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## Research Article

# Human Trafficking and Migrant Workers: Analysis of Indonesian Migrant Workers Protection in Overseas

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**Abstract:** The problems in this research are concerning to the regulations on the legal protection of illegal Indonesian migrant workers abroad who are victims of trafficking in persons already comprehensive, and the forms, mechanisms and procedures for legal protection of illegal Indonesian migrant workers abroad who are victims of trafficking in persons in BP3TKI Central Java already comprehensive? This thesis research uses a qualitative approach with a juridical-empirical method. The results of research and discussion show that based on Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers Overseas (PMI Law), the protection provided to victims of human criminal acts includes legal, social, and economic protection. Whereas Law Number 21 of 2007 concerning Eradication of the Criminal Act of Trafficking in Persons (Human Trafficking Act) grants the right to victims of human trafficking, among others, restitution, rehabilitation, and repatriation. The most important form of legal protection for Indonesian migrant workers who are victims of trafficking in persons by Central Java BP3TKI is the repatriation of victims. In addition, the BP3TKI also conducts law enforcement against the perpetrators who are suspected of committing criminal acts of people. In conducting protection efforts, the Central Java BP3TKI collaborates with various parties such as the local police, BNP2TKI, and representatives of the Indonesian state in the placement country.

**Keywords:** Human Trafficking; Migrant Workers; TKI; Protection; PMI

## Introduction

Based on Article 3 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers (PMI) it is stated that the protection of Indonesian Migrant Workers aims to: a). guaranteeing the fulfillment and enforcement of human rights as citizens and Indonesian Migrant Workers; and b). ensure the legal, economic and social protection of Indonesian Migrant Workers and their families. In addition, PMI protection can also be seen in Article 5 of the 2012 RKUHP

governing the principle of protection and the passive national principle.

BP3TKI as a government agency in order to carry out the role of government in the field of service, placement and protection of Indonesian Workers Abroad. BP3TKI is obliged to implement good protection in the field in order to prevent the occurrence of Criminal Acts of Trafficking in Persons, bearing in mind that this institution is the spearhead of the protection of Indonesian migrant workers abroad, so BP3TKI should focus on Illegal Indonesian migrant workers from Central Java who work abroad who are victims of trafficking in persons.

Based on background on ATAs, then problem formulated 1). Are the regulations on the legal protection of illegal Indonesian migrant workers abroad who are victims of trafficking in persons already comprehensive? 2). Are the forms, mechanisms and procedures for legal protection of illegal Indonesian migrant workers abroad who are victims of trafficking in persons in BP3TKI Central Java already comprehensive?

The aim of this study To find out the arrangements regarding the legal protection of illegal Indonesian Migrant Workers who are victims of trafficking in persons. Then To find out the form, mechanism, and procedure of legal protection for illegal Indonesian Migrant Workers victims of trafficking in persons in BP3TKI Central Java.

## Method

This research uses a qualitative approach with a juridical-empirical method. The data used comes from primary and secondary data. Data collection techniques using interview and literature study methods. Data validity is done by data triangulation techniques, using sources, methods and theories. Data analysis places more emphasis on secondary legal material.

## Result and Discussion

As stated in the Preamble of the 1945 Constitution of the Republic of Indonesia, that one of the goals of the state is to protect the entire nation of Indonesia and the whole of Indonesian blood. The above clearly provides a mandate for the state to provide protection for the entire nation from all threats, especially legal and illegal Indonesian Migrant Workers who are victims of human trafficking crimes abroad. Legal migrant workers are migrant workers who have supporting documents and the process of departure and placement is carried out based on the legislation in force. While illegal migrant workers do not have complete supporting documents and the process of departure and placement is not carried out based on the legislation in force.

Illegal Indonesian migrant workers themselves are divided into two, namely illegal non-procedural PMI and illegal PMI victims of

trafficking in persons. The results of an interview with Rodli, S.Pd, MM, as the Head of the Protection and Empowerment Section of the Central Java BP3TKI stated:

"Non-procedural illegal PMI is Indonesian migrant workers whose departure processes are not in accordance with administrative requirements or their departure is not through official institutions. Illegal PMI victims of human trafficking are more severe illegal PMIs, because there are elements of fraud, coercion, forgery, violence, etc (Personal Interview, October 4, 2019).

