

Legal Protection for Indonesian Migrant Workers During Pandemic Covid 19:

The Case from Human Right Approach

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Abstract—Covid-19 has implications for all aspects of life, changing various social and life structures in Indonesia, and in various countries around the world. The Indonesian state has the responsibility to provide protection to migrant workers who are abroad. The case highlighted here is Indonesian migrant workers, in relation to the COVID-19 pandemic. Migrant workers are often the first to get the consequences of a condition, but the latter get access to protection. Likewise, in this pandemic period, migrant workers are most affected by it, but the government's response is not as fast as the consequences that befall them. The research method used is the normative juridical research method, which is a method that examines legal symptoms that occur based on legal theories or concepts, based on literature searches, statutory regulations, plus interviews with parties who are considered competent with the problem researched. The result of this research is Protection of Indonesian migrant workers during the Covid-19 pandemic from the Indonesian government has basically been carried out with various efforts, including by helping to provide health protection for Indonesian migrant workers abroad through the Social Security Administering Agency (BPJS) or the repatriation of migrant workers. both working legally and illegally.

Keywords—legal, protection, migrant, workers

I. INTRODUCTION

Working and having a job has an important meaning in the life of a human being, because by working humans can show their existence and by having a job, humans can live properly to be able to fulfill the life of themselves and their families. The right to work is guaranteed in the 1945 Constitution,

namely in Article 27 paragraph (2) which states that: "every citizen has the right to work and a decent living for humanity [1]. The article also shows that the government has an obligation to fulfill the right to work by providing employment opportunities. The fact that happened in the country of Indonesia, the limited available job vacancies while job seekers were so abundant, caused many Indonesian citizens to be attracted to work abroad. Indonesian citizens, both men and women who work abroad, are then known as Migrant Workers (TKI), and another term that is currently developing is migrant workers.

When the Covid 19 pandemic started in China, all aspects of life in all countries were affected. Especially for those who work for foreign employers in foreign countries too. Many of these difficulties and problems have occurred in normal times, especially during the first Covid-19 virus pandemic. Migrant workers are among the groups most affected by this pandemic, for example, Indonesian migrant workers in Malaysia, who cannot work again because the company he worked for was experiencing a crisis due to a pandemic. They struggle because they have no income, not only for their daily meals, but they also must pay for their house rent and other necessities.

Social restriction policies are implemented in the countries where Indonesian workers work, causing additional difficulties for them because they cannot leave the house, so that those who work in households have more jobs, while their health is neglected [2]. Another problem is the increasing number of workers who do not have official documents, because with social restrictions they are also unable to extend their residence

permit, so that it will cause immigration law problems, and can be classified as illegal employees.

This research is focused on examining comprehensively based on the perspective of human rights, legal protection that has been and will be carried out by the Indonesian government against Indonesian migrant workers who work abroad, as a sample the research will be carried out on workers who work in Malaysia and Singapore. The specific purpose of this research is to examine the extent to which the application of cooperation between the Indonesian government and the receiving country in protecting Indonesian workers in their area, without distinguishing between workers with official documents and those who are not.

The problem above is urgent to research considering that the protection of Indonesian workers, especially those with problems in other countries, is a state obligation and is part of the protection of human rights, in accordance with Article 27 paragraph (2) of the 1945 Constitution. decision makers in dealing with Indonesian citizens affected by Covid 19 in other countries, so that they can be saved as soon as possible.

II. METHODS

A. Design

This study uses a qualitative approach. Qualitative research is humanistic research and can explain the naturalistic perspective and the interpretive perspective of human experience [3]. This qualitative research is felt to be the sharpest analytical knife to present an in-depth assessment model of society [4].

B. Data Source

The source of data in this study is secondary data, namely data that is prioritized based on data from the library, in the form of books containing opinions on concepts and laws and regulations. In addition to sources from secondary data, primary data is also added in the form of interviews and simple surveys.

C. Approach

The approach method used in this research is a normative juridical approach, namely the problems studied in this study are analyzed based on legal studies, policies, and legal rules and concepts.

D. Conclusion Drawing and Verification

The steps taken in the analysis of qualitative data according to Miles and Huberman [5] are drawing conclusions and verification. A logic that starts from "special to general"; not from "general to specific" as in deductive verification logic. Therefore, the activities of data collection and data analysis are inseparable from each other.

III. RESULTS AND DISCUSSION

A. Legal Protection

Legal protection is one of the important elements in a state of law. It is said to be important because in a legal state, everything must always be based on the law, and the established law aims to provide legal protection for all its citizens. As it is known that a country will have a reciprocal relationship between its own citizens. In this case, it will give birth to a right and obligation to each other. Legal protection will be the right of every citizen, meaning that on the other hand legal protection is an obligation for the state itself, so that when citizens need protection, the state must be present to provide legal protection to its citizens.

Legal protection is a protection given to legal subjects in the form of tools, both preventive and repressive, both verbal and written. In other words, it can be said that legal protection is a separate picture of the function of the law itself, which has the concept that the law provides justice, order, certainty, benefit, and peace [6].

