

PLACEMENT AND PROTECTION OF INDONESIAN MIGRANT WORKERS IN PEMALANG

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PLACEMENT AND PROTECTION OF INDONESIAN MIGRANT WORKERS IN PEMALANG

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Abstract

Law No. 18 Year 2017 aims at protecting the rights of Indonesian Migrant Workers. In reality migrant workers get decent job; unpaid and violences. Pemalang Regency is one of the regencies in central java where many migrant workers have been violated. Act 39 of 2004 concerning Placement and Protection of Indonesian Labor in Foreign Country has determined and regulated sanction that can be delivered for violation by Private Indonesian Labor Placement Agency (PPTKIS) in worker pre-placement in foreign country. The sanction includes administrative sanction and criminal sanction. This research was intended to study enforcement of administrative and criminal sanction for violation of PPTKIS in labor placement in foreign country and resettlement of dispute between PPTKIS and TKI candidate in relation to placement agreement. The research method used is empirical with sociological juridical approach and data analysis is done descriptively. The results of the research indicated that there was violation by PPTKIS in pre-placement in foreign country. The violation was on recruitment of labor candidates. Pemalang regency is supposed to ensure the fulfillment of the rights of prospective Indonesian migrant workers. the Pemalang regency government oversees the implementation of the placement of immigrant worker candidates; forms and develops information systems for placement of the candidates abroad; makes diplomatic action to guarantee the immigrant rights and give protection optimally.

Kata kunci:

pekerja imigran;
Perlindungan; Pemalang

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Abstrak

UU No. 18 Tahun 2017 bertujuan untuk melindungi hak-hak Pekerja Migran Indonesia. Ternyata buruh migran mendapatkan pekerjaan yang layak; tidak dibayar dan kekerasan. Kabupaten Pemalang merupakan salah satu kabupaten di Jawa Tengah yang banyak dilanggar pekerja migran. Undang-undang 39 Tahun 2004 tentang Penempatan dan Perlindungan Tenaga Kerja Indonesia di Luar Negeri telah menetapkan dan mengatur sanksi yang dapat dijatuhkan atas pelanggaran oleh Badan Penempatan Tenaga Kerja Indonesia Swasta (PPTKIS) di prapenempatan tenaga kerja di luar negeri. Sanksi tersebut meliputi sanksi administratif dan sanksi pidana. Penelitian ini dimaksudkan untuk mengkaji penegakan sanksi administratif dan pidana atas pelanggaran PPTKIS dalam penempatan tenaga kerja di luar negeri dan penyelesaian sengketa antara PPTKIS dan calon TKI terkait dengan perjanjian penempatan. Metode penelitian yang digunakan adalah empiris dengan pendekatan yuridis sosiologis dan analisis data dilakukan secara deskriptif. Hasil penelitian menunjukkan adanya pelanggaran yang dilakukan oleh PPTKIS pada prapenempatan di luar negeri. Pelanggaran tersebut terjadi pada perekrutan calon tenaga kerja. Pemkab Pemalang seharusnya memastikan pemenuhan hak-hak calon pekerja migran Indonesia. pemerintah Kabupaten Pemalang mengawasi pelaksanaan penempatan calon TKI; membentuk dan mengembangkan sistem informasi penempatan calon di luar negeri; melakukan tindakan diplomasi untuk menjamin hak-hak imigran dan memberikan perlindungan secara optimal.

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INTRODUCTION

International migrant workers have been playing an increasingly important role in Indonesia's labor market since the early 1980s. Today, more than 4.79 million Indonesian have legally migrated to other countries for job opportunities. The actual number of Indonesian migrant workers working overseas is estimated to be far higher since many more migrate illegally. These migrant workers send billions of dollars back to Indonesia annually, unquestionably supporting the country's economic development. In 2016 alone, Bank Indonesia's recorded US\$8.9 billion remittances from migrants, contributing a significant of 24 percent to country's balance of payments inflows from services and income. While migration on one

hand has been seen as an opportunity for Indonesia, on the other hand there are many concerns about the human rights of Indonesian migrant workers as a result of many cases of harassment and exploitation.

