

The Implementation of Palermo Protocol of 2000 in Combating the Human Trafficking In Indonesia

Nur Akifah Janur¹, Abdul Maasba Magassing², Iin Karita Sakharina²

¹Student at Graduate School of Hasanuddin University

²Associate Professor on Legal Science, Faculty of Law, Hasanuddin University.

²Associate Professor on Legal Science, Faculty of Law, Hasanuddin University.

Abstract: *The issue of Human Trafficking has become a concern for the international community, because the number of human rights violations is regarded as the cause and consequence of human trafficking. Thus, it becomes an obligation for the state to prevent the continued crime of Human Trafficking as a form of human rights violation. Ratification of the Palermo Protocol of 2000 as a manifestation of Indonesia's commitment in preventing and combating the organized transnational crime, including the crime of trafficking in persons.*

Keywords: *Human Trafficking, Human Rights.*

I. Introduction

Human Trafficking is a modern form of slavery, taking place both at national and international levels, by doing the development of information technology, communication and transformation. Human trafficking is an extra ordinary crime, organized, and transnational, so it can be categorized as Transnational Organized Crime (TOC).¹The current issue of human trafficking has become a concern for the international community. This is because a number of human rights violations are regarded as the cause and consequence of trafficking.² According Universal Declaration of Human Rights, human right or freedom through teaching and education as well as through progressive steps nationally and internationally to ensure recognition of and compliance with universally effective against him.³ The violations such as forced labor, sexual and labor exploitation, violence, and ill treatment of victims

According International Organization for Migration (IOM), during March 2005 to December 2015, the number of human trafficking occurred in Indonesia reached 6,651 people.⁴ Nowadays, the countries in international world have taken effective measures to prevent and combat the human trafficking, especially women and children. It requires a comprehensive international approach in countries of origin, transit and destination countries that include measures to prevent trafficking, to punish traffickers and to protect victims of human trafficking, including protecting their internationally recognized human rights. Remember that the state has the duty to implement the protection, respect and fulfillment of human rights and than the principles in the Universal Declaration that have legally binding force, so An international treaty on human rights should be established. Specially for human trafficking, Indonesia has signed the United Nations Convention against Transnational Organized Crime (UNTOC) on 15 November 2000 and ratified by Law Number 5 of 2009 about Ratification of Convention against Transnational Organized Crime, this step is followed by the ratification of the Protocol about human trafficking by Law Number 14 Year 2009 about the Ratification of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children, in supplementing the Crime. It called as the Palermo Protocol of 2000.

This Protocol is formulated to strengthen and to improved the international cooperation to prevent and cope the human trafficking. And than promoted to improve protection for victims and assistance for victims. As mandated in Article 2 of the Protocol palermo 2000, that the purposes of this Protocol are :

- 1) To prevent and combat trafficking in persons, paying particular attention to women and children;
- 2) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- 3) To promote cooperation among States Parties in order to meet those objectives.

¹SupriyadiWidodoEddyono, “PerdaganganManusiaDalamRancangan KUHP”, ELSAM LembagaStudi And AdvokasiMasyarakat, 2005, Page : 2-3.

²SulistiyowatiIrianto ,“PerdaganganPerempuanDalamJarimnganPenedaranNarkoba”, Jakarta : YayasanObor Indonesia, 2007, Page : 1-2

³HandarSubhandiBakhtiar and Nur AkifahJanur, “The Regulation of Religious Freedom in Indonesia And International Law Prespective”, Journal of Research in Humanities and Social Science, Volume 5, Issue I, 2017, Hal 31.

⁴<http://news.liputan6.com/read/2249883/catatan-iom-human-trafficking-paling-banyak-terjadi-di-indonesia>, Accessed on October 11, 2016

Seeing this, the authors want to look deeper in the implementation of Protocol Palermo 2000 which has been ratified by Indonesia in 2009 in the Eradication of the human trafficking in Indonesia.

