Trade, Data Protection and Data Transfer between Malaysia and Turkey: A Legal Analysis of Compatibility

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Abstract

As the global trade escalates, so does the transfer of personally-identifying information (PII) between trading countries. This has raised some concerns between consumers and lawmakers as to the compatibility of data protection law afforded by foreign trading partner. For example, if Malaysian company wishes to trade with its counterpart in Indonesia, concern may emerge as Indonesia has not had a comprehensive personal data protection law, thus a legal protection to be afforded to Malaysian data subjects whose data is processed in Indonesia may be questioned. The inexistence or unavailability of a comprehensive legal protection may be a hindrance to the international trade and businesses between the two important trade partners.

It is interesting to note that the Personal Data Protection Act in Malaysia provides that a data user (a term for ‘data controller’ in Europe), shall not transfer personal data to other countries except if those countries have a similar legal protection. This certainly raise the concern of ‘data localisation’. But in fact, there is no such data localisation in Malaysia, simply because the same law provides leave for data user to transfer data regardless the non-existence of data protection law, as long as there is other safeguards taking place as are provided in the law itself.

It is equally interesting to see how this law on international data transfer affect trade between Malaysia and Turkey. For Turkey, Malaysia is the first Southeast Asian country to have inked a free trade agreement with Turkey, back in 2015. According to the Turkey’s Ministry of Trade, the trade volume between Turkey and Malaysia was realized as 3.424 million dollars in 2017 with an increase of 48% compared to 2016. In 2017, Turkey’s exports to Malaysia has amounted to 286 million dollars, whereas its imports have amounted to 3.138 million dollars. This is certainly a promising relationship for more trade and, consequently, for more data-exchanging activities. How would this go along with the laws on personal data protection in both countries will be an important area to assess.

The objective of this paper is to assess the regulation of international data transfer in both Malaysia and Turkey. This discovery and analysis are crucial to ensure the growing trade between two countries continue to sustain for the benefit of both countries. This study is primarily a legal doctrinal study, analysing the rules of the international data transfer based on the primary statutory documents, namely the personal data protection laws of both Malaysia and Turkey. Brief analysis is also conducted on the rules under the European General Data Protection Regulations (GDPR) to compare and comment how much the situation is in line with this regional law standard. At the end, some analysis for improvement will be proposed to ensure the efficient implementation of the data protection regulations, as well as giving more assurance to consumers in both countries in relation to the privacy of their personally-identifying information (PII).

***Keyword:*** *Personal Data Protection, Trade, Malaysia, Turkey, International Trade Agreement*