Indonesia formally since its inception in 1945 has declared itself as a state of law and has been reaffirmed in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) because of the amendments in Article 1 paragraph (3) which states that: "The State of Indonesia is a state of law. " By paying attention to the formulation of the concept of the rule of law in Indonesia,

The protection of migrant workers is part of the right to work and the right to work which is a basic human right (HAM). In Indonesia, this right is guaranteed in Article 27 paragraph (2) of the 1945 Constitution. These rights are also regulated in Article 23 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 [7].

The right to decent work and the right to work as part of human rights (HAM) will be inherent in everyone. The right to work is the state's obligation to respect, protect and fulfill human rights [8]. The obligation to respect means that the state must ensure that its policies do not violate the human rights of its citizens; protect by preventing any violations committed by third parties and conducting investigations and penalties for those who violate; while fulfilling means creating a condition that allows every citizen to enjoy the right to work, for example by providing job information or creating jobs [9].

The problem faced by workers, especially Indonesian migrant workers abroad during the COVID-19 pandemic by the ILO (International Labor Organization) is the dilemma between "infecting or starving". The effects of the COVID-19 pandemic and the economic recession also have different impacts on women workers, workers with disabilities, or other marginalized groups, who before the pandemic had often experienced discriminatory practices in the workplace. As regulated in national law and international human rights standards, rights holders are individuals or individuals, while

duty bearers are states, which include executive (government), legislative (parliamentary) institutions, the judiciary (courts), and other state institutions, both at the national and local levels.

In more detail, the state has 3 obligations: 1. The obligation to respect (duty to respect); the state must discipline all its apparatus not to commit human rights violations; 2. The obligation to protect (duty to protect); The state must protect its citizens or everyone within its jurisdiction from human rights abuses committed by other people, whether they are state officials or non-state actors (such as companies). If there is a violation of human rights, the state is obliged to restore rights (remedy) or enforce justice, whether it is punishing the perpetrators or providing compensation (reparations) to the victims. Obligation to fulfill (duty to fulfill); the state takes legislative, administrative, judicial, and other steps or steps necessary to ensure that state officials or third parties (non-state actors) carry out the respect and protection of human rights.

The fulfillment of workers' rights, ranging from welfare issues, unsafe and healthy working conditions, to discriminatory practices in the world of work are still problematic before the emergence of the COVID-19 pandemic in early 2020. The pandemic and the government's and company's response to it have only strengthened the vulnerability of the fulfillment of workers' rights.

The following are the findings of this study, in terms of protecting migrant workers affected by the COVID-19 pandemic, including the existence of a policy of restricting contact and strict physical distance, the world of work has also closed the workplace. Some businesses can exercise flexibility by enacting a work from home policy, but most workers lose their working hours or productivity which results in a decrease in wages or income and even lose their job.

The Covid-19 pandemic that has occurred has also made migrant workers more vulnerable and their mobility limited, both in accessing daily needs as well as assistance and legal assistance when experiencing cases. In addition, cases of detention exceeding the time limit at the Temporary Detention Center, such as what happened in Sabah, which is commonly called the Red House and is known among workers as a place of torture, is as much as 10%. This high number is closely related to the delay in deportation due to the government's unpreparedness to facilitate the return of Indonesian migrant workers in the Covid-19 pandemic situation.

The handling of Covid-19, both in Sabah, Malaysia, and in Indonesia, has neglected the safety and human rights of migrant workers and their families. Undocumented migrant workers experience prolonged detention at Immigration Depots, in Sabah, Malaysia due to complicated deportation procedures. Immediate repatriation was also hampered by the Indonesian government's decision. The Indonesian government does not seem to have provided its best service to fulfill obligations to its citizens who are affected by problems in other countries, especially during this COVID-19 pandemic.

In terms of laws and regulations, when it is expected to provide legal certainty to improve legal protection for migrant workers, what happened when the enactment of the Job Creation Law, articles relating to Indonesian migrant workers, even further weakened the protection of equality for migrant workers. The ratification of the Job Creation Act seemed like a step backwards after Indonesia ratified the 1990 Migrant Convention and ratified the Indonesian Migrant Workers Law which was full of protection. Whereas currently the need for protection for migrant workers is increasing, both in the form of policies and appropriate handling measures by the government. It has been more than three years since the Migrant workers Law was passed, women migrant workers still experience violence, rights violations, and impoverishment. The migration system is still running without adequate protection with various traps of trafficking and other vulnerabilities. This happens not only because of the government's slow pace in making derivative regulations, so the perspective of state protection for migrant workers is still a big question. The situation of migrant workers is also exacerbated by the handling of the pandemic that has not been fully human rights oriented and the direction of state policies that place more emphasis on investment, such as in the Job Creation Law rather than the policies needed by workers and their families, in this case legal protection based on human rights.

