

ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NUMBER 18 OF 2017 CONCERNING INDONESIAN MIGRANT WORKERS

I WAYAN GDE WIRYAWAN

Faculty of Law, Mahasaraswati University, Denpasar, Indonesia

iwayangdewirayawan@gmail.com

Abstract-- *Indonesian Migrant Workers or Pekerja Migran Indonesia (PMI), is any Indonesian citizen who is eligible to work abroad in an employment relationship for a certain period of time by receiving wages. The placement of PMI abroad organized by PMI Service Companies must comply with the terms and procedures specified in the laws and regulations. After the conditions and procedures have been met, a work agreement is drawn up concerning the legal protection of PMI's rights. With a work agreement, PMI who works abroad will receive legal protection during pre-placement, placement period and post-placement. This study examines the arrangement of work agreements and the placement of PMI abroad, as well as the legal protection available to PMI abroad. The research methods used are the statutory approach and the conceptual approach as a support for the statutory approach. The source of writing legal materials is obtained from literature with types of legal materials in the form of primary legal materials and secondary legal materials. According to the study's findings, there are two primary reasons why migrant workers are not adequately protected: first, the government's protection statute is not being implemented correctly, and second, there is a lack of coordination among the relevant parties.*

Keywords— *Indonesian Migrant Workers, Legal Protection, Work Agreement, Workers Right*

Table of Contents

INTRODUCTION

1. METHODOLOGY
2. RESULTS AND DISCUSSION
3. CONCLUSION

INTRODUCTION

The issue of unemployment is one of the most fundamental challenges that the people of Indonesia will need to overcome on their journey toward becoming an independent nation. The fact that these issues are occurring is evidence that the labor market in Indonesia is not able to keep up with the rapid increase in the number of people looking for employment (Sudja'i & Mardikaningsih, 2021). Consequently, unemployment becomes one of the major issues inside the national problem circle known as poverty (Prasetyoningrum & Sukmawati, 2018). During the period of globalization, some Indonesian citizens (WNI) migrate overseas for a variety of reasons. The Indonesian Migrant Workers or known as Pekerja Migran Indonesia (PMI), Indonesian professionals, students, businesses, and religious affairs are all examples of Indonesian residents living overseas. When compared to Indonesian employees, Indonesian residents who work outside of Indonesia have a higher tendency to not create as many difficulties in the countries in which they find themselves employed. This is because people come from different socioeconomic and educational backgrounds. On the one hand, Indonesian labor migration has the potential to make a significant contribution to the country's economic growth, but there are a number of issues that must be addressed. An rising number of Indonesians, especially in the wake of the country's recent economic crisis, are looking for work outside of Indonesia, contributing to the country's labor shortage (Anas et al., 2022).

Protecting the whole nation and all of Indonesia's blood vessels is a top priority for the Government of the Republic of Indonesia, and the Representative of the Republic of Indonesia abroad, which is why the problem of Indonesian labor overseas is so vital (Nurhadi, 2021). Technical protection, in this case can be

in the form of providing shelters and repatriation along with handling travel documents like problematic Indonesian workers abroad, the Embassy of the Republic of Indonesia abroad also provides political protection efforts which is an instrument that is no less important because without the basis of bilateral agreements, the space for protection of the Representative of the Republic of Indonesia against citizens its state is limited only to the 1963 Vienna Convention on Consular Relations, which is limited by the sovereignty and authority of the receiving state.

Because of the crucial role that work plays in human existence, it is essential that everyone have decent jobs (Brock, 2014). A person's job provides him or her with the means to provide for himself and his family. It may also be seen as a way to improve one's sense of self-worth, making one's life more meaningful to oneself, one's loved ones, and one's community. Hence, the right to work is an inherent human right that must be protected and promoted (Mapp et al., 2019).

The 1945 Constitution of the Republic of Indonesia emphasizes the relevance and meaning of employment for everyone. Article 27 paragraph 2 indicates that every person of Indonesia has the right to work and a good standard of living. In fact, the limited number of job openings in the country has prompted a significant number of Indonesian residents and Indonesian Migrant Workers (PMI) to seek employment abroad (Rahman et al., 2021). As time goes on, more and more people choose to make a living overseas.

The biggest motivation for becoming a migrant worker is the high pay given (Supomo, 1999). However, while working overseas, PMI encounters several issues. Starting with the issue of human rights breaches and moving on to the persistent issue of people trafficking at PMI. Because they are in the nation of people illegally, workers frequently find themselves in legal difficulty (Noveria et al., 2020). The overwhelming violence that has so far been directed towards PMI is really worrisome. On the list of nations where PMI frequently gets reports of employer-caused human rights abuses are Malaysia and Saudi Arabia (Fikri, 2022; Mindarti, 2015; Yolanda, 2020).

