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EXAMINING THE “COPY & PASTE” REGULATION OF BATAM CITY TO COMBAT HUMAN TRAFFICKING IN THE TRANSIT AREA

DR. RINA SHAHRULLAH¹ DR. ELZA SYARIEF AND MS. YAYAK DAHLIA

ABSTRACT

Batam City of Riau Island Province is a destination and transit area for the embarkation and debarkation of human trafficking victims in Indonesia. In 2013, the Batam City Government issued Municipal Regulation No.5 on the Prevention and Handling of Human Trafficking Victims (henceforth ‘Batam Human Trafficking Regulation’). This regulation has caused controversy among stakeholders in regards to its effectiveness in combating human trafficking. This paper evaluates the effectiveness of the Batam Human Trafficking Regulation by utilising the approaches of Soerjono Soekanto’s ‘Effectiveness of Law Theory’. The research adopts a socio-legal research method by using in-depth interviews as a means of data collection. It finds that the Batam Human Trafficking Regulation is merely a piece of ‘copy and paste’ legislation, borrowing from the West Java Province Regional Regulation on Human Trafficking. It is suggested that the Batam Human Trafficking Regulation should be revised and preceded by in-depth research and a survey of public opinion to involve all relevant stakeholders in Batam City.

Key Words: human trafficking, Batam Regulation, transit area

INTRODUCTION

Batam City is located in the Riau Islands Province of Indonesia with a population of 1,200,000 in 2014. Geographically, Batam City is adjacent to Singapore and Malaysia, as shown in Figure 1.

Figure 1: Map showing the location of Batam City



Source: Google Maps

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Batam City has become a destination and transit area for the embarkation and debarkation of Indonesian migrant workers to and from Malaysia and Singapore (Nababan, 2007; Pramodharwardani, 2007; Saad, 2005). A number of Indonesian migrant workers deported via Batam City are human trafficking victims (Shahrullah, 2010). *Yayasan Embun Pelangi*, a local NGO in Batam City, reports that the number of human trafficking victims in the city has been fluctuating, as shown in Table 1.

Table 1: Human trafficking victims in Batam City

Year	Number of victims
2005	41
2006	143
2007	61
2008	44
2009	11
2010	11
2011	24
2012	111
2013	69
2014	86
2015	57

Source: *Yayasan Embun Pelangi*

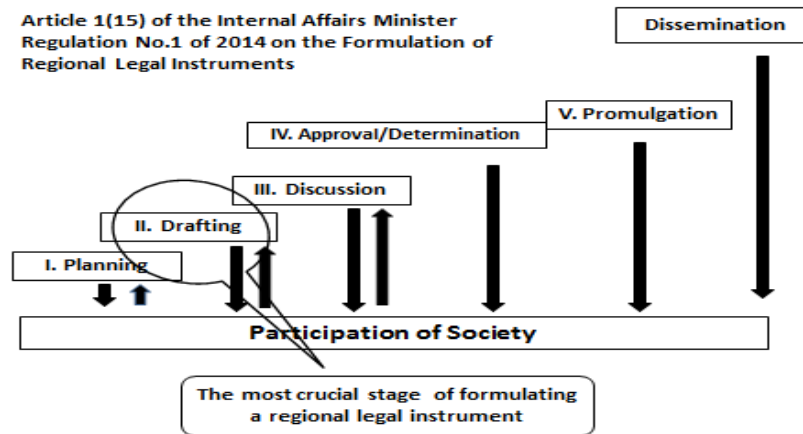
The actual number of human trafficking victims in Batam City remains unknown, because many victims are ashamed to report to the relevant authorities. Many are reluctant to take legal action against their traffickers because of the lengthy legal process that is likely to ensue (Shahrullah, 2010).