B. Analysis of the Government's Protecting for Indonesian Migrant Workers Based on Human Right Perspective

Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers (Law Of Migrant Workers) states that the central government together with provincial, district/city governments have the duty and responsibility to take care of the return of Indonesian migrant workers in the event of war, natural disasters, , disease outbreaks, deportations, and migrant workers In relation to the problems of Indonesian migrant workers in foreign countries affected by the pandemic, the Ministry of Manpower has coordinated with the Ministry of Health for health checks at the debarkation for returning workers. The letter was followed up with the Decision of Director General of Disease Prevention and Control to all Port Health Offices (KKP) on March 27 [10].

Other measures to protect Indonesian Migrant Workers (PMI) carried out by the Ministry of Manpower are coordinating with the Manpower Attaches at 12 Indonesian Representatives to urge PMIs who will return to Indonesia to report their return online or offline and ensure that they are handled upon arrival and return of PMIs to their areas of origin.

Other protective measures for Indonesian Migrant Workers (IMW) that have been carried out by the government are providing basic material assistance to IMW affected by COVID-19 in placement countries and allocating employment opportunities expansion programs for workers and prospective workers and their family members. The assistance is in the form of infrastructure labor-intensive programs, productive

work, business incubation, appropriate technology, and independent labor.

In foreign countries such as Malaysia, Singapore, and Hong Kong, currently there is still stigmatization of migrant workers who will return to Indonesia. The stigmatization is in the form of a public assessment that migrant workers are spreaders of Covid-19 (Chairman of Indonesian Migrant Workers Union). In addition to the process of returning migrant workers to Indonesia, it is quite difficult because of the policies of the countries where they work. The existence of certain elements who collect fees on migrant workers when they arrive in Indonesia is still a problem.

After returning to Indonesia, the problem does not mean that it is over, but it creates new problems because, among others, difficulty in getting a job, difficulty in getting assistance from the government such as difficulty in obtaining pre-employment cards, direct cash assistance or difficulty in being involved in cash labor-intensive programs originating from village funds.

The response and protection from the Indonesian government already exists, but it seems that it has not met the elements of protection needed by migrant workers. The government is asked to take migrant workers protection policies, ranging from protection in the health aspect to protection related to professional rights and human rights. In terms of regulation, Law Number 18 of 2017 concerning the Protection of Migrant Workers is in the most advanced position because it adopts aspects of the migrant worker convention, one of which is the protection of women workers. However, the transitional period of the law has dragged on for the last 3 years and some instruments such as public service bodies in each country of placement also do not exist until now. There needs to be an effort to increase synergy with the Migrant Workers Protection Agency,

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In Indonesia, the concept of protecting citizens is contained in the Preamble to the Constitution of the Republic of Indonesia, especially in the fourth paragraph, which is about

the purpose of the state. The four goals or ideals of the ideal state of Indonesia are: (i) protecting the entire Indonesian nation and the entire homeland of Indonesia; (ii) improve the general welfare; (ii) the intellectual life of the nation; and (iv) participate in carrying out world order based on independence, eternal peace, and social justice. To achieve the four goals which are the ideals of the Indonesian people, especially in the context of protecting the entire Indonesian nation and the entire homeland of Indonesia, a principle called the principle of nationality or citizenship has emerged. The principle of nationality is divided into two, namely the principle of active and passive nationality. The rationality of this principle is that the state and its citizens still have a relationship / bond even though the Indonesian citizen is not in the territory of Indonesia, in the sense that the citizen is not domiciled in Indonesia because of work or education abroad. It can be concluded that the principle of nationality remains attached to Indonesian citizens wherever they are, as well as that Indonesia as a country that always has ties to its citizens must continue to provide protection wherever they are. Based on this principle, every country is obliged to provide full protection to its citizens, even though their citizens are abroad [11].

The state's response to the problem of migrant workers is during the COVID-19 pandemic - especially those who work in the informal sector, certain time workers, gig workers (seasonal workers, self-employed, or casual workers), and migrant workers. They had a lot of problems before the emergence of the COVID-19 pandemic. In general, these problems are related to not getting social security and other protection, or in the context of women workers being considered as "second class" workers, and more vulnerable to losing their jobs (Lay off).

IV. CONCLUSION

Protection of Indonesian migrant workers during the Covid-19 pandemic from the Indonesian government has basically been carried out with various efforts, including by helping to provide health protection for Indonesian migrant workers abroad through the Social Security Administering Agency or the repatriation of migrant workers. However, there are still many things that need to be addressed, due to the lack of coordination with the work destination countries and the harmonization of rules between countries. There are different conditions in each country where Indonesian migrant workers depend on the policies of each country in dealing with Covid 19, but what is almost the same is that migrant workers, especially those who work in the informal sector, are treated as if they were potential carriers of the virus and thus receive discriminatory treatment. and lead to human rights violations.

Indonesian migrant workers are increasingly vulnerable in their position during the Covid-19 pandemic. This is not only due to the slow pace of the government in making derivative rules from the Law on the protection of Indonesian Migrant Workers, but also because of the weakening of the basic concept of state protection of migrant workers as a state obligation.

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