Indonesian Perspective on the Protection of the Right to Health for Migrant Domestic Workers During the COVID-19 Pandemic

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ABSTRACT

Today, the world faces a COVID-19 pandemic caused by SARS-CoV-2, a new type of virus from the coronavirus (a group of viruses that infect the respiratory system). Coronavirus infection can cause mild to moderate respiratory infections, such as flu, or infections of the respiratory system and lungs, such as pneumonia and even death. The very high rate of transmission of COVID-19 has caused enormous changes in all areas of life, including labor law and policy. Indonesia is a country that sends migrant domestic workers. Even though it is in a pandemic state, in 2020, Indonesia sent 113,173 people to work abroad. The question raised in this paper is the protection of the right to health for migrant domestic workers during the COVID-19 pandemic based on Indonesian regulations is. This research uses normative legal research methods by collecting data from regulation, literature, journal articles, and cases in the migrant domestic sector. This paper aims to get an overview of what efforts have been made by the Indonesian government and provide input for the government to protect the right of health for migrant workers in the domestic sector during the COVID-19 pandemic.

Keywords: *Human rights, Right of Health, Migrant Domestic Workers.*

1. INTRODUCTION

The COVID-19 pandemic has spread throughout the world since January 2020. The COVID-19 virus is caused by SARS-CoV-2, a new type of virus from the coronavirus (a group of viruses that infect the respiratory system). Coronavirus infection can cause mild to moderate respiratory diseases, such as flu, or respiratory system infections and lungs, such as pneumonia. The transmission of COVID-19 can happen in the following ways. First, accidentally inhaling the droplets that come out when a person with COVID-19 sneezes or coughs; second, holding the mouth, nose, or eyes without washing hands first, after touching objects affected by droplets of people with COVID-19, and third, close contact (less than 2 meters) with sufferers of COVID-19 without wearing a mask. The latest news based on WHO, COVID-19, can also be transmitted through aerosols (particles of substances in the air).

To deal with the increasingly widespread outbreak of the COVID-19 virus, WHO recommends that countries in the world implement social restrictions and campaign for the 5M health protocol movement in their communities. Social restrictions are one of the steps to prevent and control COVID-19 virus infection by encouraging healthy people to limit visits to crowded places and direct contact with other people. In implementing social restrictions, a person cannot shake hands and maintain a distance of at least 1 meter when interacting with other people, especially people who are sick or at high risk of suffering from Covid-19. Meanwhile, the meaning of the 5M health protocol movement is wearing a mask; wash hands with soap and running water; keep the distance; stay away from the crowd and limit mobilization and interaction.

Therefore, to minimize transmission and increase the number of sufferers of the COVID-19 virus, the house is a safe place to live because

everyone can do most of their activities from home, starting from worship, work, and study. However, the home can also be unsafe, especially for migrant workers in the domestic sector. Working in the employer's home, making this type of work in the domestic sector requires exceptional and extra protection because migrant workers in the domestic sector are at risk of experiencing multiple intersections of discrimination and violence based on race, ethnicity, nationality, age, status: migration or other sex or gender-related characteristics.[1]

The state of the COVID-19 pandemic has made an emergency increase the risk of violence and harassment against female migrant workers, one of which is carried out by the employer [1]. Data shows that hotlines that respond to violent incidents have reported an increase in calls. In Singapore, the AWARE women's helpline received 33 percent more violence-related calls in February 2020 than in the same month last year. In Malaysia, online love hotlines for women and children reported a 57 percent increase in phone calls; and women's assistance organizations (WAO) have reported a 40 percent increase in violence-related phone calls to their hotlines [2].

The COVID-19 pandemic situation has had an essential impact on migrant domestic workers, including health and provision of care. Female migrant workers are at increased risk to their health during the pandemic because they often live and work in conditions without the means, space, information, or personal protective equipment to follow public health measures and maintain social distancing. Female migrant workers can have difficulty accessing accurate information about COVID-19 in their language [2].

Indonesia is a sending country for migrant domestic workers. From 2014 to 2020, the placement of Indonesian migrant workers was recorded at 1,869,653 people. In 2020, the number of migrant workers was 113,173 people, with 36,784 people in the formal sector and 76,389 people in the informal sector who became migrant workers in the domestic sector. When viewed by gender, Indonesian migrant workers in 2020 consisted of 22,673 men and 90,500 women. The destination countries for migrant workers in the domestic sector from Indonesia are Hong Kong, Taiwan, Malaysia, Singapore, and Saudi Arabia [3].

