

Protecting Our Migrant Workers from Violence: How the Legal Protection System Works?

Novita Intan 'Aina Salsabila
Faculty of Law, Universitas Negeri Semarang, Indonesia

Ragil Putri Amalia Solekhah
Faculty of Law, Universitas Negeri Semarang, Indonesia
ragilsunardi12@students.unnes.ac.id

Abstract

Indonesia is the 4th most populous country in the world. With this population, it is not surprising that Indonesia can send many workers abroad. In connection with that, there have been many cases of violence against migrant workers, especially female immigrant workers. This analysis analyzes legal protection for victims of violence, especially migrant workers. The method in this study uses normative juridical studies where researchers use several references as legal material to analyze the topic of discussion. This case study found that Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad, is a regulation



that regulates the protection of Indonesian migrant workers. This regulation stipulates that migrant worker arrangements must be based on integration, equal rights, democracy, social justice, gender equality and justice, anti-discrimination, and anti-human trafficking. The government has a responsibility to increase efforts to protect migrant workers abroad. For this reason, there needs to be an appropriate solution to overcome these problems and issues. This case study concludes that, although various legal theories and regulations of the Law are able to answer cases of violence against migrant workers, in-depth analysis is needed, so that a complete picture is obtained. This case study suggests the need for special regulations or laws to prevent violence against women, in the sense of critiquing criminal acts to providing legal remedies and sanctions for victims. In this case, it is necessary to regulate the legal process and compensation, recovery and safety of victims not only sanctions against perpetrators.

KEYWORDS

Violence, Labor, Women, Etymology

Introduction

Indonesia is one of the countries with the largest population in the world as reported by the news portal INews.id stated that Indonesia ranks after the United States with a population of 228 million people, precisely ranks 4th. With such a large population, it is not surprising that Indonesia can send many workers abroad. Many Indonesian citizens become workers in various countries ranging from European, American, and Asian countries. With the existence of this Indonesian Manpower program, many Indonesian citizens are helped in improving their economic standards. In February 2022, based on data, there were 9 million people in Indonesian workers or also known as Indonesian migrant workers (TKI / PMI) spread

invarious countries. ¹ The number consists of male workers and female workers. By looking at the large number of Indonesian workers working in various countries, Indonesia benefits from the large amount of foreign exchange received by the country from these workers.

Nevertheless, the increasing number of Indonesians working abroad must be accompanied by a large number of cases of violence, persecution, and harassment against these Indonesian workers. In the last period of years, from 2019 to 2020, BP2MI managed the repatriation of 700 bodies of migrant workers victims of violence from the country where they worked, as well as arranged the repatriation of 460 Indonesian workers in sick conditions. The 460 migrant workers were also victims of violence where the migrant workers worked. This shows the large number of victims of migrant worker violence abroad. In this regard, it is necessary to review the regulations governing the protection of Indonesian workers.

Part of national development efforts which are regulated in Pancasila and the 1945 Constitution, is employment development. Every society or citizen has an equal position in law and government and is obliged to respect the law and government with nothing else as stipulated in Article 27 paragraph (1) of the 1945 Constitution. The articulation indicates the position of citizens in law. the rights of every Indonesian citizen are the same for every citizen, both children, dewasa, men and women and get legal guarantees, especially in the field of labor.

As contained in the Government regulation in the preparation of directives related to the protection and increase of manpower programs, namely regulating work, guaranteeing work so that there is no discrimination against women and ensuring that they get their rights, both financial rights and backhand financial rights such as menstruation, maternity and breastfeeding. The perspective of Human Rights (HAM) expects that humans are born break even, rise and have freedom (free and

¹ Puti Aini Yasmin, Wednesday, February 2, 2022, 20 Most Populated Countries in the World 2022, *Inews.id*.

rise to). This is based on the assumption that discrimination is not allowed. This approach has drawn criticism from feminists for implicitly blaming the victim, particularly in the context of rape, by giving credence to the widespread gender view that the victim may have 'asked for it'.

Currently, there are still many cases of human rights violations against Indonesian migrant workers. One of the things that is not in accordance with the application of human rights to workers is the existence of violence by employers. Pro-arrest and prosecution policies for perpetrators in cases of violence against migrant workers have been implemented. The government designed policies to respond more effectively to racially and religiously motivated crimes as well as homophobic and transphobic violence. The proliferation of such policies and practices in recent years is a welcome sign that governments are beginning to develop an inclusive approach to victimization that recognizes the broader structural underpinnings of victimization and its relationship to social incompatibility. Measures adopted by the traditional criminal justice system to provide more effective protection for victims' needs have been paralleled by the development of a series of restorative justice initiatives in the past two decades.