*Human trafficking* is a crime that violates human rights. Both slavery, sexual exploitation, and whatever its forms are related to trafficking in persons for the purpose of exploitation, it clearly violates human rights. However, it has been well known that human rights are rights that cannot be contested because they are inherently inherent rights since humans were born and are also gifts from God that must be maintained between human beings (Ali & Pramono, 2011: 102-103).

As a state based on law (*rechstaat*), the implementation of human rights is said to be effective if it meets the following requirements, as emphasized by Nasution (2011), as follows:

1. Human rights must be made positive law;
2. There must be legal procedures to defend and protect these human rights; and
3. There must be independence of the court as the holder of a free and independent judicial power.

Article 23 Paragraph (3) of the Universal Declaration of Human Rights by the United Nations states that whoever works has the right to just and favorable remuneration ensures for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection (everyone who does work is entitled to fair and good remuneration, which guarantees his life together with family, commensurate with human dignity and if coupled with other social assistance).

Based on interviews with informants:

"Provision of protection for Indonesian migrant workers is cryptic. There is no distinction for example between formal and informal or legal with illegal (non-procedural). This is solely to protect the human rights of workers. However, in its implementation, in relation to providing protection for problematic illegal PMIs, particularly those affected by TPPO, it is quite difficult to trace because it is constrained due to preliminary data or

initial instructions” (Personal Interview, October 4, 2019).

In addition to accommodating the recognition of human rights in national regulations, Indonesia also holds international cooperation in the context of preventing and handling human trafficking. This can be seen from a number of efforts to carry out international relations, bilaterally, multilateral, and regionally.

#### **a) Bilateral Cooperation**

Bilateral agreements are agreements entered into by two parties. In connection with efforts to protect Indonesian Migrant Workers abroad, Indonesia entered into several bilateral agreements with the placement country.

##### **1) Bilateral Cooperation with Malaysia**

Malaysia is the second largest destination for Indonesian migrant workers. The Government of Indonesia has entered into a cooperation agreement regarding the placement of Indonesian workers. one of the countries that entered into the cooperation agreement was Malaysia, namely in 2006. With the MoU bringing hope that the number of people trafficking of Indonesian migrant workers in Malaysia can be reduced. However, the percentage of these numbers actually increased. That is what caused the moratorium to temporarily stop sending migrant workers to Malaysia from 2009 until a new MoU was reached between Indonesia and Malaysia (Pudjiastuti, 2011: 208).

The signing of the MoU between Indonesia and Malaysia at the end of March 2010 was an important moment for the continuation of Indonesia-Malaysia relations related to sending migrant workers to Malaysia. However, the MoU in the domestic sector is still in the stage of renewal. According to the Director of the Protection of Overseas Workers (PTKLN) of the Ministry of Manpower and Transmigration Eva Trisiana, the process of renewing the MoU with Malaysia was quite tough because the Malaysian side itself was still struggling (Petriella, 2019).

##### **2) Bilateral Cooperation with the United Emirates Arab Emirates (UEA)**

The country of Saudi Arabia is the biggest destination country for Indonesia in sending migrant workers abroad. According to the Report on Prevention and Handling of

Trafficking in Persons issued by the Secretariat of the Task Force on Prevention and Handling of Trafficking in Persons. The Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia in 2015, the Minister of Foreign Affairs of the Republic of Indonesia and the Minister of Foreign Affairs of the United Arab Emirates on September 13, 2015 signed a Memorandum of Understanding (MoU) of Cooperation in Combating Human Trafficking and Protection of Trafficking Victims Humans in Abu Dhabi, PEA. The scope of the MoU cooperation includes:

- a. Law enforcement in preventing and combating human trafficking, including detection, investigation and prosecution;
- b. Protection, rehabilitation and assistance to victims, which may include returning victims; and
- c. Capacity building and prevention efforts.

However, the high number of cases affecting Indonesian workers in the Middle East led the Indonesian government through the Minister of Manpower to issue Ministerial Regulation No. 260/2015 on the Termination and Prohibition of Placement of Indonesian Workers to Individual Users. The core of the regulation is to stop sending migrant workers, especially the domestic help sector in all Middle Eastern countries including Saudi Arabia, Algeria, Bahrain, Kuwait, Iraq, Lebanon, Libya, Morocco, Mauritania, Egypt, Oman, Sudan, Qatar, Palestine, Syria, Tunisia, United Arab Emirates, Yemen and Jordan.