To provide protection to human trafficking victims, in 2013 the Batam City Government implemented the Municipal Regulation of Batam City No.5 on the Prevention and Handling of Human Trafficking Victims (henceforth the ‘Batam Human Trafficking Regulation’). The issuance of this Regulation was mandated by a law at the provincial level, the Regional Regulation of Riau Islands Province No.12 of 2007 on the Abolition of Trafficking in Women and Children. At the national level, the mandate is derived from Law No.21 of 2007 on the Elimination of Human Trafficking Crimes. Although the Batam Human Trafficking Regulation was enacted to counter the problems of human trafficking, stakeholders in Batam City claim that it cannot be effectively implemented because the substance of the Regulation does not reflect the conditions of Batam City as a destination and transit area. The question then is: why has the Batam City House of Representatives enacted such an unsuitable regulation? This study poses two main questions: a) Why is the Batam Human Trafficking Regulation ineffective? b) What is the solution for its effective implementation?

LEGISLATIVE AND THEORETICAL FRAMEWORK

The Batam Human Trafficking Regulation is a municipal legal instrument, and the process of formulating it should refer to the Internal Affairs Minister Regulation No.1 of 2014 on the Formulation of Regional Legal Instruments (‘Regional Legal Instrument Regulation’). Article 1(15) of the Regional Legal Instrument Regulation stipulates that the formulation procedure of a regional legal instrument (Provincial, Regency or Municipal Regulation) shall consist of ‘planning, drafting, discussion, approval or determination, promulgation and dissemination’. The most crucial stage is the drafting process, described in Figure 2.

Figure 2: Formulation of a regional legal instrument



Source: Badan Pembinaan Hukum Nasional (BPHN)

The drafting process of a regional legal instrument shall be supplemented by an elucidation and/or an academic manuscript, as required by Article 18 of the Regional Legal Instrument Regulation. The academic manuscript components are comprised of ‘introduction, theoretical reviews and empirical studies, evaluation and analysis of relevant legislation, philosophical, sociological and legal analysis, scope of substances, [and] closing’ (Article 20(1)). The Regional Legal Instrument Regulation does not explain the meaning of these terms, but the Appendix of Law No.12 of 2011 on the Formulation Procedure for Legislation goes into more detail (Table 2).

Table 2: Brief description of an academic manuscript

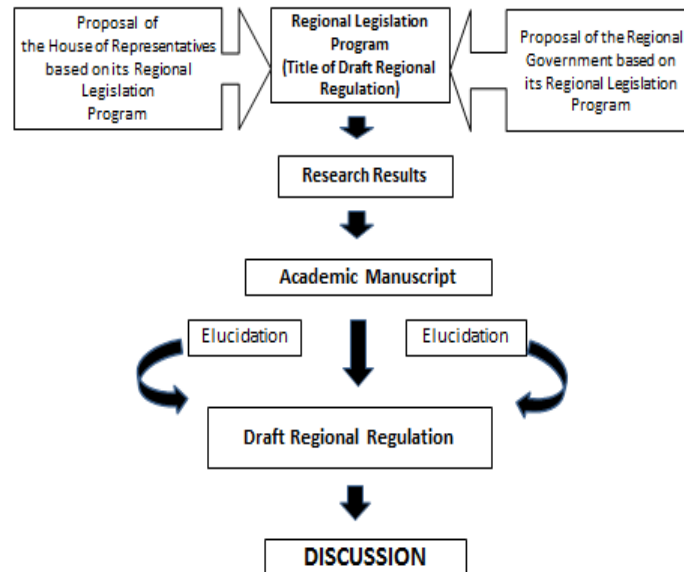
Introduction	Theoretical reviews and empirical studies	Evaluation and analysis of relevant legislation	Philosophical, sociological and legal analysis	Scope of substance	Closing
Contains background, targets, problem identification, objectives and research methods.	Contains reviews of theoretical principles, and studies of social, political, economic, and state financial implications.	Contains studies of relevant legislation. Vertical and horizontal harmonisation of legislation.	Philosophical analysis relates the Indonesian philosophy (<i>Pancasila</i>) and Preamble of the 1945 Indonesian Constitution. Sociological analysis relates to community needs. Legal analysis relates to the legal issues involved in	Contains general, substantive, sanction and transitional provisions.	Contains conclusion and suggestions.

			forming a new regulation.		
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Source: Appendix of Law No.12 of 2011 on the Formulation Procedure for Legislation

The process of drafting a regional regulation may be initiated by the House of Representatives (the legislative body) or the Regional Government (the executive body). Figure 3 is a flowchart showing the process of planning and drafting a proposed regional regulation, initiated either by the legislative or the executive body.

