



INDONESIAN TRAFFICKING IN PERSONS CASES

AN ANALYSIS OF 2019-2021 COURT DECISIONS

March 2023

Australian
Aid 

**ASEAN-Australia
Counter Trafficking**



ACKNOWLEDGEMENTS

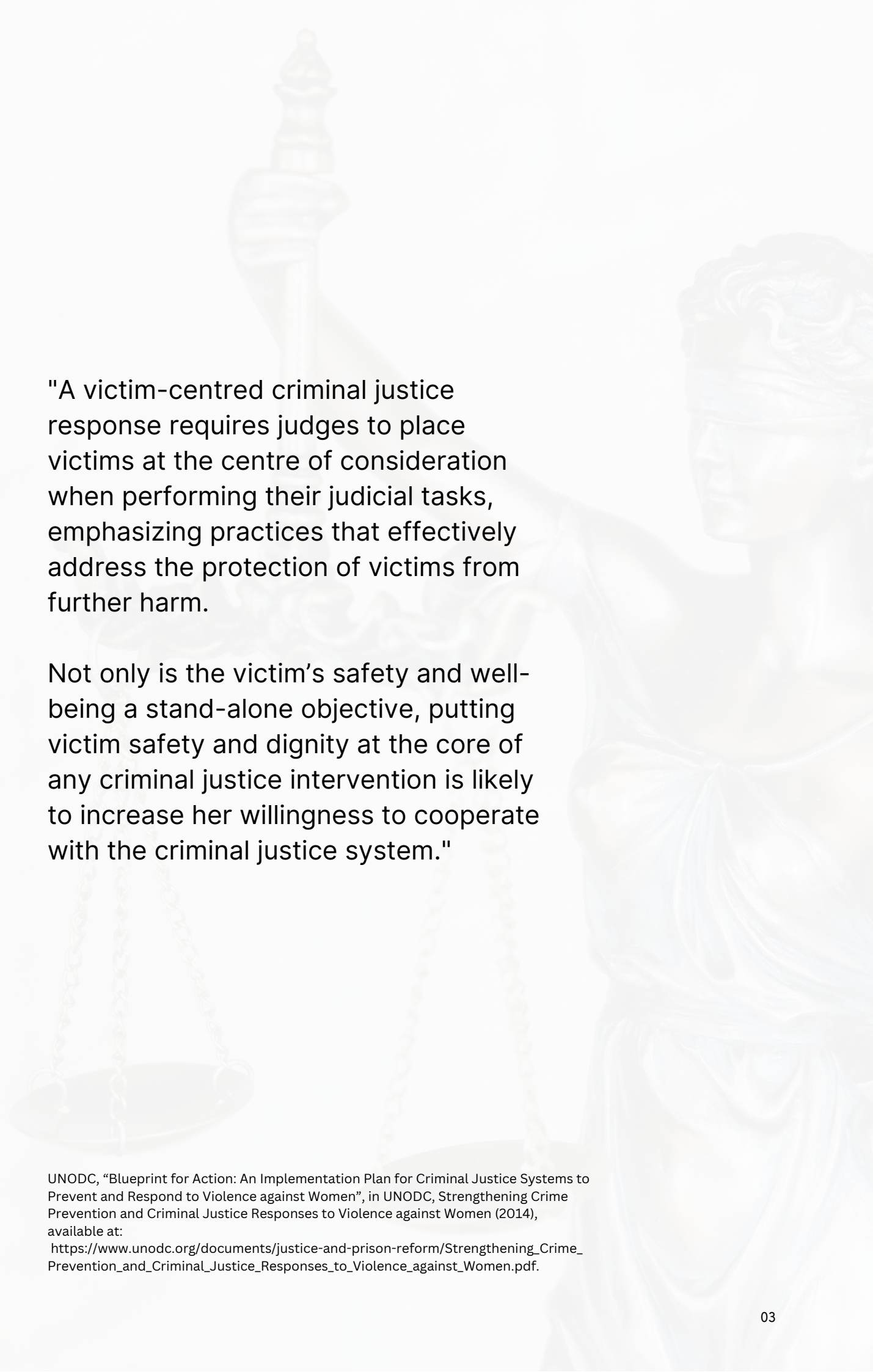
This knowledge product was written by Leisha Lister and Cate Sumner, Senior Advisors ASEAN-ACT with assistance from Theodora Putri.

