were reluctant to report or to be accompanied by the police officers¹⁹⁶, because they were afraid if they were seen with police officers or in the police stations, their family would become the target of abuse or violence from the traffickers. Some women avoided the police stations because they believed that ‘good women’ do not get themselves involved with police affairs. Many women also recognized that their traffickers are police officers and involved the state apparatuses.

Nevertheless, this discursive situation reflects the self-contradiction itself. First, the law is employing a genderless term to reach the objective to eradicate gender biases, but at the same time the law reinforced the main construction of women as being weak, modest and incapable of protecting themselves. In addition to that, while the motivation of the law is to protect women, the law detaches women from their ability to identify themselves in the situation of needing protection and assigns others to do that. The law centralizes the state apparatus in its involvement in women’s liberatory process from exploitation.

5.7 Conclusion

Apart from the arrival of the Palermo Protocol that had marked different debates on trafficking in Indonesia, the available political opportunity also contributed to the dynamic of debating trafficking. The fall of the New Order Regime had provided the occasion for civil society to engage with government officers and with parliament members to discuss social issues. The political opportunity had also enabled discursive participants to react to the international discussion, in this case, trafficking in persons. The contemporary debates on trafficking (2000-2007) are characterized by the changing of the term in trafficking, re-negotiating global-local relations, gender critics of usage of the term ‘trafficking in persons’, criminalizing trafficking and scrutinizing the new Law No. 21 (2007).

The debates on shifting terms demonstrate that reasons for applying ‘persons’ instead of ‘women and children’ seems to simplify the trafficking issue and ignore the complexity of gender relations in the society. It also seems that the word “persons”

¹⁹⁶ They mostly appointed male police officers.

bears the huge burden in correcting unequal relations between women and men (and children). The genderless term “persons” may actually exacerbate the problem rather than increase the understanding of women’s situation in trafficking and the phenomenon of the issue. The application of the word ‘persons’ does not serve the eradication of gender biases but underlines the position of women as second-class citizens given the stereotypical biases for women in an authoritative legal document. The state situates itself as the authority to have more power over women to assign a new identity, to decide the best services and attributes for women. To the contrary, while it is ostensibly based on the motivation to protect women, the law instead renders the very subject intended to be protected powerless.

The negotiation between the global and local suggests that the entry point of the new definition of trafficking through an international channel challenges the division between “us” and “them” in different political, cultural, social and economic situations, “here” and “there” in regard to trafficking realities and experiences, and “before” and now” in relation to the history of trafficking. It also attempts to universalize women’s experiences in trafficking. Nevertheless, instead of looking at different forms of oppression on women, the discursive participants mainly highlight the different situation of countries’ economic, social and cultural conditions, between the West and Indonesia. On the other hand, the discussion also implies that the law functions as a site of retaining differences and at the same time, pointing out the authoritative way the change in trafficking definition should be comprehended in the context of Indonesia.

CHAPTER 6

SEXUAL EXPLOITATION AND NATIONAL DIGNITY: CONTEMPORARY DISCOURSES ON TRAFFICKING IN INDONESIA

6.1 Introduction

As discussed earlier, the contemporary character of trafficking in person lies on its relations to globalization, transnational crime network, flow of money, and state's policy. Nevertheless, the debates on trafficking shape the way trafficking is conceptualized, understood and characterized. As previously described at length, discourses in Indonesia assign different themes in the absence of a legal trafficking definition. This chapter focuses more on discourses that were invoked from 2000 until 2007. Ani Sutjipto¹⁹⁷ from the Asia Foundation Jakarta Office suggested, "It is unavoidable to see this period in its relations to the global concerns which linked the issue of international relations, security, Islam and American interest." As Hastedt (2000:25) had argued that the US perceives human trafficking involves transnational organized crime which was identified as one of the enemies of the state. Furthermore, Ani Sutjipto explains, "With the 9/11 incidence, trafficking becomes the issue of national security. The emergence of trafficking measures in Indonesia cannot be separated from the US interest involvement as they provided funding for such"¹⁹⁸. Haynes (2004) argues that the US narrated trafficking as a global world issue had been politicized by compressing all issues such as terrorism, smuggling and migration into one arena; countries assessment on human trafficking, then, was not only about a country's measures to tackle trafficking but also connected to other issues. Some governments may be motivated by the funding incentive (or to avoid sanctions)

¹⁹⁷ Interview on June 15, 2007, Ani Sutjipto also argues that the US interest in Indonesia was also characterized by the fear of post 9/11.

¹⁹⁸ In the interview on June 15, 2007, Ani Sutjipto stated that the Asia Foundation received funding from the US State Department, USAID, and the US Congress to deal with trafficking in persons in Indonesia from 2002 – 2007.

without necessarily having ownership of the issue to eradicate trafficking (Mattar 2003; Haynes 2004). Additionally, Ani Sutjipto stated that the selection of Islam-based organizations to deal with trafficking in Indonesia may reflect this trepidation. Religious leaders were used to preach to people on what Islam teaches about slavery, trafficking, rights to movement and right to work for women¹⁹⁹. On the other hand, as Hanna Satrio²⁰⁰ from the Asia Foundation Jakarta Office had noted that actually the US government used the trafficking issue in Indonesia to repair its relationship with Islam²⁰¹.

From the above context, this chapter focuses on discussing dominant discourses on trafficking domestically. In doing so, I used the data from interviewing key actors in trafficking discursive practices and also the general public on their understanding of the concept of trafficking²⁰², as well as examining news articles, minutes of meetings, seminar papers and the statement of political parties. In this chapter, I argue that the dominant discourses on trafficking are shaped in combination of the feature of prostitution as sexual exploitation and the feature of migrant workers abuses abroad. These dominant discourses are built up by the previous discourses on trafficking that are discussed in chapters three, four and five. As part of that, the efforts from discursive participants to manage the link with previous themes are also made evident. The new theme in the discussion is the 'international image'. Together with debates on 'national dignity', the theme of 'international image' shadows the dominant discourses. As a consequence of this dominance, there are discourses marginalized and silenced in the debates. I conclude that the main goal of all discourses in trafficking is to discipline women's sexuality and to sustain stereotypical gender roles of women in relationships between men and women.

¹⁹⁹ This approach is replicated for other Islamic countries to deal with trafficking such as Afghanistan and Pakistan (Ani Sutjipto, June 15, 2007).

²⁰⁰ Interview, June 28, 2007.

²⁰¹ Therefore, many programs of the Asia Foundation were addressed mostly the Moslem groups in Cirebon, West Java, although the banner of USAID cannot be posted to avoid a riot or protest in the area.

²⁰² General public here means the non-participants in discursive practices. I interviewed one taxi driver based on the assumption that he might have heard of trafficking from the conversation of passengers, read newspapers, watched TV news or talked with drivers. I also talked to my family members (my sister and her 17-year old daughter).

6.2 Dominant Discourses: Sexual Exploitation and Migrant Abuse

These two themes: sexual exploitation and migrant abuse come up in all answers in an attempt to define trafficking. Some resource persons said that the theme ‘sexual exploitation’ is mostly assigned to the condition of women in prostitution and also to the situation of domestic trafficking, whereas ‘migrant abuse’ depicts the phenomenon of international trafficking which happens to men and women, but mostly to women²⁰³. However, the themes on prostitution and sexual exploitation have their own debates as well as the debates on migrant abuses abroad. At the Parliament House, migration and sexual exploitation were the discourses that championed the discussion on the drafting of Law No. 21 (2007)²⁰⁴. Some of the members in parliament pointed out that to curb trafficking the law should handle labor recruitment agents harshly. However, other members said that not all migrant workers are trafficked persons.²⁰⁵ The term ‘exploitation’ then becomes the key to explain the distinction between illegal migration, smuggling, and labor migrant with trafficking²⁰⁶.

Nevertheless, according to Ratna Batara Munti, the Coordinator of JKP3, a NGO network involved in the legal drafting, agreeing that trafficking and prostitution are forms of sexual exploitation does not automatically mean that the concept is needed to be explained further in the body of the law. She further stated that it is assumed that everyone understands the legal parameters of the term and denounces such practice. She said that the legal drafters in the House of Representatives told her that it is uncommon practice for law drafting in Indonesia to put such a ‘phrase’ [sexual exploitation] in the content of the law²⁰⁷. But Eva Sundari of the Fights for Indonesia’s Democracy Party or PDIP insists, “This concept [of sexual exploitation] should be explained legally and comprehended in a bigger and broader definition to include female and male migrant workers. This is also to show the fact that many

²⁰³ This emphasis is from resource persons with whom I have talked in this research.

