

SEXUAL HARASSMENT: LEGAL PROTECTION AGAINST WORKERS IN MALAYSIA

H. Hanafi Arief

Faculty of Law, Islamic University of Kalimantan MAAB
Adhyaksa Street No. 2 Kayutangi Banjarmasin South Kalimantan
E-mail: Hanafi_arief@yahoo.com

Abstract

Sexual harassment is a criminality that the government of Malaysia should give protection to the victims. Malaysia Criminal Act, Employment Act 1955, and Industrial Relations Act 1967 and Regulation or Act 117 were enforced to do. The protection includes any victim living in Malaysia without discrimination citizens or non-citizens, including labour migrants whether documented or undocumented. Sometimes employer violated their worker's rights because he believes that workers tend not to reveal their irregular and illegal status. Protection via due process and fundamental human rights is embodied in the Malaysia Federal Constitution and applicable to them regardless of their status. This writing is proposed to give discussion on how the Malaysian Acts protect sexual harassment against the workplace workers. Data were obtained through research literature, with the writer trying to discover and collect material from documents, books, laws and regulations that apply specifically to the criminal law in relation to the workplace.

A. INTRODUCTION

The term of "sexual harassment" is a taboo talk. Women are expected not to talk harassment that they have to any person. According to Morgan, P, (2001) harassment against women is closed and the suffering is neglected.¹ Commonly women never want to expose or to make report to the police on the sexual harassment that

they have.. And even very serious cases never urge the women to make a report to the police, because they feel afraid and ashamed, and sometimes the report is never handled seriously. This is the same as domestic violence cases against women that the police never handled seriously.

Malaysia is one of ASEAN countries that recruit most workers from either inside and outside of the country. The outside workers mostly come from Indonesia, Myanmar, Bangladesh, and Nepal. Statistically

¹Morgan, P, 2001, *Violence against women at work*, Renziati., C. M., Edleson, J. L. & Bergery, R. K. *Sources on violence against women*, Thousand Oaks: Saga Publication, p. 209-222.

in 1916, the amount of legal migrant workers in Malaysia is more than two millions, while the illegal is more than one and half millions.² It is one of the reasons why the government of Malaysia should give protection to the victims without discrimination citizens or non-citizens, including labour migrants whether documented or undocumented.

B. DEFINITION OF HARASSMENT

Many theories of sexual harassment are developed by the sociological experts. The theories are trying to explain the meaning of sexual harassment and why it may happen to anyone, either at the workplace or in any place such as such as at homes, hospitals, markets etc.

It must be recognized that to find fairly true towards the definition of sexual harassment is not easy, because of the meaning of harassment itself is very wide. Maggie Humn (1989) stated, sexual

harassment is undesired action conducted by men towards women. This definition indicates that sexual harassment happens to women only. Meanwhile Margaret L. Andersen (1977) stated, that sexual harassment is undesired action happens in the cause of unbalanced power among men and women. Meanwhile Grana (2002) stated, sexual harassment is one of violence in which the actor controls the victims. Sexual harassment is the sexual invitation; unexpected and unaccepted such as touching, comments, and jokes. The harassment does not only happen among the lowest and the highest or employers towards employees, but also to any person who may disturb others if the action and speech is sexual. Morgan (2001) stated; sexual harassment is one of violence againsts women. Sexual harassment may perform as the control towards a woman, in which the control is referred to her sex in the cause of her status as a woman. In other words, sexual harassment is the domination of man to woman in which the woman is considered the lowest.

² http://www.bbc.com/indonesia/dunia/2016/02/160218_dunia_malaysia_tki (May 12, 2017)

Meanwhile sexual harassment in the workplace refers to sexual conduct that is unwanted, unwelcome, or unsolicited. This includes requests for sexual favours which are inappropriate and offensive.³ Sexual harassment in the workplace is a serious problem and can happen to both women and men. The United States Equal Opportunity Employment Commission (EEOC) defines, sexual harassment in the workplace is as unwelcome sexual advances or conduct of a sexual nature which unreasonably interferes with the performance of a person's job or creates an intimidating, hostile, or offensive work environment.⁴

C. CATEGORIES OF SEXUAL HARASSMENT

There are at least five categories of sexual harassment as stated by Doyle and Paludi (1998); they are gender harassment, seductive behaviour, sexual bribery,

sexual coercion, and sexual imposition.⁵

1. Gender harassment, containing of sexual comments and unreal sexual interaction but more than to blame and to fall one's dignity. Gender harassment may also refer to an act that is to show pornography pictures, dirty painting, bad jokes, or giving signals in contrast¹²³ with social order and good manners.
2. Seductive behavior; this harassment may refer to an expected sexual action, an unsuitable context, and aggressiveness. The others are: making dates, making

³ http://www.wao.org.my/Sexual+Harassment_51_5_1.html (May 12, 2017)

⁴ <http://employment.findlaw.com/employment-discrimination/sexual-harassment-at-work.html> (May 12, 2017).