The birth of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers (hereinafter written Law No. 18 of 2017) is an integral part of the system built on the mandate of Article 28D paragraph 3, where every citizen is entitled to a decent job. The government expects the passage of Law No. 18 of 2017 to minimize the number of victims of violence against Indonesian migrant workers overseas and to prevent the occurrence of illegal PMI. Besides, Law No. 18 of 2017 controls employment agreements and placements for migrant workers.

Maskunah binti Nasuka Murid from Tukdana Village, Tukdana District, Indramayu Regency, an example of an illegal PMI who died abroad; deceased was despatched by PT Tebar Insani Mandiri; deceased did not follow PMI processes, protocols, and mechanisms in her departure (Voice Indonesia, 2022).

Background information allows us to condense the issue at hand down to a single formulation, namely what is the form of Legal Protection for Indonesian Migrant Workers abroad?. Based on the identification of this issue, this study aimed to analyze the illegal Indonesian Migrant Workers protection based on Law Number 18 of 2017 concerning Indonesian Migrant Workers.

1. METHODOLOGY

In this study, we used the Normative Juridical method, which is a legal research method that is carried out by examining library materials or mere secondary materials (Soekanto, 2012). This study was a normative juridical research on issues related to legal protection for Indonesian Migrant Workers (PMI).

The data analysis method was carried out by collecting data through a review of library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials, both in the form of documents and applicable laws and regulations relating to normative juridical analysis of election law enforcement and election. To analyze the legal material that has been collected, this study uses a qualitative data analysis method, namely normative juridical which is presented descriptively, namely by describing an effective formula in legal protection for Indonesian migrant workers abroad.

2. RESULTS AND DISCUSSION

The provision of protection must be viewed carefully and precisely due to the conflict between the sovereignty of other countries and international law. On the other hand, the government does not prepare a budget to provide protection for cases that have no impact on bilateral relations, politics, the

economy, or socio-cultural life in Indonesia (Adamhar, 2004).

Realizing the actions of the ruler's protection is provided to every human right in order to create a sense of security as a type of legal protection due to losses produced by a crime, from dangers that interfere with a person's mind and physique (Satjipto, 2000).

Maskunah Binti Nasuka Murid is a PMI from Indramayu who departed through PT Tebar Insani Mandiri in February 2022 and arrived at the Jeddah Makkah agent (*syarikah*) place in March 2022 (Voice Indonesia, 2022). It is known that the deceased departed without the consent of her family, which is one of the requirements for becoming a PMI candidate.

In addition, as a PMI candidate, the following requirements must be met: a certificate of marital status, a photocopy of the marriage book for those who are married, a work competency certificate, a health certificate based on the results of health and psychological examinations, a passport issued by the local immigration office, a Work Visa, an Indonesian Migrant Worker Placement Agreement, and an Employment Agreement (Tantri, 2022). In addition to not having authorization from the family and being unknown to the village chief, there are also additional irregularities, such as the absence of a job agreement and the visa being a tourist visa with a 90-day maximum.

The government protects PMI in order to decrease the amount of violent acts committed against PMI in the course of their activities and to save PMI from those who wish to trade them overseas using illegal PMI funds. The law must protect every person who lacks the political, economic, and social resources to obtain justice for themselves (Hartono, 1991).

In this case, Indonesian government has utilized a variety of both local and international measures to protect its citizens (Susetyorini, 2010). Various rules have been created to address the difficulties, yet there are still many purposeful and inadvertent infractions throughout their implementation. A mutually agreed upon employment arrangement includes legal protection for the rights and duties of Indonesian Migrant Workers abroad. Law No. 18 of 2017 regulates the principles of compatibility, equal rights, democracy, equality of society, equality, gender justice, and anti-trafficking.

The government has representatives abroad, namely diplomatic, so that the limitations of diplomatic duties and functions are as follows:

1) *Repesanti*

According to B.Sen (Sen, 1979), the limitation of the representative is the main function of a diplomatic representative in representing the sending country in the receiving country and acting as an official liaison channel between the governments of the two countries. The aim is to maintain diplomatic relations between countries concerning the transportation facilities of the two countries. Diplomatic officers often carry out the function of negotiating and conveying their government's views on important issues to the government of the country where they are accredited.

2) Protection

Protection can be viewed as protecting the person, property, and interests of foreign-based citizens. This protection is an authority provided by international law to the sending country, which means that the sending country may, but is not required to, defend its citizens residing in the receiving country. This responsibility arises only on the basis of the national law of the country of origin (Suryono & Arisoendha, 1986).