The rights of migrant workers, especially women, are legally guaranteed and regulated by conditions that constitute the obligation of the state to protect women as citizens to respect human rights and freedoms. Thus, effective steps are needed to keep pace with existing social developments. This step can be in the form of protection which in this case is protection for victims of violence against migrant workers, namely preventive protection, which is made by the government with the aim of preventing violations from occurring. There is also protection in the form of repression which is the last stage of protection for perpetrators of actions that are considered inappropriate / violate regulations which are usually also accompanied by sanctions.

Regarding Indonesian workers, it is regulated about the protection of migrant workers, namely in Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad, also a regulation that regulates the protection of Indonesian migrant workers. Both regulations already contain regulations regarding the protection of the rights and obligations of migrant workers. The regulation should be able to protect Indonesian migrant workers. However, in practice there are still many violations of the rights of Indonesian migrant workers who are not protected and face violence while working in the place of placement. For this reason, it is necessary to study the legal protection for Indonesian migrant workers so that in the future the rights and obligations of workers can be truly prioritized in the world of work. Therefore, the author wants to examine the perma of violence against migrant workers with a victimology approach that examines from the perspective of victims who are factors in the emergence of crime, the relationship between victims and perpetrators, and the relationship between victims and the criminal justice system. In addition, in this case, the victims caused are women, so the author will also examine efforts to protect the rights of women workers as victims of violence.

Method

This research uses literature study techniques obtained based on legislation, legal books and articles, and legal journals, so the approach used in this study is normative juridical. The type in this study is descriptive, which aims to make the object of research as widely known as possible through various information related to the problem raised. In this writing, researchers use research methods with normative juridical methods with a *case approach*, researchers use several references as legal material to analyze the object of research.

Results and Discussion

1. Protection of Indonesian Labor Law from a Victimological Perspective

Benjamin Mendelsohn (1900–1998) was a criminal law scholar who coined the term victimology in a paper presentation in Bucharest, Romania, in 1947 and used it in a paper entitled "A New Branch of Bio-Psycho-Social Science: Victimology" in 1946 (Mendelson, 1963; *The Victimologist*, 1998). As a criminal defense attorney, Mendelsohn, like many victimologists of the time, was interested in understanding how victims' actions contributed to criminal activity.²

In the study of victimology, there are also several typologies of victims, including First, the level of irritability experienced by victims such as physical, psychological, emotional conditions as a basis for assessment of victims. Second, the level of negligence of the victim that can be seen in a state of consciousness or not he is part of the crime. The science of victimology in conducting studies on acts of abuse that occur to minors examines several things about victims, namely the relationship between the role of victims and the occurrence of crimes, the relationship between victims and perpetrators, victims who are in vulnerable positions and the relationship between victims and criminal justice in Indonesia. Therefore, the author examines victims of sexual violence in migrant workers, especially women, using several aspects previously described.

Broadly speaking, the definition of victim is characterized not as a victim who bears directly, but also a victim who experiences suffering that can be classified as a victim. By victim we mean a spouse who lost their spouse, a child who lost a father, a guardian who lost a child, and so on. Juridically, the definition of a victim is clarified in Law No. 31 of 2014 concerning the Guarantee of Witnesses and Victims, which states that victims are "natural persons who bear physical, mental, and/or financial

² Clevenger, Shelly. 2020. *Understanding Victimology: An Active-Learning Approach*.

suffering caused by a criminal act. Judging from the understanding, the so-called casualties are:

- a. Every individual
- b. Experiencing physical, mental, and/or suffering
- c. Economic losses
- d. Consequences of criminal acts

Victimology refers not only to the reality of the victims' lives but also to the existence of reciprocal relationships between institutions and structures 'necessary to understand how historical, cultural and socioeconomic processes, as well as state power, 'support the actions of certain individuals at certain moments'. One of the main ways to achieve such change is through advocacy on the part of the victims' movement for recognition of victims' rights.

In the case of sexual violence, the effects of rape and sexual assault are long-term and not just limited to the immediate aftermath of the crime. Some of the greatest damage to the victim is done at the psychological level. Two psychological disorders that many sexcrime victims associate with post-traumatic stress disorder and major depression have been used to describe trauma reactions observed in such victims over the past two decades. Rape victims experience this trauma reaction more than victims of other crimes such as robbery. Clinical symptoms persist for months, with nearly half of victims meeting trauma criteria three months after the crime.