⁵ Paludi, 1998, *The Psychology of women*, New Jersey: Prentice Hall. p. 322-323.

telephone calls, sending letters or messages, and even spying.⁶

3. Sexual bribery; that is a requirement to perform sexual interaction or other sexual behaviours by giving rewards if the requirement has been fulfilled.⁷

4. Sexual coercion; that is the coercion to force sexual interaction or other sexual behaviours by giving punishment if his desire will not be fulfilled.⁸

5. Sexual imposition; including imposition in the form of attach and rap.⁹

Sexual harrassment may be in forms¹⁰:

1. Verbal harassment: offensive or suggestive remarks,

comments, jokes, jesting, kidding, sounds, questioning.

2. Non-verbal/gestural harassment: leering or ogling with suggestive overtones, licking lips or holding or eating food provocatively, hand signal or sign language denoting sexual activity, persistent flirting.

3. Visual Harassment: showing pornographic materials, drawing sex-based sketches or writing sex-based letters, sexual exposure.

4. Psychological: repeated unwanted social invitations, relentless proposals for dates or physical intimacy.

5. Physical harassment: inappropriate touching, patting, pinching, stroking, brushing up against the body, hugging, kissing, fondling, sexual assault.

D. WORKPLACE

According to Susan M. Healthfeild (2016), a human resources expert, the workplace is

⁶ Ibid, p. 323.

⁷ Ibid, p. 323.

⁸ Ibid, p. 323

⁹ Ibid, p. 323.

¹⁰http://www.wao.org.my/Sexual+Harassment_51_5_1.htm (May 12, 2017)

the location at which an employee provides work for an employer. That seems like a simple enough explanation, but it can be a bit more complex, especially in today's knowledge economy.¹¹ Zaharan Zainal Abidin categorized the workplace as the following:

1. Being at the workplace in or out of worktime;
2. Being at the mosque or social place relating to the duty;
3. The moment working, out of workplace;
4. During the meeting or training;
5. On the way to work;
6. During communicating or using electronical media.¹²

E. MALAYSIA LEGAL PROTECTION OF SEXUAL HARASSMENT

The term of sexual harassment exists in some Acts of Malaysia such as Criminal Act, Employment Act 1955, and

Industrial Relations Act 1967 and Regulation also called Act 117. Section 354 of Criminal Act states the attack or criminal violence to any person with the purpose is to violate the one's honorary. This section states:

Barang siapa menyerang atau menggunakan kekerasan jenayah kepada mana-mana orang, dengan hendak mencabul atau mengetahui mungkin bahawa ia akan dengan jalan demikian itu mencabul kehormatan orang itu, hendaklah diseksa dengan penjara selama tempoh yang boleh sampai sepuluh tahun, atau dengan denda, atau dengan sebat atau dengan mana-mana dua daripada seksaan-seksaan itu.

Section 509 also states:

Barang siapa dengan maksud hendak mengaibkan kehormatan seseorang, menyebut apa-apa perkataan, membuat apa-apa bunyi atau isyarat, atau menunjukkan apa-apa benda, dengan maksud supaya perkataan atau bunyi itu didengar, atau supaya isyarat atau

benda itu dilihat oleh seseorang itu, atau mengganggu kesantunan seseorang itu, hendaklah disesa dengan penjara selama tempoh yang boleh sampai lima tahun, atau dengan denda, atau dengan kedua-duanya.

Neither the Employment Act 1955 nor .Industrial Relations Act

¹¹Susan M. Healthfeild (2016) <https://www.thebalance.com/what-is-a-workplace-1918295> (May 12, 2017)

¹²Zaharan Zainal Abidin, Gangguan Seksual di Tempat Kerja, <http://www.mohr.gov.my>. (May 12, 2017).

1967 and Regulation states explicitly the status of sexual harassment at the workplace, but implicitly it can be understood that the employer may stop worker to continue working if he or she knows that the worker has made misworks at the workplace. In this case, it can be said this is one kind of sexual harassment at the workplace in the cause of discharge. Employment Act 1955 section 14 (1) states:

Seseorang majikan bolehlah, atas alasan-alasan salahlaku yang berlawanan dengan pematuhan syarat-syarat perkhidmatan yang nyata atau tersirat, selepas siasatan yang sepatutnya:

- (a) memecat pekerja tanpa notis,
- (b) menurunkan pangkat pekerja; atau
- (c) mengenakan apa-apa hubungan ringan lain sebagaimana yang disifatkannya adil dan patut, dan jika hukuman penggantungan tanpa gaji dikenakan, ia tidak boleh melebihi suatu tempoh dua minggu.