²⁰⁴ Interview Nurul Gufron (June 4, 2007), Ratna Batara Munti (June 19, 2007), Eva Sundari (June 21, 2007), Dewita Hayu Shinta (June 12, 2007), Anis Hamim (June 11, 2007).

²⁰⁵ Interview with Nurul Gufron, June 4, 2007.

²⁰⁶ Interview with Ratna Batara Munti (June 21, 2007), Dewita Hayu Shinta (June 12, 2007) and Eva Sundari (June 21, 2007).

²⁰⁷ Interview with Ratna Batara Munti (June 21, 2007) who also explained that some people felt it awkward to spell out ‘sex’ or ‘sexual exploitation’ as they considered it not a polite nor legal term.

Indonesian workers have been treated as slaves abroad²⁰⁸.” However, the debate finally ended and defined ‘sexual exploitation’²⁰⁹ as “Any form of the use of sexual organs or other organs of the *victim* for the purpose of obtaining profit, including but not limited to *all acts of prostitution* and sexually indecent acts²¹⁰ (Article 1(8), Emphasis added). Further, for sexual exploitation, the law elaborates in the Article 1(8), as “any form of the use of sexual organs or other organs of the victim for the purpose of obtaining profit, including but not limited to all acts of prostitution and sexually indecent acts”²¹¹. Nonetheless, there is no further explanation in the law on what constitutes sexually indecent acts. However, Suharyono²¹² from the Ministry of Human Rights and Justice answered the inquiry by explaining the forms of sexual exploitation of women in places like massages parlor, and as artists in an impresario program²¹³. He further explained, “Many women were recruited to be performance art ambassadors, but they ended up in such practices of satisfying men’s sexual desires or else worked as maids”.

The law distinguishes sexual exploitation with ‘exploitation’ as a criminal act (Article 1[7]): “An act committed with or without the consent of the victim which includes but is not limited to prostitution, servitude or forced labor, slavery or practices similar to slavery, repression, extortion, physical abuse, sexual abuse, abuse of the reproductive organs, or the illegal transfer or transplantation of body organs or the use of another persons’ labor or ability for one’s own material or immaterial profit”²¹⁴.

²⁰⁸ Interview with Eva Sundari (July 2, 2007).

²⁰⁹ Exploitation is explained separately in Article 1(7) as “an act committed with or without the consent of the victim which includes but is not limited to prostitution, servitude or forced labor, slavery or practices similar to slavery, repression, extortion, physical abuse, sexual abuse, abuse of the reproductive organs, or the illegal transfer or transplantation of body organs or the use of another persons’ labor or ability for one’s own material or immaterial profit” (Unofficial Translation by IOM Indonesia (the file with author).

²¹⁰ Unofficial Translation by IOM Indonesia (the file with author).

²¹¹ Unofficial Translation by IOM Indonesia (the file with author).

²¹² Interview on June 4, 2007.

²¹³ This is known as cultural exchange programs. In 2001, many Bali dancers were transported to Japan to perform traditional dances but ended up as prostitutes (see Rosenberg 2003).

²¹⁴ Unofficial Translation by IOM Indonesia (the file with author).

6.2.1 Debates on Sexual Exploitation and Prostitution in Trafficking

The national government describes the sex industry as the burden of the state and blames it for “not only raising considerable human, social, and economic costs, but also transmitting sexual diseases and HIV/AIDS” (The Report on the Elimination of Trafficking in Persons in Indonesia 2004-2005, 2005: 3, English version). In the National Commission for Women’s Annual report (2001:1)²¹⁵, trafficking of women was categorized as sexual terrorism and discussed under sexual violence. Sexual terrorism is understood as a growing attack that target women’s body and their sexuality which generate a condition in which victims constantly felt intimidated and threatened (National Commission for Women Report 2001:1).

Women’s organizations actively defended women’s rights by framing prostitution as sexual exploitation to correct the existing one: as public nuisance and representative of the moral disorder of women. They talked to media, government and parliament members, conducted seminars and worked with sex workers. Within this framing, women urged the public to look at prostitutes as victims rather than as criminal or public order breakers. Situating prostitution as a form of sexual exploitation had occupied discourses in the media and the way trafficking was discussed in the parliament²¹⁶. Ratna Batara Munti stated that prostitution is sexual exploitation²¹⁷. Eva Sundari explained, “Our main business in this law is actually preventing women from sexual exploitation, of which, prostitution is one form²¹⁸. Additionally, Nurul Gufron, on the legal staff of the House of Representatives, conveyed this: “Within this trafficking law, we want to protect women from being exploited sexually and from prostitution”²¹⁹.

²¹⁵ National Commission for Women (2001) *Terorisme Sexual Mencekam Perempuan Indonesia: Catatan Akhir Tahun* (The Note at Year End: Sexual Terrorism Frighten Indonesian Women), unpublished report (file with author).

²¹⁶ Interview Eva Sundari (June 21, 2007), Ratna Batara Munti (June 19, 2007), Salma Safitri (June 11, 2007), Anis Hamim (June 11, 2007), Maria Hartiningsih (June 11, 2007).

²¹⁷ Interview on June 19, 2007.

²¹⁸ During interviews, resource persons from NGOs, government and parliament mentioned that pornography is also one form of sexual exploitation or commodification of women’s body.

²¹⁹ Interview on June 4, 2007.

Dewita Hayu Shinta from LBH Apik (Legal Aid Foundation – Indonesian’s Women Association for Justice), said,²²⁰ “We use ‘prostituted women’ and never ‘sex workers’. Prostitution is sexual exploitation of women, so is trafficking. For us no women would consent to work as prostitutes.” In a similar vein, Mike Verawati Tawang of KPI (Indonesian’s Women Coalition)²²¹ said that “trafficking and prostitution are indeed sexual exploitation against women and a gross violation of human rights, we need to maintain seeing such issues in these two frameworks”. Ms. Anna Sulikhah of Bandungwangi Foundation reasoned “... Because they are victims. We look at them as victims; we would like to remove them from the street and from the practice”²²².

There is no distinction made between forced prostitution and voluntary prostitution either in trafficking or in the issue of prostitution. For most, prostitution is trafficking. A major federation-based organization in Indonesia, LBH Apik and a major mass-based organization of women, KPI, insisted on using ‘prostituted women’ instead of ‘sex worker’ on the grounds of their poverty and unequal position between women and men in the society, so women never can choose freely. If they decided to work as prostituted women, this decision should be understood as a socially and economically forced decision²²³. This decision is perceived as difficult for women, because no women would consent to use their bodies commercially²²⁴.

Actually, there are efforts to introduce the discourse of “sex work as work” like what had been done by the senior feminist, Saparinah Sadli. In a conference on prostitution in 1997, she requested academics and journalists to start using the word “sex worker” because it is actually a form of work that needs the same protection and respect as other kinds of work.²²⁵ However, Antarini Arna, a woman activist, commented that “this perception [voluntary prostitution or sex work] is not applicable to women in Indonesia who enter prostitution because they have difficulties to feed themselves, were divorced from their husbands with three children who need to be fed

²²⁰ Pre-interview on May 31, 2007.

²²¹ Interview on June 7, 2007.

²²² Interview on June 7, 2007.

²²³ Pre-Interview with Dewita Hayu Shinta (May 25, 2007).

²²⁴ Interview with Ratna Batara Munti (June 19, 2007). Ratna is also a board member of KPI and LBH Apik.

²²⁵ Bursa Seks in Indonesia tetap spekulatif (Sex Market in Indonesia is still speculative), *Kompas* 12 July 1997.

as well”²²⁶. Nevertheless, M. Farid from the National Commission for Human Rights argued that the phenomenon of ‘prostituted women’ is not a reflection of the reality²²⁷. He complained that many Indonesian women activists that he met tend to polarize women’s situation into a single reality.