There have been other reported problems with social adjustment, sexual functioning and self-esteem. Impaired social adjustment in family and work life can last up to four months. The effect on sexual function varies depending on the frequency of sexual activity prior to the crime. Women with higher levels of sexual activity before the crime recovered faster than those women who rarely engaged in sexual activity before the assault. Disassociation, that is, impaired consciousness that results in difficulties in cognitive, emotional and physical integration, can also occur as a result of victimization. In addition, there are less definitive responses to trauma that

concern the idea of self-confidence. Reactions vary from the reinforcement of a negative self-conception to the destruction of a positive view of oneself of the world and everyone in it. Issues such as personal security, intimacy, and trust in others also arise.

There are therefore many factors that exacerbate the victim's initial trauma and make the death more complex and longer in duration than almost any other crime. The lasting effects of trauma are felt in relationships, families, workplaces, and avoidance of things done before crime, such as going out after dark. It is this effect that makes therapeutic procedures in the treatment of rape-related trauma attempt to cope with by reducing anxiety and changing patterns of avoidance, dysfunction or depression to develop appropriate responses to female victimization. In addition, it highlights the fact that women are active agents who develop strategies for survival.

Patriarchy consists of the exercise of male power over women, often through violence, facilitated by male conflicts over the state, social institutions and ideas. Feminists highlight the ways in which such violence is hidden from view or implicitly sanctioned by the state on the basis of gendered views on women's sexuality and is 'appropriate' in the domestic sphere. MacKinnon, for example, argues that the maleness of the state as well as the legal system obscures the experience of rape of women. In a patriarchal system, she argues, 'victims, usually women, are always feminine, "never only actualized". The assumption that in sexual terms, women really want what men want from women, makes male power over women in sex invisible.'

Patriarchy breeds a dichotomy between public and private money. If the public sphere, that is, the realm of the state, workplace, and other public institutions is dominated by men, women are relegated to the private sphere of the home. Domestic violence, which is used as a form of male/female control in the private sphere, is ignored by the state and criminal justice institutions on the basis of gendered conceptions of family privacy. The

theoretical focus of radical feminism on violence against women is complemented by research methods that emphasize responding sensitively to women's experiences.

Women, as victims can have a role either directly, indirectly, or in a conscious state in the emergence of a violent crime. The role referred to in this discussion is the condition of the attitude or condition of the prospective victim that triggers obscene acts. In this case, sometimes the thought arises why victims who actually get losses both physically, mentally, socially and others actually also play a role in triggering acts of erasure, even victims also take responsibility for the occurrence of these crimes. For example, workers consciously or unconsciously have made mistakes that can trigger the emotions of their bosses or employers so that uncontrollably resulting in violence against victims, both physical and psychological violence, or violence in immoral matters.

In a period of two years, from 2019 to 2020, BP2MI was recorded to take care of the repatriation of 700 bodies of migrant workers victims of violence from the country where they worked. In addition, it also arranged the repatriation of 460 Indonesian workers in a sick condition. The 460 migrant workers are also victims of violence where they work. This shows the large number of victims of migrant worker violence abroad. In addition, data shows that the majority of victims of migrant worker violence are female immigrant workers.

In the case of Indonesian workers, women migrant workers are vulnerable to violence or harassment. In this regard, it is necessary to review the regulations governing the protection of Indonesian workers. Judging from the existing reregulation, actually the regulation of rape in the law has existed for a long time. However, in terms of imposing criminal threats against perpetrators, it is still considered less than optimal. Both then and now are still considered not to have developed and are not enforced optimally. However, in the case of victims of sexual abuse whose victims besides being raped are also persecuted to death, they are only subject to

more severe crimes. In order to understand the problem of sexual violence, it is necessary to understand the understanding of violence itself, violence is an act that is practiced by an individual to another individual which causes or injures physically or psychologically.³

Women are one part of the vulnerable group because of physical conditions that trigger the emergence of an obscenity crime. Self-violence is a form of crime.

Acts of violence against women need serious attention, especially in this case related to violence against Indonesian immigrant workers. This then gave rise to many cases of harassment and violence against migrant workers that still occur, which take advantage of the weak position and still lack of broad advocacy and protection efforts for Indonesian workers.

