



Juridical Analysis of the Application of Legal Protection to the Rights of Indonesian Migrant Workers (Research Study at the Batam Migrant Worker Protection Service Post (P4MI))

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ABSTRACT

The purpose of the protection of Indonesian Migrant Workers as stated in Article 3 of Law Number 18 of 2017 concern the Protection of Indonesian Migrant Workers is to ensure the fulfillment and enforcement of Human Rights as Indonesian citizens and migrant workers as well as to ensure legal, economic, and social protection. Indonesian migrant workers and their families. This research uses the library research method or library research. The data sources used are primary and secondary data from press releases, as well as data from the Batam City Placement and Protection Service Post for Indonesian Migrant Workers (P4MI), then the data were analyzed by descriptive analysis method. Every prospective Indonesia Migrant worker has the same rights and obligations to get a job abroad and choose a job according to his competence, gain access to self-capacity through education and job training, and obtain correct information about the job market, placement procedures, and conditions. Based on the data analysis conducted, it is concluded that the government's efforts to provide legal protection for Indonesian Migrant Workers so far can be seen from the form of legislation issued in response to the needs of Indonesian Migrant workers.

INTRODUCTION

Indonesian Migrant Workers, as Indonesian citizens, have the right to work and a decent life as referred to in Article 27, paragraph (2) of the 1945 Constitution, which states that every citizen has the right to work and a decent life for humanity. Therefore, the State is obliged to protect all its citizens without exception. The Indonesian Migrant Workers Protection Agency (BP2MI) again uncovered a case of Trafficking in Persons (TPPO) and Placement of non-procedural Indonesian Migrant Workers, this time in collaboration with the police of the I Gusti Ngurah Rai Airport area who had delayed the departure of 4 prospective Indonesian workers who were allegedly going to be dispatched to Cambodia.

The number of Indonesian Migrant Workers abroad turns out to have many problems faced by Indonesian Migrant Workers abroad; in various mass media broadcasts, it is often reported how Indonesian Migrant Workers abroad often experience mistreatment from employers, and not infrequently, the mistreatment leads to death.

LITERATURE REVIEW

Indonesian Migrant Workers are often used as objects of human trafficking, including the sale of organs, slavery, and forced labor, victims of violence, arbitrariness, crimes against human dignity, and other treatment that violates human rights. The case that befell the Indonesian Migrant Worker is ironic because the State cannot protect its citizens who are abroad. Based on the description above, it can be seen that there are still many migrant workers who do not get adequate protection. Therefore, the author is interested in conducting research with the title "Juridical Analysis of the Application of Law to the Protection of the Rights of Indonesian Migrant Workers" (Research Study at the Service Post for the Protection of Indonesian Migrant Workers (P4MI) Batam.

METHODOLOGY

This type of thesis research is normative legal research supported by sociological (empirical) legal research. Starting from secondary data, then continued with research on primary data or data obtained directly from the Placement and Protection Service Post for Indonesian Migrant Workers (P4MI) Batam. This research was conducted at the Service Post for the Protection of Indonesian Migrant Workers (P4MI) in Batam. The population in this study were officers of the Protection Service Post for Indonesian Migrant Workers (P4MI) Batam. The sampling technique in this study was purposive sampling. The sample in this study is the Head of the Indonesian Migrant Worker Protection Service Post (P4MI) Batam. In collecting data, researchers used primary and secondary data. The data obtained from collecting data in literature studies (legal research) and studies to the field in this study was analyzed using qualitative data analysis. To make decisions from the data of the results of this study, the positive law study method used by the author in this study is a method that is deductive (general) to induction (special), which is a method used to complement the normative system that has been compiled and organized through collection and inventory efforts.