The responses indicate the repetition and continuity of previous discourses on prostitution as a form of sexual exploitation in the 1980s. As one of the purposes of trafficking is for sexual exploitation, therefore trafficking equates to prostitution. Trafficked women and prostitutes should be seen as victims of sexual exploitation. The responses also indicate a local dynamics on debating prostitution. It constructs prostitutes in different ways: (1) as an affront to public order that should be removed, (2) an outrage to public morality and national culture that has to be contained, cultured and fixed, (3) a burden to development projects and public health which should be restrained, and (4) as innocent victims who should be protected and relocated. Secondly, poverty seems to be a common argument in discussing women’s issues as it also appeared in women’s forums from the 1920s to 1940s. Thirdly, women in trafficking or prostitution are seen as victims of male lust and domination. Thus, sexual exploitation is a matter of power of men over women, as Kathleen Barry had argued that sexual exploitation is the foundation of women’s oppression that marginalized women socially and politically (1995:1).

Nevertheless, the participants of discursive practice recognize that there are different categories and ways of women entering prostitution, which is not only through force or deceit. The debates, however, try to ignore one another leading to the marginalization of women’s rights based on their choices. It is also clear that there is a certain degree of recognition that women may choose to work as prostitutes and a proposition to acknowledge prostitution as a work.

6.2.2 The Debates on Migrants Abuses Abroad

Migration and trafficking are distinguished from one another by the notion that migration is characterized by choice and trafficking by coercion, deception or

²²⁶ Email on June 28, 2007.

²²⁷ Interview on June 13, 2007.

force. In the case of Indonesia, many women and men migrate for economic reasons. During the 1990s²²⁸, the media reported abuse cases of Indonesian migrant workers abroad. Some of the reports were about the bad fates of migrant workers who were forced to work as prostitutes or were raped by their employers. In 1993, *Jawa Pos* reported that the *Khar* Company 'sold' 11 Indonesian women to the *Daichi* Entertainment Company of Japan. They were recruited as entertainers to take part in a supposed cultural exchange but ended up working in the sex industry (in Dzuliyatin and Silawati 2002:17). In a 2000 workshop²²⁹, Salma Safitri from *Solidaritas Perempuan*²³⁰, an organization working for the rights of women migrants, had emphasized that the act of sending migrant workers abroad is the softest form of women trafficking because the act has been used by the third party to camouflage the crime²³¹. The government orders that the migration should be arranged by a private agent. At this stage, many people's identities and ages are falsified, with promises of good salaries and light work. In the destination country, migrant workers' passports are kept by the employers to ensure that the foreign worker will not be able to leave the house, the plantation estate or the factory before the end of the contract. The first lady of Indonesia, Mrs. Sinta Nuriyah Abdurrahman Wahid, stated in 2000 that human slavery, including trafficking of women, had manifested its modern forms and appeared as if it was legal a through broad range of activities, such as sending migrant workers abroad.²³²

The National Commission of Women, as Lisa Noor Hamidah explained, puts trafficking in the framework of dealing with migrant issues in the structure, for the reason that it is difficult to separate trafficking and migrant issues²³³. Trafficked and migrant women are seen as vulnerable to exploitation and abuses together with

²²⁸ Indonesia started to export laborers in 1988 based on the Ministry Decree No. 1307/Men/1988 on the regulation of the management of exporting labor to the foreign markets.

²²⁹ Solidaritas Perempuan (2000) Workshop *Proceeding on Human Rights in Practice: the Handbook to Fights Trafficking of Women and Children*, Jakarta (file with author).

²³⁰ From the workshop *Proceedings on Human Rights in Practice: the Handbook to Fight Trafficking of Women and Children*, conducted by Solidaritas Perempuan in 26 July 2000, Jakarta (file with author).

²³¹ Third party here includes officers in *kelurahan* or the village government office, the agent, the middle men who approached men and women and offered jobs abroad

²³² Keynote speaker at the workshop on *Human Rights in Practice: the Handbook to Fight Trafficking of Women and Children*, 26 July 2000, Jakarta (file with author), reported by *Media Indonesia*, 27 July 2000, *Kompas*, 27 July 2000 and *Suara Pembaharuan*, 27 July 2000.

²³³ Interview on June 13, 2007

domestic workers and women as the heads of the family grouped under the Division of Vulnerable Group Protection and Discrimination (PKRD) in the National Commission for Women²³⁴. ‘Migration’ is seen here as an advocacy strategy to attract many organizations and people to work on the issues related to migrant workers such as trafficking and domestic work, as Lisa Noor Hamidah puts it,

Sometimes it is not always easy to think of migration as separated from trafficking, although I know that all issues have their own characteristics but by linking them into migration, many actors would join in. I also noticed that the trafficking issue was re-materialized at the same time with the rise of the terrorism issue, where many countries tightened immigration as one of their coping strategies. That is why in the National Commission for Women, we had been very careful in making any statement. On one hand, migration is one of human rights; while on the other hand, trafficking in migration is a criminal act²³⁵.

Nevertheless, either in parliament or in the government, their understanding of trafficking occurs within the migration framework. This entry point, according to Supalarto Sudiby²³⁶ of the Ministry of Women Empowerment, helps them comprehend the element of movement in relation to sexual exploitation and the category of international trafficking. The migration element situates countries into sending, transit and destination sites of trafficking²³⁷ which then help in identifying different natures of the problem, as well as, mandate different responses to tackle trafficking. Understanding trafficking through migration has also opened up the discourse on economic gaps and migrant’s perspectives on a destination country and the perception of the destination country on migrants. Moreover, the migration issue

²³⁴ Interview with Lisa Noor Hamidah (June 13, 2007)

²³⁵ Interview on June 13, 2007.

²³⁶ Interview on June 15, 2007.

²³⁷ As shared by Azis Hussein of the Ministry of Women Empowerment in the National Seminar on “Trafficking issue and State’s Policy” in Jakarta, March 14, 2005. unpublished paper (the file with author). He said that he just realized that Indonesia is the source or sending country by putting migration into the trafficking issue.

has been used as a common interest in discussing trafficking among departments,²³⁸ as this issue has collated units in various government institutions to take action. Lisa Noor Hamidah further asserts that linking trafficking and migration proved to be a strategic measure to gather different units, interests and people²³⁹. Lisa Noor Hamidah also related that while many NGOs consider that migration is human rights and campaigning on ‘the safest way for migration’ many people, including parliament members, in one of their hearing assemblies, suggested that a similar campaign to be initiated on “how people can be involved in a ‘good trafficking’?”²⁴⁰, which is clearly an oxymoron.

The effort to establish a link between trafficking and migration, as the above discussion suggests, apparently invites a new issue. These two concepts are frequently conflated. The link between migration and trafficking was re-established with reported abuse cases abroad that occurred to migrant workers. Some of them were reportedly forced to work as prostitutes, work for more than 18 hours a day, raped by the employers, and physically abused. Mutilated corpses and wounded organs were the main pictures used to displaying the phenomenon in the media. This view created the discourse that trafficking happened in foreign lands and was done by foreigners. To some extent many organizations equate trafficking and migration. During my work visits to provinces when I worked as Counter Trafficking Project Officer in the Solidarity Center from 2001- 2003 and then in Terre de Hommes, Netherlands from 2003 – 2004, this perception was still prevalent among activists and villagers.

However, without deep scrutiny of the approach, this connection (between trafficking and migration) may have potential danger to the status of the trafficked women in a destination country as they may be seen as breakers of the immigration law. When ‘trafficking’ is equated with ‘migration’ the measure applied will be primarily deportation in order to protect the state from illegal aliens, rather than protecting the victims. Another important issue is that of consent in ‘migration’ and ‘trafficking’. Equating trafficking and migration may appear confusing when “a

²³⁸ Interview of Ms. Sumarni Dawam Rahardjo (June 12, 2007), Mr. Supalarto (June 15, 2007) and Ms. Mujiwati (June 11, 2007) of the Ministry of Women Empowerment.

²³⁹ Interview on June 13, 2007

²⁴⁰ Interview on June 13, 2007,

woman is trafficked with her consent”. Logically, people may consent to migrate but not to trafficking, which involves sexual and labor exploitation.