Figure 3: Process of drafting a proposed regional regulation



Source: Badan Pembinaan Hukum Nasional (BPHN)

Soekanto (2008) argues that the fulfilment of law-making procedures is not the sole factor ensuring the effective implementation of law. He establishes five factors in his Effectiveness of Law Theory, which has been adopted by this research to examine whether the Batam Human Trafficking Regulation is being implemented effectively. According to this theory, the five factors in the effective implementation of law are:

1. The legal substance must contain justice, certainty and utility;
2. Law enforcers must be professional and ethical;
3. Legal facilities and means must be supported by good organisation, equipment and adequate finance;
4. Society must act to achieve harmony among its members; and
5. The legal culture must contain the common values of society (e.g. the values of morality, sustainability, security and order).

RESEARCH AIMS AND METHODS

Stakeholders in charge of eliminating human trafficking in Batam City argue that the Batam Human Trafficking Regulation does not reflect the conditions or situation in Batam City as a destination and transit area for human trafficking victims. As a result, this study particularly aims to discover the causes of the Regulation's ineffectiveness, examine the Regulation's ineffective provisions, and provide a solution for the effective implementation of the Regulation.

To meet these aims, this study adopts a socio-legal empirical research method that considers law as a social phenomenon with a structural approach (Saptoomo, 2009). According

to Soekanto (1984), socio-legal research covers research on the identification of unwritten law and the implementation of law, i.e. the effectiveness and impact of law. This study specifically focuses on the effectiveness of law. The substance of the Batam Human Trafficking Regulation is evaluated to determine whether it has met legal, sociological and philosophical requirements. This study used primary data collected through in-depth interviews (Amiruddin, 2004; Wignjosoebroto, 2002). The key stakeholders interviewed for this study are shown in Table 3.

Table 3: Key stakeholders dealing with human trafficking problems in Batam City

Institution	Role
Head of Commission IV of the Batam City House of Representatives 2009–2014	Initiator of the Batam Human Trafficking Regulation
Head of the Women’s Empowerment, Child Protection and Family Planning Agency of Batam City	Leading the elimination of the sector responsible for the elimination of human trafficking in Batam City
Head of the Legal Department of Batam City Regional Secretariat	In charge of the Regional Legislation Program of Batam City
Members of the Anti-Human Trafficking Task Force	Task Force to combat human trafficking in Batam City
Director of Women and Children’s Protection of <i>Yayasan Embun Pelangi</i>	NGO and activist against human trafficking in Batam City

Source: Data compiled by the authors

In addition to primary data, this study also used the following secondary data:

1. Primary legal materials (authorised materials) consisting of legislation, official records or minutes in the making of legislation (Marzuki, 2005). The primary legal materials used by this study were:
 - a. Law No.21 of 2007 on the Elimination of Human Trafficking Crimes;
 - b. Law No.12 of 2011 on the Formulation Procedure for Legislation;
 - c. Internal Affairs Minister Regulation No.1 of 2014 on the Formulation of Regional Legal Instruments;
 - d. Regional Regulation of Riau Islands Province No.12 of 2007 on the Abolition of Trafficking in Women and Children;
 - e. Regional Regulation of Batam City No.5 of 2013 on the Prevention and Handling of Human Trafficking Victims; and
 - f. Academic manuscript of Regional Regulation of Batam City No.5 of 2013 on the Prevention and Handling of Human Trafficking Victims.
2. Secondary legal materials collected from articles, books and other relevant materials on human trafficking (Marzuki, 2005).