RESULT AND DISCUSSION

The Role of Law on Indonesian Migrant Worker Agreements to Provide Legal Guarantees and Protection

Providing guarantees and legal protection against labor agreements of Indonesian migrants working abroad is an effort and way of the government of the Republic of Indonesia to provide legal certainty for its citizens, both domestically and abroad. Protection of workers abroad is part of the state's obligation to fulfill constitutional rights as citizens. Indonesian citizens who work abroad can be known as Indonesian Migrant Workers (PMI), previously better known as Indonesian Migrant Workers (TKI).

Overview of the Placement of Indonesian Migrant Workers

Placement of Indonesian workers abroad can only be done to destination countries whose governments have made written agreements with the Indonesian government that have laws and regulations that protect foreign workers and foreign labor. The procedure for the placement of workers outside the country can be described as follows:

1. Recruitment: The recruitment of Indonesian Workers to be employed abroad begins with the reporting of Private Indonesian Migrant Workers Recruitment implementers or abbreviated PPTKIS who get a Deployment Permit (SIP) to the provincial workforce office and the Indonesian Migrant Workers Protection Placement Service Agency or abbreviated BP3TKI to get a recruitment cover letter.
2. Document Management: According to Article 51 of Law No. 39 of 2004, to be employed abroad, prospective Indonesian Migrant Workers must have documents that include a certificate of marital status for those who are married, attach a marriage book, Certificate of permission of husband or wife, permission of parents or permission of guardians, Certificate of work competence, Health certificate based on the results of medical and psychological examinations, Passport issued by the local immigration office, Work visa, Indonesian Migrant Worker placement agreement, Work agreement, Overseas Worker Identity Card (KTLN).
3. Article 3 (Jo article 65) states: The first party is responsible for managing the second party's departure documents (passport, visa, insurance membership, foreign identity card, departure ticket, and other documents determined by the placement country).
4. Article 4 (Jo article 52 paragraph 2 letter h) stated: The second party is willing to bear the placement cost through bank loans; the second party receives a minimum monthly salary by the nominal salary of the country of placement of Indonesian Migrant Workers.
5. Article 7 states: If the second party absconds or resigns, the first party has the right to request the second party the return of placement fees incurred by the first party by valid proof of payment.
6. Article 8 (Jo Pasal 70) states: If shelter is required before departure, the first party must provide shelter for the second party that meets the requirements of feasibility, health, and safety by applicable regulations.

7. Article 9 (Jo article 8 letter e) states: The first party guarantees to the second party to be employed by the expertise and salary that has been determined with facilities according to actual demand.
8. Article 10 (Jo Article 57 and Article 60) states: If the second party extends the employment agreement through or with the knowledge of the first party, the provisions of article (2) shall not apply during the extension period of the employment agreement.
9. Article 12 (Jo article 85) states: If a dispute arises regarding implementing the employment agreement between the first party and the second party, it shall be settled by deliberation.

Obligations of Indonesian Migrant Workers

Based on Article 6 paragraph (2) of Law of the Republic of Indonesia Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, every Indonesian Migrant Worker has an obligation to:

1. Obey the laws and regulations, both domestically and in the country of placement.
2. Respect the customs or habits prevailing in the country of placement; Article 6 paragraph (2) of Law of the Republic of Indonesia Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers.
3. Obey and carry out their work by the employment agreement.
4. Report the arrival, whereabouts, and return of Indonesian Migrant Workers to the Representative of the Republic of Indonesia in the country of placement.

Overview of the Protection of Indonesian Migrant Workers

The objectives of the protection of Indonesian Migrant Workers, as stated in Article 3 of Law No. 18/2017 on the Protection of Indonesian Migrant Workers are as follows:

- a. To ensure the fulfillment and enforcement of human rights as citizens and Indonesian Migrant Workers.
- b. To ensure the legal, economic, and social protection of Indonesian Migrant Workers and their families.

Protection for citizens is a citizens right guaranteed by law. Overseas protection of Indonesian Migrant Workers is carried out by the Representative of the Government of Indonesia of the Republic of Indonesia, in this case, the Embassy of the Republic of Indonesia (KBRI), based on legislation and international law and custom. The Embassy of the Republic of Indonesia provides guidance and supervision to representatives of private Indonesian Migrant Workers and Indonesian Migrant Workers who are placed abroad.

