

Analysis Policy Protection of Women and Children Tradecomparative Study of Indonesia Malaysia

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ABSTRACT

Trafficking of women and children is a global issue that is warmly discussed at present not only as a national crime but also a transnational offense which is a violation of human rights. The purpose of this study is to analyze the laws governing the prevention and protection of victims of trafficking of women and children in Malaysia and Indonesia. This research method uses normative juridical research that is comparative. By content analysis, it describes and analyzes the content material and the validity of data found in the legislation between two different legal systems. The results of this study found that in prevention efforts of PTPPO Indonesia and APOAPM Malaysia there are similarities. In the protection effort, there are significant differences where PTPPO Indonesia regulates the protection of both physical and material victims with the provision of compensation and restitution to the victims. While APOAPM Malaysia does not restrict it, both Lamaya time protection PTPPO Indonesia does not distinguish between citizen and foreign citizen otherwise APOAPM Malaysia differentiates between citizen two years while foreign citizen only three months. Conclusion expected to Malaysia add one article in APOAPM to give ganjurugi and restitution to victims of trafficking. As per human rights there should be no discrimination in protection. Both countries are expected to increase the MOU in a sustainable manner to achieve the full protection as mandated by human rights.

Keywords: protection, victims, trafficking, children, comparative

1. INTRODUCTION

Trafficking is a modern form of slavery, taking place both at national and international levels. With the development of information technology, communication and transformation mode of trafficking human traffics increasingly sophisticated. "Trafficking in persons is not an ordinary, organized and transnational, so it can be categorized as the transnational organized crime (TOC) as a phenomenon that has an impact on international security, international trade and human rights. This phenomenon shows the extent of criminal acts both from the actor, the purpose, and the way of organizing it. Transnational crimes may be in the form of terrorism, corruption, money laundering and human trafficking, illegal trade, and other organized and hidden crimes (International Journal of Vol 1, 2013 p.177). The factors driving the occurrence of trafficking in persons include poverty, low education, livelihood, high wages, family violence, gender differences and debt remuneration as well as urban and sub-district officials assisting the fraud of ID cards.² The Universal Declaration of Human Rights states that everyone is entitled to employment has the right to choose a job and is entitled to fair and favorable terms of employment, but the fact that

women and children's efforts to obtain decent work and life mandated by human rights have not been successful, because the efforts of women and children to obtain decent employment and living resulting in many trapped children trafficking victims. Elizabeth Dunlap, manager of the International Organization for Migration (IOM) Indonesia, said that the trafficking victims from March to January 2008 reached 3,042 people from several provinces in Indonesia m to some countries, especially Malaysia (Kompas 29 March 2017 edition). The data is a phenomenon of icebergs, and the actual number of trafficking victims is not known with certainty. This is caused because human trafficking including criminal, illegal, hidden, well organized • so difficult to obtain data that is completely valid, "said Deputy of Child Protection Ministry of Women Empowerment, Surjadi Soeparman.

Attention, the government to combat trafficking is good enough, as evidenced by the issuance of the "Plan of Action for the Elimination of Trafficking of Women and Children (RAN -P3A) through Presidential Decree No. 88 of 2002. Then the Law of the Republic of Indonesia Number 23 of 2002 renewed by Law No.35 of 2014 on Child Protection which among other things dictates the prohibition of trading, selling, or kidnapping children for themselves or sale. Given many laws

regulating the trafficking of women and children but the victims are still increasing every year therefore the Indonesian government ratifies the Law of the Republic of Indonesia Number 21 of 2007 on the eradication of the criminal acts of trafficking in persons that are more conver- sively used as legal umbrella in preventing trafficking in persons Where in Article 2 (1) Every person hiring, transporting, shelter, transfer, or acceptance of a person with threats of violence, use of force, abduction, capture, falsification, fraud, abuse of power or vulnerable positions, debt bondage or pay or benefits even if obtained by the person in control of others the purpose of exploiting that person in the territory of the Republic of Indonesia shall be subject to imprisonment of a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp120,000,000.00 (one hundred and twenty million rupiahs) Rp600.000.000,00 (six hundred million rupiahs). This punishment is appropriate to be given to the perpetrator, but in practice, the judge's verdict is sometimes much lower than specified in this law so as not to have a deterrent effect, so there is no effect of this law because trafficking in women and children annually increased.