6.3 Sub-dominant Discourses: National Dignity and International Image

6.3.1 The Debates on National Dignity, National Identity

The lack of support for migrant workers that was showed by the government on the discourse of ‘abroad’, created the discourse on *national dignity*²⁴¹. Salma Safitri said that one of the reasons many NGOs working on migrant rights issues used the discourse on “national dignity” was to shame the government²⁴². For example, on August 24, 2007, five political parties under Parliament Caucus Coalition for Human Rights publicized their political stand in the press release titled “Stop the violence against migrant workers and uphold the *national dignity!*”²⁴³ In addition to that, IWORK, a legal aid organization for migrant workers, on August 26, 2007 declared:

The government has been treating migrant workers like “a milk cow” by increasing the sending of migrant workers abroad without enhancing their quality. This was done by the government on the basis of increasing the return of foreign exchange without providing maximum protection for its citizens. Violence, oppression and abuses of migrants’ human rights has resulted in suffering and death of so-called ‘heroes’ are evidence that the government is very weak in protecting and fighting for our *national dignity* as a *nation* in front of other countries (Emphasis added).

²⁴¹ As also shared by Salma Safitri on June 11, 2007.

²⁴² Interview on June 11, 2007.

²⁴³ This was signed by Annisah Mahfudz (FKB), Anna Muawanah (FKB), Badriyah Fayumi (FKB), Ida Fauziah (FKB), Maria Ulfah Anshor (FKB), Nursyahbani Katjasungkana (FKB), Syaidah Syakwan (FKB), Eva K Sundari (FPDIP), Ribka Tjiptaning (FPDIP), Tumbu Saraswati (FPDIP), Chairunnisa (FPG), Aisyah Hamid Baidlowi (FPG), Mariani Akib B (FPG), Marliah Amin (FPG), Nari Hardiyanti (FPG), Watti Amir (FPG), Sri Harini (FPG), Tyas Iskandar (FPG), Sudarmani Wiryatmo (FPG), Tisnawati Karna (FPG), Maryamah N B (FPG), Hayani Isman Sutoyo (FPG), Asiah Salekan (FPG), Latifah Iskandar (PAN), Kasmawati Tahir (FPBR) (Translated by and file with author).

Moreover, the Welfare and Prosperity Party (PKS), an Islamic based party, declared in its political statement that “trafficking had disadvantaged and disgraced Indonesia’s dignity and identity as a nation” (October 3, 2006:1). Further, PKS emphasized:

Having a trafficking law is one of the solutions to answer the problem and cut the chain of numerous cases of trafficking which have been degrading our *national dignity and our identity in front of international eyes* (October 3, 2006: 2, Emphasis added).

Eva Sundari inquired into the ironic situation of how a country which holds *Pancasila*²⁴⁴ as a national philosophy permits trafficking take place²⁴⁵ “It is very ironic that Indonesia which is holding *Pancasila* as state principles still allows trafficking incidences that gradually became so rampant” (October 11 2006: 2).

In the interviews, some government staffs responded to the US tier system. Initially, they suggested that we have to be positive about the system as the objective of it is for the benefit for trafficked victims²⁴⁶. However, they found that the system was unfair and the assessment was methodologically flawed. First, the US does not assess itself. Second, putting Malaysia – which according to Indonesia is the biggest violator of the rights of Indonesian migrant workers – in Tier Two Watch List and Singapore in Tier One - was, according to government officials, unfair and political. Third, human rights should be left alone as a domestic issue of the country²⁴⁷.

Dian Kartika Sari recalled her experiences working with village and *dusun* leaders in several districts in West Kalimantan during 2003–2004 in several training and workshops²⁴⁸ and said that discussing trafficking meant discussing one’s identity:

²⁴⁴ Pancasila is the national five pillars consisting of (1) The belief in one and only God, (2) Just and Civilized Humanity, (3) Unity of Indonesia, (4) Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives, (5) Social justice for the whole of the people of Indonesia.

²⁴⁵ Translated from Bahasa Indonesia to English by Wahyuningrum (the file with author). Emphases are added

²⁴⁶ Interview with Mujiwati (June 11, 2007), Sumarni Dawam Rahardjo (June 12, 2007), Supalarto Sudibyoy (June 15, 2007), and Suharyono (June 11, 2007).

²⁴⁷ I disagree with this opinion.

²⁴⁸ Interview on 26 June 2007.

At first, they would deny that trafficking cases happened and involved the members of their community. This is because they felt ashamed of failing to prevent people from being trafficked. It hurt them as the father of the village. It also hurt them as part of Kalimantanese society. They kept saying that they found such incidences but they were not part of their community, but were inhabitants of neighboring villages. By the end of the training, they finally testified that there are trafficking cases in their community but they did not know how to tackle them.

On the other hand, trafficking is also perceived as causing potential damage to the future development of the nation because Indonesian women get harmed in trafficking cases. The *Naskah Akademis*²⁴⁹ on the *Elimination of Trafficking of Women and Children*, written under the Deputy of Development and Information in the Ministry of Women and Empowerment (November 2002:3),²⁵⁰ stipulated that “trafficking is a factor to slow down the development and will potentially damage the process of producing a qualified generation”. Moreover, trafficking is perceived as having no place in Indonesia’s set of value and identity construction as Nurul Gufron asserted, “Prostitution is illegal and there is no conformity with Indonesia’s value. Trafficking for prostitution is sexual exploitation against women. That is why it needs to be eradicated”²⁵¹. He further elaborated²⁵²:

From what I have seen in Thailand, sexual services do not necessarily mean sexual exploitation but can be seen as job options, while this is not the case in Indonesia. Sexual services are illegal and considered a form of sexual exploitation. This is our value. As Indonesian, we do not accept that women may choose to be sexually exploited [as sex workers]. In Thailand, many women who were sexually exploited as prostitutes were rehabilitated and then

²⁴⁹ *Naskah Akademis* is academic concepts in English. This paper is for the basic argument or proposal explaining the need to have a new law or amend the existing law(s). The “Naskah Akademis” is usually a result of an academic research done either by a university or the government. I use *Naskah Akademis* here without translating it because I have not found similar words for the meaning

²⁵⁰ Translated from Bahasa Indonesia into English by Wahyuningrum (file with author).

²⁵¹ Interview on June 4, 2007

²⁵² Interview on June 4, 2007 when he recalled his experiences with other member of the drafting team to visit programs in Thailand in December 2006.

relocated to work as sex workers. In Thailand, it is called ‘eradication’, for me it is double exploitation. In Indonesia, the solution of sexual exploitation is to remove women from ‘that world’.

This statement established and defined Indonesia as ‘not Thailand’ by distinguishing identity markers, women’s sexuality, perceptions and responses toward sex workers. The term ‘sexual services’ refers to the commercial sexual activities and prostitution. Sexual services are recognized to be performed by women in the marital institution (private; legal; good; non-exploitation form) or outside of marriage (public; illegal; bad; form of exploitation). In this case, the power of men over women within marriage is legal and should not be consider as exploitation, but it is illegal and seen as exploitation outside the marriage. This notion suddenly reminds us of the idealization of women that was promoted in the New Order regime. The regime perceived women’s best role as wife and mother, or what Suryakusuma (2004) called as the state of *ibuism*²⁵³. In the workshop conducted by KPI in 2001 in Bengkulu²⁵⁴, a male participant opined that trafficked women should be told to return to their *Kodrat*²⁵⁵ (assigned roles) as women. He believed that this would decrease the number of trafficking incidences in Indonesia. This opinion actually reflects that although the Regime has changed, there is a continuity of its gender ideology.

Nonetheless, the above responses indicate that many discursive participants look at the state as the father in the family, which is similar with the way Law No. 21 (2007) depicts the relations between the state and women (in Chapter Five). The discourse of national dignity is used to mark the failure of the government to protect its citizens abroad similar to how the father fails to protect a member of the family. The family has interest to have good, healthy and qualified members, so trafficking is seen as a treat to the fulfillment of this interest. Indonesia is also perceived as one big family which lives in the ‘community’. The abuses of an Indonesian family member

²⁵³ *Ibu* means mother in Bahasa Indonesia.

²⁵⁴ From KPI Bengkulu’s activity report on a series of anti-trafficking campaigns in 2001 (file with author).

²⁵⁵ Suryakusuma (2004) describes *Kodrat Wanita* as an appeal to justify the suitability of men and women for different tasks; this provides a separated function and entity based on biology and to keep women in their place in the home. This implies that women should be submissive, self-sacrificing, nurturing, sexually shy, modest and politically passive. In sort, women are expected to take role as wives and mothers.