At the regulatory level, migrant workers in the domestic sector should have the same rights as other workers, including healthcare access. Indonesia, as a sending country, is responsible for providing health protection for migrant domestic workers. In general, the responsibility for fulfilling the right of access to health for migrant domestic workers is enshrined in Article 12 of the International Covenant on Economic, Social and Cultural Rights 1966, which states that the States Parties to this Covenant recognize the right of everyone to enjoy a standard of physical and mental health. Steps that should be taken by States parties to achieve the full realization of this right include those necessary for the prevention, treatment, and control of epidemic, endemic, occupational and other diseases; the Creation of conditions that will guarantee all medical services and medical attention in the event of illness. Indonesia has ratified this 1966 International Covenant On Economic, Social, And Cultural Rights with the issuance of Law of the Republic of Indonesia number 11 of 2005 concerning Ratification of the International Covenant On Economic, Social and Cultural Rights. Thus, the International Covenant On Economic, Social, and Cultural Rights is binding and must be applied in Indonesia.

More specifically, the right of health must be enjoyed by migrant workers; as stated in the International Convention on the protection of the rights of all migrant workers and members of their families 1990, Article 28 states that migrant workers and members of their families have the right to receive very good medical care. Necessary for preserving their life or avoiding irreparable harm to their health on an equal basis with nationals of the State concerned. The International Convention on the protection of the rights of all migrant workers and members of their families 1990 has been ratified by Indonesia through the Law of the Republic of Indonesia number 6 of 2012 concerning Ratification of the International Convention on The Protection of the Rights of All Migrant Workers and Members of their families.

In order to implement the provisions of the International Covenant On Economic, Social and Cultural Rights 1966 and the International Convention on the protection of the rights of all migrant workers and members of their families 1990, as an effort to protect the right to health for

migrant domestic workers, Indonesian government faces several problems. The problem faced is how to protect Indonesian migrant workers in the domestic sector who are in other countries[4]. Efforts to protect Indonesian migrant domestic workers in other countries are much more difficult because they cross the jurisdictional limits of the Indonesian state. However, the Indonesian government must still be present in protecting citizens wherever they are, including the right to health.

Based on the description above, the problem raised in this paper is how to implement the protection of the right to health for Indonesian migrant workers in the domestic sector during the COVID-19 pandemic. This paper aims to get an overview of what efforts have been made by the Indonesian government in protecting the right to health for migrant workers in the domestic sector during the COVID-19 pandemic. The hope that results from this research is to endeavor useful input for improving government policies in protecting the right to health for Indonesian migrant domestic workers.

2. RESEARCH METHOD

In answering the problems above, the authors use normative legal research methods by collecting materials derived from legislation, literature, journal articles, and cases to protect migrant domestic workers. The technique of collecting legal materials is carried out through a documentation study: conducting an inventory of legal materials, classifying legal materials, and evaluating legal materials to solve research problems related to migrant domestic workers. All legal material had collected analyzed by prescriptive analytics and building deductive arguments

3. FINDINGS AND DISCUSSION

The right to health is a fundamental part of human rights. Internationally, the right to health is contained in the Universal Declaration of Human Rights 1948, which mentions health as part of the right to an adequate standard of living (article 25). The right to health is again recognized as a human right in the International Covenant on Economic, Social, and Cultural Rights in 1966.[5] The provisions of this instrument state the responsibility for health on the part of the state by defining *health* as an individual right and establishing concrete state obligations. The right to health includes several important aspects, namely:

1) The right to health is inclusive. The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights, mentions the underlying determinants of health, namely safe drinking water and adequate sanitation; Food safe; Adequate nutrition and housing; Healthy working and environmental conditions; Health-related education and information; Gender equality[5].
2) The right to health contains freedom. This freedom includes the right to be free from non-consensual medical treatment, such as medical experimentation and research or forced sterilization, to be free from torture and cruelty, inhuman or degrading treatment[6].
3) The right to health contains the following rights: The right to a health protection system that provides equality, the opportunity for everyone to enjoy the highest attainment of health; The right to prevention, treatment, and control of disease; Access to essential medicines; Maternal, child and reproductive health; Equitable and timely access to essential health services; Provision of health-related education and information; Population participation in health-related decision-making at the national and community levels.
4) Health services and facilities should be provided, all without discrimination. Non-discrimination is a fundamental principle in human rights and is essential for the enjoyment of the right to the highest attainable standard of health.
5) All services, goods, and facilities must be available and accessible, acceptable, and good.

