

Legal Protection Model for Indonesian Migrant Workers

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The emergence of several large cases of migrant workers in Malaysia and Singapore as well as in several Middle Eastern countries, especially Saudi Arabia, made all the nation's components flinch. Many people argue that the problem occurs because of the low level of education of migrant workers. There are also those who say that this problem occurs because employers of Indonesian labor services companies (Pengerah Jasa Penyalur Tenaga Kerja Indonesia, PJTKI, now called Perusahaan Penyalur Tenaga Kerja Indonesia Swasta, PPTKIS) are not nationally minded and only pursue profit (profit-oriented). There were also those who argued that the cases of migrant workers occurred due to the inactivity of regulative and punitive functions of the Government of the Republic of Indonesia. Based on the background above, the problem can be formulated is how the urgency of legal protection for Indonesian migrant workers abroad and how the legal protection model for Indonesian migrant workers abroad. Research carried out at BP3TKI and the Semarang Manpower and Transmigration Office underlined that legal protection for Indonesian migrant workers abroad is very important. The urgency in legal protection due to fulfillment of the rights of victims who work legally abroad but also cannot be fully implemented properly, due to differences in legal systems with migrant workers recipient countries that do not necessarily want to protect the rights of migrant workers who experience treatment not please from their own citizens. The migrant workers who work illegally the government has not been able to fully protect the rights of victims who have experienced criminal acts. The legal protection model for migrant workers currently emphasizes the fulfillment of victims' rights who work legally abroad, such as obtaining legal assistance from a local lawyer appointed by the ambassador of the Republic of Indonesia in the country receiving the migrant workers, mentoring by psychologists and clergy, bringing the families of victims, compensation, and insurance claims. And at the same time, for migrant workers who work illegally the government has not been able to fully protect the rights of the victims.

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INTRODUCTION

NATIONAL Agency of Placement and Protection Indonesian Workers (*Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia*, BNP2TKI) stated that the number of Indonesian workers sent abroad was 203,490 (57%) and the number of male workers was 156,573 (43%). Most of the Indonesian workforces are women who work in the informal sector, which do not have sufficient education, experience and insights. Most of them are recruited by brokers/agents from PJTKI, who promise jobs to them with procedures that are fast and cheaper. This is what triggers the occurrence of a series of problems experienced by Indonesian Migrant Workers (PMI) starting from abusive treatment from employers, persecution and even rape by their own employers (exploitation). This condition triggered the government to enact Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad. The main problem in the protection law at issue is not about express or not, but the commitment of the Government as a stakeholder in realizing protection to Indonesian migrant workers (BNP2TKI 2014; BNP2TKI 2015; Hidayah 2015).

The placement of migrant workers itself often raises problems that involve not only PMI, but also involves many parties, such as families of migrant workers, sending companies and the government, in this case the Ministry of Manpower and Transmigration and the Ministry of Foreign Affairs/Indonesian Representatives abroad. This is one of them caused by the unclear responsibilities of the government and employment agencies regarding the fulfillment of labor rights (Situmorang 2012).

The responsibility of the sending agency or company, as emphasized by Situmorang (2012), needs to be clarified so that excesses arise in the process of sending migrant workers such as (1) human trafficking transactions at the time of recruitment and placement; (2) illegal placement process, which tends to lead to human trafficking practices, (3) sexual harassment and violence during the pre-placement period, (4) inhuman treatment during the shelter period, (5) uncertainty about his departure abroad, (6) uncertainty about who will be his employer, (7) uncertainty about wages to be received, (8) violence, abuse, and sexual harassment on people, and (9) violence and fraud when returning to the area of origin, can be minimized.

With the disclosure of several large cases of PMI in neighboring Malaysia and Singapore as well as in several Middle Eastern countries, especially Saudi Arabia, all components of the nation were shocked. Many people argue that the problem occurs because of the low level of education of migrant workers. There are also those who say that this problem occurs because employers of Indonesian labor services companies (PJTKI, now called PPTKIS) are not nationally minded and only pursue profit (profit-oriented). There were also those who argued that the cases of migrant workers occurred because of the inactivity of regulative and punitive functions of the

Government of the Republic of Indonesia ((Rahardja 2015; Ratya 2017; Husin 2009).

Data from the BNP2TKI Development Research and Information Center states that Indonesian workers who have problems based on their country's placement are 156,100 problems (20120-2013) which are divided into several countries as follows.

