



JILS (JOURNAL *of* INDONESIA LEGAL STUDIES)

NATIONALLY ACCREDITED JOURNAL (SINTA 2)

Published by Faculty of Law, Universitas Negeri Semarang, Indonesia
Volume 5 Issue 1, May 2020 ■ ISSN (Print) 2548-1584 ISSN (Online) 2548-1592

BOOK REVIEW

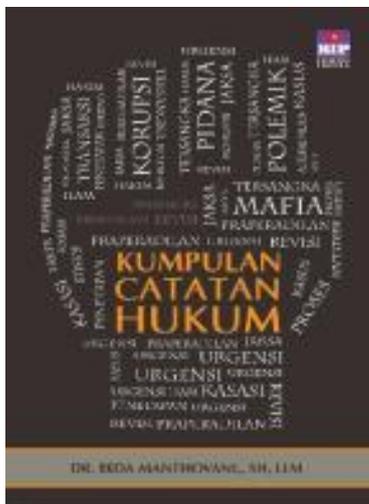
THE COMPLICATED CONDITIONS ON INDONESIA LAW ENFORCEMENT: A BOOK REVIEW *KUMPULAN CATATAN HUKUM*, DR. REDA MANTHOVANI SH LLM, BHUANA ILMU POPULER (KELOMPOK GRAMEDIA), JAKARTA, 2017, 234 PAGES, ISBN 978-602-394-630-3

Nabilla Banuati

Faculty of Law, Universitas Negeri Semarang, Indonesia

✉ nabillabanuati49@students.unnes.ac.id

🆔 <https://orcid.org/0000-0002-2163-1587>



Title of Book : Kumpulan Catatan Hukum
Author : Dr. Reda Mantховani
Language : Bahasa Indonesia
Publisher : Bhuana Ilmu Populer, Jakarta
Pages : 234 Pages
Year : 2013

HOW TO CITE

Banuati, N. (2020). The Complicated Conditions on Indonesian Law Enforcement: A Book Review *Kumpulan Catatan Hukum*, Dr. Reda Mantховani SH LLM, Bhuana Ilmu Populer (Kelompok Gramedia), Jakarta, 2017, 234 pages, ISBN 978-602-394-630-3. *JILS (Journal of Indonesian Legal Studies)* 5(1), 267-276 <https://doi.org/10.15294/jils.v5i1.34790>.

Copyright © 2020 by Author(s)
This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

This book is a collection of writings or short notes made by the author to be published in various media both print and online in the period 2014 to 2016. The theme of the various writings or notes is in accordance with the position or research that the author is living in certain interesting moments attention for example Case on the Migration of Indonesian Workers in Hong Kong. This book is a collection of writings or short notes made by the author to be published in various media both print and online in the period 2014 to 2016. The theme of the various writings or notes is in accordance with the position or research that the author is living in certain interesting moments attention for example Case on the Migration of Indonesian Workers in Hong Kong. The writer's notes were produced when the writer worked at the Indonesian Consulate General in Hong Kong as the Technical Attaché of the Prosecutor's Office. After the Author served as Chief Prosecutor since mid-2015, the notes or writings produced were related to events or legal moments that occurred at that time, for example notes about Pre-trial. Notes about the Pre-Trial Court are the thoughts of the Writer when the decision made by the Judge Sarpin was phenomenal which was strengthened by the Constitutional Court's ruling on the expansion of the Pre-Judicial object. Thus, in a nutshell it can be said that the collection of writers' notes in this book is a collection of thoughts that are manifested in writing / brief notes at certain moments that attract the author's attention.

ILLEGAL INDONESIAN MIGRANT WORKERS RETURNS IN HONG KONG AND MACAU vs REALITY POLICY

Head National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI) Nusron Wahid, on Thursday, December 12, 2014, said that the government would repatriate around 1.8 million nonprocedural migrant workers abroad. which has no contract. According to him, the majority of non-procedural, overstayed and illegal migrant workers are currently in Malaysia, namely 1.2 million people and the rest are scattered in the Middle East, Korea, Taiwan and Hong Kong. To understand this, it is necessary to explain the notion of *nanoscopic* TKI. According to Dictionary.com the procedural term as a process that is in accordance with

the law / regulation, so that nonprocedural can be defined as a process that is not in accordance with the law /regulation and in this case the process of placing TKI in accordance with Law No.39 of 2004 concerning to Placement and Protection of Indonesian Workers and labor regulations in the destination country According to the Director General of the Placement of the Ministry of Manpower, Rena Usman, as a result of improper procedural procedures, Indonesian citizens often go abroad using tourist visas. Then the citizen was upgraded to a foreign worker in the country by being given a work visa. But without having a work contract that results in no clarity of wages and other workers' normative rights, so that the legal status of the Indonesian citizen will eventually become an illegal TKI.