During the moratorium, the Indonesian government continued to encourage countries in the region to improve the rules / governance of the placement and protection of migrant workers, as well as to have a clear resolution mechanism in the event of problems affecting Indonesian migrant workers. The government also reviewed the memorandum of understanding (MoU) with the destination country of placement. For this reason, the Indonesian government is currently trying to implement a one channel placement system (SPSK). This idea is an initiative between the two countries between Indonesia and Saudi Arabia to improve the protection of Indonesian migrant workers.

However, regarding this collaboration, there are challenges. Based on the Report on

Prevention and Handling of Trafficking in Persons issued by the Secretariat of the Task Force on Prevention and Handling of Trafficking in Persons. The Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia in 2015 the challenges faced by the Government of Indonesia in bilateral cooperation with partner countries are: (1) differences in domestic regulations in each country in efforts to deal with TPPO victims, which in turn raises (2) different perceptions in each agency related to each country in the effort to handle victims. This condition ultimately affects the type of service and protection provided by the local State Government to TPPO victims.

#### **b) Regional Cooperation**

When compared between regional and multilateral bilateral relations, bilateral relations seem to show clear progress. But in general, if only strengthened in bilateral relations, equality is often not achieved between Indonesia as a sending country and a recipient country. Therefore, the strength of encouragement in the regional framework is very important (Pudjiastuti, 2011: 210).

Within the scope of ASEAN, the Indonesian government has signed the ASEAN Convention Against Trafficking in Persons Especially Women and Children (the ASEAN Convention Against Trafficking in Persons Especially Women and Children) on 21 November 2015 in Kuala Lumpur, Malaysia, namely Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

Based on Article 1 signing the ASEAN Convention Against Trafficking in Persons Especially Women and Children stated that the purpose of this regional legal instrument is to be effective; a). prevent and combat trafficking in persons, especially women and children, ensuring fair and effective punishment for traffickers, b). protect and assist victims of trafficking in persons based on respect for human rights, and c). promote cooperation between States parties to meet these objectives (Prayoga, et.al, 2017: 410-411).

Regarding protection, this is regulated in Chapter IV Article 14 and 15 ASEAN Convention Against Trafficking in Persons Especially Women and Children.

#### Article 14

##### Protection of Victims of Human Trafficking

1. States Parties shall establish national guidelines or procedures for identifying victims of trafficking in persons and, as appropriate, can work with relevant non-governmental organizations that provide an assistance to victims.
2. If trafficking in persons occurs in more than one country, the State Party shall respect and acknowledge the results of identification of victims of trafficking in persons carried out by the competent authorities of the receiving State Party.
3. Unless the victim states otherwise, such identification shall be conveyed to the sending State Party without delay by the receiving State Party.
4. States Parties shall consider adopting legislation and other measures that allow victims of trafficking to live on their territory, temporarily or permanently, in certain cases. The State party shall give due consideration to humanitarian factors and compassion for this purpose.
5. States Parties shall endeavor to maintain the physical safety of victims of trafficking during their stay in their territories.
6. In certain cases and where possible under domestic law, the State Party is obliged to protect the privacy and identity of victims of trafficking in persons, including, inter alia, by carrying out litigation proceedings in closed cases.
7. States Parties shall, in accordance with domestic law, rules, regulations and policies, and in certain cases consider not to punish victims of trafficking criminally or administratively, for acts contrary to the law committed by them, if the act is directly related to deeds of trade.
8. States Parties shall without reason detain a person who has been identified as a victim of trafficking by competent authorities in detention or correctional institutions, before, during, or after civil, criminal, or administrative justice from trafficking in persons.
9. States Parties shall communicate to victims of trafficking of persons identified within reasonable time limits, all information relating to the victim's right to protection, assistance

