

RAISING THE AWARENESS OF INDONESIAN MIGRANT WORKERS IN MALAYSIA ON THE CRIME OF SEXUAL VIOLENCE BASED ON INDONESIAN POSITIVE LAW

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ABSTRACT This international community service program aims to provide an understanding of the crime of sexual violence based on Indonesian positive law to Indonesian migrant workers (PMI) working in Malaysia, given the high potential for such crimes to occur in the workers' environment. This activity was initiated by SHARING NGO and collaborated with International Institutions in Malaysia, namely PCINU Malaysia, PPI, UPSI Malaysia, the Indonesian Embassy in Kuala Lumpur, and SIKL, and involved 82 universities in Indonesia. The main focus of this program is related to the phenomenon of sexual violence crimes, the number of which continues to increase and occurs not only in Indonesia but also throughout the world. The implementation method used is the problem-solving approach, where the process of finding solutions can run quickly and efficiently through discussions and questions and answers between speakers and participants. The results of the activity showed that the PMI participants were very enthusiastic to be involved in the discussion, with questions about the crime of sexual violence based on positive law. Where positive law, namely, the law has regulated the forms of criminal acts of sexual violence and criminal sanctions. Criminal sanctions related to physical and non-physical sexual abuse, with a maximum sentence of 44 years and nine years, respectively, and or a fine of Rp. 50,000,000 and Rp. 10,000,000 respectively. The conclusion from this program is that this international community service has a positive impact by increasing PMI's awareness and understanding of the crime of sexual violence and the applicable regulations. Recommendations from the results of this activity are the need for socialization that continues to be carried out both by the government and society in general to reduce the crime of sexual violence, both physical and non-physical.

Keywords: Crime; Indonesian Migrant Workers; Indonesian Positive Law; Sexual Violence.

1. INTRODUCTION

Globalization has changed the mindset and behavior of people in various parts of the world. For example, in the world of work, which has brought people to work across national borders, this is a global phenomenon growing today. This phenomenon occurs in Indonesia, with more and more Indonesians choosing to work abroad. But over time, in carrying out this work, many have experienced problems related to the law, including sexual violence.

Based on information from the Director General of Immigration, there are around two million Indonesian Migrant Workers (PMI), both procedurally and non-procedurally in Malaysia. Indonesian Migrant Workers do not experience sexual violence, for example, exploitation, physical violence, or sexual violence. Based on the Chairperson of the Central Leadership of the Indonesian Migrant Workers' Family, Kabar Bumi, in a discussion themed Commemoration of International Migrant Workers' Day, said that Indonesian Migrant Workers are in a cloud position experiencing human rights violations, namely by forced sterilization or forced contraception and this is a form in the category of sexual violence (KOMNAS HAM, 2022).

Considering that the victims of criminal acts of sexual violence, physical and non-physical sexual harassment, sexual exploitation, and so on, are women and children. Based on the data of complaints to Komnas Perempuan, it is divided into three domains: the personal domain of 2098 cases, the public domain of 1276 cases, and the state domain of 68 cases. (Komnas Perempuan, 2023).

First, violence occurred in the personal sphere perpetrated by ex-boyfriends (713 cases); violence against wives (622 cases); violence in relationships (422 cases); violence against girls (140 cases); domestic violence / RP missal: violence against sons-in-law, cousins, brothers/sisters-in-law or other relatives (111 cases), and violence against ex-husbands (90 cases). *Second*. Violence in the public sphere. Which includes violence in the public sphere, namely cyber (869 cases); violence in the place of residence (136 cases); workplace violence (115 cases); violence in public places (101 cases); violence in education (37 cases); violence in medical facilities (6 cases); violence in overseas workplaces (migrant workers 6 cases); other violence (6 cases).

Third. Violence in the realm of the state, namely cases related to: Women facing the law (35 cases); natural resource conflicts (11 cases); violence against women with state officials, evictions, and agrarian conflicts (5 cases each); discrimination in the election process of public officials (3 cases); violence against women in civil registration (2 cases); intimidation by the local government (1 case) and freedom of religion (1 case). Of the three domains, only two domains are included in

the violence regulated in the sexual violence law; namely, the first domain is included in the form of psychological violence, and the second domain is included in the form of sexual violence.

The impact of these inhumane acts varies, but in general for women, such as mental health, physical health, behavior, and social. The child victim is inhibiting the optimal physical and psychological growth and development of the child, and this is carried over into adulthood. The actions of the perpetrator are illegal, so the perpetrator must be held accountable for his actions, which can be criminalized with quite severe sanctions.

The state, in this case, as mandated in the Constitution of the Republic of Indonesia in 1945, that everyone has the right to protection from various forms of sexual violence and freedom from torture. Thus, the state guarantees the protection of all its citizens, as mandated by the 1945 Constitution of the Republic of Indonesia. Therefore, the government has enacted Law Number 12 of 2022 on the Crime of Sexual Violence.

