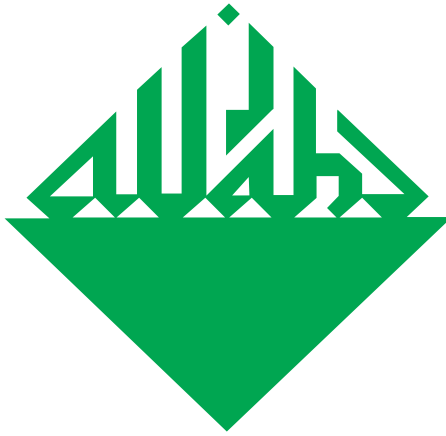


STUDIA ISLAMIKA

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A CRITICAL VOICE ON THE HAJJ BY A SUMATRAN PILGRIM FROM THE EARLY TWENTIETH CENTURY

Suryadi, Mochtar Lutfi, Moch. Ali, Listiyono Santoso & Rima Firdaus

FORCED MARRIAGE AND SEX TRAFFICKING UNDER THE GUISE OF NIKAH SIRI IN INDONESIA

Zezen Zaenal Mutaqin & Yayan Sopyan

REVISITING WOMEN'S PIETY MOVEMENTS IN THE INDONESIAN CONTEXT

Wasisto Raharjo Jati, Syamsurijal, Halimatusa'diah, Ihsan Yilmaz & Dini Rahmiati

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Table of Contents

Articles

- 185 *Suryadi, Mochtar Lutfi, Moch. Ali,
Listiyono Santoso & Rima Firdaus*
A Critical Voice on the Hajj by a Sumatran Pilgrim
from the Early Twentieth Century
- 221 *Zezen Zaenal Mutaqin & Yayan Sopyan*
Forced Marriage and Sex Trafficking
under the Guise of Nikah Siri in Indonesia
- 251 *Wasisto Raharjo Jati, Syamsurijal,
Halimatusa'diah, Ihsan Yilmaz & Dini Rahmiati*
Revisiting Women's Piety Movements
in the Indonesian Context
- 281 *Mehmet Özey & Nia Deliana*
Indonesian Image of the Ottoman Caliphate
and the New Republic of Türkiye 1918–1925
- 305 *Jajang Jahroni*
The Rise of Tahfiz Schools
in Contemporary Indonesia

- 337 *Syamsul Rijal & Musa Alkazim Alhabsyi*
al-Ḥarāk al-ṣūfī wa al-da'wah al-insānīyah
fī Indūnīsīyā: Ḥālāh al-Ḥabīb Abī Bakr
al-'Aṭṭās al-Zabīdī

Book Review

- 377 *Oman Fathurahman*
Manuskrip Arab sebagai Argumen Islam
Asia Tenggara

Document

- 397 *Aptiani Nur Jannah*
Expert Meeting on Green Islam:
Igniting Faith-Led Environmentalism Action
in Indonesia

Zezen Zaenal Mutaqin & Yayan Sopyan

Forced Marriage and Sex Trafficking under the Guise of *Nikah Siri* in Indonesia

Abstract: *Prostitution, forced marriage, and sex trafficking have long been practiced in the Puncak area of West Java, Indonesia. The practice is condoned not only by the surrounding community but also by state officials. This paper resulted from our field research, interviews, and observation in the Puncak area. This paper seeks to uncover the reasons why the practices of sex trafficking and forced marriage are tolerated and what has led to this approval. By dwelling on legal, historical, and anthropological studies, this paper argues that the practices are tolerated because they hide behind a thick veil of cultural-religious justification and are obscured by legal tricks/stratagems, which we call 'trafficking framing.' This framing conceals and camouflages sex trafficking and forced marriage under accepted legal-cultural practices. This paper seeks to uncover the veil of trafficking framing and reveal that the practice of secret marriage (nikah siri) in Puncak is nothing but sex trafficking.*

Keywords: Forced Marriage, Sex Trafficking, *Nikah Siri*, Unregistered Marriage, Indonesia.

Abstrak: *Prostitusi, kawin paksa, dan perdagangan seks telah lama dipraktikkan di daerah Puncak, Jawa Barat, Indonesia. Praktik ini tidak hanya dibiarkan oleh masyarakat sekitar, tetapi juga oleh para aparat negara. Tulisan ini merupakan hasil dari penelitian lapangan, wawancara, dan observasi kami di daerah Puncak. Tulisan ini berusaha mengungkap alasan mengapa praktik perdagangan seks dan kawin paksa ditoleransi dan apa yang menyebabkan hal tersebut dibiarkan. Dengan bertumpu pada kajian hukum, sejarah, dan antropologi, tulisan ini berargumen bahwa praktik-praktik tersebut ditoleransi karena bersembunyi di balik selubung tebal pembenaran budaya-agama dan dikaburkan oleh trik/siasat hukum, yang kami sebut sebagai “pemingkiaan perdagangan orang”. Tulisan ini berusaha untuk meruntuhkan tabir pemingkiaan perdagangan orang dan mengungkapkan bahwa praktik nikah siri di Puncak tidak lain dari praktik perdagangan seksual.*

Kata kunci: Kawin Paksa, Perdagangan Seks, Nikah Siri, Pernikahan Ilegal, Indonesia.