In addition to non-procedural, illegal migrant workers can also occur when a person who initially worked legally but ran out of work visa, and still continue his work without extending a work visa, so that his presence is considered illegal or overstayed. In addition, there are also TKI who have a work visa but work not in accordance with the agreed work contract, the legal conditions In connection with the policy of returning non-procedural labor migrants & Hong Kong requires a somewhat different handling, due to the problem many migrant workers with problems in Hong Ko do not want to be repatriated.

For this reason, it is necessary to develop into the ins and outs of illegal TKI in Hong Kong. To complete the problem above, it is also necessary to discuss about migrant workers in Macau there are many non-procedural labor migrants, overstayers and other forms of Worker relief in Hong Kong and Macau? How did that happen? Can the repatriation of non-procedural migrant workers also be considered illegal workers management in foreign countries in Hong Kong and Macau?

INDONESIAN MIGRANT WORKERS IN HONG KONG

Workers who work as domestic helper in Hong Kong or known as Indonesian migrant workers (PMI) based on Hong Kong Immigration data as of April 2014 totaled around 151.416 people. That number is the second largest after the Philippines amounting to 167.195 people. Based on BNP2TKI data, the departure of migrant workers to Hong Kong in 2011 was 50.301, in

2012 45.478 in 2013 were 41.769 and 2014 were 30.208. Whereas the repatriation of troubled Indonesian citizens from Hong Kong at BPK-TKI Selapajang Tangerang in 2011 amounted to 1,808, in 2012 there were 1.215 and in 2013 amounted to 223. Looking at the data in the case of ole aka ounce De seen an increase in the number of Indonesian citizens working in Hong but there is a decrease in the number of Indonesian citizens dispatched to Hong Kong and a drastic reduction in the number of repatriated Indonesian citizens who have problems yes Looking at the data above, raises the question whether there are non-procedural migrant workers who can work in Hong Kong?

Based on Article II paragraph (1) of Act Number 39 Year 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad. However, if the Indonesian government does not have an agreement with the government of a TKI user, then placement can still be done if the country already has legislation that provides protection to labor, Indonesia does not have a written agreement with Hong Kong but Hong Kong has specific regulations governing domestic helpers, so that Hong Kong can be categorized as a country of placement of Indonesian migrant workers. An Indonesian who want to work in Hong Kong as domestic helpers must go through a Hong Kong Employment Agency. Work contract forms are issued by Hong Kong immigration.

The form consists of the names and addresses of the parties, duties or workloads that must be carried out, workers' normative rights that must be obtained, contracts for two years and can be extended. And most importantly, the work contract must be filled and signed by the parties and must be witnessed by the Hong Kong agency and witnesses from the workers, in this case interpreted signed by PPTKIS and known by the Indonesian Consulate General. In the absence of a consulate's signature, the visa / work permit will not be issued by the Hong Kong Immigration Service.

This means that the system is in accordance with procedures as regulated in Act No. 39 In 2004. In other words, the employment system in Hong Kong is procedurally in accordance with Indonesia, so that in theory it is unlikely that non-procedural TKIs will occur in Hong Kong unless there is a Hong Kong document falsification of the preconditions for issuing visas / work permits. Then is there illegal TKI in Hong Kong? Based on the data collection conducted by the Indonesian Consulate General in Hong Kong between July and August 2014, Indonesian citizens in the Tailam Center for

Women consisted of 13 overstayers and illegal workers from 18 Indonesian prisoners, in the Lowu Correctional Institution there were 60 inmates convicted of overstaying from a total of 70 Indonesian prisoners. Of the total 73 Indonesian citizens who were overstayed in detention in Hong Kong, just three among them who want return to Indonesia to marry or care their children. and the others won't come to home and some of them apply non-refoulement to Hong Kong's Immigration office by international social services, be used by overstayed Indonesian citizens is the threat of torture, kidnapping or killing committed by family or other parties if they return to Indonesia, even though this is not true even though Indonesia is ranked second in forging domestic legal registered in Hong Kong immigration

However, in the number of Indonesian non-refoulement claims 10% are still based on the Filipino base which only amounts to 5%, of the total number of 7,960. This means that there are around 796 people who want to be repatriated to Indonesia for various reasons. Many Indonesians who do not want to be repatriated (non-refoulement claims) or overstays will more or less base on the increase in crime rates committed by ex-PM men in Hong Kong. That is because the oven requires cost for their daily needs. Whereas men are prohibited from doing work, so they do a lot of part time work in a number of good restaurants who want to remain on the right track. But not a few do other crimes so that the conduct of the former PMI was punished with two tumb, namely overstay and other crimes. causing Indonesian citizens or PMI to become over and submit non-refoulment clams. From some of them were carried out on overstayers who were in Dew Yang outside the prison and the majority of them did not know and overstay.