This guarantee has generally been agreed upon internationally as outlined in various international conventions. Indonesia has ratified *the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)* contained in Law No. 7 of 1984 Concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention encourages ratifying countries, including Indonesia, to emphasize eliminating discrimination against women.

The crime of sexual violence is not new, and it has often occurred in the community. However, with the existence of mass media and social media, cases of criminal acts are quickly reported and become the center of public attention because the victims are women and children. However, the public in general, especially women and children, do not understand or realize that they are victims of sexual violence.

The scene of sexual violence can occur anywhere as long as there is interaction between women and men. For example, in the work environment, education environment, and other public places, including the pesantren environment. Sexual violence, whether it occurs in the work environment, in the education environment, or in other public areas, can even happen, which was initially thought to be impossible, but in reality, this happens. This problem has caused anxiety in the community and parents who have daughters.

As the result of one of the thoughts of scientific studies, that the occurrence of sexual violence or sexual harassment in the workplace is one of the problematic issues for workers, the perpetrators of sexual violence are usually carried out by the leadership or their position is higher than the

victim, and can also be carried out by coworkers. Judging from Komnas Perempuan's data from January to November 2022, there was sexual violence based on gender experienced by women, as many as 860 cases of sexual violence in the public and 899 cases in the personal sphere (Komnas Perempuan, 2022).

The problem of the rampant occurrence of criminal acts of sexual violence cannot be separated from several causal factors that influence people's behavior, including globalization factors, environmental factors, economics, education, technology, etc. These various causal factors can affect Indonesian migrant workers, especially those working in Malaysia. These various causative factors can affect Indonesian migrant workers, especially those working in Malaysia.

Based on these problems, this community service activity provides counseling to the community of migrant workers living in Malaysia. The purpose of this community service activity is to protect migrant workers from sexual violence. One way to provide protection is by increasing understanding of the crime of sexual violence based on positive law. So, it is hoped that this service activity can provide legal awareness to the community of Indonesian migrant workers who work in Malaysia.

2. METHOD

This international community service program for Indonesian Migrant Workers (PMI) was held on Sunday, 26 May 2024, at Sekolah Indonesia Kuala Lumpur (SIKL) with the theme, "Empowering Migrant Workers in Malaysia: A Multidisciplinary Capacity Building Approach and Medical Examination." This activity lasts one semester, January - May 2024, to reach broader participation and collaboration. The implementation of this activity uses a hybrid method, which combines online and offline activities driven by the need to meet the diverse conditions and locations of PMI and recognizes the limitations caused by geographical distance and different time availability. The program realization activities can be seen in Table 1 below:

Table 1. *Activity Schedule*

No.	Activities	January - May				
		1	2	3	4	5
1	Activity Preparation					
2	Survey					
3	Problem analysis					
4	Compilation of activities					
5	Activity Implementation					
6	Report Preparation					

The method of implementing this community service activity consists of the following:

- a. The problem-solving approach aims to find the right solution quickly and efficiently based on the existing problems. The first stage is preparing an issue or situation that is happening, the second is formulating the problem, the third is collecting data in the form of references and libraries, and the fourth is formulating temporary conclusions.
- b. The implementation method used is counseling by providing material to participants on activities on criminal acts of sexual violence based on Indonesian positive law so that participants can understand and provide legal awareness of the phenomena that occur.
- c. The question-and-answer method is used to dialogue with participants. Specifically, participants can ask about what they have not understood related to the problem of sexual violence based on positive law so that they can be enlightened.

3. RESULT AND DISCUSSION

This international community service collaboration activity began with counseling on the crime of sexual violence based on Indonesian positive law. This theme was raised because considering the problems that are rampant in society both in Indonesia and abroad, namely related to sexual violence, this can be known based on electronic print media and other mass media. This international community service activity was carried out hybrid (online and offline) on May 26, 2024, and the place of implementation at Sekolah Indonesia Kuala Lumpur (SIKL).

The implementation of collaborative community service activities (PKM) International III is the result of collaboration with International Institutions in Malaysia, namely the Special Branch Management of Nadhiatul Ulama (PCINU) Malaysia, the Indonesian Student Association (PPI) Universitas Pendidikan Sultan Idris (UPSI), the Embassy of the Republic of Indonesia (KBRI) Kuala Lumpur and Sekolah Indonesia Kuala Lumpur (SIKL) as well as many 82 universities in Indonesia facilitated by the NGO SHARING (Indonesia Academic Community). The participants in the collaborative community service activities (PKM) III Malaysia are Indonesian Migrant Workers (PMI), as many as 106 people, and Foreign Migrant Workers, as many as seven people, so 113 participants attended this community service activity.



Figure 1. Documentation of the material presented by the author.