ملخص: تُمارس الدعارة والزواج القسري والاتجار بالجنس منذ فترة طويلة في منطقة بونشاك، جاوة الغربية، إندونيسيا. ولا يتم التسامح مع هذه الممارسة من قبل المجتمع المحلي فحسب، بل من قبل مسؤولي الدولة أيضًا. هذه المقالة هي نتيجة البحث الميداني والمقابلات والملاحظات في منطقة بونشاك. بالإضافة إلى ذلك، تتضمن هذه الورقة أيضًا مراجعة واسعة النطاق للأدبيات، والتي تتضمن دراسات عن اللوائح القانونية الإندونيسية والدولية، والكتابات الأكاديمية، والتقارير الإعلامية. تسعى هذه المقالة إلى الكشف عن أسباب تسمح ممارسة الاتجار بالجنس والزواج القسري، وأسباب عدم المبالاة بذلك. ومن خلال الاعتماد على الدراسات القانونية والتاريخية والأنثروبولوجية، ترى هذه الورقة أنه يتم التسامح مع هذه الممارسات لأنها تحتبى وراء حجاب سميك من المبررات الثقافية والدينية ويتم حججها بواسطة الحيل القانونية، والتي نطلق عليها «تأطير الاتجار بالبشر». يحاول هذا المقال هدم الحجاب عن تأطير الاتجار بالبشر والكشف عن أن ممارسة الزواج القسري في بونشاك ليست سوى ممارسة الاتجار بالجنسي.

الكلمات المفتاحية: الزواج القسري، الاتجار بالجنس، الزواج السري، الحيل القانونية، إندونيسيا.

The marriage of Sarah and Latif was arranged by a *biong*, a local term referring to members of the trafficker rings that connect small villages in Cianjur, West Java, to cities across the Middle East and Africa. During the wedding ceremony, everything looked normal, solemn, and sacred. A representative of the district police, community leaders, and invited guests all attended the party. A local *kyai* (Muslim religious leader) led the ‘*aqd al-nikāh*’ (Islamic marriage contract ritual), and attendees celebrated the wedding with a feast. From the perspective of Islamic jurisprudence, all requirements for a valid marriage were met. The *biong* carefully arranged the processes to ensure that it would be like a normal sacred marriage, successfully giving the impression that Sarah was legally married to Latif.

Despite its solemn atmosphere, everyone who attended the ceremony realized, or was at least suspicious, that the marriage was *hīla* (or *hiyal*)¹, a legal trick or stratagem in Islamic law which enables the avoidance of straightforward compliance with Islamic law, while still obeying the letter of the law. In other words, the marriage ceremony was used to ‘legalize’ sex trafficking. The ‘client’, Latif, had paid a full package fee to the *biong* at an agreed rate. Half of the money was given to the bride’s family, while the other half was used to fund the traffickers’ ring and arrange all necessary processes. Thus, in fact, Sarah and Latif’s marriage was not a sacred marriage. Sarah was trafficked, facilitated by the *biong*.

Less than two months after the party, Sarah was tortured by her ‘husband’. According to media reports (BBC Indonesia 2021), Latif handcuffed Sarah in her room and poured hydrochloric acid all over her body. With blood running down her face, and her skin burned, Sarah somehow managed to escape, running into the front yard of her villa before collapsing. Although neighbors tried to save her life by rushing her to a hospital, Sarah died from her severe injuries.

The case of Sarah is just one of many forced marriages arranged by the ring of *biong* in the two neighboring regencies of Bogor and Cianjur in West Java, Indonesia. Often referred to as the Puncak area, the locality is a famous resort, especially among tourists from the Middle East. The resort is only a two-hour drive from Jakarta, Indonesia’s capital city, and has been a popular place to unwind and rest among the tea plantations since the Dutch colonial era. Tourists from the Middle East have flooded Puncak, especially in the last twenty years, with the region even being referred to as ‘*Jannah*’, a paradise reminiscent of that alluded to in the Qur’an.

The tourism boom in Puncak has significantly boosted local economic growth, contributing to around 8% of the annual local revenue (Bogordaily 2022; Kompas 2016). However, along with this benefit comes a problem: prostitution and sexual trafficking are booming, too (Bah, Artaria, and Suen 2022; Bernstein and Shih 2014; Brooks and Heaslip 2018; Hulsbergen n.d.; Jeffreys 1999). As will be elaborated in this article, prostitution and sex trafficking in this area, for our purposes, can be divided into two categories: regular prostitution and what can be called 'legalized' sex trafficking. While regular prostitution may be related to activities that fall under the national legal definition of sex trafficking, this paper will focus on the second category of 'legalized' sex trafficking.

This subject, along with the broader topics of forced marriage and human trafficking in Indonesia, is understudied. Some studies on human trafficking in Indonesia completely omit the practice of sexual trafficking in Puncak. For example, Naibaho (2011) argues that the main problem of human trafficking in Indonesia is due to the lack of commitment and willingness to enforce regulations. She highlights the lack of knowledge and capacity of the law enforcement agency, demonstrating that a very low number of trafficking cases are processed in court. However, she does not consider any cases from the Puncak area. Meanwhile, Bajari (2013), while claiming that West Java was the most vulnerable region to trafficking cases, is silent about trafficking cases in Puncak. More recent studies, like the one by Sari (2021), focus on the profiles and backgrounds of the traffickers while briefly mentioning the overall phenomenon. Sari, too, also omits cases in the Puncak area despite her brief elaboration on cases in West Java. Khuluq et al. (2022), in their post-COVID-19 study on human trafficking in Indonesia, similarly skipped Puncak, focusing mainly on cases involving the trafficking of Indonesian migrant workers abroad.

It can be posited that previous studies intentionally omitted cases in Puncak because the authors did not consider them to fit with the definition of trafficking. It is likely that the authors saw the cases in Puncak as simple administrative marriages or child marriage cases.