- and support in accordance with domestic law and this Convention.
10. The State party shall, where applicable, provide care and support to victims of trafficking in persons, including in certain cases, in cooperation with non-governmental organizations, other organizations and other elements in civil society, as follows:
    - a. decent housing;
    - b. guidance and information, specifically related to their legal rights, in language that can be understood by victims of trafficking in persons;
    - c. health, psychological and material assistance; and
    - d. employment, education, and training opportunities.
  11. States Parties shall make their best efforts to assist victims of trafficking in persons in reintegration into society from sending countries.
  12. The State Party shall, in implementing this Article, pay attention to the age, sex and special needs of victims of trafficking in persons, especially children.
  13. States Parties shall ensure that their domestic legal system contains measures that offer the possibility of obtaining compensation for losses suffered to victims of trafficking in persons.
  14. States parties must provide reasonable funds to be allocated, including, if applicable, to establish a national trust fund, for the care and support of victims of trafficking in persons.
3. In accordance with Paragraphs 1 and 2 of this Article, at the request of the receiving State Party, the requested State Party shall, without undue delay or unreasonable, ascertain whether the person who is a victim of trafficking is a citizen or has the right to live permanently in his territory upon entering the territory of the receiving State Party.
  4. To facilitate the repatriation of victims of trafficking in persons who do not have proper documents, the State Party in which the person is a citizen or in which he has the right of permanent residence upon entering the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, documents these travel documents or other authorizations deemed necessary to allow the person to leave and re-enter the territory.
  5. States Parties shall adopt legislation or other measures as needed to establish a repatriation program if applicable, and if necessary, involving relevant national or international institutions and nongovernmental organizations.
  6. This Article shall not prejudice the rights granted to victims of trafficking by domestic law of the receiving State Party.
  7. This article is obliged not to rule out applicable bilateral or multilateral treaty rules or immigration arrangements that provide rights and privileges that are more beneficial to victims of trafficking in persons.

#### Article 15

##### Repatriation and Repatriation

1. The State Party where the victim of trafficking in persons is a citizen or where the person has the right of permanent residence upon entering the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the repatriation of the person without undue delay or unreasonable delay.
2. When a State Party repatriates a victim of trafficking in accordance with Paragraph 1 of this Article, the repatriation shall pay attention to the security of that person and the status of any legal process relating to the fact that the person is a victim of trafficking in persons.

Based on the convention, the Indonesian government, in this case the Ministry of Women's Empowerment and Child Protection together with the Ministry of Law and Human Rights, the Ministry of Foreign Affairs and members of the House of Representatives Commission I made efforts to address the increasingly worrisome cases of trafficking in persons, one of which was by discussing Draft Law the law on Ratification of the Convention at the regional level, namely the ASEAN Convention Against Trafficking in Persons Especially Women and Children (ASEAN Convention Against Trafficking in Persons Especially Women and Children).

##### c) *Multilateral Cooperation*

In addition to bilateral and regional cooperation, the Indonesian government also carries out multilateral cooperation. Indonesia is an

active country that considers important efforts to prevent and deal with trafficking in persons.

The latest developments on 10 - 11 December 2018 Indonesia has participated in an intergovernmental conference in Morocco attended by 150 UN member states. At the conference, the participants agreed on a pact on migration or the Global Compact for Safe, Orderly, and Regular Migration (GCM). The GCM contains 23 objectives to guide countries to develop policies and actions to improve the quality of international migration governance, whose outlines include the importance of accurate data collection, correct information, identity and documents, reducing the drivers of forced migration, fair and ethical recruitment, saving lives and international coordination for missing migrants as well as eradicating trafficking and people smuggling, border handling, guarantees of justice and abuse, active role of the diaspora, inclusion and integration, strengthening skills and managing remittances and social security, and international cooperation for safe and regular migration. Specifically, objective 6 of the GCM confirms the country's commitment to review the recruitment mechanism.

The GMC's main objective is to strengthen the government's commitment to improve regulations on recruitment to align with international guidelines and best practices, prohibit recruiters and employers from charging fees for migrant workers to prevent debt bondage, exploitation and forced labor, including mandating the government to establish recruitment oversight mechanisms effective, mandatory and enforceable. Goal 6 of the GCM confirms the country's commitment to review the recruitment mechanism. The GMC's main objective is to strengthen the government's commitment to improve regulations on recruitment to align with international guidelines and best practices, prohibit recruiters and employers from charging fees for migrant workers to prevent debt bondage, exploitation and forced labor, including mandating the government to establish recruitment oversight mechanisms effective, mandatory and enforceable. Goal 6 of the GCM confirms the country's commitment to review the recruitment mechanism.