ASEAN-ACT and the Authors of this knowledge product wish to thank the Supreme Court of Indonesia, in particular to the Chair and Members of the Women & Children Working Group, Theodora Putri, the Indonesia Judicial Research Society (IJRS), and the Australia-Indonesia Partnership for Justice II (AIPJ2), especially Herni Sri Nurbayanti for their assistance with this decision analysis.

ASEAN-ACT is supported by the Australian Government and implemented by DT Global. This publication has been funded by the Australian Government through the Department of Foreign Affairs and Trade. The views expressed in this publication are the author's alone and are not necessarily the views of the Australian Government.

Indonesian Trafficking In Persons Cases

2019-2021: An Analysis of Decisions



"A victim-centred criminal justice response requires judges to place victims at the centre of consideration when performing their judicial tasks, emphasizing practices that effectively address the protection of victims from further harm.

Not only is the victim's safety and well-being a stand-alone objective, putting victim safety and dignity at the core of any criminal justice intervention is likely to increase her willingness to cooperate with the criminal justice system."

UNODC, "Blueprint for Action: An Implementation Plan for Criminal Justice Systems to Prevent and Respond to Violence against Women", in UNODC, Strengthening Crime Prevention and Criminal Justice Responses to Violence against Women (2014), available at:
https://www.unodc.org/documents/justice-and-prison-reform/Strengthening_Crime_Prevention_and_Criminal_Justice_Responses_to_Violence_against_Women.pdf.



TABLE OF CONTENTS

02 Acknowledgements

05 Overview of Recommendations

06 Introduction

07 Methodology and Distribution of Cases

08 Profile of a defendant
Profile of a victim

09 Key Findings

OVERVIEW OF RECOMMENDATIONS

2019-2021: an Analysis of Decisions

**Key Finding 1 -
TIP Case
Classification**



**Key Finding 2 -
Average
Duration of a
TIP Case**



**Key Finding 3 -
Sentencing
Outcomes in TIP
Cases**



**Key Finding 4 -
Confiscation of
Assets**



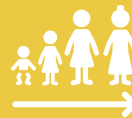
**Key Finding 5 -
Application for
Restitution for
TIP Victims**



**Key Finding 6 -
Court Orders
for Restitution**



**Key Finding 7 -
Age of the
Victim**



**Key Finding 8 -
Child Victims**



**Key Finding 9 -
Victim Sensitive
Approach to Child
Victims**



**Key Finding 10 -
Disability**



**Key Finding 11 -
Victim Sensitive
Approaches in
Courts**



**Key Finding 12 -
Legal
Representation**



**Key Finding 13 -
Procedural
Aspects of the TIP
Case (E-Court)**



**Key Finding 14 -
Anonymised
Decisions Online**



**Key Finding 15 -
Elements of
Trafficking in
Decisions**



INTRODUCTION

The ASEAN-Australia Counter Trafficking is a 10-year partnership funded by the Australian Government (2019-2028) that supports ASEAN Member States to implement and report on their obligations under the ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP).

Implementation of the ACTIP relies on the collection, analysis and sharing of national trafficking in persons data. Publishing this data is valuable as it allows government and civil society to consider how their efforts may be contributing to outcomes.

Without data it is difficult to tell whether government funds allocated to the investigation and prosecution of traffickers are having an impact, or whether the patterns of human trafficking cases are changing across the country/region, and what counter-trafficking efforts might be needed to respond to these emerging types of patterns.