Dedicated studies on cases in Puncak tend to be brief and lack rigor, deep elaboration, and analysis. Interestingly, none of them are seeing the cases under the framing of sexual trafficking. Suhud and Syabai (2014), for example, study these cases of 'temporary marriage' from

a motivational perspective. Their study refers to the phenomena of temporary marriage as “halal sex tourism”. They affirm that the practice of temporary marriage is a strategy intentionally aiming to ‘halalize’ prostitution in that area. The authors further argue that many girls from poor families in Puncak are motivated by what they call a ‘Cinderella complex’, where girls dream about becoming rich princesses by getting married to foreigners. Suhud and Syabai also note that a significant number of girls are trapped into temporary marriages for altruistic reasons such as helping their families out of poverty.

Other studies, such as that by Arivia and Gina (2015) on temporary marriage in Puncak, focus on gender issues, asserting that the manipulation of marriage is leading to the degradation of Indonesian women’s dignity (Arivia and Gina 2015). Meanwhile, Azeharie and Susanto (2018) focus on how Middle Eastern tourists are changing the culture of the local people in Puncak . Other studies explore the legal aspects of temporary marriage, known as *mut’ah* marriage in Islamic law (Nuraeny and Kuswandi 2019; Nuranisa, Nurwati, and Fedryansyah 2022). Finally, Riswandari (2023) considers the practice from the perspective of child sexual exploitation, primarily focusing on contractual marriages between Middle Eastern tourists and local girls as a form of exploitation. In this, our study will fill the gap left by previous studies.

Rather than using a conventional definition of sexual trafficking, our paper reflects on cases that differ from conventional definition with the hope that it will enrich our understanding of how human trafficking is practiced. This paper is the result of field research, interviews, and observation conducted in the Puncak area, in addition to an extensive literature review, including the study of Indonesian and international law, academic writing, and media reports. Due to the complicated nature of our study, we employ an interdisciplinary approach, digging into a deeper ethnographic and historical analysis in combination with the legal-policy analysis. This innovative approach is necessary to understand the complicated phenomenon of forced marriage and sexual trafficking in the Puncak area.

In this paper, we argue that the leniency towards sex trafficking through *nikah siri* (unregistered marriage) in Puncak is due to a socio-religious framing of the practice, which includes cultural-historical justification as well as religious and legal tricks utilized by traffickers

(*biong*). This framing obscures sex trafficking and conceals it under religious, legal, and cultural practices to the extent that the practice is tolerated by the community and even state officials. Importantly, because a conventional definition of sexual trafficking is arguably difficult to apply in those cases, the crimes are then simply recognized as regular cases of prostitution. To prevent and eradicate this practice, these acts, hidden under the guise of Islamic marriage practices, must be dismantled and condemned for what it is: sex trafficking. We also assert that a demand-side approach to combating trafficking must be adopted in Indonesia.

This paper opens with a brief elaboration on the reality of sexual and human trafficking in Indonesia, providing context to the situation in Puncak. It is followed by a discussion on forced marriage and sex trafficking in Puncak with a focus on dismantling cultural-historical justification as well as legal and religious stratagems to frame and obscure sex trafficking. In the final section, because sex trafficking in Puncak is demand-generated, we discuss the issue through comparison with other countries. By doing so, we hope our study fits into the larger study of sexual trafficking and contributes to the fight against trafficking in Indonesia and globally.

Sexual Trafficking in Indonesia: Laws, Regulations, and the Current Situation

To mitigate human trafficking, the Indonesian government issued Law Number 21 of 2007 on the Eradication of Trafficking in Persons. Similarly, Presidential Regulation 69 of 2009 established the Task Force for the Prevention and Handling of Trafficking in Persons. The task force involves 19 ministries and institutions and is chaired by the Ministry of Coordination and People's Welfare and the State Ministry of Women's Empowerment and Child Protection (KPPPA) as its coordinator (Gugus Tugas TPPO 2019).

At least 32 provincial task forces and 245 district- and city-level task forces have been formed. Moreover, KPPPA have also encouraged the establishment of around 121 *Pusat Pelayanan Terpadu Pemberdayaan Perempuan dan Anak* (P2TP2A, or Integrated Service Centers for Empowerment of Women and Children) in provinces and districts/municipalities to provide guidance to task force members and trafficking response service providers. Additionally, KPPPA issued

Ministerial Regulation No. 1 of 2010, which concerns the Minimum Service Standards (MSS) for Integrated Services for Women and Children Victims of Violence (Menteri Pemberdayaan Perempuan dan Perlindungan Anak 2010).

To further combat human trafficking, the Indonesian National Police has established 528 Women and Children Service Units (*Unit Pelayanan Perempuan dan Anak*) in 31 provinces (Gugus Tugas TPPO 2019, 91–92). Furthermore, local governments are obliged to prevent trafficking crimes as mandated in Article 56 of Law No. 21 of 2007 on the Eradication of Trafficking in Persons. This article aims to prevent as early as possible the occurrence of criminal acts of trade in people. Article 57 of the same law states that (1) governments, local governments, communities, and families must prevent trafficking crimes, and (2) governments and local governments must make policies, programs, activities, and budget allocations to implement the prevention and handling of trafficking.

Despite the legal instruments and institutions established to prevent human trafficking in Indonesia, KPPPA reported around 400 cases of trafficking were recorded in 2020. This was a significantly increase from 2019, when 318 cases were recorded. Overall, between 2019 and 2021, the ministry reported that 1,331 people were trafficked in Indonesia (IOM Indonesia 2023). Approximately 80% of the reported cases were related to sexual trafficking. A report from the work force group covering 2015 to 2019 shows that there were 554 cases involving 2,648 victims. More than 87% of the victims were women and girls, and over 50% of the reported cases were sex trafficking-related (Gugus Tugas TPPO 2019).