- a. Unlike Malaysia, as a destination country, a source of transit for women and children trafficked for exploitation purposes At a low stage there are mainly Chinese Malaysian women trafficked out of the state for prostitution purposes. Also there is also a small number of Malaysian people, especially women and young girls from indigenous people outside the city are also traded in the country with the aim to become laborers and experienced exploitation of prostitution.
- b. Malaysia is a destination country for women and children who migrate voluntarily from Indonesia to Malaysia to find work. Some women and children come without official documents. This situation increases their vulnerability to trafficking. Indonesian citizens are being exploited into forced labor abroad-primarily employed as domestic workers, factory workers, construction workers and laborers in oil palm plantations in Malaysia Their condition is very sad, their rights continue to be violated, working hours are very long, there is who is held captive, and forced to work out of their will to cause their lives in situations of fear and insecurity. This is contrary to human rights and child protection laws. Therefore, the state, government, community, the family are responsible for maintaining human rights by the law.

2. RESEARCH METHODOLOGY

This study uses a comparative normative juridical approach that aims to search, examine and examine in depth the formulation of norms and rules on the criminal acts of trafficking in persons from prevention and protection of victims, criminal sanctions for traffickers regarding PTPPO Indonesia 2007 and APOAPM 2007 Malaysia. Then the two different norms and rules are compared or compared by looking at the sides of the equations and the differences between the two to obtain an objective answer, and the results are by the objectives of the study. The type of research used is descriptive, i.,e. Research on comparative law, which compares comprehensively between PTPPO Indonesia and APOAPM Malaysia. The data used are secondary data through the study of literature and the study of legislation from books and other documentation related to the problem under investigation. To get the data done by research of library and field research, According Soerjono Soekamto literature study is document study which is a data collection tool done on written data. In this case the researchers read, education, and review of books, documents, and writing materials related to this research (Soerjono Soekamto, 1984, p. 21) Data analysis technique is an important step in determining research. Data analysis in a study is to describe or solve the problems studied based on the data obtained and then processed into the subject matter of the descriptive research. (Heribertus Sutopo, 1998.) This study uses content analysis method describes and analyzes the content and validity of data found in legislation between two different legal systems.

3. RESULT AND DISCUSSION

3.1 Analysis of PTPPO Indonesia and APOAPM Malaysia From Prevention Aspects

PPP O Indonesia, approved April 19, 2007, comprises 9 Chapters and 67 articles covering the prevention issues set out in Chapter VI contained in sections 56 to 58. The prevention of trafficking in persons is aimed at preventing the earliest commission of trafficking in persons.

The central task force is headed by a minister or a ministerial-level official who is appointed under the administrative rule. To streamline and ensure the implementation of measures as required by the government and local government shall be required to allocate the necessary budget. Further provisions concerning the formation, organizational structure, membership, budgets

and working mechanisms of central and local task forces are governed by government regulations.

In Article 59, regulation on cooperation in combating trafficking in persons, which affirms that "to implement the prevention and eradication of trafficking in persons effectively, the Government of Indonesia shall undertake international cooperation, both bilateral, regional and multilateral".

3.2 Analysis of PTPPO and APOAPM Malaysia From Protection Aspects

Protection of victims can be found in Law No. 13 of 2006 on the Protection of Witnesses and Victims whereas in the PTPPO Indonesia provisions that provide Protection found twelve Articles (12) that regulate the Protection of Witnesses and Victims:

1) In Article 44, it is formulated on:

Witnesses and victims of trafficking in persons are entitled to secrecy; This right of confidentiality is also given to the witness/victim's family up to the second degree if the family of witnesses and from other persons about the testimony of witnesses and victims

In Article 45, it is affirmed that:

In order to protect the witnesses or victims of each province and regency / municipality, a special service room shall be set up at, at the local police station to conduct investigation at the investigation level for witnesses or victims of trafficking in persons; Regarding the establishment of special service room and procedure of examination of witnesses or victims is regulated by the Police of the Republic of Indonesia.

In Article 46, several things are formulated:

To protect witnesses or victims, each district/city can establish an integrated service center for witnesses or victims of trafficking in persons; procedures and mechanisms of integrated services are regulated by Government Regulation.