Types of Legal Protection for Indonesian Migrant Workers

Law No. 18/2017 on the Protection of Indonesian Migrant Workers determines that there are three types of protection for Indonesian Migrant Workers, namely: Protection before work/pre-placement, Protection during work/placement, Protection after work/post-placement.

Rights of Indonesian Migrant Workers

By Article 6 paragraph (1) of the Law of the Republic of Indonesia Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, every prospective Indonesian Migrant Worker has the same rights and obligations to Get a job abroad and choose a job according to their competence. Obtain access to self-capacity building through education and job training. Obtain correct information about the labor market, placement procedures, and working conditions abroad. They are obtaining professional and humane services and treatment without discrimination before work, during work, and after work. They are obtaining professional and humane services and treatment without practicing worship by their religion and beliefs, obtaining wages by the prevailing wage standards in the country of placement and the agreement between the two countries and the employment agreement, and obtaining protection and legal assistance for actions that can degrade dignity by the provisions of laws and regulations in Indonesia and in the destination country of placement. Obtaining an explanation of rights and obligations as stated in the employment agreement. Obtain access to communication. Mastering travel documents during work. Organize and assemble by the provisions of the applicable laws and regulations in the country of placement. They are obtaining a guarantee of safety and security protection for returning Indonesian Migrant Workers to the area of origin and obtaining documents and work agreements for prospective Indonesian Migrant Workers and Indonesian Migrant Workers.

The Legal Nature of Indonesian Migrant Worker Protection

Employment development must be regulated so that fundamental rights and protection for workers are fulfilled. Respect for human rights in the field of international labor in the workplace is known through the eight basic conventions of the International Labor Organization (ILO). This Convention consists of four groups, namely: Freedom of Association, Discrimination, Forced Labor, and Child Protection. The legal basis for protecting Indonesian Migrant Workers is intended as a place to find provisions or rules regarding everything related to Indonesian Migrant Workers.

Implementation of the Legal Basis for Indonesian Migrant Workers

The legal basis for the protection of Indonesian Migrant Workers includes:

1. Law
 - a. Law No. 13/2003 on Manpower
 - b. Law Number 18 Year 2017 on the Protection of Indonesian Migrant Workers
 - c. Law No. 06/2012 on the Ratification of the International Convention Concerning the Protection of the Rights of All Migrant Workers and Members of Their Families.
 - d. Law No. 39 of 2004 on the Placement and Protection of Indonesian Workers Abroad
 - e. Law No. 39 of 1999 on Human Rights.
2. Government Regulation

- a. Government Regulation No. 3 of 2013 concerning the Protection of Indonesian Workers Abroad
 - b. Government Regulation No. 4 of 2013 concerning Procedures for the Implementation of Placement of Indonesian Workers Abroad by the Government
 - c. Government Regulation No. 59 of 2021 on the Implementation of the Protection of Indonesian Migrant Workers.
3. Ministerial Regulation
 - a. Regulation of the Minister of Manpower of the Republic of Indonesia Number 22 of 2014 concerning the Implementation of Placement and Protection of Indonesian Workers Abroad
 - b. Regulation of the Minister of Manpower of the Republic of Indonesia Number 45 of 2015 concerning Financing the Placement of Indonesian Workers Abroad
 - c. Regulation of the Minister of Manpower of the Republic of Indonesia Number 18 of 2018 concerning Social Security for Indonesian Migrant Workers.

Indonesian Migrant Worker Agreement

According to Article 1601 of the Civil Code, what is meant by a work agreement is a labor agreement, "A labor agreement is an agreement in which one party commits himself to be under the orders of the other party, for a certain time, doing work by receiving wages." Employment agreements are regulated in Chapter 7A of Book III of the Civil Code, initially private law. However, in its development, many provisions are no longer valid and are replaced by new public regulations. Employment agreements in Chapter 7A of Book III of the Civil Code are general, meaning that they do not distinguish between the field of the company or the persons entering into the employment agreement. However, this general system has an exception, namely that employment agreements are no longer valid for civil servants.