What is striking is that many Indonesian reports on human trafficking in general, and sexual trafficking in particular, rely on the Government of the United States' annual Trafficking in Persons Report (hereinafter TIP Report). Since 2000, this report covers the progress of combating human trafficking globally, and acts as an implementing mechanism, part of United States (US) foreign policy to combat modern-day slavery and human trafficking. The TIP Report is an implementing tool of the 2000 US Trafficking Victims Protection Act (TPVA), which recognizes human trafficking as a universal crime that is prevalent in the US and globally. The report categorizes countries globally into three separate tiers from one to three. Tier 1 indicates full

compliance with the minimum standards for the elimination of human trafficking, while Tier 3 indicates a total lack of compliance.

While the TIP Report has been used globally and considered an important tool to control the progress of combating human trafficking, a question remains: why does the Government of Indonesia rely on and cite the TIP Report of the US government, when the Task Force on Prevention and Treatment of Trafficking in Persons was established in 2008? In an ideal scenario, with the task force in place, Indonesia should produce an annual report mirroring the US TIP Report that can be used as a benchmark for the national efforts of combating this crime. This indicates that many regulations and state institutions were simply created as lip service in response to international demand or in reaction to certain events (Mutaqin 2016). Furthermore, this demonstrates that the government fails to make genuine efforts to combat human trafficking.

The Government of Indonesia's failure was highlighted in the 2022 TIP Report. The Report demoted Indonesia from Tier 2 to the Tier 2 Watch List. Indonesia has been at Tier 2 since 2015, and this downgrade was a severe blow to the government's efforts to combat human trafficking. The Tier 2 Watch list indicates that Indonesia fails "to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecutions, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials" (US Department of State 2022, 55).

The report mentions several reasons why Indonesia was demoted: investigations of trafficking crimes decreased in the last five years; ongoing official complicity in trafficking; the lack of robust, systematized victim identification procedures; lack of prioritization of staffing and funding for effective oversight of trafficking cases; weak coordination between the national anti-trafficking task force and provincial and local-level counterparts; and the inconsistency of the 2007 anti-trafficking law with international law, in which the law requires a demonstration of force, fraud and coercion to constitute a child sex trafficking crime (US Department of State 2022, 285–86). To put the position in perspective, Indonesia join countries like Ethiopia, Hong Kong, and El Salvador on the Tier 2

Watch List. Without any significant improvement, Indonesia could soon fall to Tier 3.

Forced Marriage and Sex Trafficking in Puncak

Several key questions emerged in our minds as we began our field research: why are only tourists from the Middle East involved in sexual trafficking and forced marriage in Puncak? Why do we rarely find foreigners from other countries? How did the Puncak area end up being a tourist hub for sex trafficking?

Based on our interviews, there is no single explanation for why Middle Eastern tourists, especially from Saudi Arabia, come to Puncak. In addition to the region's beautiful mountainous scenery and cool breezes, visitors from the Middle East came to the Puncak area because, like Indonesia in general, it is a predominantly Muslim region. Since the late 1980s, visitors from the Middle East have come with their families normally during the *hajj* (pilgrimage) season when many flights from Indonesia to Saudi Arabia are empty on their return, providing visitors from Saudi Arabia with hugely discounted fares (Yustiana 2017). Living costs in Indonesia are relatively cheap compared to those of Middle Eastern countries. This enables foreign tourists to stay for longer periods, renting villas in the most desirable parts of Puncak, surrounded by tea plantations and mountains. Here is when the demand for sex services started: sex industries go hand in hand with the booming tourism industries.

However, it is important to note that the interaction between people, mostly women, from Puncak with Middle Eastern tourists began much earlier and is more intimate. We know from our informants that many female migrant workers from Puncak were marriage Saudi Arabian men, who then migrated to Indonesia. Indonesia has sent around one million migrant workers to the Middle East, mostly to Saudi Arabia, since the early 2000s (Bank Indonesia 2021). Many came from Cianjur and Bogor, the regencies where Puncak is located. Through this network of migrant workers in Saudi Arabia, Puncak is well-known. However, it is important to emphasize that not all Middle Eastern tourists are involved in prostitution or sexual trafficking; many even come with their families for holidays.

Based on our observation, we can classify cases of forced marriage and sex trafficking in Puncak into two categories. Firstly, we found that

many victims were trafficked by their parents or other close relatives. In one *kampung* (sub-village administrative level) where we conducted our field research, we identified at least ten victims of forced marriage and child sexual trafficking. We could not claim that a similar number of victims can also be found in other villages, but the fact that there were around ten victims in one *kampung* alone indicates that such practices are widespread, at least in the Puncak area. Secondly, some victims are trafficked by their husbands. This second type of crime is arguably more difficult to classify as trafficking, and it is easier to classify it under prostitution. Nevertheless, for our purpose, we will categorize them under trafficking because the husband unwillfully puts their wife into prostitution.

On account of the role of family members in commissioning trafficking, one may connect the discussion to the issue of familial sex trafficking.² Familial sex trafficking is defined as a form of trafficking (or sexual exploitation) where a member of the family takes advantage of an “imbalance of power to coerce, manipulate or deceive a child or young person under the age of 18 into sexual activity (a) in exchange for something the victim needs or wants, and/or (b) for the financial advantage or increased status of the perpetrator or facilitator” (HM Government 2016). One may further connect the elaboration of familial sex trafficking to the larger study of forced marriage as a form of modern slavery. Indeed, in Puncak, most of the cases of sexual trafficking are facilitated through forced marriage in which a family, assisted by *biong*, willingly puts their daughter into forced marriage for financial gain.