Some went along because they saw that only those who overstayed had better money because of the difficulty of moving agents, there were those who were granted. Most of them live together with people in the same boat as rented jointly, even though sometimes those living with a partner or sleeping on the streets. Overstayer is part-time and hush, but the work earns more than the PMI who works as domestic helper at the employer's house. More aspirations and broader freedoms left PMI tempted to follow in the footsteps of his colleagues who had overstayed. Is it because of the difficulties in moving agents so that the PMI causes overstayers to choose? Based on the Along forum conducted by KIRI Hong Kong on December 14, 2014, there were a number of PMI who were concerned about the online system which made it difficult for BMI to change agents because of locking)

PMI so as not to change agents. The online system works for step in providing services and protection for Indonesian citizens. It has been confirmed by the Indonesian Consulate General in Hong Kong that there is no prohibition on PMI to move agents as long as the PMI has paid the cost structure that must be paid for 6-7 months of installments. Why does KJRI have to make these requirements?

That is because it has become an obligation for PMI to pay off the cost structure. Because if before being paid but KJRI gives approval to move agents, then KJRI can be accused of providing assistance to PMI for not paying the cost structure. The cost structure should not be charged to PMI for storing PMI data working in Hong Kong, this is required obliged to provide decent work and livelihood to their citizens in accordance with Act 27 paragraph (2) of the 1945 Constitution. However, because the state still has not able to make this a matter, then the private parties was given the opportunity to participate in installments that should have been carried out by PPTKI themselves will still need funds to bail out the cost structure PPTKI Also legalize Indonesia's financial institutions non-bank and bind the cost structure over Previously, in reality, Indonesian financial institutions that had been prepared to analyze earlier did not perform well in practice. In fact, in practice, it asked for the support of Hong Kong financial institutions to finance the co-structure.

So that financing by Hong Kong financial institutions is subject to interest rates of up to 30 percent, which must be borne. By comparison with the Philippines, the selection process for the registration of accreditation for direct labor is carried out by the government and not by the private sector. This process is called the Pre-Employment Service Office (PESO). Whereas private parties (agents) are only beta to recruit only, handling all kinds of documents from the Philippine Overseas Employment Administration (POEA). Does the two weeks rule play a role in increasing the number of PMI employees in Hong Kong? It has become an ordinance or employment officer in Hong Kong if there is a domestic helper dismissed or asked to stop were only given two weeks opportunity to stay in Hong Kong until they got a new spell, according to several PMI who had cancelled contracted him because they were very worried about the PMI want found it difficult to find an employer who was bored. to be o After another trigger is income which is more broad which makes the PMI shifted due to overstaying and overstayers is suffering from illness which died on Thursday, 1st December

2014 at Queen Elizabeth Hospital, Kowloon because of drugs overdoses type of methamphetamine or ice and infected with the HIV virus or an Overstayer with the initials SEN killed in Hong Kong, the message will increase when the overstayer of the Indonesian citizen has a child by contact with fellow overstayer.

Overstayer's repatriation of migrant workers in Hong Kong cannot be forced, because the overstayers do not want to be repatriated. It is proven that there are many overstayers who submit non-refoulement claims. upstream processes in BNP2TKI and PPTKIS). Because if the improvement is done downstream, then the solution is only temporary. There should be a structured improvement that starts and a recruitment process that is too long, to improve the quality of Work Training and Certification Institutions in Indonesia so that TKIs are sent according to the required qualifications, reduction the drastic structure that exists today, the determination of financial resources that are responsible and responsible, and the integration of the WNI protection system, whether carried out at the representative or in the Ministry of Foreign Affairs and BNP2TKI.

THE 8-POINT AGENDA AND ITS RELATIONS WITH INDONESIAN POLICY IN MIGRANT WORKERS

The application of Indonesian policy related to estimation country (Hong Kong) international migrant worker has become a more important issue for Indonesia because the number Indonesian labor working abroad increases significantly during the last five years. Every year more than half a million Indonesians migrate abroad to work as foreign employers Hong Kong. The Indonesian migrant workers are predominantly women and work as foreign domestic workers. Hong Kong is one of the main destinations for Indonesian's migrant domestic workers to work and in accordance with Hongkong immigration data per April 2014 there are 151.416 Indonesian domestic workers in Hongkong. This number significantly contributes to the national revenue. In 2013 alone, it was estimated that Indonesian migrant workers sent US\$.587.336.254 to their home in Indonesia.