The Indonesian government provides maximum efforts to protect Indonesian Migrant Workers (PMI) abroad by making bilateral agreements with destination countries for Indonesian Migrant Workers. The agreement is made through negotiations between the two countries, which manifests in formulating a Memorandum of Understanding (MoU) regarding the placement of Indonesian Migrant Workers. A Memorandum of Understanding is a form of agreement between two countries made in written form. Several agreements have been made at the global and regional levels that aim to protect migrant workers who work outside their home countries.

Factors and Constraints to the Protection of Migrant Workers' Rights

The constraints referred to here include:

- a. The absence of reports from Indonesian Migrant Workers after being in the destination country.
- b. The number of prospective Indonesian Migrant Workers who falsify and misuse the Republic of Indonesia's travel documents.

Other obstacles include bureaucracy and administrative issues. Bureaucracy often hampers the process of placing Indonesian migrant workers abroad. For example, it is not easy to arrange electronic work abroad cards (e-PTKLN) and other requirements. Similarly, administrative problems often hamper prospective Indonesian Migrant Workers who will seek employment abroad. Administrative problems that hamper, for example, the many administrative requirements that must be met, such as KTP, permission letters from parents, marriage certificates, passports, visas, and the like. Some of the factors causing the ineffectiveness of legal protection for Indonesian Migrant Workers working abroad are:

1. Weakness of Indonesian diplomacy.
2. Weak laws that guarantee Indonesian Migrant Workers who are in trouble in the destination country.
3. The government is unable to create jobs in Indonesia.
4. The difficulty of recording the existence of Indonesian Migrant Workers in destination countries.
5. The existence of representatives of the Republic of Indonesia needs to function optimally.
6. Lack of bilateral agreements between Indonesia and the destination countries of Indonesian Migrant Workers abroad.

Solutions to Protect the Rights of Indonesian Migrant Workers

According to the coordinator of PMI Batam City, Darman M. Sagala, before the outbreak of COVID-19 throughout the world, including Indonesia, almost once every three months, the Indonesian government, through P4TKI, repatriated problematic Indonesian workers, one of which was permanently repatriated to the homeland, namely Indonesian workers from Malaysia. The government's solutions and efforts towards the rights of Indonesian Migrant Workers include

- a. Transparency,
- b. Providing Education to Indonesian Migrant Workers, Implementation of Work Contracts, and
- c. Government Efforts towards the Legal Protection of Indonesian Migrant Workers.

CONCLUSIONS AND RECOMMENDATIONS

Protection of Indonesian Migrant Workers Based on Law No. 18/2017, protection of Indonesian Migrant Workers is all efforts to protect the interests of prospective Indonesian Migrant Workers and Indonesian Migrant Workers and their families in realizing the guaranteed fulfillment of their rights in all activities before work, during work and after work in legal, economic and social aspects. Implementing the law on the Protection of the Rights of Indonesian Migrant Workers is quite good when viewed from existing laws and regulations. However, there is a lack of synergy between related parties in solving PMI problems, so legal protection is not optimal. The government's efforts in providing legal protection for Indonesian Migrant Workers have obstacles, namely where there are still many Indonesian Migrant Workers who do not report themselves to state representatives, either the embassy of the Republic of Indonesia or the consulate general in the destination country of PMI, as well as many PMI, who falsify and misuse passport documents, so that when there is a problem it is very difficult to trace the origin of Indonesian Migrant Workers.

FURTHER RESEARCH

This research still has limitations so further research needs to be done on this topic "Juridical Analysis of the Application of Legal Protection to the Rights of Indonesian Migrant Workers (Research Study at the Batam Migrant Worker Protection Service Post (P4MI)".

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