All data was analysed based on its content (content analysis) using a qualitative approach. Qualitative research is a type of scientific research that seeks to shed light on a phenomenon by answering the questions ‘what’, ‘how’ or ‘why’ (Coutin, accessed November, 2015). The qualitative approach was suitable for this study because of its aim to provide solutions pertaining to the ineffectiveness of the Batam Human Trafficking Regulation.

RESEARCH FINDINGS AND DISCUSSION

Causes of the ineffectiveness of the Batam Human Trafficking Regulation

Article 236 of Law No.23 of 2014 on Regional Government (‘Regional Government Law’), which revised the previous Law No.32 of 2004, stipulates that a regional regulation may be enacted to maintain regional autonomy. Article 240 of the Regional Government Law further

states that a ‘Draft Regency/Municipal Regulation (*Rancangan Perda*) can be initiated by the Regency/Municipal House of Representatives or Head of Regency/Municipality’. This provision gives the authority to the Batam City House of Representatives to initiate the issuance of the Batam Human Trafficking Regulation.

The process of formulating the Batam Human Trafficking Regulation referred to the statutory formulation requirements established by Article 1(15) of the Regional Legal Instrument Regulation. The issuance of the Regulation has complied with the requirements for planning, drafting, discussion, approval or determination, promulgation and dissemination. The fulfilment of the formal process of making the Regulation was also emphasised by the Head of Batam City (House of Representatives) and the Head of the Legal Department of Batam City Regional Secretariat in the interviews undertaken for this study. No flaws were found in the process of making the Regulation, as presented below.

1. *Planning stage*: The Head of Commission IV of Batam City House of Representatives 2009–2014 initiated the Regulation, which was endorsed by seven factions of Commission IV and was subsequently included in the Regional Legislation Program;
2. *Drafting stage*: The Batam City House of Representatives requested that a higher education institution (academicians) draft an academic manuscript, including a draft for the Municipal Regulation (Draft Regulation);
3. *Discussion stage*: The academic manuscript and the Draft Regulation (*Rancangan Perda*) were discussed in plenary meetings among legislative members, and the executive body was subsequently asked to provide input regarding the Draft Regulation;
4. *Approval or determination stage*: The Draft Regulation was approved jointly by the Batam City House of Representatives and the Batam City Mayor. It was subsequently submitted by the Head of the Batam City House of Representatives to the Batam City Mayor, to be determined as the Municipal Regulation of Batam City No.5 of 2013 on the Prevention and Handling of Human Trafficking Victims;
5. *Promulgation stage*: The Regulation was promulgated in the *Batam City Gazette* Year 2013 Number 5; and
6. *Dissemination stage*: The Draft Regulation was disseminated from the planning stage until the promulgation stage to the Batam City public and relevant stakeholders to provide information and/or obtain their input (public opinion).

Although the issuance of the Regulation fulfilled the formalities of statutory procedures formulation, it should be noted that doing so does not guarantee effectiveness. The crucial factor in determining the effectiveness of the Regulation is its substance. The Effectiveness of Law Theory prioritises this factor over all others in influencing the effectiveness of a law. This Theory submits that the legal substance must contain ‘justice, certainty and utility’. From interviews with the Head of the Women’s Empowerment, Child Protection and Family Planning Agency of Batam City, members of the Anti-Human Trafficking Task Force and the Director of Women and Children’s Protection for *Yayasan Embun Pelangi*, it was found that the substance of the Regulation does not reflect the conditions or the situation in Batam city.