In the 1961 Vienna Convention on Diplomatic Relations, it has also been emphasized that the diplomatic mission functions to protect the interests of the sending country and its citizens in the territory where it is accredited.

3) Negotiation

In international law, a form of relationship between countries is known as negotiation. Negotiation or negotiations can be held between two or more countries. These negotiations can be carried out either with accredited countries or with other countries. These negotiations are one of the diplomatic functions in representing the country. In this case a diplomat can express his country's attitude to the receiving country which concerns the interests of the two countries and also the attitude taken by his country regarding international developments in general (Mauna, 2003).

4) Reporting

The obligation to make reports for diplomatic representatives by law is stipulated in Article 3 of the 1961 Vienna Convention on Diplomatic Relations where it states "Provide reports to the sending country regarding conditions and developments in the receiving country in ways that are justifiable by law."

This is a key responsibility for diplomatic officials in the receiving country, which includes the careful observation of all developments in the receiving country. The need is to facilitate the management of country's interests. The report must be given to the sending nation by observing or carefully analyzing every event that occurs in the receiving country that has the potential to influence the interests of the country (Suryono & Arisoendha, 1986).

The basis of the duty of a diplomat is to provide reports to his government on political policies and other events in the recipient country where he is accredited.

The form of protection provided to PMI consists of 3 aspects, namely:

1. Protection before departure is a protection where prospective migrant workers will be given information regarding the requirements and procedures for the stages that must be passed to become PMI including document management, this stage is very important to prevent illegal PMI from occurring.
2. Protection while in the working area according to the state of work, where this protection includes matters of encouragement and support morally and physically in accordance with the legal provisions of the region where the destination works. The government supervises and guides to prevent human rights violations committed by employers where migrant workers work.
3. Protection given to PMI after the completion of the period of work which includes termination of employment or due to an accident until the deportation activities of the foreign government where the destination works are imposed on PMI. If in the process of repatriating a migrant worker, there is a PMI who has died for some reason, the implementing party of the PMI placement must notify the family concerned no earlier than one day after the death of the PMI. In accordance with the existing provisions, the PMI placement executor must also provide funeral expenses for the person concerned, even though he has died, the receipt of PMI's rights must be fulfilled by the PMI departure implementation service.

Additionally, there are preventive and curative legal protections in place to protect migrant workers abroad. Preventive protection for migrant workers is educational protection, i.e. providing knowledge on the rights and responsibilities of each party in doing a good and accurate job, specifically in the sphere of domestic assistant (ART) work or what is widely known as the informal industry (Rustamaji & Kusuma, 2023). Affirming the duties that employees must fulfil, the rights they get, and the manner in which they embrace these rights. PMI receives curative or repressive protection if there is a violation of the employment agreement in an employment relationship. This protection is offered if PMI encounters a legal issue in a jurisdiction in which it operates. As an effort to ameliorate the victims' condition. It is feasible for each victim of physical abuse to obtain justice and mental improvement in order to better continue their life.

The protection efforts by the RI Representatives are only at an early stage and are felt to be not optimal (Primawati, 2012). This is caused by several factors such as financial constraints for the provision of local lawyers, in addition to limited funds for operational costs incurred to accommodate troubled migrant workers at the Indonesian Embassy. In addition, the Indonesian Representatives' flexibility is restricted by the Vienna Convention of 1963, specifically Article 5 on consular services, which requires every foreign official to respect the sovereignty and authority of the host country.

3. CONCLUSION

Indonesian Migrant Workers or *Pekerja Migran Indonesia* (PMI) Protection in accordance with Law Number 18 of 2017 encompasses PMI protection before placement, PMI protection during placement, and PMI protection after completion of employment in placement. To protect the rights of migrant workers, the government also offers preventive and curative/repressive measures. In this instance, the objective of preventive protection is to prevent violence towards PMI. Meanwhile, curative or repressive protection is provided if PMI encounters difficulties or violence while performing their tasks.

REFERENCES

- [1] Adamhar, F. (2004). *Problems of Indonesian Citizens, Both Migrant Workers and Non- Migrant Workers Abroad*. *Indonesian J. Int'l L.*, 2, 695. <https://heinonline.org/HOL/LandingPage?handle=hein.journals/indjil2&div=51&id=&page=>
- [2] Anas, T., Hill, H., Narjoko, D., & Putra, C. T. (2022). *The Indonesian Economy in Turbulent Times*. *Bulletin of Indonesian Economic Studies*, 58(3), 241-271.
- [3] Burezq, H. . (2021). *Biochar In Cattle Farming: An Innovative Solution For Soil Fertility And Cattle*

