



Legal protection for Indonesian workers in various countries

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ABSTRACT

The placement of migrant workers abroad is carried out by upholding human dignity, human rights, legal protection, equal employment opportunities and providing employment opportunities and employee training in accordance with national needs. However, violence often befalls Indonesian workers in their destination countries. So Indonesia created legislation in the form of protection for Indonesian workers, an international convention on protecting the rights of all migrant workers and their families which is often referred to as ICRMW. The ICRMW Agreement describes human rights contained in international law on economic, social and cultural rights and international law on civil and political rights specifically states how these different rights apply to different categories of migrant workers. Legal protection for the rights and obligations of migrant workers abroad is stated in a mutually agreed work relationship. Article 2 of Law Number 39 of 2004 regulates the principles of integration, harmony of rights, democracy, equality in society, justice, gender equality and anti-human trafficking. This is a form of legal protection for Indonesian workers.

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1. Introduction

Indonesian Workers (TKI) is a government program that aims to improve the quality of human resources (HR) through training and practice to improve the welfare of workers and their families, namely by taking advantage of available international work opportunities (Yusuf, 2022). TKI is the term for Indonesian citizens who work abroad (such as Malaysia, Saudi Arabia, Hong Kong, and so on) in an employment relationship for a certain period of time. Female migrant workers are called female workers (TKW).

However, the term TKI often has the connotation of manual workers (Lestari & Andrian, 2018). Apart from reducing the unemployment rate, migrant workers represent quite a large amount of foreign exchange for the country. Indonesia earns more than IDR 100 trillion in foreign exchange from sending workers abroad every year. The contribution of migrant workers to the country's foreign exchange in 2004 reached around US \$ 170 million or 1.53 trillion at an exchange rate of US \$ 1 = Rp. 9,000. Foreign exchange is expected to continue to increase next year considering that demand for migrant workers continues to flow. This happened because TKI

were considered capable of working well. The number of migrant workers in Indonesia has increased from year to year. In 2001, there were 55,206 male migrant workers and 239,942 female migrant workers, in 2002 this increased to 116,706 male migrant workers and 363,607 female migrant workers, so on until 2006 the number doubled to 126,601 male migrant workers and 484,935 female migrant workers. Based on a report by the Indonesian Migrant Worker Protection Agency (BP2MI), the placement of Indonesian migrant workers (PMI) will reach 274,965 people throughout 2023.

According to the Minister of Labor and Social Affairs of Saudi Arabia, Ali bin Ibrahim Al Namlah, workers from Indonesia work well, are polite and have good morals, so they are well received by the people of Saudi Arabia. Head of the National Agency for the Placement and Protection of Indonesian Workers, Moh Jumhur Hidayat, said that during 2009 Bank Indonesia reported that foreign exchange from sending migrant workers reached IDR 82 trillion and this amount did not include workers' salaries which were taken directly home or entrusted to relatives in their country of origin.

Article 1 Decree of the Minister of Manpower of the Republic of Indonesia No. 104A/Men/2002 concerning the placement of TKI abroad states that TKI are men and women who work abroad for a certain period of time based on a work agreement through TKI placement procedures. This article explains that to become a TKI you must go through a correct and legal TKI placement procedure agreement. If they do not go through this procedure, migrant workers will later face problems in the country where they work because they can be said to be illegal migrant workers. According to Article 1 section (1) of Law no. 39 of 2004 concerning the Placement and Protection of TKI Abroad, TKI is every Indonesian citizen who meets the requirements to work abroad in an employment relationship for a certain period of time and receives wages. This article explains that what is meant by TKI are individuals who are able to work in order to produce services to meet their living needs.

In detail, the guarantee of protection provided includes freedom for workers to improve their standard of living both personally and in their families, preventing reduction or loss of income and purchasing power, especially for workers/laborers (Bairizki, 2020). as well as protection for loss of work and income due to work accidents, illness, or death. The series of protections mentioned above are part of a series of legal protections for workers/laborers. A form of labor protection that must be implemented by every entrepreneur or company that employs people to work for the company (Tantimin & Sinukaban, 2021).

2. Method

The research method used in writing this scientific work is the library research method (Ridwan et al., 2021). Library research means research that uses written documents as data, and the data sources used in this research include secondary legal materials and tertiary materials (Pantu, 2023). Primary legal materials are legal materials that are binding or that make you obey the law, including legal products that are material for study and legal products that serve as a means of criticism. Secondary legal materials include explanations. Primary legal materials are in the form of expert doctrine found in books, journals and on websites (Nurhilmayah, 2019).