Our original case of Sarah, for example, was forced by her mother to marry Latif for economic reasons. Sarah was the daughter of a migrant worker from Munjul Village. Her mother, Berna, worked for a family in Saudi Arabia for several years before getting married to a Saudi man. Their marriage was unregistered, referred to as *nikah siri* in Indonesian. Sarah was born soon after her mother returned to Indonesia, but her Saudi husband refused to take any responsibility, as the pregnancy arose from their unregistered marriage. Berna looked after Sarah in difficult conditions and survived by working menial jobs. When a *biong* came to her saying that a Saudi tourist was looking for a wife and was willing to pay an IDR 150 million (around USD 10.000) dowry, she decided to offer Sarah up for marriage. Sarah had no choice, and was trafficked through forced marriage.

Poverty and economic conditions are among the strongest causes of acquiescence toward trafficking in Puncak. The tourism boom in Puncak, despite its negative side, has contributed to the improvement of the local economy. The longer Middle Eastern tourists stay in the area, the more villa owners, local food vendors, car rentals and restaurants benefit. Interestingly, local religious leaders, known as *kyai* or *ustad*, also benefit economically. When *biong* arrange a temporary secret marriage (through *nikah siri*), they must interact with *ustad* to marry the bride and groom. To do so, *biong* must pay *ustad* a significant amount of money. Our interviews found that several *ustad* even obtain donations from Middle Eastern tourists for building schools and mosques for their services. Thus, trafficking is tolerated and survives due to local community members' economic interest, in addition to ongoing historical and cultural justification.

Historical-Cultural Justification

To fully explore why sex trafficking occurs in Puncak, we require a deeper historical elaboration on prostitution, temporary marriage, and concubinage near plantation areas in Indonesia. We must seek explanations from historical and anthropological data to understand the situation.

As mentioned earlier, the Puncak area became a prime destination for the Dutch in the early 1800s, especially when Puncak became an industrial plantation, providing tea and cocoa for the Dutch colonial government. That period was marked by the forced cultivation system (*cultuurstelsel*) policy, which aimed to boost raw material export to Europe. Tea, coffee, cocoa, sugar, and other commodities were planted on a mass scale in field across Java and Sumatra (Bosma 2007; Dell and Olken 2020; Fasseur 1986; Niel 1992). Along with developing industrial plantations, the colonial government also constructed roads and railways that could transport the commodities to the ports on the coasts of Java and Sumatra and then be exported to Europe.

As the massive establishment and opening of plantations, the demand for sexual services also increased. Some scholarly works indicate the rise of prostitution and brothels concomitant with this development (Hartanto and Hudiyanto 2023; Hull 2017; Syafrullah 2020). The expansion of plantations in Java and Sumatra and the construction of roads and railways triggered migrations of male laborers,

which created demand for sex services (Hull 2017). The legacy of this development is still visible today, with many prostitution districts and brothels, such as Sarkem in Yogyakarta, Saritem in Bandung, Dolly in Surabaya (now has been closed), concentrated near train stations or seaports (Fathoni 2023; Hull 2017; Syafrullah 2020). Meanwhile, practices of concubinage mushroomed in plantation areas (Hera and Wijaya 2014; Hull 2017; Janti 2019b; Niekerk 2023; Pranata 2021), even contributing to the overarching tale for one of Indonesia's most famous novels, Pramoedya Anata Toer's *This Earth of Mankind*.

If we delve deeper into the history of Southeast Asia, we find that temporary marriage was a common practice in some areas of the region during the early modern period. Barbara Watson Andaya (1998, 13), a prominent historian, argues that when the Europeans came to the region, European traders commonly “entered into a temporary marriage with the local women who also helped them in trade”. Temporary marriage also helped tribes connect, providing a useful kinship network for newcomers, and was even seen as prestigious among some communities, as foreigners were often perceived as having wealth, sexual potency, and access that would help local people. The image of ‘stranger kings’ (Gibson 2008; Henley 2004; Sahlins 2008) in the study of anthropology perfectly matches this particular historical development. Women's companionship, including sexual favors, was often considered part of Southeast Asian hospitality (Andaya 1998, 12). In fact, Andaya argues that “temporary marriages were indispensable to successful trading, not merely due to the kinship connections they created but because throughout Southeast Asia it was women, not men, who controlled the retail trade” (Andaya 1998).

This indicates that the current cultural practices in Puncak may not have shifted much from the past. The cultural psyche of the community in plantations areas, such as Puncak, continue to tolerate the existence of older practices. A plausible reason might be that concubinage was positioned somewhere between prostitution and legal marriage, and although the practice was viewed negatively but tolerated in colonial times, temporary marriage in Puncak today is seen in the same way: it is looked down upon, but nevertheless tolerated.

However, Puncak is a very Islamic area, so concubinage-like practices would not survive without other efforts of framing the trafficking through law and religion. This second element masks underlying cultural practices and imbues them with religious and legal justification.

Religious and Legal Stratagems

The practice of forced marriage in Puncak, which we argue is a form of sexual trafficking, is hiding behind the veil of religion and legal tricks. These two attempts at framing are crucial in keeping such practices alive amid the changing religious and cultural aspects of life in Puncak. They sustain the practice of forced temporary marriage as they camouflage it as a normal marriage, or at least a tolerated one. The state would outlaw the practice, and the community would reject it, if it took the form of ‘naked’ concubinage without the camouflage of legal marriage.

What are religious and legal stratagems being used to obscure sexual trafficking in Puncak? Based on our observation, including interviews with numerous informants, there are two key justifications used: *nikah siri* and the doctrine of *birr al-walidayn*.

Nikah Siri

Five of the six trafficking victims we interviewed were wed through *nikah siri* with Middle Eastern men. Only one, Sarah, married in a relatively public display that was presented as a ‘normal’ wedding. Based on our research, most of the temporary-forced marriages in Puncak between local girls and foreign tourists take place in secret.