(read: citizen) abroad, done by neighbors, marked in migration or as trafficking cases ripped apart Indonesia's dignity and honor. Nevertheless, differences in values and beliefs are used as contradistinction to the meaning to be Indonesia(n)

6.3.2 The International Discursive Practices - Images and Records

The way trafficking was handled was partly to respond to international criticism. The US government placed Indonesia in Tier 3 to indicate that the government failed to fully comply with the minimum standards, and without making significant efforts to do so. In its political statement dated October 3, 2007 (p.1-2), PKS articulated that trafficking makes Indonesia look vulnerable in international surveillance, "this situation makes Indonesia seen as incapable to protect its citizens and is grouped with countries which have bad records on trafficking in persons". Being ranked in tier 3 (2002–2002) or tier 2 watch list (2006), a state is perceived as belonging to lower caste states and excluded from the civilized state group, as argued by PKS in its political statement (October 3, 2007:1-2):²⁵⁶

Trafficking has not only disgraced the national identity, but also placed Indonesia in the lowest caste of the world hierarchy.

The reason for the increased international attention on Indonesia is explained in the *Naskah Akademis on the Elimination of Trafficking of Women and Children*, (November 2002:2); it is because there is no serious political will among government institutions in Indonesia to deal with trafficking. Having had the opportunity to work with the government in drafting the NPA in 2001-2002, I frequently received complaints from government officials on the lack of coordination among government departments (or inside one department)²⁵⁷. They worried that this situation will be seen as a lack of serious will. The *Naskah Akademis* further illustrates, "Our country is in the situation of an economic recession, with lack of job opportunities as one of

²⁵⁶ File with Wahyuningrum

²⁵⁷ During 2001-2003, I worked for the Solidarity Center with its first mandate to deal with the Ministry of Women Empowerment in drafting the NPA. Other complaints were corruption and the bureaucracy.

the main factors of trafficking of women and children, apart from other causes such as social conflicts, war, low education and the weakness of law enforcement” (November 2002:2)²⁵⁸.

The government, especially the Ministry of Women Empowerment staff, admitted that the tier system had motivated them to work harder on trafficking issues including discussing and passing the law²⁵⁹. Sumarni Dawam Rahardjo²⁶⁰ of the Ministry of Women Empowerment realized that the department was under scrutiny to ensure a good international image of Indonesia. The Minister of Women Empowerment, Meutia Hatta Swasono, affirmed that the enactment of Law No. 21 (2007) indicates Indonesia’s commitment to the international community to tackle trafficking seriously²⁶¹.

NGOs, as observed by Salma Safitri, recognized that the government’s interest in this legal discussion is for purposes of a good record and to bring back a good name in the eyes of the international community²⁶². Through changing the image, funding becomes available mainly to be used to tackle the issue of trafficking of women and children. Meutia Hatta Swasono, emphasized the importance of attracting future funding to help trafficked persons (Jakarta Post, March 24, 2007). Wahyu Susilo of Migrant Care, an organization working for migrant’s rights, asserts that in the past if an activist talked about trafficking, s/he would be charged as being subversive, but now, even the government is the one who brings talk of the topic to the public (Sinar Harapan, August 2, 2003). Further, he argues that, this progress actually does not necessarily reflect the good political will of the government, but more the interest in sustaining the access to foreign aid. This report, then, is used by civil society organizations, in particular non-government organizations, to urge the government to immediately respond to the incidences of trafficking in persons in Indonesia. In other words, the political intervention of the United States toward the

²⁵⁸ Translated from Bahasa Indonesia into English by Wahyuningrum (file with author).

²⁵⁹ Interviews: Mujiwati (June 11, 2007), Sumarni Dawam Rahardjo (June 12, 2007), Supalarto Sudibyo (June 15, 2007).

²⁶⁰ Interview on June, 15, 2007.

²⁶¹ *Jurnal Perempuan*, March 23, 2007, available online at <http://www.jurnalperempuan.com/yjp.jpo/?act=berita%7C-796%7CX>. This is also stated in the background section of Law No. 21 of 2007 and appeared in the final Statement of the President on the draft law on the Suppression of the Criminal Acts on Trafficking in Persons, October 11, 2006 (the file with author).

²⁶² Interview on June 11, 2007.

government of Indonesia can be categorized as the pushing factor of the growing attention from the government on the issue of trafficking in persons²⁶³.

Many government officials consider the enactment of Law No. 21 (2007) to be their accomplishment. Some of them claimed that it has been the most comprehensive law that they have produced within the last decades²⁶⁴. Even the Ministry of Women Empowerment planned to chair a forum in the next meeting of the Asia-Africa Legal Consultative Organization (AALCO)²⁶⁵ on 2nd – 6th July 2007 in Cape Town, South Africa, to show this achievement as a legal model on suppressing trafficking²⁶⁶. The *AALCO Summary Report of the Forty-Sixth Session* said that Indonesia submitted Law No. 21 (2007) as a model law on eradicating trafficking and the session was chaired by Ambassador Mr. Reza Tabatabaei Safei, DSG of AALCO (under the Agenda Item III: Establishing Cooperation Against Trafficking in Women and Children, 2007: 27-28)²⁶⁷.

As trafficking is a transnational issue, the above discussion suggests the recognition of a world hierarchy. The notion of periphery and semi-periphery countries in the trafficking issue is not marked by economic stability but with the way the states deal with the issue. It is clear that the government's aim in this forum is to claim a space and attention to boost its legitimacy in front of Asian and African countries. The assumption of this initiative was that Indonesia now can be categorized along with "civilized states" and no longer is one of the "pariah states" in relation to trafficking.

The responses also demonstrate that the participants in discursive practices are aware of foreign aid availability as the reward for meeting US standards in dealing with trafficking. Recognizing this reward has been used by NGOs and foreign governments to 'whip' the Indonesian government to do more for trafficked people,

²⁶³ Similar points also raised by Azhar Asihin of YPHA, email July 12, 2007.

²⁶⁴ Interviews: Sumarni Dawam Rahardjo on (June 12, 2007), Suharyono (June 4, 2007), Supalarto Soedibjo (June 15, 2007) and Mujiwati (June 11, 2007).

²⁶⁵ The Asia-Africa Legal Consultative organization was established in 1956 with the aim of forging solidarity on international law matters amongst the countries in Asia and Africa. Its objective is to serve as a Legal Advisory Body to its member states in the field of international law. The organization is currently comprised of 47 member states which include countries in Asia and Africa. For further information on this please visit: www.aalco.int or www.aalco.org.

²⁶⁶ Interview with Mujiwati (June 11, 2007)

²⁶⁷ AALCO (2-6 July 2007) Summary Report of the Forty Sixth Session of the Asia-Africa Legal Consultative Organization, Cape Town: AALCO, available online at www.aalco.org.

while for the Indonesian government, the reward means an improved international image, an increase in funding and better reporting records.

6.4 Marginalized Discourses: Human Rights and In-Country Domestic Work

6.4.1 The Debates on Human Rights

Some observers said that the rights discourse is rarely tabled in legal discussions on anti-trafficking²⁶⁸. But others said that rights are automatically discussed, especially when a committee deals with services for victims' protection. Eva Sundari affirmed that human rights and sensitivity to gender issues are the main objective in legal discussions on anti-trafficking. Suharyono²⁶⁹ pronounces that even though 'rights' are not articulated, the main concern of the anti-trafficking is actually serving human rights. He further said,

Law No. 21 (2007) is actually weighed to support human rights protection. Human rights are based on all laws and vice versa. Law and human rights should be in the same line. If one violates rights, s/he breaches the law. But sometimes it depends on the country's regulation. Rights fulfillment is also dependent on other things such as social, economic and political policies and conditions. All of them should operate together. They cannot walk alone, it will not work.

Insisting that 'rights' were discussed during the legal drafting, Nurul Gufron, came up with examples of rights that mainly occupied the discussion as²⁷⁰:

Rights are protected under the 1945 Constitution. By saying the term trafficking, people know that this is a human rights violation... automatically... If they take advantage of objectifying themselves sexually for

²⁶⁸ Sumarni Dawam Rahardjo said that rights rarely came up in the government or parliament forums; Maria Hartiningsih also said that rights rarely appeared in journalists' reporting on Law No.21 (2007).

²⁶⁹ Interview on June 4, 2007.

²⁷⁰ Interview on June 4, 2007.

their own benefit, so it is not constituted human rights for us. But on the contrary, *for us*, it is violation of human rights. It is like *she traffics herself*. Well, it is not allowed to be done, either. We do not agree on the notion of prostituted women because it is one form of exploitation. We also consider it is exploitation if a woman prostitutes herself (Emphasis added).