It can be seen that equality and / or equality in relations between people is not what is expected. Although the struggle for justice and equality has been carried out for a long time, here women are still seen and treated as marginalized. It can be seen from the still existence of rimation disks, harassment, and often become victims of violence. Even in today's era, many women are exploited. This means that violence experienced by people occurs in various forms of violence, be it psychological, physical, sexual, or economic, cultural and religious. So, in terms of case studies on the protection of victims of violence in migrant work is a responsibility and part of a cross-country organizing system that should receive special attention⁴.

Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad, is also a regulation that regulates the protection of Indonesian migrant workers. This regulation regulates the regulation of oil and gas which must be based on equal rights, democracy, and social justice as stated in Pancasila. In addition, it must also pay attention to gender equality and justice, anti-discrimination, and anti-

³ Literature Review of Victimology on Sexual Violence Linked with the Convention on the Elimination of Discrimination Against Women, <http://repository.unpas.ac.id/11629/4/bab%20ii.pdf>

⁴ Nandika Ajeng Guamarawati, 2009.

human trafficking. The government has always been responsible for increasing efforts to protect migrant workers abroad. In terms of carrying out their duties and responsibilities, they must be able to ensure the welfare of migrant workers abroad. With this regulation, in fact, there is no risk of reducing the level of violence against migrant workers so that it is felt that the protection of migrant workers has not been enforced optimally.

2. Protection of Indonesian Labor Law from the Perspective of Women's Protection and Human Rights

According to the theory of legal protection, law has the aim of combining and organizing diverse interests in society, because in the exchange of interests, certain interests can be achieved by limiting the interests of other parties. Equal access to decent work and life, including equal treatment of persons with disabilities, according to the interests and abilities of the workforce concerned, without distinction of gender, race, ethnicity, religion, or political orientation. With Lawg No. 13 of 2003 concerning Manpower, there is an understanding that labor as everyone who is able to produce goods and / or services to meet their own needs and the needs of the community through work. Indonesian workers are Indonesian citizens who have implemented the conditions to work abroad in a permanent and paid employment relationship.

victimization and is a tool for the survey of attitudes towards crime and the services provided by the criminal justice system. People's fear of crime has generally been discussed in terms of their fear for their personal safety rather than the perception of crime towards their property. Women and the elderly express the most fear, even though their lifestyle puts them at the least risk of physical attack. In some places, because of the actual occurrence of crime, fear of crime is not necessarily irrational despite the apparent inverse relationship between victimization and fear of crime. Women and older people who have a fear of crime may reflect the hidden violence they

suffer in the domestic context as well as their greater vulnerability because the physical, psychological and economic costs of crime may be greater for them compared to wealthier and physically stronger people.

With more and more migrant workers having to work abroad, the problems faced by Indonesian migrant workers are widening and even creating human trafficking that can be classified as inhumane. Indonesian migrant workers are regularly used as subjects of human trafficking abroad, counting slavery and forced labor, victims of atrocities, beatings, abuses against nobles and other treatment that undermines human rights. The arrangement of migrant workers abroad can be a sign of increasing rights and opening up of labor to get a fixed job and salary, and its use is carried out by taking into account human nobility, rights and security, legal protection, and break-even with the division of labor and openings based on the wishes of the state.

Work is very important in human life; everyone has the imperative to work. Work can be used as a source of income that allows a person to meet the needs of himself and his family. In this way, the right to work can become a human right. The meaning and importance of working for everyone is reflected in Article 27 paragraph (2) of the Law on the Constitution of the Republic of Indonesia Year 1945 which states that every Indonesian citizen has the right to work and the highest quality as a human being. However, in reality, the limited number of jobs in the country makes many Indonesians look for work abroad. The number of individuals working abroad is increasing every year.

The large number of Indonesian workers who need to work abroad and who are currently working abroad has positive sides, one of which is being able to overcome some unemployment problems in the country, but also dangerous negative sides by treating migrant workers inhumanely. Indonesian migrant workers can face these dangers of their departure, while working abroad, and upon returning to Indonesia. Furthermore, measures are needed to maintain distance to avoid and reduce the danger of

indifferent treatment of migrant workers. In essence, what is needed in this case is the existence of a legitimate regulator who is able to appropriately direct the administrative arrangements of labor arrangements. Provides large business administration standard calculating cheap, fast, basic and secure.