What is *nikah siri*, and why is it linked to the practice of sexual trafficking? *Nikah siri* is a marriage that is not registered with the state and, therefore, lacks formal legal recognition. In Indonesia, marriages must be registered with the Office of Religious Affairs (for Muslims) or the Office of Civil Registry (for all other religions) to be official. Thus, in Indonesia, *nikah siri* is almost synonymous with unregistered marriage, although Nisa (2018) argues that *nikah siri* is only one of several forms of unregistered marriage. *Nikah siri* is legally banned in Indonesia because it creates administrative problems, is detrimental to women, and often leads to domestic violence and human rights abuses.

Despite the prohibition, however, the rate of *nikah siri* in Indonesia is high, with data from 2012 showing that up to 25 percent of total marriages were, in fact, *siri* marriages (Nisa 2018, 292–93). The most recent data available from Bogor and Cianjur, the two regencies where Puncak is located, indicates that *nikah siri* remains common: in 2021, around 71,000 couples in Cianjur while 1.4 million people in Bogor in total (all year) entered into *nikah siri*. (Radar Cianjur 2021; Sani 2023).

The widespread practice of *nikah siri* is due to the pluralistic nature of the Indonesian legal system, where Islamic law, state law, and, to some degree, customary law (*adat*), interlink and often conflict with one another. In the case of marriage law, Muslims in Indonesia should follow Islamic law. Within the *arkān* and *shart* (pillars and requirements) of marriage in Islamic law, there is no requirement that a marriage must be registered with the state. Thus, even without registration by the state, any marriage is considered valid in the eyes of Islam as long as it meets the following requirements: the presence and consent of the guardian, two witnesses, contract (*ijab* and *qabul*), and *mahr* (dowry). Marriage registration is considered an additional requirement mandated by state law to guarantee civic and administrative rights, but is, in itself, not required under Islamic law.³

Why do people get married through *nikah siri* in the first place? There are many reasons, such as when the couple has not met the minimum legal age requirement; to avoid administrative costs; because one or both parties has not officially divorced their previous spouse; and polygamy (Nisa 2018, 293–95). Interestingly, in Puncak, *nikah siri* is a loophole for legalizing, obscuring, and camouflaging prostitution and sexual trafficking. In addition, in some instances, people in Puncak refer to the short-term secret marriages as ‘visa marriages’, implying that the marriage will end when the foreigner’s tourist visa ends.

The nature of the *nikah siri* – which is simple, cheap, and relatively secret but still legally valid (in Islam) – perfectly facilitates the camouflage of forced marriage, sex trafficking, and prostitution in the Puncak area. In other words, as we argue at the beginning of this article, marriage is no more than a legal trick, known as *hila* in Islamic law, to obfuscate and legalize prostitution and sexual trafficking. We heard an outrageous story where this legal stratagem was used to obscure prostitution in Puncak: a *biong* would drive around in a car, bringing women to offer to the Middle Eastern tourists who lived in elite villas. When someone was interested, the *biong* would ask whether or not they wanted to get married before receiving the ‘service’. Thus, *biongs* always have an on-call local *ustad* (or *ustad* imposter) to conduct marriage ceremonies whenever required.

Birr al-walidayn as a ‘brainwashing’ ideology?

Most of the victims that we interviewed married below the minimum legal marriage age of nineteen, as required by national law at the time.

Nevertheless, these marriages may be seen as valid from an Islamic law perspective, as the minimum requirement is that the woman must have reached the age of puberty (*bāligh*). Most of the girls were still enrolled at local middle schools when forced to marry. Consequently, most were required to drop out of school. When asked why they would do that, they answered that they must obey their parents and be dutiful daughters. Being dutiful to parents (*birr al-walidyn*)⁴ is the most common reason for the daughter to be involuntarily married to the tourists. Many also shared with us that there were economic reasons and that they felt helpless in their situation.

Placing the particular cases in Puncak within a broader comparative study of forced marriage and human trafficking, it is evident that trafficking, especially when involving children, is often facilitated by family members. The International Organization for Migration and Polaris (2017) reports that nearly half of the child trafficking cases involved family members as the perpetrators, while Lauren Martin (2017), in her study of sex buyers and human trafficking in Minnesota, reveals that traffickers and victims tend to live in the same neighborhood and often have familial relationships. Jyoti Sanghera (2005) asserts that some studies in Asia reveal that “contrary to the commonly held impression of the existence of highly organized national and transborder networks of crime gangs, the perpetrators of trafficking in the form of recruiters and agents are primarily small-time operators functioning mostly in an individual capacity and are based upon personal and sometimes familial sets of relationships” (Sanghera 2005, 16). Her remark perfectly matches what takes place in Puncak.

Thus, it is clear that families often become part of the chain of trafficking in Puncak. To do so, family members, such as parents, need religious and cultural framing and justification for their actions and in order for their daughter to obey. In Puncak, most informants said that they must obey their parents because their religion tells them to do so. However, it should be noted that this doctrine is a noble and virtuous teaching and has nothing to do with human trafficking. Just like the practice of *nikah siri*, the doctrine of obedience to the parent as part of religious ethics is misused for the justification of forced marriage and sexual trafficking.

Can Buyers Be Punished?

As mentioned earlier, the failure of the previous studies to identify cases of forced marriage in Puncak as sex trafficking is because they

see the cases as either a matter of administrative malfunction of the Indonesian marriage law or as a matter of ‘normal’ prostitution. We believe that part of the issue stems from the way the story of human trafficking is frequently presented as being overly mechanical, presuming that the exploitation is a formalistic, nonconsensual relationship with stages and strict requirements that include the act, the means, and the forms of exploitation. In reality, exploitation and trafficking are subtle and hegemonic practices rather than raw and coercive ones. The exploitation, as seen in our case, is somehow facilitated by the misuse of cultural, legal, and religious justification as its framing to the extent that it is normalized and tolerated.