Section 2 Employment Act 1955 declares that “employee” means “any person who is:

- (a) categorized into the First List on how far it has been declared in it; or

(b) in relation to any person in which the Ministry makes order under subsection (3) or section 2A.

The First List, Section 2 (subsection 1 part 5) of Employment Act 1955 declares that “employee” is included involved person as domestic employee.

The Industrial Relations Act 1967 and Regulation states in section 20 (1), employee may stop working and declare that he or she constructively has been discharged as the effect that the employer does not take any attempt towards the report of sexual harassment victim happened on her or him.¹³ Actually the Ministry of Malaysian Human Resources has introduced Practise Code to deter and eradicate sexual harassment at the workplace August 1999. The Code presents guidances to protect all employees from the sexual harassment at the workplace.

Commonly, the definition of sexual harassment for the employee refers to sexual perform which is not

¹³ Siti Zaharah, *Gangguan seksual di Tempat kerja dan Seksyen 20 Akta Perhubungan Perusahaan 1967*. Malaysia Journal of Law and Society, 2000, p. 93.

desired to happen at the workplace either by the employer or work mates.¹⁴ Meanwhile the Organization reported some kinds of sexual harrasment as the following::

1. Oral harassments such as exhortation, comments, funs, distrurbs, making sounds, and asking unenjoyable cases.
2. Signal harassments such as sticking out the tougues, producing sounds with unsuitable tone, passing the lips, tauching and eating provocatively, showing hand's signals or dirty and enticing language .
3. Visual harasssment, such as showing pornographic printing, rough drawing or sexual writing, and showing sexual performance.
4. Psychological harasssment such as unwanted invitation, fairly often making dates, or physical intimidation; and
5. Physical harasssment, such as touching, clapping,

massaging, grazing, embracing, kissing, or raving.

Meanwhile sexual harasssment also has wide spectrum of defination including: whistling, dirty talking, clapping or tauching sensetive part of one's body, dating with threathment, pursuiding sexual activity and rapping.¹⁵ Employmeny Act 1955 Seksen 14 (1) states:

Any employer may, on the grounds of misconduct incons is tent with the fulfilment of the express or implied conditions of his service, after due inquiry_____

- (a)dismiss employee without notice;
- (b)downgrade the employee; or
- (c)impose any othe lesser punishment as he deems just and fit, and where a punishment as suspension without wages is imposed it shall not exceed a period of two weeks.

F. CONCLUSION

Based on the above discussion, it can be concluded that:

1. Basically there are acts in Malaysia relating to the sexual harasssment, but the acts themselves are specilized for sexual harasssment at the

¹⁴ Women Aid Organization 2003. (May 12, 2017)

¹⁵ LBH APIK Jakarta 2003. (May 12, 2017)

- workplace. The existence of the Acts for sexual harassment refers in Employmen Act 1955, Industrial Relations Act 1967 and Regulation, and Criminal Act (Act 574);
2. Criminal Act (Act 574) only declares sexual harassment in common terms without spesialization of the workplace. The sexual harassment for the honorary violence contains in section 354, 355, 375, 377C, and 509.
 3. Employment Act 1955 and Industrial Relations Act 1967 can be references for vitims and employers in handling the sexual harassment cases, even the two acts have not given complet and detailed description.
- Morgan, P, 2001, *Violence against Women at Work*, Renziati,, C. M., Edleson, J. L.
- Siti Zaharah, 2000, *Gangguan Seksual di Tempat Kerja dan Seksyen 20 Akta Perhubungan Perusahaan 1967*. Malaysia Journal of Law and Society.
- Susan M. Healthfeild (2016) <https://www.thebalance.com/what-is-a-workplace-1918295> (May 12, 2017)
- Zaharan Zainal Abidin, *Gangguan Seksual di Tempat Kerja*, <http://www.mohr.gov.my>. (May 12, 2017).
- Women Aid Organization, 2003. (May 12, 2017).

LIST OF BIBLIOGRAPHY

- Anon, *Sexual Harassment*, http://www.wao.org.my/Sexual+Harassment_51_5_1.htm (May 12, 2017)
- Bergery, R. K. *Sources on Violence against Women*, Thousand Oaks: Saga Publication.
- LBH APIK, Jakarta, 2003 (May 12, 2017)