The above responses are common to many Indonesians, especially government officers. The responses reflect three familiar ideas. First, the discourse on rights is framed in conditional relations to social, economic and political situations in the country; therefore, the implementation of rights is different from one country to another. Rights are reluctantly accepted as a language of legal claims by the citizens. Second, rights are determined and constructed by a country's laws and regulations. It is the state which decides what the so-called people's rights and how they should be exercised. Third, instead of embracing people without discrimination, the discourse of rights has been used to keep people in and put others out based on a defined set of values.

In contrast, the *Naskah Akademis on the Elimination of Trafficking of Women and Children*, written under the Deputy of Development and Information in the Ministry of Women and Empowerment (November 2002:11), articulates that "trafficking of women and children is not only gross violations of human rights, where victims are treated as commodities to be bought, sold, moved, re-sold, but also some are trapped in a slavery and servitude situation". Some of the violated rights in trafficking are spelled out in the *Report on the Elimination of Trafficking in Persons 2004 – 2005* (the English version, 2005: 3) to include "a person's right to live freely, not to be tortured, to have personal freedom, thought and conscience, to believe in a religion, and not to be subjected to slavery, etc". However, there is no explanation on how trafficking violates the right to believe in a religion.

When asked about what rights are included and excluded in trafficking debates, NGOs are plainly able to engage with the discussion. Nevertheless, this is not the case with the staff of DPR, parliament members or government officials²⁷¹. Dian

²⁷¹ For instance, some responded with "the umbrella of this law is the 1945 Amendment Constitution, so rights are automatically included, so we do not necessarily need to mention them one by one",

Kartika Sari argues that NGOs mainly formulate trafficking as a human rights violation from the beginning: “We flag the issue as gross human rights violations on the grounds that trafficking by nature has the character of systemic abuse”. Salma Safitri mentioned²⁷²:

First is the right to life. In this line of thought, we discussed how the victims can be protected and feel secure. They can have an alias name. They cannot meet with the perpetrator in the same room. They also have to be free from threats and intimidation. So in discussing the law we talked about the rights of those who already were the victims. The right to work also was discussed. In this way, the state should facilitate the trafficked victims to get better jobs.

Furthermore, Salma Safitri said “I think the word ‘right’ is not mentioned broadly in the law, but maybe only in one article.”²⁷³. She actually referred to Article 44(2) which stipulates, “The right as provided in paragraph (1)²⁷⁴ is also given to the families of witnesses and/or victims to the second degree, provided that the families and/or the victims have received physical or psychological threats from outside parties relating to the testimonies of witnesses and/or victims”. Nevertheless, Ratna Batara Munti asserted that “the only problem of this provision is the usage of the word “shall” which has no strong command to government to provide the required services for trafficked victims”²⁷⁵. M. Farid observed that the spirit of rights was evident when people talk about trafficking, including when Law No. 21 (2007) was under discussion, but the articulation of such was misleading. He argued that some

another said, “that is your job as a researcher to identify what rights are included in the discussion”, and the rest said, “that question should be answered by the staff in the human rights division, not by me because I am the staff of the legal drafting division”.

²⁷² Interview on June 11, 2007.

²⁷³ Interview on June 11, 2007.

²⁷⁴ This sentence refers to Article 44 (1), “Witnesses and/or victims of trafficking in persons are entitled to have the confidentiality of their identity maintained” (IOM unofficial translation, the file with author).

²⁷⁵ Interview on June 19, 2007

aspects of rights, unfortunately, were debated in the frame of rights as way of negotiation, especially when it comes to the right of movement²⁷⁶.

The above discussion demonstrates the gaps between different discursive participants in embracing rights into daily talk. At some point, it indicates the level of familiarity and the importance of using rights as arguments and defining the state-citizen relationship. Another thing the discussion also shows is the awkward relations between many discursive participants with the idea of rights. Rights are important but reluctant to be adopted. Rights are there without mentioning that they exist. In other words, rights are not understood as inherent to the individual or, in this case, trafficked people's rights are limited to discursive participants' knowledge about rights. Even though NGOs staffs are more articulate in debating rights, yet they have no voice in the actual drafting meetings. They only can submit some suggestions to be considered in the body of the law, lobby parliament members in different places²⁷⁷, talk to the media and send sms (short mobile telephone text messages) to the parliament members. Moreover, spelling out the word 'right' is allegedly not necessarily as it is naturally about right. It is assumed that there is uniform understanding on what rights are as constituted in Indonesia's context. As if there is one.

Apparently, bringing rights discourse into the discussion does not necessarily serve the objective of human rights. In the case of Indonesia, these are dependent on the economic and political condition, culture and set of values, ideology, myth, and knowledge held by the discursive participants and their interaction in creating discourse. If we return to the non-discrimination argument as the first reason for changing the term, this point demonstrated an apparent contradiction. The responses show that human rights language has inarguably been taken for granted. Human rights are not part of the 'culture' in Indonesian discussions on trafficking.

It is also interesting to note Nurul Gufron's statement on "she traffics herself". This statement illustrates two ideas: (1) whether trafficking is equated with sex work

²⁷⁶ This is prevalent in the instruction letter of the Ministry of Human Rights and Justice No. F.U.M.02.02-104B dated June 25, 2003 to control the issuance of Indonesian passports for young women.

²⁷⁷ Such as at the office of the members of the parliament/ government, in the toilet, in prayer rooms (Interview Ratna Batara Munti on June 19, 2007, Salma Safitri on June 11, 2007, Dewita Hayu Shinta on June 12, 2007, Mike V Tawang on June 7, 2007).

or, (2) trafficking is migration. As earlier explained in Chapter Two that the element of ‘means’ is one of the important aspects in constituting trafficking, therefore it is not possible for someone to traffic his/herself. Trafficking needs another person(s) to exercise the recruitment, deception or exploitation. However, this statement may reflect the majority of the Indonesian general public’s confusion with the concept of trafficking.

6.4.2 The Debates on In-Country Domestic Work

The emphasis on sexual exploitation leaves little room for discussing labor exploitation, especially domestic work within country²⁷⁸. Some resource persons said, “Because this is a law about trafficking and not about domestic work”²⁷⁹. Aida Mila Sari of Gema Perempuan²⁸⁰, an organization working for domestic workers based in Jakarta, explained that in-country domestic workers have different characteristics than migrant domestic workers. She asserted, “In my point of view, Law No. 21 (2007) only discusses migrant domestic workers and not in-country domestic work”. One of the differences is in the recruitment pattern of domestic work is it is mainly done through family and relatives so this made the abuses and labor exploitation perceived as necessary punishment to become a better worker. In Javanese society, there is a practice of “ngenger” (see Chapter Three). Gema Perempuan frequently received cases of acute child domestic abuse²⁸¹. Some of the children were reluctant to report them because they thought the abuses were part of learning life skills²⁸².

Further, Aida Milasari²⁸³ argued that even though the law had adopted the concept of debt bondage, it still does not explain the fact that many in-country domestic workers have been victimized by such practice²⁸⁴. Anis Hamim (ICMC)

²⁷⁸ This observation is also shared by Salma Safitri (June 11, 2007),

²⁷⁹ Interview with Anis Hamim (June 11, 2007), Nurul Gufron (June 4, 2007),

²⁸⁰ Interview on June 8, 2007.

²⁸¹ Interview with Aida Milasari (June 8, 2007).

²⁸² Interview on June 8, 2007.

²⁸³ Interview on June 8, 2007.

²⁸⁴ Debt as an instrument of coercion is common in cases of trafficking. Holding wages or valuable possession is also common practice in in-country domestic work to ensure someone’s labor for a certain period. This is usually accompanied by the threat of abusing the parents, family or relatives back home. Workers are also afraid that if they escape from the premises before the working contract’s termination, they will never obtain their wages or valuable possessions.

stated that the reason for putting the issue of domestic work aside was because it would have prevented passing the law on anti-trafficking on time²⁸⁵.

The domestic worker issue has been avoided by the Minister of Women's Affairs, Department of Labor as well as by the parliament. Domestic work is categorized under the informal work sector. This group is seen as beyond the Department of Labor's mandates. On the other hand, as domestic work is related to labor issues, the Ministry of Women Empowerment considered that it is not within their job descriptions. In addition, this issue had also been avoided by the government and parliament because according to Aida Milasari, it is about "us" and "our house"²⁸⁶. Discussing domestic work issue is discussing our house and us. On the other hand, trafficking issue is about "them" and "someone else" which is detached from the self. Trafficking is perceived as only happening to poor, naïve, weak and less educated people which are not "them". Separating "them" and "us" will make the process of legal drafting less complicated.