This counseling can provide an understanding of sexual violence so that criminal acts of sexual violence can be avoided and can reduce the number of victims. After completing the presentation of the material, it was continued with questions and answers; with the question and answer or interaction between the speaker and the participants, it can be seen that the participants were very enthusiastic about asking questions, so this means that the participants wanted to understand more about the problem of criminal acts of sexual violence, especially forms of sexual violence and criminal sanctions for perpetrators as regulated in the law. The increase in knowledge or understanding of the participants is expected to lead them to be more reflective or careful in their behavior and actions wherever they are.

Sexual violence can occur anywhere, for example, in public places, namely malls, public transportation, schools, universities, and workplaces, and even in the home. Family members at home should be safe and comfortable. Still, often news can occur sexual violence in the form of physical or non-physical sexual harassment to rape of children or domestic assistants, etc.

What's more, the current era of information openness and digital technology can also trigger sexual violence, for example, through cyberspace, especially after the pandemic forced people to get women to a form of violence, namely online-based gender violence. There are at least three forms of online gender-based violence namely 1). sexual violence facilitated by technology, for example, sexual abuse, sexual torture, rape, exploitation of the body, etc. all of this uses the internet. 2). Dissemination of sexual content in the form of spreading photos and videos and capturing layers of conversation between the perpetrator and the victim. 3). Revenge with

pornography, a form of violence that involves relations spreading their intimate content with the victim to defame the victim, take revenge, or seek profit,

The crime of sexual harassment in the workplace published by the Ministry of Manpower and Transmigration in collaboration with the International Labor Organization, that what is meant by sexual harassment is any unwanted sexual act, whether in the form of verbal, physical, or gestures that make someone feel offended, humiliated and/or intimidated and the act disrupts work. Participants also need to know the definition of a criminal offense in criminal law, an act against the law that causes the perpetrator to be punished. So, the crime of sexual violence is any act that fulfills the elements of a criminal offense.

The elements of a criminal offense are the unlawful nature, the quality of the perpetrator, and causality, where there is a relationship between an act as a cause and a reality as an effect. According to experts on the elements of criminal offense (*strafbaar feit*), namely:

1. D. Simon, "the elements of a criminal offense are: a) action; b) criminalized; c) against the law; d) done with a fault; and, e) capable of responsibility."
2. Van Hamel, "the elements of a criminal offense are: a) the act is regulated by law; b) is against the law; c) is done with fault; and d) should be punished."

In Indonesian positive law, several rules and regulations regulate the crime of sexual violence, namely the Criminal Code (KUHP), Articles 281 - 296. These articles regulate related to the crime of rape, obscene acts, and attacking honor and decency. So that the perpetrators of these crimes can be punished with imprisonment, ranging from two to five years. In addition to the Criminal Code, Law No. 19 of 2008 concerning Electronic Information and Transactions also regulates criminal acts committed through the Internet in obscene images or videos, including transactions.

In 2022, the government passed Law No. 2 of 2022 on the Crime of Sexual Violence. The law regulates the forms of criminal acts in Chapter 2 Article 4, paragraph 1, namely related to acts: Non-physical sexual harassment; Physical, sexual harassment; Forced contraception; Forced sterilization; Forced marriage; Sexual torture; Sexual exploitation; Sexual slavery; and Electronic-based sexual violence. Whereas in paragraph 2, the forms of criminal acts are: Rape; Obscene acts; Copulation of a child, obscene acts against a child, and/or sexual exploitation of a child; Acts of violating morality against the will of the victim; Pornography involving children or pornography that explicitly contains violence and sexual exploitation; Forced prostitution; Trafficking in persons for sexual exploitation; Sexual violence within the scope of the household; Money laundering crime

whose original criminal act is a crime of sexual violence; and other crimes that are expressly stated as crimes of sexual violence as stipulated in the provisions of laws and regulations.

The laws governing violations and crimes against the public interest are punishable by punishment like infliction or torture (C.S.T. Kansil, 1989, p. 257). In criminal law, if every act is against the law and has fulfilled the elements of the crime, then the perpetrator can be subject to criminal sanctions. One jurist argues that criminal sanctions are a form of suffering given to people who have committed an act and fulfilled the conditions (Sudarto, 1998).

The function of criminal law is a tool owned by the state to fight crime, although crime is not the only tool. But always in combination with preventive measures (Arief & Muladi, 1984). The inclusion of criminal offenders into a correctional institution for guidance.



Figure 2. The participation of participants in the implementation of international community service offline at SIKL.

4. CONCLUSION

With the collaborative activities of international community service, it can be concluded as follows:

- a. The achievement in counseling is a change in knowledge or understanding of Indonesian migrant workers and foreign migrant workers who participate in counseling. With an increase in knowledge or understanding, it is hoped that they can be more vigilant in relationships or interactions in the work environment or wherever against symptoms of forms of sexual violence and criminal sanctions.
- b. With sufficient knowledge or understanding related to forms of sexual violence, it can reduce the number of criminal acts of sexual violence, which will automatically reduce women and children from becoming victims. However, it is not easy to reduce the number of sexual

violence crimes because of the substantial challenges, namely the rapid development of digital technology so that it can reach across regions and countries.

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