Directives that abuse these standards can trigger the regulation of migrant workers who violate the law which certainly has suggestions for the need for security for migrant workers who are included in it. Cases of inhumane treatment of migrant workers abroad are increasingly widespread. Cases involving the fate of migrant workers are increasingly rampant and indeed create human trafficking that can be classified as inhumane. Certainty of Indonesian migrant workers abroad is the Law on the Sending of Indonesian Migrant Experts Abroad and the Law and supervision of its implementers. Statutory arrangements are also simple/short to meet growing demand. The shortcomings of the Law and the absence of laws governing the regulation and safety of Indonesian workers abroad that are so far away have been overcome by the current ministerial regulations and proper regulations. With the enactment of Law Number 13 of 2003 concerning Manpower.

So far, the shortcomings of the Exchange Supervision Service and the need for laws regulating and securing migrant workers abroad tend to be through ministerial regulations and implementation guidelines. With the issuance of Law Number 13 of 2003 concerning Manpower, the Statement Letter of Sending Indonesian Migrant Workers Abroad is declared invalid and considering that the sending of workers abroad is regulated in a separate law. The course of action through partitioned legislation will create legitimate guidelines that fish Indonesian migrant workers from all forms of abuse and treatment by anyone. Touching on Article 27 (2) of the 1945 Constitution of the Republic of Indonesia, the law basically provides guarantees for citizens who will seek their right to work, especially for

citizens working abroad, to obtain business administration on a customary basis. prioritizing labor security, both physically, ethically, and respected.

3. Legal Remedies in accordance with Human Rights Law No. 39 of 1999

Human rights are rights enjoyed by law, realized through the process of forming laws from the community itself, both domestically and abroad. "The basis of these rights is the consent of citizens, these rights are not limited to the natural order as the first basis, and thus become an important basis for regulating the labor immigration system in the country. The legal system and the guarantee of human rights of workers, migrant workers and their family members are also the main references in the formulation of bilateral and multilateral agreements related to labor migration.

According to Article 8 of Human Rights Law Number 39 of 1999, states that "the protection, promotion, enforcement, and realization of human rights are the responsibility of the government and society". The government has disseminated various laws and regulations and signed and ratified various conventions, such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, and others, but the implementation of these instruments is not supported by strong joint commitments. Therefore, laws and regulations are needed specifically to prevent violence against women, in order to criminalize criminal acts to provide legal remedies and sanctions for victims. In this case are regulated not only sanctions against the offender, but also the proceedings of trial and compensation, rehabilitation and safety of the victim.

4. Legal remedies based on Law No. 39 of 2004 concerning Indonesian Workers Abroad

Law no. 39 of 2004 states that the rights of migrant workers are guaranteed in the midst of all preparations for the relocation of migrant

workers abroad. Article 77 states that every planned migrant worker has the correct certainty in accordance with laws and regulations and supervision. Even though many things happen to migrant workers when working/going abroad. The Indonesian migrant workers' law as a control when migrant workers or migrant workers who will come who need to go abroad is not controlled, when remote employers are subjected to torture, or migrant workers act subjectively towards contributors to our foreign trade. Law No. 39 of 2004 on the placement and protection of Indonesian migrant workers abroad does not provide instruments to handle migrant worker cases, proving the shortcomings of the political system stipulated in the law. The government has not provided any legal instruments of guarantee or assistance to migrant workers. The government also does not maximize discretion with degraded countries.

Conclusion

From the discussion of the writing above, it can be concluded that the development of the times is very influential on existing social phenomena so that as a result of that the more complex forms of crime. Thus, effective steps are needed to keep pace with existing social developments. This step can be in the form of protection which in this case is protection for violence against migrant workers, namely preventive protection, which is made by the government with the aim of preventing violations from occurring. There is also protection in the form of repression which is the last protection for perpetrators of actions that are considered inappropriate / violate regulations which are usually also accompanied by sanctions. Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad, is a regulation that regulates the protection of Indonesian migrant workers. This regulation stipulates that migrant worker arrangements must be based on integration, equal rights, democracy, social justice, gender equality and justice, anti-discrimination, and anti-human trafficking. The

government has a responsibility to increase efforts to protect migrant workers abroad. Regulating Law No. 13 of 2003 concerning Manpower. Legal remedies according to Law Number 39 of 1999 concerning Human Rights. Special regulations or laws are needed to prevent violence against women, in the sense of criminalizing criminal acts to providing legal remedies and sanctions for victims. In this case are organized not only sanctions against the offender, but also due process and compensation, recovery and safety of the victim. Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad does not provide a mechanism to handle migrant worker cases, a proof of weakness in the policy framework stipulated in the law.

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“Crime is common. Logic is rare. Therefore, it is upon the logic rather than upon the crime that you should dwell.”

Sir Arthur Conan Doyle

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