Table 1 Data of Troubled Indonesian Migrant Workers 2010-2013

No	Country of Destination	2010	2011	2012	2013
1	Saudi Arabia	31.676	18.977	8.940	3.769
2	UEA	6.843	6.770	5.545	3.737
3	Taiwan	3.834	3.520	2.231	525
4	Qatar	2.924	3.460	4.061	2.777
5	Singapore	3.395	2.972	2.380	478
6	Oman	2.140	2.131	1.956	1.337
7	Kuwait	2.466	685	299	94
8	Hong Kong	1.789	1.808	1.215	223
9	Malaysia	1.953	1.282	683	374
10	Syria	339	437	1.214	5.054
11	Bahrain	743	762	872	639
12	Brunei Darussalam	190	144	198	61
13	South Korea	0	4	0	9
14	Others	2.107	2.621	934	664
	Total	60.399	44.432	31.528	19.741

Source: BNP2TKI Development Research and Information Center, 2013

This amount is data recorded by BNP2TKI based on incoming reports so that the numbers could be larger than the data with problems that could not be reported to the government, even those data also increased in 2018, considering the data on employment Indonesia in 2018 also has a large number, namely 228,918 people, data as of October 2018 (BNP2TKI 2018).

The large number of Indonesian migrant workers also with the large number of problems requires the government to provide optimal safeguards. This aspect of protection against the placement of workers abroad is very

much related to the management and regulation system carried out by various parties involved in sending Indonesian workers abroad. For the pace of overseas employment, Indonesia has established a mechanism through three phases of placement responsibility, namely the pre-placement phase, during placement and after placement (Aswata 2006).

The regulation regarding the placement of Indonesian workers abroad is Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad. In the consideration of letters c, d and e, it is stated that Indonesian workers abroad are often used as objects of human trafficking, including slavery and forced labor, victims of violence, abuse, crimes for human dignity and other treatment that violates human rights. that the state must guarantee and protect the human rights of its citizens who work both at home and abroad based on the principle of equality of rights, democracy, social justice, gender equality and justice, anti-discrimination and anti-trafficking in persons. In the case of the placement of Indonesian workers abroad it is an effort to realize equal rights and opportunities for workers to obtain decent employment and income, the implementation of which is carried out by observing the dignity, dignity, human rights and legal protection as well as equalizing employment opportunities and providing labor that corresponds to national needs.

In the same context, Bachtiar and Prasetyo's research (2017) looks at the problems of Indonesian migrant workers by looking at the development potential of workers returning to Indonesia. According to him, the need for re-integration of development for Indonesian migrant workers returning to Indonesia can have an impact on the domestic economic and social sector. However, efforts to protect Indonesian workers abroad are still a problem, even though there are laws that regulate them, Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad.

LEGAL PROTECTION *to* INDONESIAN MIGRANT WORKERS

MIGRANT workers, including Indonesian Migrant Workers (*Pekerja Migran Indonesia*, PMI) comprise a significant proportion of the migrant labor force in the world. There are an estimated 232 million migrant workers around the world (ILO 2015). In 2010 it was estimated that 52.6 million migrant workers were domestics. Estimates are difficult to obtain and some sources quote a figure between 51 and 100 million workers (ILO 2013). The numbers represent an increase of more than 19 million since the mid-1990s. Most strikingly, domestic work accounts for 7.5 per cent of women's wage employment worldwide and a far greater share in some regions (ILO 2013). In Asia, at least 21.5 million women and men work in private households (or 41 per cent of all domestic workers worldwide) (ILO 2011). The International Labor Organization (ILO) (2015) notes that globalization, demographic shifts, conflicts, income inequalities and climate change will encourage ever more

workers and their families to cross borders in search of employment and security (Islam and Cojocarú 2015).

As a result of globalization, demographic shifts, conflicts, income inequality and climate change have also prompted many Indonesians to find work abroad, one of destination country is Malaysia. The number of labor migrants placed in Malaysia through the Indonesian Ministry of Manpower increased from a few thousand per annum in the early 1980s to an average of 100,000 in the 1990s. After 2000 their numbers more than doubled. The Malaysian Ministry of Finance in 2010 reported 1.9 million legal migrants of which two thirds from Indonesia (Devadason and Chan 2014). Unofficial sources suggest there are probably an equal number of undocumented Indonesians in the country and although accurate data are not available, it seems safe to estimate the total number of all Indonesian migrant workers at over two million (IOM 2010). Legal migrants are mostly female, the irregular ones predominantly male (Adi 2003; IOM 2010). It also emphasized by Spaan and Naerssen (2017) that this number continues to grow every year so it requires its own management.