This research outlines as follows to explain: 1) Implementation of the Palermo protocol as an effort to combat human trafficking, 2) A form of international cooperation by Indonesia as an effort to combat human trafficking.

Method of the Research

This type of research is a normative legal research. The study began with a legal analysis about the process of ratification of the protocol. Furthermore, to determine the form of international cooperation by Indonesia as an effort to combat the human trafficking conducted interviews with the parties in the Migrant Care as a non government organizations (NGOs) Data obtained both primary and secondary processed first and then analyzed using qualitative descriptive method, which the researchers explain, describe, and illustrate in accordance with the problems closely related to the study, and then draw a conclusion based on the analysis that has been done.

II. Results and Discussion

1. The Implementation of the Palermo Protocol as an Effort to Combat Human Trafficking

As an effort of the Indonesian government in combating human trafficking, Indonesia has signed an international legal instrument that specifically regulates efforts to eradicate and combat transnational crime, is the United Nations Convention Against Transnational Organized Crime on 15 December 2000 in Palermo, Italy and its two protocols, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention on Transnational Organized Crime as a manifestation of Indonesia's commitment in preventing and combating organized transnational crime, including the crime of human trafficking.⁵

As a form of implementation of international law about prohibition of human trafficking, especially women, Indonesia ratified the Palermo Protocol of 2000 in Law Number 14 of 2009 about Ratification of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Indonesia ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against the Transnational Organized Crime by making a Declaration on the provisions of Article 5 paragraph (2) letter c and Reservation against the provisions of Article 15 paragraph (2) of the Protocol.

Declaration: The Government of the Republic of Indonesia declares that the provisions of Article 5 paragraph (2) letter c of the Protocol will have to be implemented in strict compliance with the principle of the sovereignty and territorial integrity of a state. Reservation: The Government of the Republic of Indonesia does not consider itself bound by the provisions of Article 15 paragraph (2) and takes the position that disputes relating to the interpretation and application of the Protocol which can not be settled through the channel provided for in paragraph (1) of the said Article may be referred to the International Court of Justice only with the consent of the Parties to the disputes.⁶

The reason for the reservation made by Indonesia in ratifying this protocol is about the sovereign rights of a country on international treaties. Indonesia considers that, in the settlement of disputes related to the interpretation and implementation of this Protocol, each State shall have the right to determine its own way, which is deemed to be easier and mutually beneficial between the parties.

Ratifying an international agreement should be implemented through the follow-up provisions of the treaty. Through a regulation of national law with further provisions, in a simple implementation can be said as an effort to implement an international agreement, It is not enough to be implemented if only ratified international treaties into national law. Therefore, requires other implementing regulations in accordance with those international treaty provisions. Implementation of an international agreement becomes very important and necessary to provide new input, so that it can add insight to the development of national law. There are still rules that have not been regulated in the national law, it is expected that the ratified international agreement can add to the existing shortcomings in the national legal system.⁷

⁵Mohammad Fadil, "Pengaturan Hukum Internasional tentang Larangan Perdagangan Perempuan serta Implementasi di Indonesia", *Jurnal Ilmu Hukum Legal Opinion*, Edisi 5, Vol 1, 2003, Page :6.

⁶Opening of Law Number 14 of 2009 on Ratification of Protocol to Prevent, Suppress And Punish Trafficking in Persons, Especially Woman and Children, Supplementing The United Nations Convention Against Transnational Organized Crime.

⁷Henny Nuraeny, "Kejahatan Perdagangan Orang : kebijakan hukum pidana dan pencegahannya", Sinar Grafika, Jakarta, 2011, Page : 89.

Until now, after ratification process of Palermo Protocol of 2000 in Law No 14 of 2009, there are no further provisions on the implementation of this Law. This ratification only strengthens the existing national regulation.