In Article 47, is regulated on

The witness or the victim and his or her family are subject to threats that endanger themselves, their souls, or their property, the State Police of the Republic of Indonesia shall be required to provide protection both before and during and after the examination of the case".

In Article 48, several things are formulated:

Every victim of trafficking in persons or heirs are entitled to restitution; Restitution in the form of compensation for 1. Loss of wealth or income; 2. Suffering; 3. Fees for medical or psychological treatment; 4. Losses suffered by victims as a result of trafficking. Such restitution shall be granted and included at the same time in

the judgment of the court of criminal cases of trafficking in persons; implemented from the first court decision; Restitution granting may be deposited in court where the case is terminated; The grant of restitution shall be made within 14 (fourteen) days from the date of the announcement of the decision having obtained a permanent legal force; In the event that the offender is disconnected by the appeals court or the cassation, the judge shall order in his decision that the deposited restitution money be returned to the person concerned.

In Article 49, several things are emphasized: The implementation of the provision of restitution is reported to the court president who decides the case, accompanied by a proof of the implementation of the grant of restitution. After the Chief Judge receives the proof the Chief Justice announces the execution on the notice board of the court concerned; A copy of the evidence of the implementation of the granting of restitution is delivered by the court to the victim or his heir.

In Article 50, there are several matters:

In the event that the provision of restitution to the victim is not fulfilled until the deadline exceeds the victim or his heirs informs the court; The Court may provide a written warning letter to the refund provider to immediately fulfill the obligation to provide restitution to the victim or his heir; In the event that the warning letter is not executed within 14 (fourteen) days, the court orders the prosecutor to confiscate the property of the convicted person and auction off the property for the payment of the restitution. If the perpetrator is unable to pay restitution then the perpetrator shall be subjected to a maximum of 1 (one) year in prison

In Article 51, several things are emphasized:

Victims are entitled to health rehabilitation, social rehabilitation, repatriation and social reintegration from the government if the person suffers from physical or psychological harm caused by a person's trafficking crime; The rights of the victim or the family of the victim, friend of the victim, police, companion volunteer or social worker after the victim has reported the case or the other person reported it to the Indonesian National Police; Applications shall be submitted to the government through the Minister or agency dealing with health and social issues in the region.

In Article 52, several things are arranged:

The minister or agency responsible shall provide health rehabilitation, social rehabilitation, repatriation and social reintegration no later than (7) seven days from the date of application; For the provision of health rehabilitation services, social rehabilitation, repatriation, and social

reintegration of government and local governments shall establish social protection homes or trauma centers; For the provision of public services or other social service agencies may also form a home of social protection or a trauma center.

In the case of a victim experiencing trauma or illness that endangers himself/herself due to the crime of trafficking in persons so that require immediate relief the Minister or agency dealing with health and social issues in the region shall provide first aid no later than 7 (seven) days after the application is filed.

In the event that victims abroad require legal protection from trafficking in persons, the government of Indonesia through its overseas representatives shall protect the person and the interests of the victim, and seek to return the victim to Indonesia at the expense of the state; In the event that the victim is a foreign national residing in Indonesia, the GOI shall seek protection and repatriation to the country in coordination with its representative in Indonesia; Provision of protection in accordance with the provisions of legislation, international law or international customs.

In Article 55, it was formulated that the Witness of victims of trafficking in persons, is also entitled to protection by the provisions of other laws and regulations.

4. CONCLUSIONS

Success or failure to prevent trafficking in persons is largely determined by the small participation of the community and the cooperation of the government, local government and the community. The greater the community participation and cooperation with governments, local governments and communities, the greater the chances of successful prevention of trafficking. To stop and prevent the continued trafficking of persons through the placement of Overseas Migrant Workers, it is very important to improve the social protection of migrant workers, from pre-placement such as perektutan, selection, temporary shelter of migrant workers before deployment, job training, medical examination, placement and post-placement. In addition, migrant workers who experience post-placement problems must be repatriated by PPTKIS sending migrant workers. If PPTKIS can not afford and is experiencing financial problems, then the government must take over the responsibility as a form of implementation of the mandate of the opening of the 1945 Constitution is to protect the entire blood spilled and the entire nation of Indonesia.

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