Nevertheless, the marginalization of domestic work debates also involves the issue of class and the power of elites. Working largely in private houses, domestic workers experience a degree of vulnerability that is unparalleled to that of other workers. Compared with adults, child domestic workers are more vulnerable to trafficking practices, as they are, by nature, dependent on older people for basic needs like food and shelter. This invisibility does not occur only in its non-appearance, but also in its absence in public debates, including trafficking. Perhaps, the visibility of domestic work within the public is not desired.

6.5 Conclusion: Silenced Discourses

As a consequence of having dominant discourses, there are some discourses which are not only marginalized but are also silenced, either intentionally or inadvertently because of political feasibility.

The difference in understanding 'consent' in trafficking has made trafficking as a concept differently understood from what is contained in the Palermo Protocol.

²⁸⁵ Interview on June 11, 2007.

²⁸⁶ Interview on June 8, 2007.

While the protocol mentions that consent is not relevant in the process of movement, discursive participants articulated it as irrelevant to entering prostitution. Apparently the 1920s discourse on “no women would be willing to work as prostitutes” is still alive in this period. Women’s consent to prostitution is beyond imagination. This concept belongs to the area of the ‘unthinkable’. Nonetheless, this different point of view resulted in concluding that all women in prostitution are trafficked women. Instead of helping us to comprehend this phenomenon, this conception simplifies it. The implication of this is the eclipsed notion of sex worker. Moreover, it also had silenced the agency of women in prostitution suddenly and completely as they were categorized as powerless victims. In fact, the research in several studies has revealed that adult women had the capability to consent to work as prostitutes in the absence of overwhelming economic problems.

Thus, in applying the term ‘prostituted women’ and by conflating trafficking discourse into the frame of ‘sexual exploitation against women’, the contemporary women’s movement attempted to nail down the element of male domination in patriarchal society. However the application of a gender neutral term that is applied to address trafficking, removed the concept of ‘male domination’ aspect in the concept. This does not only make the feminist emphasis on unjust cultural and structural patriarchal practices on women doubtful, but also fails to firmly advocate the idea that women may be different from men while they have the same rights and access, as promoted by the Indonesian women’s movements since the 1920s.

CHAPTER 7

CONCLUSION

As elsewhere, the fight against trafficking has become an increasingly salient political issue for the government in Indonesia. The political opportunities post the New Order Regime provided a space for ‘trafficking’ to re-emerge into public discussion in 1998. After signing the Palermo Protocol in 2001, the government of Indonesia passed the five-year National Plan of Action (NPA) to Eliminate Trafficking of Women and Children in 2002 by the Presidential Decree No. 88 (2002). The US Department of State’s TIP (Trafficking in Persons) Report put Indonesia in tier three in 2001-2002 for not fully comply with the minimum standard set in the Trafficking Victims Protection Acts (TVPA) 2000. This meant that Indonesia faced possible restrictions to access US funds, not only for countering trafficking in persons but also for other measures such as non-humanitarian aid and non-trade financial support. Through the enactment of the NPA, Indonesia was upgraded into tier two in 2003-2005. However, in 2006, Indonesia was downgraded into the tier two watch list because Indonesia was considered as failing to provide evidence to combat severe forms of trafficking in persons from the previous year and also because Indonesia had not yet passed the three-year pending draft law on anti-trafficking. With the new law on the Suppression of Crime Acts of Trafficking in Persons also known as Law No. 21 (2007), Indonesia now back to tier two again in the 2007 TIP report.

As described earlier in the introductory chapter, there are at least three phenomena that need to be looked at very carefully: (1) the shifting of the term from “trafficking of women and children” in the NPA to the term “trafficking in persons” in Law No. 21 (2007); (2) the shifting in the paradigm of viewing trafficking from a human rights violation approach to criminalization; and, (3) the US unilateral monitoring system in tackling trafficking. Furthermore, there is no study focusing on discourses on trafficking in Indonesia before and after the Palermo Protocol. It is in this point that this study posts two primary questions regarding these debates: the first

question is concerned with the shift in the focus of the debates, the factors and the implications; and, the second concerns their dominant themes.

There are three main arguments of this thesis. First, trafficking debates in contemporary Indonesia have been used as a way to authorize the power of the state over women. Second is that the contemporary debates on trafficking had reproduced and reinforced gender assumptions about women as passive, incapable of making decisions, weak, and in need of protection. Third, the debates had demonstrated that it is not 'women' that are the target of protection but the majority-imposed set of values and the nation's dignity. To provide some background to my arguments, in Chapter Two, I described a conceptual framework for conceptualizing trafficking. Whereas, in Chapter Three and Chapter Four, I examined various documents and literature to provide explanations about the cultural, political and historical context of trafficking discourses before answering the two main research questions. In Chapter Five and Six, I answered the research questions through descriptions of interviews and textual analysis.

The contemporary debates on trafficking involve: (1) the shifting of the term from "trafficking of women and children" to "trafficking in persons", (2) the shifting of places in discussing women, men and children from the main text to the subtext, (3) the debate between global and local dynamics in relation to trafficking realities, experiences, local language and socio-economic condition, (4) the shifting in the paradigm in approaching trafficking from a human rights framework to criminalization. Nevertheless, the debate as it is reflected in Law No. 21 (2007) continues to reinforce stereotypes of women as passive victims.

The dominant themes of the debate concerning trafficking in contemporary Indonesia focus upon sexual exploitation and the abuse of migrant workers. In this regard, current debates repeat and continue the focal points of the discourses in the 1980s. Current discourses are primarily concerned with notions of 'national dignity' and 'international images', yet the discussion on human rights and domestic workers is marginalized and the debate on male domination, sex work and women's agency is eclipsed.

The main character of trafficking discourses in contemporary Indonesia is marked with the acceptance of international standards in defining trafficking through

the Palermo Protocol which contribute to the ‘what’ and the ‘how’ trafficking should be conceptualized domestically. Nevertheless, there is also a foreign government’s intervention that influences on the “when” trafficking should be defined. The analysis of the interviews and collected documents reveal that it is the majority-imposed set of values and the nation’s dignity that should be protected (and not women, as it was initially intended).

The new way of debating trafficking has been used as a vehicle to idealize women as wife, mother and daughter. ‘Women’ and ‘children’ are presumed to be obscured in the word ‘persons’ but actually are present in the subtext. In contrast, ‘men’ are presumed to be entitled in the word ‘persons’ but ‘men’ do not exist in trafficking debates. Nonetheless, the word “persons” initially aimed to represent both genders and traverse difference in ages. A consequence of this broad word has been the overgeneralization of women, men and children’s experiences, realities, and capabilities in resisting and dealing with trafficking.

The significance of this study is the articulation of the discursive process of debating trafficking and legal drafting that reflects the discrepancies and, somewhat, the contradiction of the way the anti-trafficking law was initially intended, discussed, written, and then materialized (and perhaps later to be implemented).

