

PELINDUNGAN HUKUM TERHADAP PEREMPUAN PEKERJA MIGRAN INDONESIA DI SEKTOR DOMESTIK YANG MENJADI KORBAN KEKERASAN SEKSUAL DI MALAYSIA

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ABSTRAK

Malaysia merupakan negara tujuan yang paling banyak dipilih Perempuan Pekerja Migran Indonesia di Sektor Domestik (PPMI di Sektor Domestik). Sayangnya, *Employment Act* Malaysia mengecualikan mereka dari definisi pekerja, melainkan mengkategorikan sebagai pembantu rumah tangga asing. Akibatnya, mereka dikecualikan dari pelindungan utama yang didapat oleh pekerja lainnya, termasuk mekanisme penyelesaian pelecehan seksual di tempat kerja. Padahal, berdasarkan catatan Komnas Perempuan mereka merupakan salah satu kelompok yang paling rentan mengalami kekerasan seksual.

Penelitian ini bertujuan untuk menganalisis sejauh mana hukum pidana materiil Malaysia dapat memberikan pelindungan hukum represif terhadap PPMI di Sektor Domestik yang mengalami kekerasan seksual di Malaysia. Selain itu, Penulis juga akan membahas mengenai upaya Pemerintah Indonesia dalam memberikan pelindungan korban. Sifat penelitian ini adalah deskriptif dengan jenis normatif empiris. Data yang digunakan adalah data primer berdasarkan penelitian lapangan, serta data sekunder berdasarkan hasil studi pustaka.

Berdasarkan penelitian menunjukkan bahwa: Pertama, meskipun secara teori *Penal Code* Malaysia dapat memberikan pelindungan hukum represif terhadap PPMI yang menjadi korban kekerasan seksual di Malaysia, terdapat berbagai catatan berdasarkan laporan *Universal Periodic Review* dan *Reporting Status* CEDAW mengenai hukum Malaysia terkait pelindungan korban kekerasan seksual bagi PPMI di Sektor Domestik, yang kurang komprehensif dan cenderung diskriminatif. Kedua, Pelindungan Selama Bekerja berdasarkan Undang-Undang Republik Indonesia Nomor 18 Tahun 2017 tentang Pelindungan Pekerja Migran Indonesia belum dapat diimplementasikan karena ketiadaan peraturan pelaksana. Pelindungan terhadap PMI dilakukan oleh Direktorat Pelindungan Warga Negara Indonesia dan Badan Hukum Indonesia. Beberapa masalah muncul dalam memberikan pelindungan korban dan menempuh jalur litigasi, sehingga banyaknya kasus kekerasan seksual yang hanya diselesaikan dengan cara mediasi.

Kata Kunci: Perempuan Pekerja Migran di Sektor Domestik, Kekerasan Seksual, Pelindungan Hukum Represif, Penal Code Malaysia, Pelindungan Korban.

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LEGAL PROTECTION OF INDONESIAN WOMEN MIGRANT DOMESTIC WORKERS WHO ARE THE VICTIMS OF SEXUAL VIOLENCE IN MALAYSIA

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ABSTRACT

Malaysia is the most chosen destination country for Indonesian Women Migrant Domestic Worker. Unfortunately, the Malaysian Employment Act excludes them from the definition of employee. Instead, they are defined as foreign domestic servant. As a legal consequence, they are excluded from the main protection obtained by other workers, including mechanisms for resolving sexual harassment in the workplace. In fact, based on Komnas Perempuan's records, they are one of the groups which are the most vulnerable to sexual violence.

This thesis aims to analyze how far Malaysian material criminal law can provide repressive legal protection to Indonesian Women Migrant Domestic Workers as a victim of sexual violence in Malaysia. In addition, this thesis will also analyze the Indonesian Government's efforts to provide victim protection. This thesis used descriptive research with normative empirical legal research approach. The types of data used in this writing are primary data obtained through field research, and secondary data based on literature study.

The result of this legal research has shown that: First, although theoretically Penal Code Malaysia can provide repressive legal protection for Indonesian Migrant Workers who are the victims of sexual violence in Malaysia, there are various records based on the Universal Periodic Review and CEDAW's Reporting Status regarding Malaysian law related to the victims protection of sexual violence, especially for Indonesian Women Migrant Domestic Workers, which are not comprehensive and tends to be discriminatory. Second, "Pelindungan Selama Bekerja" under Undang-Undang Republik Indonesia Nomor 18 Tahun 2017 tentang Pelindungan Pekerja Migran Indonesia cannot be implemented due to the absence of implementing regulations. Victims Protection of Indonesian Migrant Workers is now carried out by Direktorat Pelindungan Warga Negara Indonesia dan Badan Hukum Indonesia. Several problems arose in providing victim protection and taking the litigation dispute resolution, so that many cases of sexual violence were only resolved through mediation.

Keywords: *Indonesian Women Migrant Domestic Workers, Sexual Violence, Repressive Legal Protection, The Malaysian Penal Code, Victim Protection.*

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