During 2020-2021, ASEAN-ACT has developed with partner countries a set of 8 Victim Sensitive Court Indicators and TIP Data Indicators as a tool to enable collection and publication of information that could support trafficked victims in making an informed decision about participating in legal proceedings.

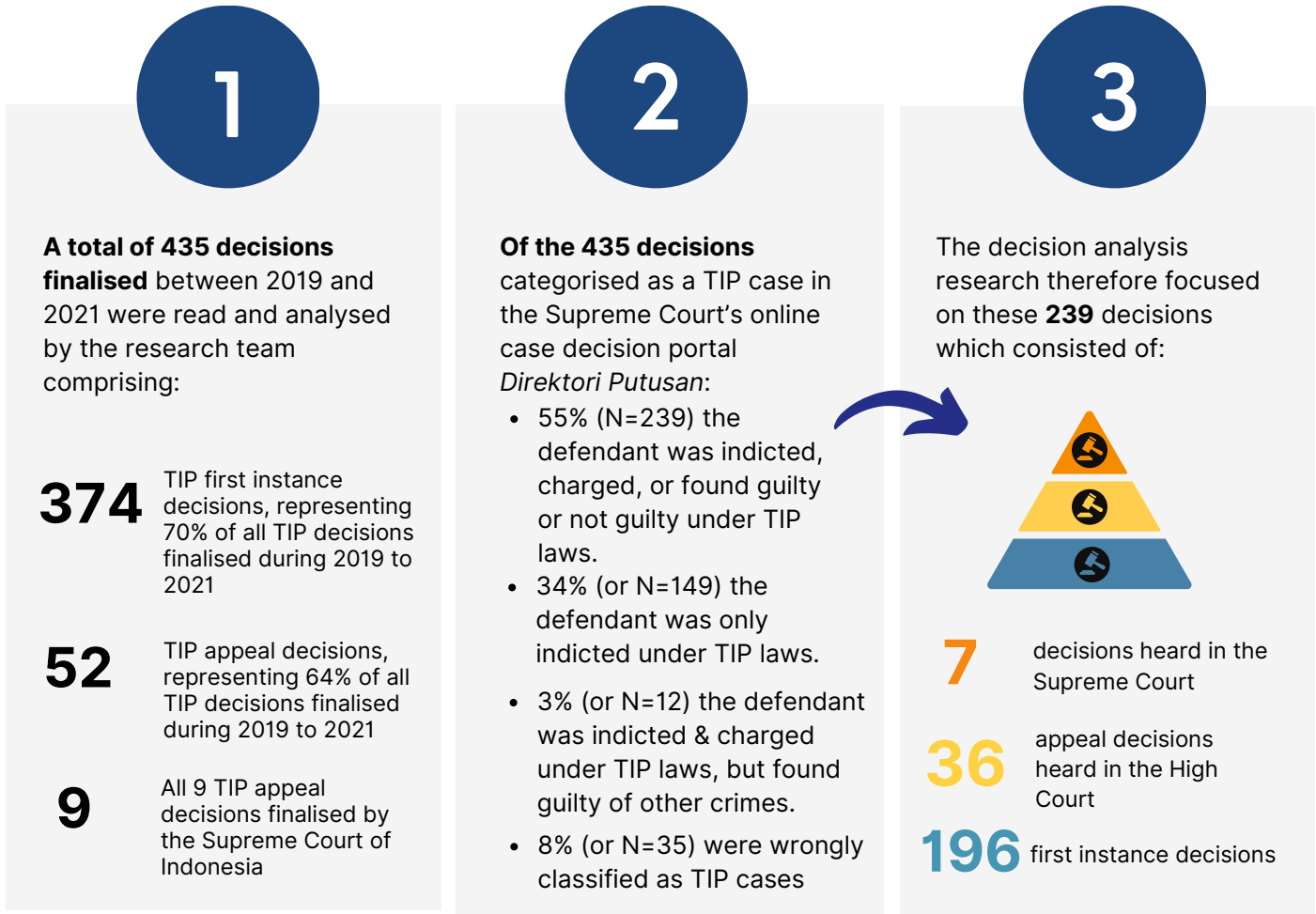
To support this work, ASEAN-ACT and CSO partners assisted the Supreme Court of Indonesia to review 2019, 2020 and 2021 TIP decisions to formulate a set of Key Findings that would assist the court to:

- 1.** Inform the development and refinement of policies and procedures that contribute to better court experiences and outcomes for TIP victims
- 2.** Provide a source of information to identify any training needs of judges and to evaluate the impact of training overtime. The analysis can also provide training materials to highlight good practice.
- 3.** Establish an evidence base and narrative to:
 - assist national courts and TIP coordinating agencies with reporting on TIP cases
 - compare with subsequent decision analyses to be undertaken 2025 and 2028 to show whether the court experience and outcomes for TIP victims have improved or not over the ten years of the ASEAN-ACT partnership.

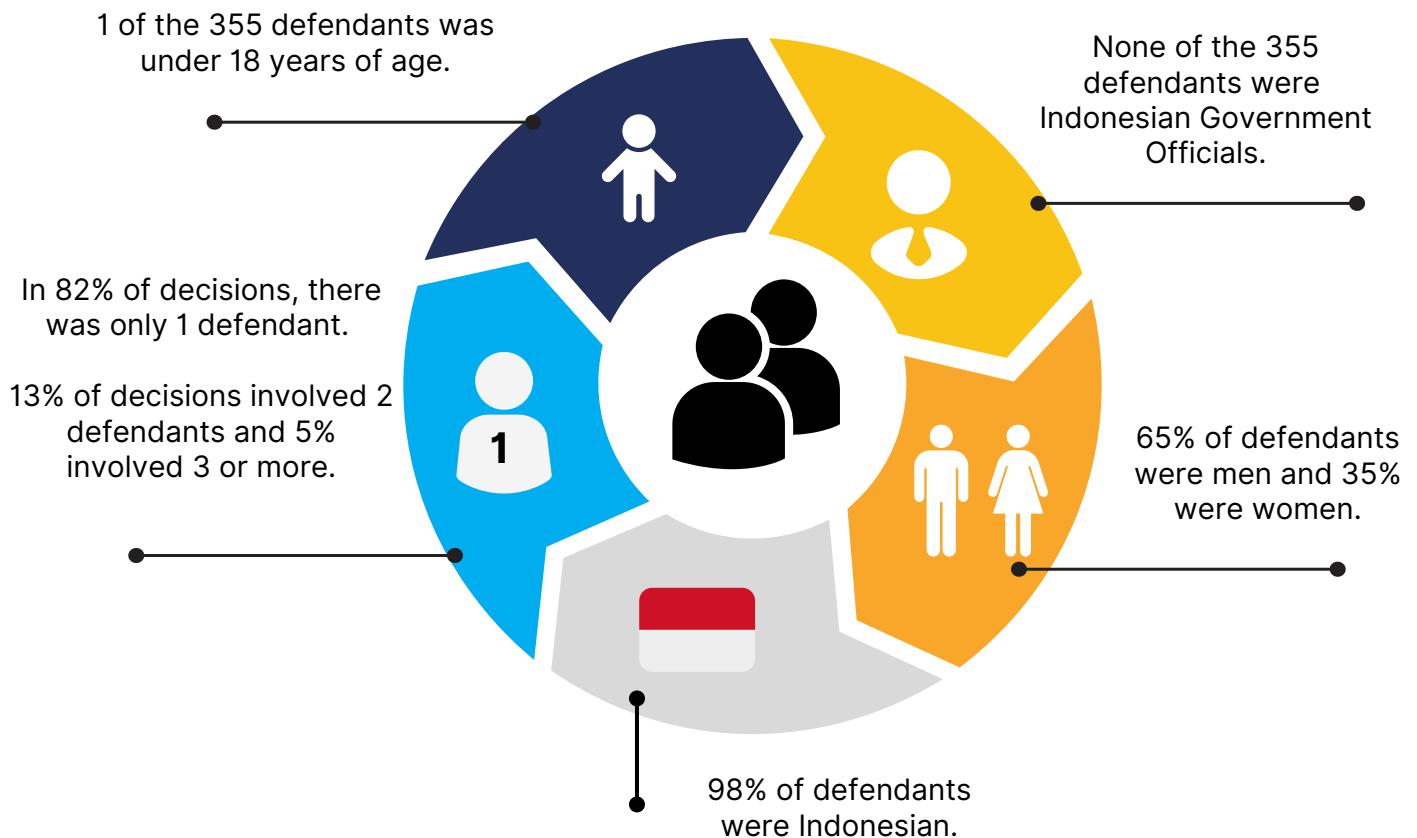
The analysis provides an overview for the Court of the way TIP cases are prosecuted, the evidence relied upon in the trial, the outcomes in the case and the judicial reasons for the decision. This document is a summary of the analysis and the key findings from the research.