Accordingly, it is imperative to examine the Regulation’s academic manuscript, because it was used as a reference in drafting the Regulation. This examination reveals that the manuscript contains many flaws, for example:

1. *Introduction*:
 - a. The background does not specifically elaborate the trafficking situation or the conditions in Batam city. It lacks statistical information and authoritative references. Instead, the background merely details the conditions and situation of human trafficking at the national level;

- b. Targets and problem identification are not clear, nor are they supported by adequate data and references;
 - c. The objectives do not focus on the human trafficking conditions and situation in Batam City;
 - d. The research method states that it combines library and field research, but it is not clear ‘who the respondents were, how the data was collected, [or] what instruments were used for data collection’; and
 - e. More importantly, the academic manuscript drafted in September 2012 does not use the Appendix of Law No.12 of 2011 in the Formulation Procedure for Legislation as a reference. As a result, the structure of the academic manuscript is outdated.
2. *Theoretical reviews and empirical studies:*
 - a. The academic manuscript contains no theoretical review, and there is a lack of analysis of the conceptual reviews; and
 - b. There are no empirical studies on the human trafficking conditions and situation in Batam City.
 3. *Evaluation and analysis of relevant legislation:*
 - a. The academic manuscript simply lists 32 pieces of legislation relevant to human trafficking, without analysing or examining them; and
 - b. The Regional Regulation of Riau Islands Province No.12 of 2007 on the Abolition of the Trafficking of Women and Children is not listed in the academic manuscript. In fact, it mandates that the regencies and municipalities of Riau Islands Province issue a Human Trafficking Regulation.
 4. *Philosophical, sociological and legal analysis:*
 - a. Philosophical analyses are not included;
 - b. The sociological analyses do not focus on, or provide data on, human trafficking in Batam City; and
 - c. Legal analyses are not provided.
 5. *Scope of substance:*
 - a. The methods of submitting propositions are unstructured;
 - b. No results of empirical studies are provided; and
 - c. It is difficult to see how the academic manuscript is connected with the Draft Regulation.
 6. *Closing:*
 - a. Conclusions are not clearly stated;
 - b. There is no connection between the conclusions and the suggestions;
 - c. There is a lack of authoritative sources in the references; and
 - d. The structure of the references is incorrect, because the regional regulation is listed before the laws at national level.

The academic manuscript of the Regulation had to be very specific because, unlike other regions in Indonesia, Batam City is both a destination and a transit area for human trafficking victims. It is unfortunate that the manuscript fails to discuss this very significant matter. It is obvious that it is inadequate as primary material for drafting the Regulation. It was further found that 98% of the 24 articles of the Regulation are identical to those of the Regional Regulation of West Java Province No.3 of 2008 on the Prevention and Handling of Human Trafficking Victims. Table 4 lists the provisions which were ‘copied and pasted’ from the Regional Regulation of West Java Province.

Table 4: Identical provisions in the Batam Human Trafficking Regulation and the Regional Regulation of West Java Province

Municipal Regulation of Batam City No.5 of 2013 on the Prevention and Handling of Human Trafficking Victims	Regional Regulation of West Java Province No.3 of 2008 on the Prevention and Handling of Human Trafficking Victims
Articles 1(1), (2), (3), (4) Article 1(16) Article 1(17) Article 1(18) Article 1(19) Article 1(20)	Articles 1(1), (2), (3), (5) Article 1(14) Article 1(15) Article 1(16) Article 1(18) Article 1(19)
Articles 2(a), (b), (c), (d), (e)	Articles 2(a), (b), (c), (d), (e)
Articles 3(a), (b), (c)	Articles 3(a), (b), (c)
Articles 4(1)(a), (b), (c), (d) Article 4(4)	Articles 4(1)(a), (b), (c), (d) Article 4(4)
Articles 5(1)(a), (b), (c), (d), (e), (f), (g) Articles 5(2)(a), (b)	Articles 5(1)(a), (b), (c), (d), (e), (f), (g) Articles 5(2)(a), (b)
Article 6(1) Articles 6(2)(a), (b), (c), (d) Article 6(3) Article 6(4)	Article 6(2) Articles 6(3)(a), (b), (c), (d) Article 6(4) Article 6(5)
Article 7(1) Articles 7(2)(a), (b), (c), (d), (e), (f), (g)	Article 7(1) Articles 7(2)(a), (b), (c), (d), (e), (f), (g)
Articles 11(2)(a), (b), (c), (d), (e), (f), (g)	Articles 12(2)(a), (b), (c), (d), (e), (f), (g)
Articles 12(1)(a), (b), (c), (d), (e), (f)	Articles 13(1)(a), (b), (c), (d), (e), (f)
Article 13(1) Articles 13(2)(a), (b), (c) Articles 13(3)(a), (b), (c)	Article 15(1) Articles 15(2)(a), (b), (c) Articles 15(3)(a), (b), (c)
Article 14(1) Articles 14(2)(a), (b), (c) Article 14(3)	Article 16(1) Articles 16(2)(a), (b), (c) Article 16(3)
Articles 15(2), (3)	Articles 17(2), (3)
Articles 16(1), (2), (3), (4)	Articles 18(1), (2), (3), (4)
Article 17	Article 19
Article 18	Article 20
Articles 19(1), (2), (3)	Articles 21(1), (2), (3)
Article 20	Article 22
Article 23	Article 24