Furthermore, the right to health is described in the 1945 Constitution of the Republic of Indonesia, which is stated in article 28H (1) that everyone has the right to live in physical and mental prosperity, to live, and to have a good and healthy living environment and the right to obtain health services.

As an obligation holder, the state has an obligation of conduct and an obligation of result. The obligation of conduct obliges the state to realize economic, social, and cultural rights, while the obligation of result obliges the state to achieve specific results[7]. Thus, the results achieved from the implementation of state obligations can be noted so that they are relevant to the progressive realization. Due to the nature of the gradual realization, the fulfillment of state obligations is must be examined from the steps taken.

The realization and fulfillment of the right to health in the interviewees must be based on non-national principles, including vulnerable groups. Based on a study conducted by the human rights commission of the Republic of Indonesia, it is stated that migrant workers are one of the vulnerable groups [8]. In reality, humans are born vulnerable, so they need the support and help of others, which causes dependence. This strength and support also require trust, giving birth to a social group or community group built to protect against the human vulnerability. However, in this social order, a group of different people or the environment is not under the existing social criteria (norms, values) in the concept of the modern social order. This group is what is called the vulnerable group (vulnerable group), or can also be referred to as the risk group (risk group), or sometimes referred to as the group that is often disadvantaged (the disadvantaged group).

When it is related to the implementation of protection for migrant workers in the domestic sector in particular and workers in general, there are several principles in theory. Iman Soepomo categorized the protection principles into three groups, namely financial protection, in the form of efforts to provide sufficient income for workers to meet the daily needs of workers and their families[9]. The second protection is social protection, namely social efforts for workers so that they can enjoy and develop their lives as human beings in general and as members of the family and society[9]. The third protection is technical protection, which ensures that workers avoid the danger of accidents caused by tools, tools, machines, or other work tools or materials processed and worked on by workers in the workplace. Of the three categories of worker protection principles above, the right to health is included in technical protection.

Migrant workers in the domestic sector get the same rights to technical protection, especially health rights. As stated in the International Convention on the protection of the rights of all migrant workers and members of their families 1990, article 28 states that Migrant workers and members of their families have the right to receive medical care, which is essential for the preservation of their life or to avoid irreparable harm to their health based on equal treatment with nationals of the State concerned. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 has also been ratified by Indonesia through Law of the Republic of Indonesia number 6 of 2012 concerning International Ratification.

The impact of being designated, migrant workers as a vulnerable group, gives the State greater responsibility in its fulfillment efforts; this is expressed in Article 5 (3) of Law Number 39 the Year 1999 concerning Human Rights, which states that: "Every person belonging to a vulnerable group of society has the right to receive treatment and protection concerning his or her specificity." Furthermore, the minimum core obligation number 1, which the State must guarantee its implementation as contained in General Comment No. 3 of the Committee on Economic, Social and Social Rights, guarantees non-discriminatory access to health facilities.

In detail, the actions taken by the State in protecting migrant workers, including migrant workers in the domestic sector, can be traced in Law number 18 of 2017 concerning the protection of migrant workers. Article 7 states that the protection of prospective Indonesian migrant workers includes protection before employment; protection during work, and protection after workers[10].

1) Pre-employment protection consists of administrative protection and technical protection. Administrative protection includes completeness and validity of placement documents and stipulation of working conditions and conditions. Meanwhile, technical protection includes: (a) providing socialization

and dissemination of information; (b) improving the quality of prospective Indonesian migrant workers through education and vocational training; (c) social security; (d) facilitating the fulfillment of the rights of prospective Indonesian migrant workers; (e) strengthening the role of work delivery functional employees; (f) placement services in one-stop integrated services for the placement and protection of Indonesian migrant workers; (g) guidance and supervision.