Even our research was initially conducted to investigate the practice of temporary marriage for a project of Islamic family law. But as scholars who have studied human trafficking and smuggling in Southeast Asia, we were able to decipher that the temporary marriages were actually cases of sexual trafficking and prostitution.

As we investigated deeper, we were surprised that Puncak has now even become an international destination for foreign sex workers (potentially including victims of trafficking). As more Middle Eastern tourists visit, and the demand for the sex industry grows, sex workers from the Middle East also follow the demand and come to Puncak. The community in Puncak calls these foreign sex workers ‘*pekerja seks komersial (PSK) Maghribi*’ (literally ‘sex workers from the Maghrib region’) (Farhan 2016; Mahendra 2023; Pranata 2021; TNR 2014; Tribun Medan 2021). Some informants, including a *biong* we met, told us that in addition to the Maghribi sex workers, one can also order ‘Pashtun’ sex workers from countries like Afghanistan and Pakistan for a special price. In Puncak, especially before the arrival of Maghribi and Pashtun sex workers, for example, we hardly see the element of transportation and transfer. Let us call it ‘in-situ trafficking’: the traffickers, victims, recruitment, transfer, and exploitation all mostly take place within the villages in that area. All three required elements to define trafficking, which include *action* (such as harboring, transferring, receiving, transportation, and recruitment), *means* (such as coercion, abduction, fraud, deceit, deception, abuse of power, abuse of a position of vulnerability, and buying or selling control of a person), and *purpose* (such as exploitation of prostitution, sexual exploitation, forced labor, servitude, slavery, practices similar to slavery, slavery-like condition)⁵

are located locally and committed by local people. Only recently, when the ‘Maghribis’ and ‘Pashtuns’ came to Puncak, the *biong* became connected to the global networks of traffickers. *Biong* are now part of a larger global ring of recruiters, including in the Middle East and Africa (especially Morocco).

For us, the need to view the temporary marriages of Puncak as trafficking cases was clear from the beginning. Many victims were children below the age of eighteen. They were forced to take part in temporary marriages with the Middle Eastern tourists, induced by being dutiful daughters and helping their families. We know that when cases involve children, the trafficking definition is more straightforward. The existence of the act of trafficking, such as “recruitment, transportation, transfer, harboring or receipt,” and the form of exploitation are enough to define the crime. Consent and means are not relevant for trafficking cases against children.

Despite the clarity of the offenses, however, we could not find any reports which demonstrated that the buyers (primarily Middle Eastern tourists) were held accountable for their actions by law. Although the colonial era practices of concubinage in plantation areas were widespread, Puncak was never a hub of prostitution and trafficking until the late 1980s, when an influx of tourists began. This fact confirms several studies of the demand-side approach in human trafficking, which argue that the “supply” would not exist without the demand (Shively et al. 2012, i–iii).

The fight against trafficking must be carried out comprehensively and systemically, tackling both supply and demand sides. However, the attempt to end human trafficking has been ineffective due to an excessive emphasis on the supply side (*biong*). As long as demand is still high, the new ring of traffickers will be replicated with more sophisticated mechanisms to obscure their illicit acts. Due to this urgency, the issue of a demand-side approach to address human trafficking has become a major concern globally in the last decade (Aronowitz and Koning 2014; Hughes 2000, 2004; Hunt 2013; Martin 2017; Nichols and Heil 2017; Niemi and Aaltonen 2017; Shively et al. 2012; van der Watt 2024).

The need to tackle trafficking from the demand side is stated in the Palermo Protocols. Article 9(5) stipulates that state parties must adopt any possible mechanism “to discourage the demand that fosters all forms

of exploitation of persons, especially women and children, that leads to trafficking”. This preventive measure is repeated in regional and national instruments such as the 2005 European Trafficking Convention, where Article 6 mentioned several measures such as formulating strategies, research on best practices of combating demand, campaign and education, and other measures. The Convention goes further by emphasizing, in Article 19, “Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offenses under its internal law, the use of services..., with the knowledge that the person is a victim of trafficking in human beings”.

In Indonesia, measures to tackle human trafficking from the demand side are stipulated in the Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons. Article 12 stipulates that “any person who uses or exploits a victim of the crime of trafficking in persons... shall be punished with the same punishment as referred to in Article 2”.

Despite these national and global legal instruments, many countries still grapple with curbing the demand side of human trafficking. The effort to hold buyers accountable has been slow-moving (van der Watt 2024). The most frequent barrier to eradication efforts is the need to distinguish between prostitution and sex trafficking. Many assume that prostitution is based on consensual relations between adults and, thus, it can be tolerated (Hunt 2013). Only in cases involving adults and sufficient proof of prior knowledge of force, fraud, or coercion might buyers be prosecuted, as stipulated by the Convention. In other words, to be a punishable offense, the buyers must be aware that the sex worker has been a victim of trafficking (Niemi and Aaltonen 2017). In Puncak, the situation is even more complicated, as one must be able to distinguish between sex trafficking, prostitution, *nikah siri*, temporary-secret marriage, and official marriage.

Sweden is a shining example of the global fight against sex trafficking. Its success is often referred to as a best practice for other nations (Ekberg 2004; Niemi and Aaltonen 2017; Waltman 2011). After Sweden passed the Sex Purchase Act in 1999, Sweden managed to eradicate 80% of street prostitution (Hunt 2013). The key to the Swedish approach is the balance between curbing both the supply and demand sides by enacting laws that prohibit all buying of sex. The country’s total ban on buying sex has proven to be effective and ease the process of legal procedure for the enforcement of the law of trafficking cases (Niemi

and Aaltonen 2017, 16). Following the success of Sweden, Norway, Northern Ireland, and France also enacted similar laws.