In Indonesia, the system of migration management has shifted from a *laissez-faire* approach to a more state-managed system, with regulation of private enterprise providing migration services (Spaan and Naerssen 2017). The urgency in legal protection by the government for Indonesian workers who work abroad and become victims of criminal acts at this time prioritizes the fulfillment of victims' rights who work legally abroad but also cannot be fully implemented properly, due to differences legal system with recipient countries of Indonesian migrant workers who do not necessarily want to protect the rights of migrant workers who experience unpleasant treatment from their own citizens. Our country must submit to the law of the recipient country of Indonesian migrant workers, therefore the efforts of the current Indonesian government in protecting its citizens in this case are Indonesian migrant workers who are victims of criminal acts in other countries only limited to diplomatic cooperation with recipient countries of Indonesian migrant workers who do not have a protection agreement for Indonesian workers. In the other hands, for Indonesian migrant workers who work illegally the government has not been able to fully protect the rights of victims who have experienced criminal acts. Legal protection provided by the government to female workers who work abroad and experience rape either committed by their employers or not the same as Indonesian female workers who are victims of criminal acts (Astawa 2015).

In addition, the convention which contains elements of the protection of migrant workers' rights, namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, has not yet been effective against the protection of Indonesian migrant workers in fulfilling their rights as victims of criminal acts. The Indonesian government itself or by the recipient country of migrant workers who have ratified the convention.

The protection carried out by the Indonesian government against Indonesian migrant workers has not yet discussed protection of migrant workers. The lack of government specifies gender protection for Indonesian migrant workers making the protection that has been carried out for every Indonesian laborer who is a victim of any crime abroad gets the same treatment, whereas cases that occur to them are different and require different handling according to the consequences of the crime. In addition, bilateral agreements in the form of MoUs and International Conventions on the Protection of Migrant Workers and Members of Their Families, which have only been ratified by several countries receiving PMI, have not fully guaranteed the protection of the rights of female migrant workers.

Related to this condition, IOM (2010) stated that Article 1 of Law No. 39 of 2004 states clearly that the law only covers Indonesian citizens who meet the requirements for a certain period. Illegal migrant workers are not covered by this law and will not receive protection, regardless of whether they use illegal channels intentionally or not. Viewed from the perspective of Law No. 39 of 2004 is not much to say. The process of socio-economic reintegration is an important part of the protection of migrant workers and efforts to improve the welfare of Indonesian migrant workers and their families. But Law No. 39/2004 does not cover the protection of Indonesian migrant workers upon their return from abroad. In fact, many migrant workers experience social and economic problems during reintegration even though the benefits of working abroad and the salary they generate can be increased if employment services in Indonesia are also accompanied by financial education to manage their income from abroad. There are many cases of migrant workers returning home but unable to report problems experienced, for example migrant workers find that their salary is not paid by their employer after returning to their country. According to a study conducted by the Institute for Ecosoc Rights in 2007 as cited by IOM (2010), migrant workers returning from work abroad want to: (1) training and assistance in managing businesses; (2) support in forming cooperatives; (3) assistance in handling insurance and salary claims from work abroad; and (4) support for resolving family conflicts.

According to IOM (2010) the shortcomings of this law, in addition to the final initiative at the national level, generally government reform has been ad hoc and does not form a coherent and comprehensive strategy in dealing with many complicated issues regarding migration management in Indonesia, especially the protection of PMI rights and illegal migration. Indonesia signed the United Nations Convention on the Protection of the Rights of All Foreign Workers and their family members but national labor migration laws and policies are still intended to reduce regional unemployment and tend to focus on facilitating the flow of migrant workers rather than creating a protection mechanism for them.

MODEL of LEGAL PROTECTION *to* INDONESIAN MIGRANT WORKERS

IN terms of handling and fulfilling the rights of victims of migrant workers, the government must provide services for dispute resolution, legal assistance and recovery. The provision of legal assistance and dispute resolution services is part of efforts to fulfill the rights of migrant workers as citizens and in particular the fulfillment of rights the rights of migrant workers who are victims, in this case the right to justice, truth and recovery. The Indonesian Overseas Workers Bill explains some of the fulfillment of the rights of migrant victims who are victims abroad, article 50 paragraph (1) explains that overseas Indonesian workers who are still involved in the problem are delayed until their problems in the recipient country are resolved. Furthermore, the problems as stated in article 50 paragraph (1) are further clarified in article 50 paragraph (2), namely legal issues both criminal and civil, illness, injury and / or death due to acts of violence, mental health problems and settlement of rights which should be received by Indonesian workers abroad. Problems such as those listed in article 50 paragraph (2) can be handled by being included in the protection center to get legal assistance and advocacy as explained in article 50 paragraph (3).