Protection of Indonesian Immigrant Workers problems often occur to this day. These problems include starting from the initial placement process, when they are working abroad to the process of returning the immigrant workers from the country where they work. The protection and placement of migrant workers regulated in Law Number 18 Year 2017 concerning the Protection of Indonesian Migrant Workers (here in after referred to as PPMI Law), this Law aims to protect the human rights of Indonesian citizens who work abroad based. And hope that Indonesian citizens get decent job and income, which is carried out by taking into account the dignity and the protection of the law in accordance with national law. Implementer of abroad employment is the Government and the private company, while individuals are prohibited from placing Citizen Indonesia to work abroad to work in the domestic sphere.

Considering that migrant workers are able to contribute to this state by its existences. Therefore, the migrant workers are managed by the state. One of the intervention carried out by the State is issuing policies regarding the dispatch of migrant workers. The most important duties and responsibilities important and fundamental for the state as a consequence of giving private agents such as PPTKIS opportunity to make deliveries migrant workers is to create provisions the basis for the operation of a private agency that responsible.

These issues done by issuing laws and regulations related to the distributions of Indonesian immigrant workers namely Law No. 39 of 2004 concerning the placement and protection of Indonesian Migrant Workers in overseas. Law No 39 is regulated various kinds of terms and conditions that must be met in the distribution of Indonesian migrant workers that starts from the pre-placement process, placement and post placement of Indonesian migrant workers along with the sanctions that can be imposed for violations of these provisions.

There are differences in the responsibilities for Indonesian workers between the regional Government and the central Government. The responsibilities of regional governments both provincial and regency/ city in the context of carrying out their obligations towards protection for migrant workers. This namely regulating, fostering, implementing and oversesing for migrant workers for placing and protecting abroad. This paper will discuss the implementation and the procedure of migrant workers in Pematang.

Pematang Regency which located in Central Java is one of the areas which is the focus of research in the matter of sending Indonesian migrant workers. The number of Indonesian migrant workers that being violated in Taiwan and Saudi Arabia and some migrants fishing being an issue that have to be researched regarding the implementation and law enforcement of Indonesian migrants workers. This article will discuss the implementation of law protection of Indonesian migrant workers in Pematang since pra placement until the condition of the migrant workers in overseas.

RESEARCH METHODS

This research uses empirical juridical legal research which in other words is sociological legal type research and can also be referred to as a field research, which examines the applicable legal provisions and what happens in society (Disemadi, 2022). As for the empirical issue to be studied to find out the role of the Regional Government of Pematang Rejang Regency in protecting Indonesian Migrant Workers. This approach is intended to identify and conceptualize the law as real and functional social institution in real living systems. The sociological juridical approach emphasize research aimed at obtaining legal knowledge empirically. Data obtained from interviews and observations in the field. Data analysis is done descriptively with Law, Conventions as a primer data and academic journals, books as an additional data.

RESULTS AND DISCUSSION

Protection of Indonesian Migrant Workers

All human beings are obliged to be given rights in terms of obtaining protection in accordance with regulations of the legislation. According to Satjipto Rahardjo what is meant by legal protection is an effort to protect one's interests by allocating a power to him to act in the framework of those interests. Meanwhile, according to Philipus M. Hadjon, the State of Indonesia as a legal state based on Pancasila must provide legal protection to its people in accordance with Pancasila. Therefore, legal protection based on Pancasila means recognition and legal protection of human dignity based on the almighty divine value, humanity, unity, deliberation of social justice. These values give birth to the recognition and protection of human rights in the place of a unitary state that upholds the spirit of kinship in achieving mutual prosperity.

With regard to workers and employers, given the position of workers is lower than the employer, it is necessary for government intervention to provide legal protection for workers. Legal protection for workers is always related to power. There are two powers that always become concern, namely the power of government and economic power. In relations with government power, the problem of legal protection for the people (governed), to the government (who governs). In relations with economic power, the problem of legal protection is protection for the weak (economic) against the strong (economy), for example protection of workers for employers, means protection for workers is legal protection of the rights of labor. (H. Lalis, 2010)

Legal protection for workers is to give the normative rights of workers and ensure equal opportunity and non discrimination on any situation of the workforce and also their families while still taking into for develop the business world. Some aspects of legal protection for workers include:

- a. Occupational Health and Safety
- b. Workers social security program
- c. Working time
- d. Wages
- e. Leave

Similarly, workers who are supposed to get protection. As foreign exchange heroes, the PMI who work abroad and faced the risks, must also get a protection by

the government. Legal protection for Indonesian Workers according to Husni Lalu is divided into three protections, namely:

a. Social Protection This social protection takes the form of health insurance at work, freedom of association, and organization. Through social protection it is expected that TKI will avoid:

1. Human trafficking transactions at the time of recruitment
2. Non procedural placement
3. Harassment and violence against migrant workers

b. Economic Protection The economic protection is a protection that aims at migrant workers to be able to enjoy the income received to meet the needs of themselves and:

1. Uncertainty to get legal assistance
2. Uncertainty about the rights and obligations of migrant workers
3. Unsafe workplace conditions
4. High work risks that can result in work accidents. (Article 1 paragraph (4) of Law Number 18 Year 2017 concerning Protection of Indonesian Migrant Workers)

¹ The legal protection of Indonesian migrant workers (TKI) is governed by Law No. 18 of 2017, which is divided into several articles. The protection of the candidate TKI governed by article 7, protection during the recruitment of TKI stipulated in article 8-19, the protection during the work is outlined in article 21¹ and the protection after employment is governed by section 24-27. Government efforts to protect TKI abroad by issuing 31 policies in the form of laws, presidential decrees and ministerial regulations that are directly related to the protection of TKI working abroad. However, strategies issued by the government to protect TKI have not been effective. This is seen by the high number of cases affecting TKI.

The protection of workers is an inseparable part of the protection of citizens as a state obligation. Fundamental rights as humans must be fulfilled by getting protection wherever they work to get their basic rights. Definition of TKI in Article 1 paragraph (2) of Law No. 18 of 2017 is every Indonesian citizen who will, is, or has done work by receiving wages outside the territory of Indonesia. ²⁰ The definition can be concluded that TKI is an Indonesian citizen who is looking for a livelihood outside the territory of Indonesia, and TKI is not fully within reach of the protection of the Indonesian state because of the existence of TKI who has entered the jurisdiction of a country where they work. The government effort to implement the placement of Indonesian workers to work abroad is an effort to realize equal rights and opportunities for Labor to obtain decent and deep employment and income in its implementation should pay attention to human dignity and legal protection side. Therefore, the country is obliged to actively guarantee and protect the rights of citizens who work both in and out of the country based on the principle of equality of rights, democracy, social justice, gender equality, and anti-human trafficking.

The aim is to protect the PMI candidates as follows

1. Empower and utilize the workforce optimally and humanely

2. Guarantee and protect prospective migrant workers / migrant workers from within the country, in Indonesia

3. Upgrade the welfare of the family.

Protection provided by the State for its citizens is a right for citizens guaranteed by law. In this case the protection of migrant workers starts from the pre-placement, placement period, until the placement. Overseas, the protection of Indonesian Migrant Workers is carried out by representatives of the Government of the Republic of Indonesia, where the protection is based on legal regulations and applicable laws.

The Categorization of Protecting Indonesian migrant workers (PMI) As same as stated on the definition of PMI regarding the protection of PMI is categorized into three categories on Law No. 18 of 2017 namely protection before work, during work and after work. By the fulfilment of the 3 aspects above, protection PMI will be easier to do. In accordance with the provision of the law, in addition it is also included in the article 38 concerning integrated services regarding PMI placement and protection as one of the Indonesian efforts on providing protection to PMI.

Protection PMI In Pematang

Difficulty of finding work in Indonesia, especially in Pematang regency forced many people to take the initiative to work abroad as Indonesian Migrant Workers. This is driving factor for the government both the central government and regional governments, especially Pematang Regency as the person in charge of the rights of its citizens who work as PMI abroad. The task of the government in the context of organizing PMI is to arrange, foster, implement and oversee the placement and protection of Indonesian Workers abroad.

Pematang regency government is supposed to guarantee the fulfillment of the rights of prospective PMI, both those who depart through the private sector, or those who independently. The Pematang regency government oversees the implementation of the placement of PMI candidates, forms and develops information systems for placement of PMI candidates abroad, makes diplomatic efforts to ensure the fulfillment of PMI rights and protection optimally in the destination country. And provide protection to PMI during the period before departure, the placement period, and the post-placement period.

The initial process in terms of protecting Indonesian Workers abroad the government appoints and imposes duties and responsibilities on the Department of Manpower and Transmigration to carry out this program. The Manpower and Transmigration Office is a government agency that provides information about manpower. Information obtained regarding employment includes job vacancies, services or giving a yellow card, various kinds of complaints both by workers and companies, carrying out labor and company supervision and so on. Protection for PMI in Pematang regency carried out by the Department of Manpower and Transmigration in Pematang Regency starts from counseling which is the most important thing for prospective PMI considering that to become a PMI does not arbitrarily go and go home, they must be prepared both mentally and physically.