3. Analysis and Results

3.1. Forms of State Legal Protection for TKI Who Are Abroad

The placement of Indonesian Migrant Workers (TKI) abroad is carried out by respecting human dignity, human rights, legal protection, equal employment opportunities and providing employment opportunities and employee training in accordance with national needs (Widiyahseno et al., 2018). Work is a very important thing in a person's life, so everyone needs it. Work can also be interpreted as a source of livelihood that can satisfy a person and his family. It can also be interpreted as a means of self-realization, where a person feels that his life has become more valuable for himself, his family and his environment. Therefore, the right to work is a special human right that must be respected. In fact, many Indonesian citizens/TKI are looking for work abroad because of limited job opportunities within the country. The number of people working abroad is increasing every year (Abdussamad, 2020). On the other hand, the number of

foreign workers and the number of Indonesian workers working abroad have a positive side in solving many unemployment problems in the country, but the risk is the inhumanity of Indonesian workers abroad.

This risk can be faced by TKI both when working abroad and during the exit process after returning to Indonesia. Therefore, preventive measures must be taken to prevent or at least reduce inhumane treatment of migrant workers (Putra et al., 2022). The implementation of protective measures by official authorities is given to every human right to provide a sense of security as legal protection against losses caused by crimes and threats that disturb the human mind or body (Nurisman, 2022). The government protects Indonesian Migrant Workers (TKI) to reduce the amount of violence experienced by TKI while they are carrying out their work and to save them from people who want to traffic them. Therefore, the law is very necessary to protect everyone who feels inadequate and not ready politically, economically and socially to provide justice to them (Labolo, 2023).

The government has taken many steps to protect its people abroad and within the country (Susetyorini, 2010). The government has also issued various regulations to overcome problems that often occur, however there are still many violations that occur, both intentionally and unintentionally (Nasution, 2018). Therefore, legal protection for the rights and obligations of migrant workers abroad is included in the work relationship that has been mutually agreed upon. In Article 2 of Law no. 39 of 2004 regulates the principles of integration, harmony of rights, democracy, equality in society, justice, gender equality and anti-human trafficking.

TKI receive 3 forms of protection, consisting of; The first is protection before departure, which is protection where prospective migrant workers are given information regarding the requirements and procedures for the stages of becoming a migrant worker, including the formalization of documents, this step is very important to prevent the emergence of illegal migrant workers. Second, protection of TKI in the field of work according to the target country, where this protection includes moral and physical encouragement and support in accordance with the laws and regulations in the area where the TKI work. The government monitors and addresses human rights violations committed by employers in the workplace of migrant workers. Third, the protection given to TKI after the work contract period ends, includes the expulsion of work guests due to the termination of their work relationship or an accident that befalls the TKI (Ismantoro Dwi Yuwono, 2013). If the repatriation process involves a migrant worker who dies due to certain reasons, the TKI's employer is obliged to notify the family concerned no later than one day after the TKI's death. According to the current regulations, workers placing workers are also obliged to pay funeral costs to the person concerned, even if the person concerned dies, the rights of the migrant worker must be fulfilled through services that result in the departure of the migrant worker (Lubis, 2021).¹

3.2. Legal Provisions for Indonesian Migrants in International Law

Legal provisions regarding Indonesian migrant workers in international law are contained in the International Convention for the Protection of the Rights of All Migrant Workers and Their Families. (ICRMW), ILO Convention No.100 concerning Migrant Workers Convention 1990. Equal pay for men and women, ILO Convention Legal protection is provided by the Maternity Protection Law No.183. concerning maternity protection provides legal protection for female migrant workers, ILO convention no. 190, ILO convention 197 concerning Violence and Harassment in the World of Work, ILO convention No. 97 concerning Labor Migration, Legal protection for TKI who work abroad is outlined in Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers (Dewi, 2018). The International Convention on the Protection of the Rights of All Migrant Workers and Their Families or often called ICRMW is a convention that has existed for a long time (Rizki, 2020). Customary international law is derived through international treaties and then agreed to by many countries participating in those treaties. An agreement may be in the smallest form as long as it does not conflict with international law (Widagdo et al., 2019). The agreement then gives birth to the laws involved in the agreement. The above agreement explains the human rights contained in the International law on Economic, Social and Cultural Rights and the International law on Civil and Political Rights specifically

states how these different rights apply to different categories of migrant workers. Despite current legal limitations, there are no provisions in the Convention that limit the right of States to decide on immigration procedures (Dinata & Akbar, 2021). One of the articles that regulates migrant workers' rights not to be discriminated against is regulated in Article 11 of the International Convention on the Protection of the Rights of All Workers.