2) Protection during work includes: (a) data collection and registration by the labor attaché or appointed foreign service official; (b) monitoring and evaluation of the Employer, employment, and working conditions; (c) facilitate the fulfillment of the rights of Indonesian migrant workers; (d) facilitate the settlement of labor cases; (e) providing consular services; (f) assistance, mediation, advocacy, and provision of legal assistance in the form of facilitation of advocate services by the Central Government and Representatives of the Republic of Indonesia as well as guardianship under local State laws; (g) guidance for Indonesian Migrant Workers; and (h) repatriation facilities[11].
3) Protection after work includes: (a) facilitation of returning to the place of origin; (b) resolving the unfulfilled rights of Indonesian Migrant Workers; (c) facilitation of the management of Indonesian Migrant Workers who are sick and die; (d) social rehabilitation and social reintegration; and (e) empowerment of Indonesian Migrant Workers and their families[12].

From the protections for migrant workers mentioned above, there is no explicit provision that explains the right to health for migrant workers, including migrant workers in the domestic sector. However, in the period before placement, there was technical protection, including social security. Suppose traced further in the Government of the Republic of Indonesia Regulation Number 10 of 2020 concerning Procedures for the Placement of Indonesian Workers by the Indonesian Manpower Protection Agency in Article 8 which states that Every Prospective Indonesian Worker who will work abroad must, among other things, be registered and has several social security memberships. Social security that will be provided to migrant workers, including workers in the domestic sector, is further explained in the Regulation of the Minister of Manpower of the Republic of Indonesia Number 18 of 2018 concerning Social Security for Indonesian Workers, Article 6 states, prospective Indonesian Workers or Indonesian Workers must be registered in Work Accident Security and Death Security program at Employees Social Security System (BPJS Ketenagakerjaan). Work accident security benefits cash and health services provided when a participant experiences a work accident or disease caused by the work environment. At the same time, the death security is a cash benefit given to the heirs when the participant dies, not due to a work accident.

In practice, based on the results of interviews with Khomsah, one of the migrant domestic workers in Shah Alam stated that she did not receive social security from Indonesian or Malaysian institutions. When she got sick, Khomsah must go to a private hospital at the expense of her employer [13].

During the COVID-19 pandemic, social security is needed, especially for migrant domestic workers from Indonesia. Umratun, an Indonesian migrant worker in Malaysia, stated that the work situation is not supportive, violating workers' rights, and has no guarantee of decent work. Violation of workers' rights can lead to higher psychological impacts, such as extreme fatigue due to increasing hours and workload and the inability to rest. Other problems experienced by migrant workers in the domestic sector in Malaysia are the anxiety of contracting the COVID-19 virus; no access to vaccines; the threat of losing their jobs; difficulty in accessing health services and social security[14].

The same problem also happened to Hendro Wijaya, an Indonesian migrant worker in Taiwan facing the same issue, having to work without precise hours and no certainty of holidays. When a migrant domestic worker experiences an accident, becomes sick, and requires surgery they must bear the treatment until they recover [14].

Based on the facts obtained in reality, the protection of the right to health provided in the

Employees Social Security System (BPJS Ketenagakerjaan) scheme has not fully contributed to migrant domestic workers, especially in the country of placement. The argument strengthened by the statement of the Minister of Manpower Ida Fauziah, namely that there are six problems related to regulations in the implementation of social security for Indonesian migrant workers, including: first, there are problems with prospective Indonesian migrant workers or Indonesian migrant workers who not included by social security; second, the lack of cooperation between Employees Social Security System (BPJS Ketenagakerjaan) and government and private institutions to cover risks that the BPJS has not covered for employment; third, the reporting of the implementation of social security by the Employees Social Security System (BPJS Ketenagakerjaan) has not been appropriate to the Minister of Manpower [15].

To respond pandemic situation caused by the COVID-19 virus, the Minister of Manpower of the Republic of Indonesia issued a Decree of the Minister of Manpower of the Republic of Indonesia Number 294 of 2020 concerning the Implementation of Placement of Indonesian Workers in the Adaptation Period for New Habits. This rule regulates every placement process starting from the pre-work stage, during work, and after work. In every step of the placement process, migrant workers, including workers in the domestic sector, must strive to comply with applicable health protocols, both in sending and receiving countries. Decree of the Minister of Manpower of the Republic of Indonesia Number 294 of 2020 states that efforts must be made to strengthen coordination between various ministries/institutions and service providers, both government and private, in implementing and monitoring the placement of Indonesian migrant workers.