The Draft Law on Indonesian Migrant Workers above is indeed one of the steps of the Indonesian government in protecting its workforce who work abroad in the future. Indeed, it may still require a considerable amount of time in ratifying the Indonesian Overseas Workers Bill to become a law that can protect our workforce who are abroad. However, various efforts have also been made by the Indonesian government that we should appreciate, because in carrying out safeguards we need cooperation from various parties.

Legal reforms concerning the protection of Indonesian migrant workers are required by reference to international conventions as emphasized by Yuwono (2011) that in carrying out legal reforms relating to migrant workers, the Indonesian government must also be guided by international law, namely the values of international conventions relating to the protection of migrant workers and their families. The new Indonesian Migrant Workers Law will also have to include the family principle as a protection unit. This means that the law must also include coverage that is entitled to protection, not only migrant workers as individuals but also members of their families. Then it must include the principle of participation. With this principle the protection of migrant workers also involves the community directly involved in the placement of PMI. In addition to carrying out the role of the community, the principle of participation also demands that migrant unions be built and empowered. So that, with migrant trade unions, migrant workers can defend and protect themselves more effectively and actively. The law on the protection of migrant workers will also have to contain the principle of decentralization. It is very important in shortening the chain of problems of PMI due to centralistic policies. Also the last but not the least, is the principle

of human rights and the right to be accompanied by an advocate when migrant workers will depart abroad, while working abroad and when returning to Indonesia.

One of the ways in preventive efforts for legal protection against Indonesian female workers who are victims of exploitation rape is to send PMIs to PMI recipient countries that have established bilateral cooperation with the Indonesian government and already contain elements of protection for Indonesian workers if they experience legal problems in Indonesia the PMI recipient country. In addition, guidance is carried out by the government through BNP2TKI and BP3TKI in accordance with Article 90 of Law Number 39 of 2004 concerning Placement and Protection of Migrant Workers such as providing guidance and advocacy for PMI starting from pre-placement, placement period and after placement until PMI understands the legal system of PMI recipient countries so that if PMIs get legal problems, they will know what to do.

Based on recommendations from the International Organization for Migration and some references obtained by the Authors, there are several policies that should be taken by the government in an effort to protect the law for Indonesian female workers who work overseas and become victims of exploitation rape, including:

1. Endorsing the Draft Criminal Code which clearly regulates the protection of its citizens through passive national principles.
2. Revise Law No. 39/2004 to include the obligations of the Indonesian government to migrant workers, ensure protection of all parties and include the inclusion of articles with a gender perspective. Most migrant workers who work abroad are women. The Ministry of Women's Empowerment has an important role in this revision process.
3. Ratification of the Draft Law on the Protection of Indonesian Migrant Workers which refers to the 1990 Migrant Convention concerning the Protection of the Rights of All Migrant Workers and Members of Their Families.
4. Make a cooperation agreement in the form of MoU concerning the safety of Indonesian workers, legal protection from the recipient country of PMI towards women workers for all forms of violence against women and also the safety of their reproductive organs.
5. Collaborating with TKI recipient countries that already have bilateral relations with the Indonesian government as outlined in the MoU on the protection of Indonesian or state female workers who have ratified the 1990 UN Convention or ILO Conventions.
6. Increasing the role of district level governments in implementing and enforcing the law and policies regarding the rights and protection of workers who work abroad and their families.
7. Providing special shelter for female workers who experience legal problems, such as victims of exploitation rape. So far, the shelters used

- by Indonesian migrant workers, both those who fled their employers and victims of crime, are still in one place
8. Special assistance from the Indonesian embassy in reporting cases involving Indonesian women migrant workers such as exploitation rape to the local state police.
 9. Protecting the rights of migrant workers who are victims of exploitation rape from the beginning of the case, from investigation to trial.
 10. Providing special health services for women workers who are victims of exploitation rape.
 11. There is a form of compensation for victims committed by employers or recipient countries of PMI.
 12. Increasing the number and scope of the attaché geography at the Indonesian Embassy abroad.
 13. Ensure that the freedom of associated workers is respected so that they can form associations that support their culture and advocacy that supports their rights abroad.
 14. Strengthen the labor inspection system to provide protection for the rights of all workers to both migrants and non-migrants.
 15. Adding task force services to Indonesian migrant workers in each Indonesian embassy by including special employees from BP2TKI/BP3TKI, because at this time only Hong Kong has a task force for PMI services.
 16. The Indonesian Embassy forms an association of migrant workers. As in Malaysia there are many informal PMI regional associations, which communicate/submit TKI complaints to Indonesian Embassy officials as a means to assist them (workers). Through a partnership with the Indonesian Embassy, the union of Indonesian migrant workers can help monitor work conditions more effectively and notify the embassy if problems occur in all sectors and urban or rural areas. Migrant workers who are also part of this union, especially in rural areas in Malaysia, can submit their complaints to the Indonesian Embassy without the knowledge of their employers.
 17. Try to abolish the contract that contains all documents such as the passport and visa held by the employer until the end of the contract.
 18. Remove illegal recruitment and through brokers by increasing supervision and facilitation of recruitment activities and increasing the involvement of district and provincial level governments.
 19. Ensure that migrant workers participate in certified orientation seminars on destination countries prior to departure without charge or a small fee for themselves. The seminar was carried out by each local government prior to the departure of migrant workers. This seminar needs to include information about culture, language, social norms and labor laws, labor rights, assistance available abroad, knowledge of finance and use of the insurance system.