The decision analysis is possible due to the commitment of the Supreme Court over the last decade to publish millions of its decisions on Direktori Putusan.

METHODOLOGY



PROFILE OF THE 355 DEFENDANTS IN THE DECISIONS



PROFILE OF THE VICTIMS

Of the 239 decisions:

- **the overwhelming majority were female victims (80%)**
- and where the decision referred to the age of the victim, **50% were children under the age of 18.**

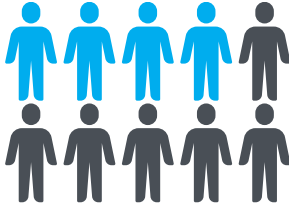


KEY FINDINGS



Key Finding 1

Cases classified as TIP without trafficking charges



- 35 (8%) decisions were wrongly classified as Trafficking in Persons (TIP) cases in the *Direktori Putusan*. In these cases there was no indictment, charges or findings of guilt related to TIP law.
 - In 149 (34%) decisions categorized as Trafficking in Persons (TIP) cases in the *Direktori Putusan* were indicted related to TIP law, but there were no charges or findings of guilt related to TIP law.
 - In 12 (3%) decisions categorized as Trafficking in Persons (TIP) cases in the *Direktori Putusan* there were no findings of guilt related to TIP law.
- These cases all had offences or charges under the law of migrant worker, the criminal code or child protection law.

Why this matters?

It is important that the Supreme Court of Indonesia's case management system (SIPP) and the presentation of TIP case data in the Supreme Court Annual Report presents an accurate picture of the number of trafficking cases filed and finalised in the Indonesian courts. *Direktori Putusan* is the primary reference point for national and international organisations to obtain information about cases heard and finalised in the Indonesian courts.



Key Finding 2

Average Duration of a TIP Case was 75 Days



**75
DAYS**

The Average Duration of a TIP case was 75 days which is measured from the date the Panel of Judges is appointed to the date the decision is read.

Why this matters?

Measuring the time it takes to hear and determine a TIP case is essential for both victims and the court. Victims cannot move on with their lives until the case has been dealt with by the courts and it is important for victims to know the estimated time it will take so they can make an informed decision about participating in the criminal trial.

Courts also need to understand the average time a trafficking case takes so they can adequately manage resources and ensure cases are dealt with in a timely manner.



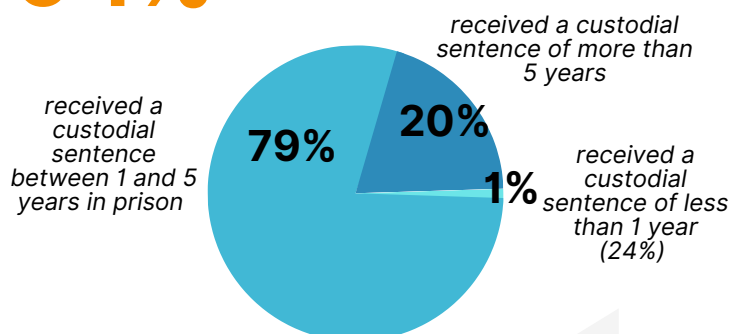
Key Finding 3

Majority of Offenders Found Guilty

In 94% of first instance decisions [N=196] the judges found one or more of the defendants guilty.