Source: Data compiled by the authors

It should be noted that the issuance of the Batam Human Trafficking Regulation is mandated by a higher law, Law No.21 of 2007 on the Elimination of Human Trafficking Crimes (Human Trafficking Law). This law also mandates that West Java Province issues a regional regulation on human trafficking. Some general provisions from the human trafficking law must therefore be adopted by these regional regulations. However, there is specific content that is deemed appropriate for each area. The specific content for the Human Trafficking Regulation for Batam City has to be very different from that of the West Java Provincial Regulation. This is because Batam City is not only a destination but also a transit area, whereas West Java Province is a sending area for human trafficking victims. The failure of the academic manuscript to detail

the conditions and situation in Batam City as a transit area generates a faulty approach to the Draft Regulation. This was made worse because members of the Batam City House of Representatives visited West Java Province for their comparative study and benchmarked that province's Regulation. It is true that West Java Province's measures are considered best practice in preventing and handling human trafficking victims. However, as has been made clear above, the conditions and situation in Batam City and in West Java Province are completely different.

The inconsistency between the academic manuscript and the Draft Regulation becomes more obvious because the Draft Regulation clearly states in the Consideration Section that Batam City is a destination and transit area; yet this matter is not discussed in the academic manuscript. The 'copy and paste' human trafficking regulation paralyses the efforts of Batam City stakeholders to combat human trafficking because many provisions of the Regulation cannot be put into practice. The most criticised provisions are as follows:

1. Provisions which require recommendation letters to work outside of Batam City are contradicted by Consideration Point C of the Regulation, which states that Batam City is a transit and destination area for human trafficking. Logically, recommendation letters are not necessary, because only sending areas require their citizens to get recommendation letters to work outside their areas;
2. Provisions relating to the support for families of human trafficking victims are inapplicable, because human trafficking victims will be returned to their hometowns, and their families do not live in Batam City;
3. Provisions on data collection and the monitoring of citizens who are willing to work outside Batam City contradict Consideration Point C of the Regulation, which emphasises that Batam City is merely a transit and destination area; and
4. Provisions pertaining to social integration for human trafficking victims are not needed, because the victims will not live in Batam City.

The contradictory substance of the Batam Human Trafficking Regulation not only shows its ineffectiveness but may lead to misinterpretation. This can happen if, for instance, the social integration provisions are interpreted to mean that human trafficking victims can be socially integrated into Batam City. This may allow human trafficking victims to stay in Batam City instead of returning to their hometowns. Nevertheless, the rules of the Women's Empowerment, Child Protection and Family Planning Agency of Batam City determine that human trafficking victims are entitled to stay in a government shelter for a maximum of seven (7) days. They may stay longer if they need medical and/or psychological care. Human trafficking victims may stay much longer in NGO shelters if they wish to take legal action against their traffickers (Shahrullah, 2010).