2. A form of international cooperation by Indonesia as an effort to combat human trafficking.

Migrant Care is one of the non-government organizations (NGOs) that existed since June 22, 2004. Migrant Care is an NGO that focuses to push the policy change by using campaigns through the media and in dialogue with government. Migrant Care runs four key strategies consisting of counseling, advocacy, research and education. In addition, Migrant Care also has two programs that want to be realized increasing the cooperation for advocacy of migrant worker in Southeast Asia and give response. In his activities, Migrant Care shows his success in building networks with various stakeholders with fellow NGOs at the national, regional and international levels; With the Indonesian government and the country concerned; And civil society.

This is seen in strengthening cooperation programs and Advocacy against migrant workers in Southeast Asia and conduct regular meetings with the movement of other migrant workers in Southeast Asia. Then, it can also be seen in the cooperation of Migrant Care with other NGOs in Indonesia such as KontraS, HRWG, Solidaritas Perempuan, INFID. While related to the government of Indonesia, Migrant Care directly related to the DPR RI, National Agency for Placement and Protection of Indonesian Migrant Workers (BNP2TKI), and Directorate of Protection of Indonesian Citizens and Legal Entities.⁸

Normatively, Migrant Care does have a mission to campaign against regulations and rules related to migrant workers. Not only does it stop on a normative mission, this mission is realized by Migrant Care in various types of persuasion to public authorities conducted through campaigns, cooperation with the media and direct dialogue with the government. In addition, Migrant Care also has a special division dealing with policy issues related to migrant workers called the Policy Advocacy Division

III. Conclusion

It is not enough to be implemented if only ratified international treaties into national law. Therefore requires other implementing regulations in accordance with those international treaty provisions. Up until now, after the ratification Palermo Protocol of 2000 in Law Number 14 of 2009. There are no further provisions on the implementation of this Law. This ratification only strengthens the existing national regulation. Furthermore, the form of cooperation undertaken by the Migrant Care does have a mission to campaign against regulations and rules related to migrant workers, Not only does it stop on a normative mission, this mission is realized by Migrant Care in various types of persuasion to public authorities conducted through campaigns, cooperation with the media and direct dialogue with the government.

Reference

- [1]. Ghani Wal Arif, "Peran International Organization for Migration (IOM) dalam Mengatasi Perdagangan Manusia di Indonesia Tahun 2010-2014", JOM Fisip Vol 3 No 1, Februari 2016,
- [2]. Handar Subhandi Bakhtiar and Nur Akifah Janur, "The Regulation of Religious Freedom in Indonesia And International Law Perspective", Journal of Research in Humanities and Social Science, Volume 5, Issue 1, 2017,
- [3]. Henny Nuraeny, 2011, "Kejahatan Perdagangan Orang: Kebijakan Hukum Pidana dan Pencegahannya", Jakarta: PT Sinar Grafika.
- [4]. Le Fevre, J. (2007). Indonesian domestic workers in Malaysia - abuse rape deadly beatings. *photo-journ's newsblog by John Le Fevre*. from <http://photo-journ.com/death-of-maid-in-malaysia-highlights-endemic-foreign-worker-abuse/#axzz30wYS9fqf>, diakses pada tanggal 12 Mei 2017
- [5]. Mohammad Fadil, "Pengaturan Hukum Internasional tentang Larangan Perdagangan Perempuan serta Implementasi di Indonesia", Jurnal Ilmu Hukum Legal Opinion, Edisi 5, Vol 1, 2003.
- [6]. Supriyadi Widodo Eddyono, 2005, "Perdagangan Manusia Dalam Rancangan KUHP", ELSAM Lembaga Studi Dan Advokasi Masyarakat,
- [7]. Sulistyowati Iriantodkk, 2007, "Perdagangan Perempuan Dalam Jaringan Pengedaran Narkoba", Jakarta : Yayasan Obor Indonesia.
- [8]. Yazid, S. 2014, "Activism Of Indonesian NGOs On the Issue Of Women Migrant Workers: Engaging In National and International Cooperation".
- [9]. <http://news.liputan6.com/read/2249883/catatan-iom-human-trafficking-paling-banyak-terjadi-di-indonesia>, diakses pada tanggal 11 Oktober 2016

⁸ Interview with Migrant Care, at January 12, 2017