- The main contents of the counseling include:
- a. Job vacancy information
 - b. Location conditions of the destination country
 - c. Terms and conditions at work
 - d. PMI rights and obligations
 - e. Statutory regulations, situations and conditions in the destination country
 - f. PMI placement procedure
 - g. Requirements and completeness of PMI candidate documents.

This counseling is done to provide clarity and to prepare PMI candidates who wish to work abroad. Apart from counseling from DISNAKERTRANS. This counseling is done to provide clarity and to further strengthen job seekers whether they really want to work as PMI or not. Job seekers who have participated in counseling and then register as PMI must meet the required administrative file requirements. Next, a selection process is carried out to determine the ability or quality of each PMI Candidate whether it is in accordance with the position of the required job vacancy.

Pemalang Regency Manpower and Transmigration Office also signed the Placement Agreement. After the PMI placement agreement is made, Indonesian Migrant Worker placement company (P3MI) must take care of all the requirements needed by PMI while in the destination country, and provide an explanation regarding the work and conditions of the destination country.

This debriefing is expected to help PMI while there. The Office of Manpower and Transmigration of Pemalang Regency carries out the departure and placement of PMI abroad. Before leaving, PMI must prepare the documents required for placement abroad, as well as provide protection to PMI while working abroad and deal with PMI problems, whether sick, death or problems in the form of unfavorable and unfair treatment from the company or from employer.

Since 2015 the amount of PMI in pemalang was highly increased. This also directly proportional to the level of violence experienced by migrant workers. According to the data from DISNAKERTRANS Pemalang, some Indonesian migrant workers from Pemalang indicated getting violation from their employers. Most of them are crew members who works on the Taiwan ships.

Therefore this issues handled by DISNAKERTRANS Pemalang Regency to conduct socialization to various sub-districts and villages that have large number of non-procedural PMIs in Pemalang Regency. The socialization effort was also included in the initial protection for PMI candidates from Pemalang regency, the socialization also brought a resource person to the head of the Pemalang regency Manpower and Transmigration Office, The Immigration Office, P4PMI coordinator for the Pemalang district. The socialization was attended by PMI candidates, former PMI, PMI families, community leaders, and local village officials. The aim of socialization is that prospective PMI can understand the importance of procedural PMI and how the mechanism works abroad properly. So PMI need not be haunted by insecurity anymore. And of course the main objective is to minimize the number of non-procedural PMIs, especially PMI from Pemalang Regency. In addition to the socialization efforts of the Pemalang Regency government also protected PMI who were sent home due to death, and illness from the country they worked for, by bearing all the costs of returning from Ahmad Yani airport to the funeral home.

The socialization proves that the coordination between DISNAKERTRANS Pematang regency and all related institution is very important to achieve the goals of Indonesian migrant workers protection in Pematang Regency. Disnakertrans can not stand alone to combat the violation or the offense of Indonesian migrant workers but coordination also support from all related agencies is needed.

CLOSING SUMMARY

The conclusions that can be drawn from this research are: All human beings are obliged to be given rights in terms of obtaining protection in accordance with regulations of the legislation. Migrant workers' rights are provided by the sending country and destination countries. Therefore governments are responsible for providing and protecting the rights of migrant workers. Legal protection for workers is intended to guarantee the normative rights of workers and give an equal opportunity and not discriminate on any basis to realize the welfare of the workforce and their families while still taking into account the development of the business world. The protection of Indonesian migrant workers given by the government on the process of pre placement, during placement and after their placement. The goal of Indonesian migrant workers protection can be achieved easily with the coordination and collaboration of related institutions. Realizing that protection of Indonesian migrant workers is together responsibility.

RECOMMENDATION

Pematang regency government is supposed to guarantee the fulfillment of the rights of prospective PMI, both those who depart through the private sector, or those who independently. And the Pematang regency government oversees the implementation of the placement of PMI candidates, forms and develops information systems for placement of PMI candidates abroad, makes diplomatic to protect the rights of PMI during working. Protection during placement is done in coordination with relevant ministries and other related institutions such as Disnakertrans Pematang Regency also Immigration office and PPTKIS Pematang Regency that responsible with the protection of Indonesian Migrant workers in Pematang Regency.

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