It is clear that this 'copy and paste' regulation is not effective at all, even if such a regulation has been processed according to formal statutory procedures. The Effectiveness of Law Theory points out that the formality of enacting a regulation is not the only factor in determining its effectiveness. The legal substance plays a more significant role for the effective implementation of the regulation. It is unfortunate that this was not realised when drafting the Batam Human Trafficking Regulation. The flaws in the Regulation's substance only became apparent when it was about to be implemented. This circumstance occurred because some key stakeholders, such as the Head of Women's Empowerment, Child Protection and Family Planning Agency of Batam City, were not involved or consulted during the drafting of the academic manuscript. The Director of Women and Children's Protection of *Yayasan Embun Pelangi* revealed that 'he was not invited to get involved during the dissemination stage of the Draft Regulation Bill, even though he was willing to do so'.

Solutions for the effective implementation of the Batam Human Trafficking Regulation

This study has found that the problems surrounding the ineffective implementation of Batam Human Trafficking Regulation are primarily caused by the flaws in the academic manuscript and the Draft Regulation. It is then open to question whether the protection and handling of human trafficking victims in Batam City must cease because of the ineffectiveness of the Regulation. The Head of the Women's Empowerment, Child Protection and Family Planning Agency of Batam City said: 'The Decision of the Batam City Mayor No. Kpts. 29/HK/I/2010 on the Establishment of a Task Force for the Elimination of Human Trafficking, Child Sexual Exploitation and the Batam City Action Plans were still being used until 2015 to handle human trafficking victims, due to the ineffectiveness of the Batam Human Trafficking Regulation. A similar approach has been taken by Members of the Anti-Human Trafficking Task Force and the Director of Women and Children's Protection of *Yayasan Embun Pelangi*. They are of the opinion that, "Since the Batam Human Trafficking Regulation cannot be effectively implemented, task forces and NGOs are left to handle human trafficking victims without reference to the Regulation."'

In the absence of a suitable Regulation, relevant stakeholders continue to combat human trafficking by using other legal instruments, such as the Decision of the Batam City Mayor. This approach is not entirely correct from a legal perspective, because the Decision was only intended to apply to the period 2010–2014. It can also be argued that only some provisions of the Regulation cannot be implemented effectively. Consequently, provisions regarding budgeting, trafficking task forces and regional action plans can still be effective for Batam City, and should thus remain intact in the Regulation.

To fill the lacunas in the Batam Human Trafficking Regulation, it is proposed that stakeholders from the legislative and executive bodies should evaluate the Regulation and list all aspects relevant to the conditions and situation in Batam City as a transit and destination area. The aspects should cover the facilities for human trafficking victims, such as medical care, psychosocial treatment, safe houses and the process of returning the victims to their hometowns. The evaluation results could be used as a reference for the Batam City Mayor to issue a Batam City Mayoral Regulation on the Regional Action Plan 2015–2020. This Action Plan could be used by all stakeholders as a guideline for dealing with the human trafficking problems in Batam City.

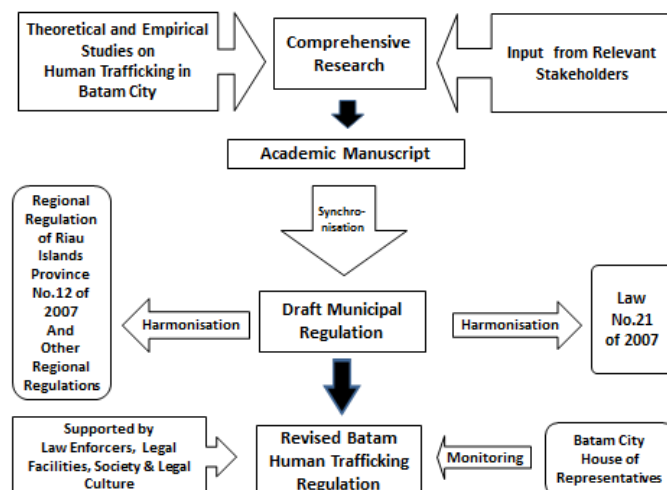
Alternatively, it is proposed that the ineffective provisions of the Batam Human Trafficking Regulation should be revised, such as those relating to the need for recommendation letters to work outside Batam City, the support for families of human trafficking victims, data collection and the monitoring of citizens willing to work outside the City, and social integration for human trafficking victims. If this proposal is to be accepted, then several improvements should be made:

1. Comprehensive research needs to be conducted to support the drafting of the academic manuscript and the Draft Regulation if the Batam Human Trafficking Regulation;
2. The academic manuscript and the Draft Regulation should be synchronised and harmonised. For this to happen, the Legal Department of the Batam City Regional Secretariat needs to establish Standard Operational Procedures (SOP);
3. The Draft Regulation needs to be harmonised with other laws and regulations relevant to human trafficking at both the national and regional level; and
4. All relevant stakeholders and the public should become involved at the dissemination stage to gain actual data and input regarding the conditions and situation of human trafficking in Batam City.

It is important to note that the fact a regulation is well-drafted cannot guarantee its effective implementation. Other factors stated by the Effectiveness of Law Theory must support it. Hence, the Revised Batam Human Trafficking Regulation should be supported by professional

law enforcers, good legal facilities, and a proactive society with a legal culture aimed at combating human trafficking. The Batam City House of Representatives should also be proactive in carrying out its monitoring function to examine the effective implementation of the revised Regulation. This proposed solution is described in brief in Figure 4.

Figure 4: The mechanisms of revising the Batam Human Trafficking Regulation



Source: Compiled by the authors

CONCLUSIONS AND IMPLICATIONS

The Batam City Government has implemented the Municipal Regulation of Batam City No.5 of 2013 on the Prevention and Handling of Human Trafficking Victims, but stakeholders claim it cannot be effective because its substance does not reflect the conditions and situation in Batam City as a destination and transit area for human trafficking victims. After examining the documents used to draft the Regulation, it is concluded that:

1. The causes of the ineffective implementation of the Regulation are derived from the failure of the academic manuscript to detail the conditions and situation in Batam City as a transit area. This flaw has led to the inclusion of inappropriate provisions in the Draft Regulation; and
2. The Draft Regulation is not consistent with the academic manuscript, because most of the provisions were copied and pasted from those of the West Java Regional Regulation on Human Trafficking.

Two solutions are proposed to fill the lacunas in the Regulation. In the short term, the Batam City Mayor should issue a regional action plan against human trafficking for 2015–2020 that can be used as a guideline by stakeholders. In the long term, the ineffective provisions of the Regulation need to be revised.

REFERENCES

- Amiruddin, A.Z. (2004) *Pengantar metode penelitian hukum*. Jakarta: PT. Raja Grafindo Persada.
- Coutin, S. B. (n.d.) Qualitative research in law and social science. [Online]. Department of Criminology, Law and Society. Available from: <https://www.scribd.com/document/153916341/Coutin-Paper> [Accessed 06 November 2016].
- Marzuki, P.M. (2005) *Penelitian hukum*. Jakarta: Kencana.
- Nababan, B. (2007) *Permasalahan buruh migran selama tahun*. Jakarta: Migrant Care.

- Pramodharwardani, J. (2007) *Perlindungan hukum terhadap pengiriman buruh migran perempuan Indonesia ke Malaysia*. Jakarta: LIPI Press.
- Saad, M.H. (2005) *Panduan buruh migran (tenaga kerja Indonesia/TKI) di Taiwan*. Jakarta: Komnas HAM.
- Saptomo, A. (2009) *Pokok-pokok metode penelitian hukum empiris murni sebuah alternative*. Jakarta: Universities Trisakti Press.
- Shahrullah, R.S. (2010) Seeking justice for trafficking victims in the transit area: far and away (A socio-legal research in Batam City, Indonesia). *Sophia Law Review*, 54(1), 85–102.
- Soekanto, S. (1984) *Pengantar penelitian hukum*. Jakarta: UI Press.
- Soekanto, S. (2008) *Faktor-faktor yang mempengaruhi penegakan hukum*. Jakarta: PT. Raja Grafindo Persada.
- Wignjosoebroto. (2002) *Pengantar metode penelitian hukum*. Jakarta: PT Raja Grafindo Persada
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