

LEGAL PROTECTION FOR INDONESIAN MIGRANT WORKERS BASED ON LAW NUMBER 18 OF 2017

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ABSTRACT

The protection of Indonesian migrant workers that working overseas is often a problem because the government has replaced the Law 39 of 2004 about the Placement and Protection of Migrant Workers Overseas by Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers (PMI). This law is expected to be a solution to provide protection for Indonesian migrant workers because it is interesting to explore by bringing up issues regarding to the form of protection of Indonesian migrant workers in the perspective of Law number 18 of 2017. This research is normative legal research that examines primary, secondary material and tertiary legal. Analysis of legal material was conducted by prescriptive analysis (prescriptive analytics) by building deductive arguments. Based on the results of the study, it was found that the protection of Indonesian migrant workers based on Law Number 18 Year 2017 began as candidates for migrant workers which included protection before work, during, and after work. Protection before work includes administrative protection and technical protection. While protection during work includes data collection, registration, monitoring, evaluation, providing services, coaching, and facilitating repatriation. While protection after work includes facilitation of return, completion of unmet workers' rights, social rehabilitation, social reintegration, and empowerment of Indonesian migrant workers and their families. Such protection includes legal, social and economic protection.

Keywords: Legal Protection, Indonesian Migrant Workers.

INTRODUCTION

The International Migration Organization (IOM) estimates around 224 million migrants worldwide or around 3.3 percent of the world's population (International Organization for Migration, 2017). Indonesia is included as one of the second largest senders of migrant workers in ASEAN after the Philippines. Based on the World Bank report there are 9 (nine) million Indonesians or almost 7 (seven) percent of the total Indonesian workforce are working abroad (World Bank, 2017).

Placement of Indonesian Migrant Workers (PMI) abroad is one way the government can reduce unemployment. According to data released in August 2018 by the Central Statistics Agency (BPS), it shows that the open unemployment rate (TPT) in Indonesia amounts to 7 (seven) million people or 5.34 percent (Central Statistics Agency, 2018). The ability of the government and the private sector to create jobs is still limited, while the number of the workforce is so large that the unemployment rate is still high. Thus the government opens

opportunities for some Indonesian people to seek opportunities and livelihoods in other countries by becoming migrant workers abroad.

Placement of migrant workers abroad brings positive things because it brings employment opportunities or reduce unemployment and bring in foreign exchange for the country. However, problems involving migrant workers such as disputes with the boss regarding unpaid salaries, persecution, mistreatment, rape and murder of migrant workers still occur frequently. Even the International Labor Organization (ILO) reports that migrant domestic workers are less protected by the law. Even their human rights are often ignored whether it is due to gender, race, ethnicity, origin or social status.

Migrant domestic workers (MDWs) are even less protected by the law. Migrant domestic workers are vulnerable to human rights abuses, due to inequalities determined by gender, race, ethnicity, national origin and social status.

Based on the number of violation cases that harm Indonesian migrant workers who work abroad, it shows that the protection provided to migrant workers is still far from expectations even though there are national and international legal instruments to protect migrant workers who work abroad. Law Number 39 (Law, 2004) concerning the Placement and Protection of Indonesian Workers Abroad has regulated the protection of Indonesian migrant workers who work abroad. However, the Law has not provided maximum protection to migrant workers because most of the articles are dominated by business affairs in the placement of migrant workers. So that it is rather considered to make migrant workers as commodities.

Before TKI is protected in the Law No. 39 of 2004, there are several other developments that encourage the changes of Law No. 39 of 2004, namely the decision of the Constitutional Court No. 019-020/PUU-III/2005 and the issuance of Presidential Instruction No. 3 of 2006 concerning Package for Investment Climate Improvement Policy (Investment Climate Policy, 2006; Law, 2005). Therefore, to anticipate the problems faced by Indonesian migrant workers the government has established Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers (PPMI) which replaces Law No. 39 of 2004.

RESEARCH METHOD

This research is a normative legal research that examines primary, secondary and tertiary legal sources. Legal material collection techniques are carried out through the study of documentation with stages of inventory, classification and assessment of legal materials in order to solve the problem under the study. Analysis of legal material is done by prescriptive analytics by building deductive arguments.