- [4] Productivity. *Journal Of Advanced Zoology*, 42(01), 61-96. <https://doi.org/10.17762/Jaz.V42i01.6>
- [5] Brock, G. (2014). Global poverty, decent work, and remedial responsibilities. *Poverty, Agency, and Human Rights*, 119-145.
- [6] Faisal, H. T. ., Abid, M. K. ., & Abed, A. . (2022). Study Of Some Biochemical Parameters in Dose During Pregnancy in Goats. *Journal Of Advanced Zoology*, 43(1), 01-06. <https://doi.org/10.17762/jaz.v43i1.109>
- [7] Fikri, S. (2022). Protection and Fulfillment of Human Rights for Indonesian Migrant Workers Abroad. *MORALITY: Jurnal Ilmu Hukum*, 8(2), 108-126.
- [9] Burezq, H. . (2021). Biochar In Cattle Farming: An Innovative Solution For Soil Fertility And Cattle Productivity. *Journal Of Advanced Zoology*, 42(01), 61-96. <https://doi.org/10.17762/Jaz.V42i01.6>
- [10] Hartono, S. (1991). *Legal Politics Towards One National Legal System*. Alumni.
- [11] Mapp, S., McPherson, J., Androff, D., & Gatenio Gabel, S. (2019). Social work is a human rights profession. *Social Work*, 64(3), 259-269.
- [12] Mauna, B. (2003). *International Law: Definition, Role and Function in an Era of Global Dynamics*. PT Alumni.
- [13] Mindarti, L. I. (2015). The relationship of domestic helper's work performance, employer satisfaction, negotiating ability and vulnerability of Indonesian female domestic helper migrants in the destination country (Case study in Malaysia's Selangor Klang Valley region). *Jurnal Ilmiah Administrasi Publik*, 1(2), 45-54.
- [14] Noveria, M., Aswatini, Fitrianita, Utami, D. W., & Saleh, R. (2020). Protection of Indonesian Migrant Workers. *Yayasan Pustaka Obor Indonesia*.
- [15] Nurhadi, N. (2021). Limited Stay Permit Arrangements for Foreign Workers Working in Indonesia. *UIN Sunan Ampel Surabaya*. <http://digilib.uinsby.ac.id/id/eprint/49720>
- [16] Prasetyoningrum, A. K., & Sukmawati, U. S. (2018). Analysis of the Effect of Human Development Index (HDI), Economic Growth and Unemployment on Poverty in Indonesia. *Equilibrium: Jurnal Ekonomi Syariah*, 6(2), 217-240.
- [17] Primawati, A. (2012). Strategies for using e-tki as a means to overcome information gaps. *Journal Communication Spectrum: Capturing New Perspectives in Communication*, 1(2), 185-202.
- [18] Rahman, R. A., Salim, A. A., & Anggriawan, R. (2021). The Role of the Governments of Indonesia and Taiwan in Tackling the Case of Indonesian Migrant Workers "Running Away." *Jurnal Wawasan Yuridika*, 5(1), 81-99.
- [19] Rustamaji, G., & Kusuma, R. (2023). Implementation of Protection of Indonesian Migrant Workers According to Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. *Private Law*, 3(1), 257-265.
- [20] Satjipto, R. (2000). *Legal Studies*. PT Citra Aditya Bakti.
- [21] Sen, B. (1979). *Diplomat S Handbook of International Law and Practice*. Springer.
- [22] Soekanto, S. (2012). *Normative Legal Research*. PT. Raja Grafindo Persada.
- [23] Sudja'i, & Mardikaningsih, R. (2021). Correlation Of Worker Welfare And Industrial Relations. *CASHFLOW: Current Advanced Research On Sharia Finance And Economic Worldwide*, 1(1), 29-32.
- [24] Supomo. (1999). *Introduction to Labor Law, 1st ed*. Djambatan.
- [25] Suryono, E., & Arisoendha, M. (1986). *Diplomatic law: immunities and privileges*. Angkasa.
- [26] Susetyorini, P. (2010). Protection of Indonesian Migrant Workers (TKI) Abroad by Representatives of the Republic of Indonesia. *Masalah-Masalah Hukum*, 39(1), 65-77.
- [27] Tantri, E. (2022). Legal Protection for Indonesian Migrant Workers Overseas According to Law Number 18 of 2017. *Lex Privatum*, 10(3).
- [28] Voice Indonesia. (2022). Again! Female Workforce Dies in Saudi Arabia, Cause of Death Not Yet Known. *Voice Indonesia*. <https://voiceindonesia.co/berita-utama/lagi-tkw-meninggal-di-arab-saudipenyebab-kematian-belum-di-ketahui/>
- [29] Yolanda, N. (2020). Legal protection of Indonesian labor. *Solusi*, 18(2), 198-217.