The existence of preventive and repressive efforts from the government in dealing with problems such as the exploratory rape of Indonesian female labor is one form of protection that has gradually been sought by the Indonesian government to fulfill the rights of victims of exploitation rape itself. ILO (2010) also underlined that the need for diplomatic missions from the Indonesian government to be carried out related to the issue of protection for Indonesian migrant workers, which that Indonesian diplomatic missions in destination countries are truly stakeholders and providers of protection for migrant workers, but it is very important for the governments of destination countries to take responsibility for the welfare and protection of workers in their countries. Workers should be given the same terms and conditions in work (such as hours of work, periods of rest, wages, and access to health services), and similar legal protections to workers of their citizens.

The international conventions on migrant workers that have been agreed upon by several countries including Indonesia have actually opened up opportunities for the Indonesian government towards PMI recipient countries for cases that have happened to PMI, because countries that are subject to the convention must submit to the mechanisms contained in the convention one of which includes legal protection for foreign migrants. But until now, it is our country's legal system that is still the barrier that makes it difficult to do so. Where, as long as the recipient country of PMI has not yet participated in ratifying migrant workers' conventions, we also must submit to the applicable law in that Country if there are legal cases that afflict Indonesian workers. The lack of certainty that regulates the protection of Indonesian citizens who are outside the territory of the Republic of Indonesia and who experience legal problems has made the Indonesian government a loophole that should have been properly utilized does not work optimally.

Furthermore, an active role in conducting diplomatic efforts for cases such as trafficking in persons, deprivation of human rights, and sexual harassment from Indonesian embassies abroad which is a reflection of the state's representation in providing protection for Indonesian citizens is very necessary. To realize a common goal, the active role of all parties related to this issue is needed, both from embassies, consular officials, embassy officials, foreign ministries, the Ministry of Manpower and Transmigration, BNP2TKI, BP3TKI, victims and communities in supporting the implementation of protection for victims of acts criminal.

In the future, taking into account the number of female workers sent abroad which is increasing every year and balanced with all the risks that will be faced by the female workforce, the government continues to be demanded to be responsive to the consequences that women workers will experience by providing protection law in accordance with the mandate of the 1945 Constitution for all indiscriminately, whether Indonesian workers who work legally or who work illegally.

CONCLUSION

IT is emphasized and concluded that the urgency in legal protection by the government for Indonesian workers who work abroad and become victims of criminal acts at this time prioritizes the fulfillment of victims' rights who work legally abroad but also cannot be fully implemented properly, due to differences legal system with TKI recipient countries that do not necessarily want to protect the rights of migrant workers who experience unpleasant treatment from their own citizens. Our country must comply with the laws of the recipient country. Therefore the efforts made by the Indonesian government at this time in protecting its citizens in this case are migrant workers who are victims of criminal offenses only limited to diplomatic cooperation with recipient countries. Indonesian Migrant Workers (*Pekerja Migran Indonesia*, PMI) who do not have a protection agreement for Indonesian workers, whereas for migrant workers who work illegally the government has not been able to fully protect the rights of victims who have experienced criminal acts. Legal protection provided by the government to female workers who work abroad and experience rape either committed by their employer or not the same as Indonesian female workers who are victims of criminal acts.

The legal protection model for migrant workers currently emphasizes the fulfillment of victims' rights who work legally abroad such as obtaining legal assistance from a local lawyer appointed by the ambassador of the Republic of Indonesia in the country receiving the PMI, mentoring by psychologists and clergy, bringing the families of victims, compensation, and insurance claims, whereas for PMI who work illegally the government has not been able to fully protect the rights of the victims. Legal protection provided by the government to PMI who work abroad and become victims of criminal acts committed by their employers. The International Convention on the Protection of All Rights of Workers of Migrant Workers and Members of Their Families is currently not effectively implemented, as an effort to protect migrant workers who work abroad.

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