RESULTS AND DISCUSSION

Legal Protection of Migrant Workers

Legal protection for migrant workers is a form of social protection or social security. These two terms of protection are sometimes used interchangeably but are also used differently depending on the context. The International Labor Organization (ILO) on a report published in the World Social Security Report (International Labour Organization, 2011) provides a presentation on social protection and social security. According to ILO, social protection has a

wider meaning than social security because it protects the workers and also protects the family members and the community. Social protection has two aspects, as social security and protection in the terms of risk and social needs.

“Social protection... is often interpreted as having a broader character than social security (including protection provided between members of the family or members of a local community) but is also used in some contexts with a narrower meaning (understood as comprising only measures addressed to the poorest, most vulnerable or excluded members of society)... Social protection has the following aspects: (1) interchangeable with social security; (2) as protection provided by social security in case of social risks and needs (International Labour Organization, 2011).”

While the International Convention of United Nations on the Protection of the Rights of All Migrant Workers and Their Family Members (MWC), adopted in 1990, includes all regular and non-regular migrants. This guarantees equal rights, for example, in training, housing, freedom of movement, and aims to eliminate illegal employment and prohibit eviction.

The ILO recommendations on social protection principles, adopted in June 2012, are important steps towards the right to social security, including social security for migrants and their families (International Labour Organization, 2012). This recommendation focuses on financial access, access to health and other social security programs, but the background of general concept of the social protection foundation is much wider, and includes most social services, such as social security, health care, education, water and sanitation, housing and food (International Labour Organization, 2011).

The Weakness of Law no. 39 of 2004 on Placement and Protection of Overseas Migrant Workers

Law No. 39 of 2004 on Placement and Protection of Overseas Workers (PPTKLN Law) is considered to have weaknesses in protecting Indonesian migrant workers overseas. Law No. 39 of 2004 emphasizes on the placement aspect than the protection aspect for migrant workers. Of the 109 articles of the Law, only 9 (nine) articles contain aspects of protection. Nine articles are 77, 78, 79, 80, 81, 82, 83, 84 and 85. The nine articles are still blurred because they have not provided a clear and comprehensive description.

Law No. 39 of 2004 has not met the provisions contained in Convention 189 which contain minimum standards for protecting the rights of domestic workers related to working conditions and decent living conditions. Law No. 39 of 2004 did not include family members of TKI, not including ABK, and undocumented migrant workers (migrant workers who do not have documents). In addition, the guarantee of migrant workers right is not comprehensively regulated. Therefore, it requires the commitment and consistency of the government in reforming the TKI system. Laws relating to migrant workers must be adapted to international work standards and reinforced so as not to cause dualism in institutions. The role of the Regional Government must be maximized because so far the management of migrant workers has been dominated by Implementing Placement of Private Migrant Workers.

According to the Regional Representative Council of the Republic of Indonesia (DPD RI) there are 4 (four) weaknesses of Law No. 39 of 2004 namely:

1. The ineffectiveness of the protection system created and implemented by the government;

2. Weak coordination between parties that still tends to be egosectoral;
3. The protection of Indonesian Workers Abroad has not become the spirit of underlying arrangements and;
4. Implementation of policies and the role of private TKI placement companies is more dominant in placement and protection than local governments (DPD RI, 2016).

The manuscript of Law No. 39 of 2004, there are at least some weaknesses contained in it,

1. The treatment of migrant workers is nothing more than a commodity;
2. Most of the contents of the law talk about the business of placing workers;
3. Less transparent and less consistent in managing the migration of migrant workers;
4. Vulnerable to institutional conflicts between government institutions that responsible for migrant workers;
5. The absence of community and local government participation in the management of migrant workers affairs;
6. Lacks attention to gender and other vulnerable groups, especially domestic workers.

Legal Protection for Indonesian Migrant Workers (PMI) Based on Law Number 18 of 2017

On October 25, 2017 the Regional Representatives of the Republic of Indonesia (DPR RI) has ratified the Law of Indonesian Migrant Workers Protection. The ratification of the new law is a manifestation made by the government on the importance of protecting migrant workers who have contributed to foreign exchange. Protection of Indonesian migrant workers (PMI) is all efforts to protect the PMI candidates and their families in realizing their rights in all activities before work, during work and after working in legal, economic and social aspects (Article 1 paragraph (5) of Law Number 18 in 2017).