Apart from that, article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families regulates state protection for migrant workers, such as: *"States Parties commit, in accordance with international instruments on human rights, to respect and guarantee the rights of migrants and their family members in their territory or jurisdiction without discrimination. about matters such as gender, race, color, language, religion, creed, nationality, ethnic or social origin, age, occupation, property, marital or birth status, or other status"*

(State parties commit, in accordance with international instruments on human rights, to respect and guarantee the rights of migrants and their family members within their territories or jurisdictions without discrimination regarding matters such as gender, race, skin color, language, religion, belief, nationality, ethnic or social origin, age, occupation, property, marital or birth status, or other status)".

Article 16 of ICRMW states that state protection provided to immigrants consists of self-protection provided by migrant workers both internally and externally, such as:

"Migrant workers and their family members have the right to strong state protection from violence, physical injury, threats, and intimidation from government officials and from individuals, groups, or private organizations." (Migrant workers and their family members have the right to strong state protection from violence, physical injury, threats, and intimidation from government officials and from individuals, groups, or private organizations).

Globally, the ILO Convention on Migrant Workers of 1949, (No.97) in article 11 refers to people who migrate from one country to another for the purpose of work. The Ministry of Social Affairs said that the definition of a migrant worker is a person who moves to another area, either within or outside the country, to work for a certain period of time. The international convention issued by the UN through the world labor organization, namely the ILO convention, stipulates that migrant sending countries must respect and have the right to apply the principle of equal territorial sovereignty both within and outside the migrant destination country.

International Convention Concerning the Protection of the Rights of All Migrant Workers and Members of Their Families (also known as the 1990 Migrant Workers Convention by some parties) This convention was promulgated in New York on 18 December 1990, and became law on 1 July 2003. On 22 September 2004 Indonesia signed the convention as a member of the United Nations. Migrant workers have an important position because they have contributed foreign exchange, also known as remittances, between 1 and 6 times per year with a total of between 200-500 United States dollars per transaction. The Migrant Workers Convention of 1990 is the strictest international legal agreement currently in existence and provides protection for people who wish to work abroad or who have already started working abroad before returning to their home country.

The aim of the 1990 Migrant Workers Convention is to protect the rights of migrant workers when they work in a country other than their own. The protections set out in this agreement are directed at the legitimate importance of documents for immigrant workers. Documents for migrant workers that are known to prevent violations during labor migration, such as violations of the age limit for migrant workers, are known to do this.

4. Conclusion

To deal with the increasing number of cases of Indonesian Migrant Workers (TKI) being tortured abroad, there needs to be an integrated and comprehensive approach involving various aspects, from regulations to support in the field. Here are some solutions that can be implemented; Increasing Legal and Policy Protection, International Cooperation: Strengthening bilateral agreements with destination countries for migrant workers to ensure the protection of migrant workers' rights. Signing and ratifying international conventions related to the protection of migrant workers, such as the UN Convention on the Protection of the Rights of All Migrant

Workers and Their Family Members, Revised National Regulations: Reviewing and strengthening the Law on the Protection of Indonesian Migrant Workers to provide stronger legal protection. Implementing heavier sanctions for agency agents who do not meet worker protection standards; Increased Supervision and Law Enforcement, Supervision of Distribution Agents: Increase supervision of migrant worker distribution agents to ensure they comply with all regulations and provide correct information and adequate training. Implement a transparent reporting and audit system for channel agents, Law Enforcement System: Strengthen law enforcement by establishing a special task force to handle cases of violence against migrant workers. Providing a complaint hotline and legal aid services that are easily accessible to migrant workers, Improving Education and Training, Pre-Departure Training: Providing intensive training before departure, including job skills training, foreign languages, and understanding of their rights. Conducting simulations of work situations that may be encountered abroad to prepare TKI mentally and physically, Legal Awareness Education: Providing comprehensive information about the rights and obligations of TKI as well as official channels for seeking help if problems arise, Improving Consular Services and Support in the Country Objective, Optimizing Consulate Functions: Strengthening the role of Indonesian consulates and embassies in destination countries in providing protection and support to migrant workers. Providing 24-hour consular services that can be accessed by TKI to report problems or seek emergency assistance, TKI Service Center: Establishing TKI service centers in destination countries that offer legal, medical and psychological consultation services, Public Awareness and Education Campaign, Education about Risks and Rights: Conduct educational campaigns in areas sending migrant workers to raise awareness about the risks of working abroad and the importance of using official channels. Inviting the community and families of prospective migrant workers to understand the importance of thorough preparation and use of official agents, Providing Alternative Employment in the Country, Local Economic Development: Encouraging economic development in areas sending migrant workers by creating decent jobs and supporting the development of small and medium enterprises (SMEs). Implementing economic empowerment programs that can reduce dependence on work abroad. With this integrated approach, it is hoped that the protection of migrant workers can be significantly improved, reducing the risk of torture and ill-treatment they experience abroad. Implementing this solution requires cooperation between government, non-governmental organizations, the international community and society at large.

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