Other judges imposed a custodial sentence on one or more defendants:

94%



Why this matters?

The likelihood of a successful prosecution in a trafficking case is an important factor that a victim may consider when making an informed decision about whether to be a witness in a TIP case.

KEY FINDINGS



Key Finding 4

Very few orders for the Confiscation of Assets

5% of decisions (N=10) refer to the confiscation of assets for proceeds of crime.



There were no orders to confiscate 'real property' or large sums of money



Most orders refer to the confiscation of small sums of money or handphones

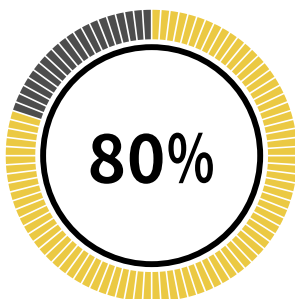
Why this matters?

Confiscation of assets is an important measure to prevent and combat organized crime, and to prevent infiltration of the legal economy. The confiscated assets can also provide a source from which damages ordered can be taken. Criminal justice agencies will be interested in this data to better understand whether the cases being brought are predominantly against defendants with limited assets or whether a reasonable proportion of cases are convicting defendants with significant assets.



Key Finding 5

No reference to an application for Restitution for TIP Victims



In 80% of decisions (N=156 of 196 1st instance decisions) there is **no reference to an application for restitution for the victim.**



Key Finding 6

Very few Court Orders for Restitution



In only 1 in 5 TIP decisions at first instance (N=38 of 196) was an order for restitution made for the victim.

KEY FINDINGS

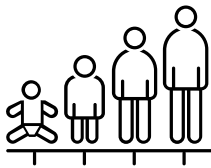
Child Victims, Disability & Victim Sensitive Approaches



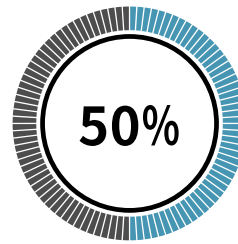
Key Finding 7 Age of the victim



In 5 out of 10 decisions, the age of the victim was not specified.



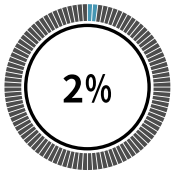
Key Finding 8 Child victims



Of the 107 decisions where the age of the victim was recorded, **50% involved at least 1 child victim.**



Key Finding 9 Victim Sensitive Approach to Child Victims



Despite the high prevalence of child victims, only 2% of decisions referred to the use of an intermediary such as a social worker, psychologist, or other child specialist.



Why this matters?

Child victims and witnesses are particularly vulnerable and need special protection, assistance and support appropriate to their age, level of maturity and unique needs to prevent further trauma. To ensure these protections are in place, knowledge about the age of the victim is critical to the case.



Key Finding 10 Disability



In none of the 196 first instance TIP decisions was there a reference to any defendant having a disability.

Two victims were identified as having a disability:

2



- one person had a physical impairment
- one person had a vision impairment.

Why this matters?

Collecting gender, age and disability disaggregated data is critical to understanding who trafficking victims are and to ensure provisions are made available to support them to actively participate in the criminal justice process.

KEY FINDINGS

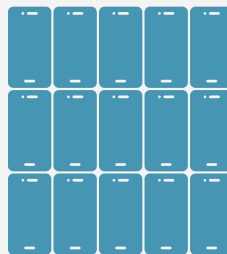


Key Finding 11 Victim Sensitive Approaches in Courts

Very few of the 196 first-instance decisions referred to whether the court used a victim-sensitive approach during the trial.



In 2 out of 10 decisions (N=43) an expert witness provided evidence in the trial.