In its implementation, coordination between various ministries and institutions can be seen to inventory information on Indonesian citizens' situation, and condition reports in general abroad through the SafeTravel application website and Portal Peduli WNI. Furthermore, this is an excellent step to protect citizens, including workers who work abroad. However, the weakness is that not all migrant workers work legally. For migrant workers who leave illegally, reporting conditions through the website is scary because they are afraid of being arrested for working abroad in a non-formal way.

In facilitating the access of all migrant workers infected with COVID-19 to health care services and other health support services during their tenure, Minister of Manpower Decree No. 294 of 2000 establishing a hotline for complaints and intensive health monitoring of the condition of Indonesian migrant workers infected with COVID-19. Technically, the Minister of Manpower Decree No. 294 of 2000 does not explain in more detail what steps will be given to migrant workers who are currently working and are in placement countries and infected with COVID-19. However, this is an obligation for the Attaché/Technical Staff/Head of Manpower or foreign service officials appointed to handle workforce affairs at the Representative Office of the Republic of Indonesia or IETO, namely to carry out intensive monitoring of the health condition of workers. In this case, it can be concluded that the protection of the right to health is based on the Decree of the Minister of Manpower No. 294 of 2000 can be fully obtained if migrant workers, including migrant workers in the domestic sector, can access mobile phones or telephone communication tools.

However, questions then arise for migrant domestic workers who do not have access to cell phones or other means of communication. In practice, not all migrant workers have access to cell phones. According to international labor statistics (ILO), in 2019, 53% of the 297 employers surveyed in Singapore stated that they did not allow migrant workers in the domestic sector to access mobile phones outside of working hours [16]. A more tragic case occurred in an Indonesian worker named KN (initial name), aged 57, who committed suicide in Saudi Arabia on January 29, 2021. One reason was that the employer did not allow the migrant worker to carry a cell phone[17].

Thus, if the monitoring and protection of migrant domestic workers are only using an application or a complaint hotline, apprehended that they will not be able to accommodate the protection of all migrant domestic workers. As a sending country for migrant domestic workers, Indonesia endeavors a more progressive way of protecting the

right to health, especially during the COVID-19 pandemic. In government regulation number 59 of 2021 concerning the implementation of the protection of Indonesian Migrant Workers in Article 13, there are eight efforts protection during work that the Indonesian government can provide in the country of placement. Some of these efforts include data collection, monitoring and evaluation of employers and working conditions, and facilitating the fulfillment of the rights of Indonesian migrant workers. Protection of migrant domestic workers will undoubtedly get maximum results if data collection, monitoring and evaluation of employers and working conditions, and facilitating the fulfillment of the rights of Indonesian migrant workers by online and door-to-door services.

After-work protection for migrant domestic workers according to Law number 18 of 2017 managing the facilities to Migrant Workers who are sick and die. In the COVID-19 pandemic, migrant workers, who have just returned from the country of placement and infected COVID-19, will receive free treatment. The government will bear all treatment costs as long as the hospital accepts referrals for the treatment of COVID-19 patients. the technical regulation revers the Decree of the Minister of Health Number 413 of 2020. This provision applies to migrant workers, including the domestic sector, and applies to all Indonesian citizens. In this case, it concluded that the right to health for migrant workers in the domestic sector, especially those infected with the COVID-19 virus during the post-work period, is well received.

4. CONCLUSION

Law number 18 of 2017 concerning the protection of migrant workers regulates the protection of migrant workers, including workers in the domestic sector. Still, it has not been able to reflect the existence of arrangements related to protecting the right to health, especially in the country of placement. The Regulation of the Minister of Manpower of the Republic Indonesia Number 18 of 2018 concerning Social Security for Indonesian Workers, in the implementation has not achieved the expected results. Government regulation number 59 of 2021 concerning the implementation of the protection of Indonesian Migrant Workers regulates protective measures including data collection, monitoring, and evaluation of employers and working conditions and facilitating the fulfillment of the rights of Indonesian migrant workers.

Suggestions to protect health rights for migrant workers in the domestic sector are, first, to improve social security schemes and seek to implement cooperation between BPJS Ketenagakerjaan and government agencies and private institutions. Second, the Government of Indonesia expected to maximize the implementation of data collection, monitoring and evaluation of employers and working conditions, and facilitating the fulfillment of the rights of Indonesian migrant workers, including the right to health for migrant workers in the domestic sector. Third, efforts to strengthen coordination between various ministries/agencies and service providers, both government and private, in implementing and monitoring the protection of the right to health for migrant workers in the domestic sector.

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