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APPENDIX

APPENDIX 1:
LIST OF PRE-INTERVIEW

No	Group	Name	Position/affiliation	Date
1	NGO	Ms. RR Agustini	Documentation Coordinator, Indonesia Women Coalition, Jakarta	04/30/2007
2	NGO	Ms. Emmy L Smith	Coordinator, Indonesia Acts Jakarta	05/23/2007
3	NGO	Ms. R. Valentina Sagala	Board Member, Women's Institute Bandung	05/23/2007
4	NGO	Ms. Mike V. Tangka	Advocacy Coordinator, Indonesia Women Coalition Jakarta	04/30/2007
5	NGO	Ms. Lola Wagner	Executive Director, YMKK Batam	05/23/2007
6	NGO	Ms. Yoke Astuti	Project Manager, Women's Journal Foundation Jakarta	05/23/2007
7	NGO	Ms. Adriana Venny	Executive Director, Women's Journal Foundation Jakarta	05/23/2007
8	NGO	Ms. Dewita Hayu Shinta	Advocacy Coordinator, LBH APIK Jakarta	05/25/2007
9	NGO	Ms. Yani Mulyani	Program Manager, YKB, Jakarta	05/23/2007
10	NGO	Ms. Ellin R	Executive Director, Women's Institute Bandung	05/23/2007
11	Government	Ms. Sumarni Dawam Rahardjo	Expert Staff, Ministry of Women Empowerment Jakarta	05/01/2007
12	Government	Mr. Supalarto	Deputy IV, Ministry of Women Empowerment Jakarta	05/01/2007
13	International Organization	Mr. Anis Hamim	Project Officer, International Catholic Migration Commission	05/01/2007

**APPENDIX 2:
LIST OF INTEVIEW (FACE-TO-FACE)**

No	Group	Name	Position/Affiliation	Date
1	NGO - child trafficking coalition	Ms. Emmy L Smith	Network Coordinator, Indonesia Acts, Jakarta	06/14/2007
2	Mass based organization on women's issues	Ms. Mike V. Tangka	Advocacy Coordinator, Indonesia Women Coalition, Jakarta	06/07/2007
3	NGO works for sex workers	Ms. Anna Sulikha	Executive Director, Bandungwangi Foundation, Jakarta	06/07/2007
4	NGO – rights of domestic worker's	Ms. Aida Milasari	Executive Director, (on domestic helpers) Gema Perempuan, Jakarta	06/08/2007
5	NGO - women coalition	Ms. Ratna Batara Munti	Coordinator JKP3 (NGO Coalition) Jakarta	06/19/2007
6	NGO - migrant women	Ms. Salma Safitri	Coordinator, Women Solidarity, Jakarta	06/11/2007
7	NGO - media	Ms. Adriana Venny	Executive Director, Women's Journal Foundation, Jakarta	06/14/2007
8	NGO - legal aid for women	Ms. Dewinta Hayu Shinta	Advocacy Coordinator, LBH APIK, Jakarta	06/12/2007
9	International Organization	Ms. Ani Sutjipto	Project Officer, Asia Foundation, Jakarta	06/15/2007
10	NGO	Ms. Dian Kartika Sari	Deputy Director, INFID, Jakarta	06/14/2007

11	International Organization	Ms. Hanna Satrio	Project Manager, Asia Foundation, Jakarta	06/28/2007
12	International Organization	Mr. Anis Hamim	Project Officer, International Catholic Migration Commission, Jakarta	06/11/2007
13	International Organization	Ms. Ruth Evelyn	Project Officer, Terre des Hommes Netherlands Regional Office, Jakarta	06/11/2007
14	International Organization	Ms. Maria Ining Nurani	Program Manager USAID, Jakarta	06/02/2007
15	National Commission	Ms. Lisa Noor Hamidah	Coordinator for the Protection of Vulnerable and Marginalized Group, National Commission of Women, Jakarta	06/13/2007
16	National Commission	Mr. M. Farid	Commissioner for Vulnerable Groups (2002 - 2007), National Commission of Human Rights Jakarta	06/13/2007
17	Government	Mr. Suharyono	Deputy for legal drafting Department of Law and Human Rights, Jakarta	06/04/2007
18	Government	Mr. Supalarto	Deputy of Children's Welfare Ministry of Women Empowerment, Jakarta	06/15/2007
19	Government	Ms. Sumarni Dawam Rahardjo	Expert Staff Ministry of Women Empowerment, Jl. Medan Merdeka Barat 15 Jakarta	06/12/2007
20	Government	Ms. Mudjiwati	Deputy for Children in conflict with the law Ministry of Women Empowerment, Jakarta	06/11/2007
21	Parliaments	Mr. Nurul Gufron	Expert staff (Legislation	06/4/2007

			Body), Pusat Pengkajian, Pendokumentasian, Penelitian Data dan Informasi DPR RI (Center of Study, Documentation and Reseach of DPR RI) Jakarta	
22	Parliaments	Ms. Eva K Sundari	Commission 8 member from PDI P (Parliament House) DPR RI, Jakarta	06/21/2007
23	Media	Ms. Maria Hartiningsih	Journalist, Kompas daily Jakarta	06/11/2007
24	Individual	Mr. Amir (name is changed)	Taxi Driver	06/11/2007

APPENDIX 3:
LIST OF INTEVIEW (VIA E-MAIL)

No	Group	Name	Position/Affiliation	Received Date
1	Individual	Ms. Nuning Hallet	Program Manager, 4indev, Jakarta	07/01/2007
2	NGO	Ms. Antarini Arna	Freelance Consultant/ Board Member, YPHA, Jakarta	06/26/2007
3	NGO - child rights	Mr. Adzkar Asihin	Program Manager, YPHA,	07/10/2007
4	NGO Media	Ms. Yoke Sri Astuti	Project Manager, Women's Journal Foundation, Jakarta	07/04/2007

APPENDIX 4:
LIST OF WORKSHOPS ATTENDED DURING FIELD WORK

No	Title of the Workshop	Organizer/Location	Date
1	Terre des Hommes's partners meeting	Terre des Hommes Netherlenads/ Jakarta	05/23/2007
2	Public Discussion on Human Trafficking and Forced Labor in Domestic Works	Ministry of Women Empowerment & Gema Perempuan/ Jakarta	06/26/2007
3	Inter-department meeting on the task force of anti-trafficking and the establishment of one stop service center for tackling trafficking	Ministry of Women Empowerment/ Jakarta	06/26/2007
4	National Public Discussion on Amending Criminal Code	National Commission for Human Rights & LBH Apik (Legal Aids for Women)/ Jakarta	07/04/2007

APPENDIX 5: INTERVIEW GUIDED QUESTIONS

Guided Questions (Translated from Bahasa Indonesia)

Title of the Research: MA Thesis “Discourses surrounding human trafficking in Indonesia 1997 – 2007”

Name: Wahyuningrum (Yuyun)

Mobile Number: 085 694 975 271

This research is one of the requirements in order to obtain MA degree from Mahidol University, Human Rights and Social Development Program. This study aims to examine dominant discourses during the discussion related to human trafficking from 1997 – 2007 in Indonesia. Employing qualitative methods, this study seek the explanation of three key questions:

1. On the shifting focus of the used terms “trafficking of women and children” (in National Plan of Action 2002 – 2007) to “trafficking in persons” (the Law No. 21/ 2007)
2. On dominant discourses and the process of creating them until the enactment of the Law No. 21/ 2007
3. Of which human rights that are prioritized and marginalized during the discussion and how certain rights of certain group were discussed and represented

The following questions are for guidance only. Please feel free to say what you think that has relation to the topic that perhaps missed out from this guided questions.

Questions:

1. How do you as individual and your organization come to the term “trafficking”? How the process on knowing and understanding the issue? Which occasion that you refer as trafficking?
2. Which discourses that you think the most dominant in human trafficking discussion? Do you think it was (or still) occupied by the issues of the abuse of migrant workers abroad?, domestic workers?, prostituted women? Sex workers? Or you may want to add something?
3. How do you see the relations of the Government toward the citizens or trafficked citizens? Or the trafficked non-citizens? Do you think there are distinctions on how government should treat women, men or children?
4. Which human rights that are addressed when trafficking issue was discussed (for example by NGOs, Parliament’s members, Government and media)
5. Which group that was marginalized in the trafficking discussion within the period of then years (or less)?
6. According to law, when is the protection begun? Is it when the candidate of the victim is female? Or when the candidate of victim has intention to leave village/house? Or when it is indicated that the suspected trafficked person does not speak the language? Not in her/his home town? Or when suspected trafficked persons are on the way to go abroad such as in training center?
7. In your opinion, how big is the foreign influence on the developing trafficking discourses and direct the discussion? And why? What were the agenda? Which agenda that were manage to be included and excluded? Why and what happened?

8. Do you think tier system of US government has contributed to the speed of the passing the law? Why do you think so and how?

9. In your opinion, what the weakness and strong points of using the term “trafficking of women and children” and “trafficking in persons”, and what the implication of each?

10. How do you think the law perceives the trafficked persons? How the law locate them vis avis the law? Do you think there is a distinction of how they are treated in and outside the country?

Thank you so much for your participation

Yuyun

BIOGRAPHY

NAME	Ms. Wahyuningrum
DATE OF BIRTH	January 7, 1973
PLACE OF BIRTH	Jakarta, Indonesia
INSTITUTIONS ATTENDED	University of Indonesia, 1991-1995 (Diploma in Library and Information Science) Mahidol University, 2006-2007 (Masters of Arts in Human Rights)
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