In Indonesia, all the national efforts are concentrated on the supply side. Pimps, traffickers, and even victims of human trafficking are often arrested and prosecuted, but buyers are never charged, even if there are strong indications that they have used sex workers who are victims of human trafficking. Law enforcement officials such as the police never use Article 12 of the Law on Human Trafficking because they assume users are not involved and are not aware of the exploitation process. Becoming a buyer is considered a right, and it is a private matter. One can observe this position when a high-level case of online prostitution involving several celebrities took place in 2022. The police charged the pimps with multiple regulations, including under the Law on Human Trafficking, but they failed to indict the buyers, despite strong demands from human rights organizations to bring them to justice. In a public press conference, the police said that the users in this case could not be charged because it was a personal matter (Damarjati 2022).⁶

It is possible for buyers of sex to be prosecuted in Indonesia. However, as in other countries that grapple with differentiating prostitution and sex trafficking, most Indonesian cases end up being treated as mere prostitution or obscenity cases (Triwibowo 2023).

Conclusion

In an attempt to ease the burden of battling forced marriage and sex trafficking, particularly in Indonesia, this article has attempted to identify ways in which sex trafficking in Puncak is camouflaged and justified. The practices of forced marriage and sex trafficking in Puncak have been condoned and tolerated for too long by the surrounding community and state officials. We have tried to develop a convincing argument to reveal the cultural, legal, and religious masks used to conceal the inhuman practices of sex trafficking. The story of sex trafficking is often presented as being unduly mechanical, assuming that the exploitation is a formalistic, nonconsensual relationship with stages and strict requirements that include the acts, means, and forms of exploitation. This is the reason why such practices are not recognized as trafficking. Instead of being overtly coercive, as we argued, exploitation and trafficking in locations such as Puncak are subtle, hegemonic processes involving cultural, religious, and legal justification.

In Puncak, curbing trafficking continues to be challenging due to unclear and incomplete regulations and weak enforcement. Furthermore, efforts to curb crime are more difficult when all illegal practices are hiding behind a thick veil of cultural-religious justification and obscured by legal tricks such as *nikah siri*. Nevertheless, we hope this article reveals how sex trafficking and forced marriage are performed in Puncak, and can contribute to the fight to eradicate the practices.

Endnotes

1. The use of legal stratagem (*hila* or *hiyal*) in Islamic law has been hotly debated when discussing the permissibility of interest (*riba*) of modern banking systems. For studies on *hiyal* or *hila* in Islamic jurisprudence, see Billah 2014; Cartelan 2017; Horii 2002; Ismail 2010.
2. Familial sex trafficking is part of a larger study of domestic violence and exploitation against children and minors. For this study see, for example Allert 2022; Reid, Huard, and Haskell 2015; Sprang and Cole 2018.
3. Marriage registration by state is a subject of debate within Islamic law, especially in the contemporary era. Those who see it as mandatory for a valid marriage argue that marriage registration should be seen as part of contemporary Islamic law reform that would guarantee basic rights within the marriage, especially for women. Furthermore, those who argue for obligatory marriage registration usually use the argument of obedience to the ruler (*waliyyu al-amr*) as part of religious obligation in Islam.
4. For a normative study on dutiful to parents in Islam, see for example (Al-Bukhari 2019). For the study on the misuse of the doctrine in Puncak, see (Sopyan et al. 2023)
5. For the definition of human trafficking, see Law No 21/2007 2007; UN General Assembly 2000.
6. Indonesian National Commission on Violence Against Women released a response to the police statement, urging that law enforcement officials, especially police, to be consistent in implementing anti-trafficking law by charging also the buyers, pursuant to the article 12 of Law on Human Trafficking. See Komisi Nasional Anti Kekerasan Terhadap Perempuan (Komnas Perempuan) 2022.

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The journal invites scholars and experts working in all disciplines in the humanities and social sciences pertaining to Islam or Muslim societies. Articles should be original, research-based, unpublished and not under review for possible publication in other journals. All submitted papers are subject to review of the editors, editorial board, and blind reviewers. Submissions that violate our guidelines on formatting or length will be rejected without review.

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2. Booth, Anne. 1988. "Living Standards and the Distribution of Income in Colonial Indonesia: A Review of the Evidence." *Journal of Southeast Asian Studies* 19(2): 310–34.
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6. Ms. *Undhang-Undhang Banten*, L.Or.5598, Leiden University.
7. Interview with K.H. Sahal Mahfudz, Kajen, Pati, June 11th, 2007.

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تم اعتماد ستوديا إسلاميكا من قبل وزارة البحوث والتكنولوجيا والتعليم العالي بجمهورية إندونيسيا باعتبارها دورية علمية (رقم القرار: 32a/E/KPT/2017).

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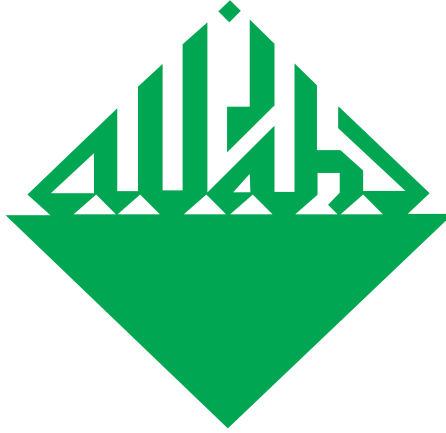
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