Therefore, the Indonesian government has the obligation to protect national to work overseas. At this very rare opportunity, the writer would like share with you on how the Indonesian government set the national regulations to protect its national overseas in link with the UN Secretary General 8-point agenda for action in migration work and also the le of the Indonesian Consulate in Hong Kong in order to implement regulation. international legal instruments, convention on domestic workers the International Convention on the Rights of Migrant Workers and their Families. including the ILO (International Labor Organization) Convention In this regard, the Indonesian government has ratified if the said convention related to human rights and migrant worker. The list of the ratified international convention appeal as annex 1. The Indonesian government has fully recognize the need to workers and domestic workers in particular, It is reflected the Indonesia government decision to ratify the International Convention on the Protection of the Rights of All Migrant Worker and Members of Their Families (Migrant Workers Convention in 2012).

In addition to support the Domestic Workers Convention the Indonesia President has attended his support at the 100 International Labor Conference in Geneva, Switzerland on 14 June 2011. In the year of 2004, the Indonesian Government introduced the legislation No.39 at the year 2004 Subsequently, in order to implement the said regulation, the Indonesian Consulate in Hong Kong introduces several related undertaking such as: establishing an interlink (data base system on-line system), welcoming program. during stay program and exit program. The programs are made program in order to engaged more and also to protect Indonesian nationals in Hong Kong, especially its immigrant workers, The Consulate also provide a shelter and providing legal aids for every Indonesian migrant workers who have legal problem provide a comprehensive protection to its migrant workers. Reduce the cost of labor migration his point emphasizes reduction in cost to work migration, such as the transfer costs of remittances and fees paid.

Eliminate migrant exploitation, including human trafficking order to prevent the practice of migrant exploitation or human trafficking Indonesia has already Introduced Law No. 21 of 2007 on Eradication of human trafficking crime. To further strengthen It, the government has also ratified The UN Convention against Transnational Organized Crime by Law No.5 of the year 2009. The newest legal step by the Indonesian government to

prevent, to crack and to punish the human trafficking is to ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. The said regulation has proven effective to and supplementary to other related regulation such as law No.23 of the 2003 on Child Protection, Law No.13 of 2006 on victim and witness protection and Law No. 39 of 2004 on Placement and Protection of Indonesian Migrant Worker The policy of Indonesian government is clear enough which declare that human trafficking is forbidden including in the area of migrant worker placement abroad. Placement of migrant Worker abroad should be done by the PPTKIS which has license to send and place migrant workers abroad.

It is ruled in article 4 Law No.39/2004. Therefore, the Individual or Legal Person who send and place migrant worker illegally is categorized as human trafficking and be punished by Law No.39/2004 and put into the development agenda The Indonesian Government through BNP2TKI has already put into development agenda. The government Lie that the migrant workers are development asset. Therefore the Indonesian government has commitment to increase the quality of migrant worker. Strengthen the migration evidence base in developing and strengthen the migration evidence base, BNP2TKI has already instrument to improve services through Information technology is known *Sisko-TKLN* (computerized system of foreign migrant worker. This online application system will support the placement assurance of migrant worker read accordance with legislation in force.

Therefore, to strengthen the service to Indonesian migrant workers in Hong Kong, Consulate will integrate data of the online system both NP2TKI and Consulate. However, it will form and service to Indonesian migrant worker in Hongkong. integrated enhance migration partnership and cooperation on address the problem of migrant workers cannot be resolved by one side namely the sending state. It requires also the operation with the receiving state. The Government of Indonesia extends its appreciation to the Government of Hong make Hong Kong as a safe home for Indonesian workers comprehensive regulation to regulate the foreign Consulate also welcomed on the implementation namely the undertaking how to control and to monitor the Indonesian workers in Hong Kong.

In conclusion, the 8 points agenda generally have been implemented in the Indonesian policy. To make this undertaking more effective, it requires the input and cooperation to uphold and improving arrangements for migrant workers. In my opinion the Author explain very clearly and simply but the cases are difficult to understanding.

ABOUT AUTHOR

Nabilla Banuati is Undergraduate Law Student at Faculty of Law, Universitas Negeri Semarang Indonesia. She is student at International Program at Faculty of Law. Besides as student, Author also involved in some research projects concerning to legal studies, as well as actively publishes his paper on some conferences both national and international. In 2019, She presented his paper on International Conference in Malaysia.