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migrant workers to prevent debt bondage, exploitation and forced labor, including mandating the government to establish recruitment oversight mechanisms effective, mandatory and enforceable (Zulbahary, et.al., 2018).

In essence the arrangements related to the protection of Indonesian migrant workers are already comprehensive. Even the protection of Indonesian migrant workers today has also been accommodated in the principle of enactment of criminal law according to place, Indonesian RKUHP 2019. In Article 5 which regulates the principle of protection and passive national principles in principle states that Indonesian citizens are included in one of the interests of the Unitary Republic of the Republic Indonesia, so that the criminal provisions in the law can apply to it.

Legal protection for victims according to Barda Nawawi Arief can be seen from two meanings, as highlighted by Ali & Pramono (2011), that:

1. Can be interpreted as "legal protection not to be a victim of a criminal act" (meaning protection of human rights or legal interests of a person).
2. Can be interpreted as "protection to obtain a guarantee / legal compensation for the suffering / loss of people who have been victims of criminal acts" (so synonymous with "sponsorship of victims"). The form of compensation can be in the form of restoration of good name (rehabilitation), restoration of equanimity (for example, by forgiveness), issuance of compensation (restitution, compensation, guarantee / social welfare compensation), and so on.

In legal substance, there are several laws that have accommodated in relation to the form of legal protection if there are Indonesian migrant workers who are victims of human trafficking abroad.

Law Number 21 of 2007 concerning Eradication of Trafficking in Persons (TPPO Law) provides rights to victims of human trafficking, including restitution, rehabilitation and repatriation. Restitution in the TPPO Law constitutes a right in the form of compensation for; loss of wealth or income, suffering, costs for medical and / or psychological treatment measures; and / or other losses suffered by victims as a result of trafficking (Article 48 Paragraph 2 of the TPPO Law). Rehabilitation in the form of health rehabilitation, social rehabilitation, repatriation, and social reintegration from the government if the person

concerned suffers both physical and psychological suffering due to the crime of trafficking in persons (article 51 Paragraph (1) of the TPPO Law). Whereas the repatriation of victims is regulated in Article 54 Paragraph (1) of the TPPO Law which states that in the case of victims abroad needing legal protection due to the crime of trafficking in persons, the Government of the Republic of Indonesia through its representatives abroad must protect the personal and interests of the victim, and strive to repatriate victims to Indonesia at the expense of the state. Based on interviews with informants:

"The most important form of protection provided by Central Java BP3TKI is how to repatriate the migrant workers concerned. We save TKI until we can meet their families again. After that we also make legal efforts against the culprit. Regarding the repatriation, we are cooperating or coordinating with the Indonesian Embassy, Indonesian Consulate General, IETO in the destination country" (Personal Interview, October 4, 2019).

Based on Article 6 Paragraph (4) of the regulation of the Head of the National Agency for Placement and Protection of Indonesian Workers Number 10 of 2016 concerning the Organization and Work Procedures of the Technical Work Unit for Placement and Protection of Indonesian Workers, the technical implementing unit of the Placement and Protection Center for Indonesian Workers related to protection and empowerment has the task of monitoring the placement and protection of PMI in placement countries, mediating, advocating and solving PMI problems, implementing empowerment of Indonesian citizens overstayer (WNIO) / problematic PMI (PMI-B) / full PMI and their families, facilitation of returning WNIO and PMI -B (repatriation, illness and death), monitoring remittances, and facilitating insurance claims.

## Conclusion

The conclusion in this study is that in terms of national legislation, the legal protection of Indonesian Migrant Workers abroad has been terminated. But in its implementation the Indonesian government cannot work optimally without the assistance of the placement country. This must be supported by international

cooperation. Pursuant to Article 6 Paragraph (4) of the regulation of the Head of the National Agency for Placement and Protection of Indonesian Workers Number 10 of 2016 concerning the Organization and Work Procedures of the Technical Work Unit for Placement and Protection of Indonesian Workers, the technical implementing unit of the Placement and Protection Service Center for Indonesian Workers in principle has the task of monitoring and protecting PMI. The most important protection when there is an alleged human trafficking is the return of PMI.

## Declaration of Conflicting Interests

The authors state that there is no potential conflict of interest in the research, authorship, and/or publication of this article

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