In Law Number 18 of 2017 there is a new paradigm in the form of the role of the state in protecting Indonesian migrant workers, this law emphasizes and gives a dominant role to the government and reduces the role of the private sector in the placement and protection of Indonesian migrant workers. Law No. 18 of 2017 gives a large role to the central and local governments to protect Indonesian migrant workers starting from before work (pre-placement), during work (during placement) and after work (post-placement). Meanwhile, the private sector was only the role of executing the placement of migrant workers. Different from Law Number 39 of 2004 which gives a big role to the private sector. The role of the private sector in this case is PT. Implementers of Private TKI Placement (PPTKIS) are too broad. A very broad role is often the cause of migrant workers becoming objects that are treated inhumanely by their boss. For example the obligation of job training and mastery of the language of the destination country be imposed to PPTKIS which must be carried out in accordance with the achievement of competency standart. However, migrant workers that has not met the work competency standards by mastering language of the destination country has been sent by PPTKIS. As a result, prospective migrant workers sent cannot work properly and miscommunicate (Husni, 2014).

The big role of the state both at the central and regional levels signifies the state's commitment to provide protection to Indonesian migrant workers and respect for the human rights they have. Through the dominant role of the state, it will reduce exploitative actions against migrant workers which have been carried out by the private sector to reap the maximum benefits. Before Law Number 18 of 2017 was established, the dominance of the private sector in the management of migrant workers often led to violations of their human rights. In Law No. 39 of 2004 the role of the private sector seems dominant start with providing information, PMI data collection, management of workers' documents, organizing training/education/courses, pre-

departure, shelter, health checks, departures, and return. Whereas, in Law Number 18 of 2017 the role of the private sector is limited to the stage of departure of migrant workers who have already obtained verification and are declared ready by a one-stop integrated agency (LTSA), providing return reports and also problem solving.

Law No. 18 of 2017 contains some significant progress compared to Law No. 39 of 2004. Progress can be seen from the existence of more specific chapters and articles concerning the protection of migrant workers, the rights of migrant workers, social security, duties and responsibilities of the central and regional governments, one-stop integrated services and worker protection of Indonesian migrants.

Here are some forms of protection against Indonesian Migrant Workers (PMI) found in Law Number 18 of 2017.

Protection before work which covers administrative protection such as the completeness and validity of placement documents, the terms and conditions of work, technical protection such as providing information dissemination and improving the quality of PMI candidates through education and training, social security, facilitating the fulfillment of Indonesian Migrant Workers' rights, strengthening the role of functional employees introducing work, placement services in one-stop integrated services placement and protection of Indonesian Migrant Workers, and guidance and supervision (Article 8 paragraph (1), (2), and (3)).

Protection during work which includes data collection and registration by labor attachés or foreign service officials, monitoring and evaluating employers, employment, and working conditions, facilitating the fulfillment of the rights of Indonesian Migrant Workers, facilitating settlement of employment cases, provision of consular services, assistance, mediation, advocacy, and the provision of legal assistance in the form of advocacy services by the Central Government and/or Representative of the Republic of Indonesia and guardianship in accordance with local state law, training of Indonesian Migrant Workers and repatriation facilities (Article 21 paragraph (1)).

Protection after work which includes return facilities to the origin, unresolved settlement of Indonesian Migrant Workers' rights, treatment facilities for Indonesian Migrant Workers who are sick and deceased in social rehabilitation and socialization reintegration, and empowerment of Indonesian Migrant Workers and their families (Article 24 paragraph (1)).

CONCLUSION AND RECOMMENDATION

Conclusion

Based on the results of the study it can be concluded that Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, more emphasis on the aspect of protection, in contrast to Law No. 39 of 2004 which places more emphasis on the placement aspect. Migrant Workers Protection starts from being a candidate for migrant workers which includes protection before work, during, and after work. Protection before work includes administrative protection and technical protection. While protection during work includes data collection, registration, monitoring, evaluation, providing services, training, and facilitating repatriation. Whereas protection after work includes return facilities, completion of unmet workers' rights, social rehabilitation, social reintegration, and empowerment of Indonesian Migrant Workers and their families.

Recommendation

In order for Indonesian migrant workers to enjoy normative legal protection stipulated in Law Number 18 of 2017, it requires the commitment of all parties to be given responsibility to understand and carry out their obligations with full responsibility.

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This article was originally published in Special Issue, entitled: "Law, Politics, Economics and Human Rights: Global and National Perspectives", Edited by Dr. Ashgar Ali Bin Ali Mohamed