Only 15 decisions referred to the use of victim impact statements being considered in the trial.



Only 1 decision referred to a victim giving evidence through video conference.



Less than 1% (N=3) of decisions referred to the victim having a support person with them when they gave evidence in the trial.



Less than 1% (N=4) of cases the decision refers to prosecutors relying on witness statements from the victim rather than having them attend the trial.

Why this matters?

Applying a victim sensitive approach in the criminal justice process is critical to ensuring the active participation of victims and witnesses. Victims of trafficking often feel vulnerable and overwhelmed by the unfamiliarity of the justice system and can be re-victimized through insensitive processes.

It is therefore critical that measures are put in place to prevent further trauma that may result from attending the trial and giving evidence.

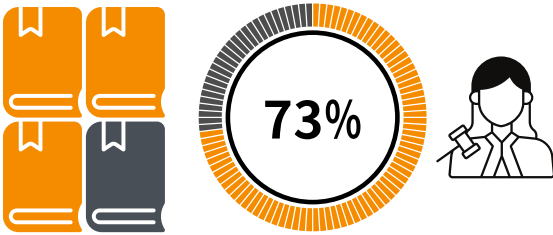
KEY FINDINGS

Court Procedures



Key Finding 12 Legal Representation

In almost 3 out of 4 decisions (73%) at least one of the defendants had legal representation.



In 27% of decisions the defendants did not have legal representation with 6% refusing legal representation.



Why this matters?

In Indonesia, defendants have a right to legal representation when they are charged with a serious crime that carries a sentence of 5 years or more.

This data is an indication of whether this procedural right is upheld in practice.



Key Finding 13 Procedural Aspects of the TIP Case (E-Court)

2% of first instance decisions analysed (N=5) referred to the trial being held partly or completely online



In one case, the decision referred to the **witness** appearing via zoom to give their testimony.



In four cases the decision noted the **prosecutor and/or defendant** attended the trial by Zoom.

Why this matters?

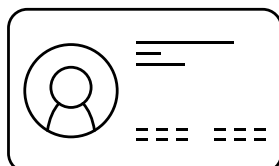
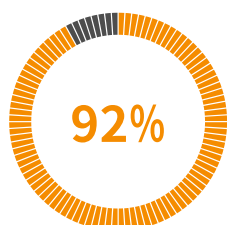
Online hearings are regarded as more accessible, more convenient, and less costly than traditional court hearings. They can also be less stressful for victims of crime. In trafficking cases, online hearings enable victims to return to their home country and to testify remotely. They may also allow for the provisions of pre-recorded video evidence to be used as the evidence in chief.

KEY FINDINGS



Key Finding 14

Anonymised Decisions Online



In more than 9 out of 10 decisions analysed (92%), identifying details about some or all victims were published including the victim's name, date of birth, address, and/or phone number.

Why this matters?

Privacy is an important consideration when a victim agrees to participate as a witness in a trafficking case. It is critical the courts ensure trafficked persons are effectively protected from further harm, threats or intimidation by traffickers and associated persons. This means that there should be no public disclosure of the identity of the trafficking victim and their privacy should be respected and protected.



Key Finding 15

Elements of Trafficking in decisions

In a significant number of decisions (90%), judges did not identify the three elements that constitute a trafficking case (Act, Means, Exploitative Practice) and include their reasons as to whether the trafficking case had been proven or not.



ACT

9 in 10 decisions did not specify the Act of trafficking the defendant was accused of.



MEANS

9 in 10 decisions did not specify the Means.



PURPOSE

9 in 10 decisions did not specify the Exploitative Practice that was used to traffic the victim.

Why this matters?

Identifying the act, means and the exploitative practice in a decision enables the GOI and its Ministries to develop appropriate points of intervention to ensure citizens, migrants workers and potential migrants workers are warned about and protected from possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required. It also enables justice actors to understand how courts apply the evidence in the case to substantiate the trafficking charge and justify the outcomes.

