



The Urgency of Providing Indonesian Migrant Workers Protection Centers in the Country of Placement

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Abstract. The state must provide job opportunities for all its citizens, because all citizens have the right to a decent life and their rights must be protected. However, in Indonesia there are still few available job opportunities, so many Indonesians choose to work abroad or can be referred to as Indonesian Migrant Workers (PMI). This requires the cooperation of the relevant agencies to provide protect every Indonesian citizen who will work abroad. For some cases, the Indonesian government cannot provide the legal protection towards the PMI as the data is not available or accurate to monitor the numbers of PMI on that country. This is because there is no center for PMI protection in the country of placement. The type of research used in this research is the Normative Legal Research Method. Normative Legal Normative legal research is a process to find a rule of law, legal principles, and legal doctrines in order to answer legal issues that are being discussed or raised. The sending of PMI to the country of placement is still not accompanied by a strong and comprehensive protection system, which can help overcome the problems of PMI and their families in all activities before, during and after work. The weak protection system for Indonesian Migrant Workers can result in opportunities for human trafficking practices as well as an increase in cases of violence, which mostly occur against women. As a better effort to protect Indonesian Migrant Workers, the Government can establish the provision of PMI protection centers in each country of placement. This has also been mentioned in Article 26 letter g of Law Number 59 of 2021 which states that the Central Government and/or Regional Governments are obliged to carry out social protection for CPMI and PMI through the provision of PMI protection centers in the country of placement destination. This entire article will review the importance of protection centers in the country of placement for migrant workers.

Keywords: Protection · Indonesian Migrant Workers · The country of placement · protection centers

1 Introduction

Indonesian Migrant Workers or often referred to as PMI are one of the elements of workers who contribute the largest foreign exchange to the Indonesian state. According

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to the Indonesian Migrant Workers Protection Agency (BP2MI), 80,099 Indonesian migrant workers (PMI) were placed in several countries until July 2022. This number is Indonesian migrant workers whose data is officially listed or recorded by BP2MI, but the number does not list Indonesian migrant workers who depart illegally or non-procedurally [1]. This indicates that there is supervision that must be tightened again both in pre-placement, during placement and post-placement [1].

This supervision is a protection provided by the Indonesian state for Indonesian migrant workers through official bodies related to the protection of Indonesian migrant workers in accordance with the implementation in Law Number 18 of 2017. In fact, the protection of Indonesian migrant workers is a right that can be accepted by migrant workers, even the protection does not apply to individual migrant workers but also to the dignity and dignity of their families [2].

However, it seems that the problem of cases involving Indonesian migrant workers has not ended. Cases such as violence, torture, sexual harassment, exploitation in the form of other human rights violations continue to haunt Indonesian migrant workers in the country of placement [3]. In one of these conditions, the Government must be present to handle the issue of cases concerning Indonesian migrant workers, considering that the protection of Indonesian migrant workers is regulated in Law Number 18 of 2017 which makes the protection of migrant workers a priority for the government for both workers with legal and illegal status.

The supervision and protection of Indonesian migrant workers carried out by the government is carried out through an extension of the hand through a body that is directly responsible to the President regarding the handling of cases, supervision and protection of migrant workers. The agency that performs its duties in the context of protecting Indonesian migrant workers is the Indonesian Migrant Workers Protection Agency (BP2MI). In this case, BP2MI performs its main duties and functions as a protective body for migrant workers both during pre-placement, during placement and post-placement. However, in practice, problems or case problems related to Indonesian migrant workers are still found, such as human rights violations against workers; migrant workers departing illegally or non-procedurally [4]. BP2MI in this case cannot handle cases directly with its authority because it has left the territory of the Territory of the Republic of Indonesia. BP2MI is obliged to write to the Indonesian Embassy or KJRI of the country where migrant workers are placed to request assistance in handling migrant worker cases.

Of course, this takes quite a long time to handle a case considering that it requires coordination between several agencies both at home and abroad. This causes the handling of cases that occur can continue to accumulate and be difficult to solve. Based on this background, the author wants to examine how important the government of the Republic of Indonesia is in establishing a protection agency for Indonesian migrant workers outside the territory or in the territory of the placement country with the aim of facilitating the handling of cases of Indonesian migrant workers so that they can be quickly resolved properly [5]. The importance of establishing a protection agency for Indonesian migrant workers, the obstacles and challenges of its establishment will be discussed in this article.

2 Research Methods

This research uses a type of legal research. Legal research that can be carried out by conducting research using library materials or mere secondary materials [6, 7]. This research uses the method of statute approach and conceptual approach. The statute approach is an approach that is carried out by examining related to legal norms, legal principles, and laws and regulations. Meanwhile, the concept approach is an approach that examines literature related to the problems in this study [8]. The analysis of legal materials in this study was carried out by collecting data by examining literature materials consisting of primary legal materials, secondary legal materials, and tertiary legal materials [9]. Legal materials can be in the form of documents or laws and regulations related to this research.

3 Result and Discussion

3.1 Current/Existing Conditions Related to PMI Protection in the Country of Placement

3.1.1 Protection of Indonesian Migrant Workers in Placement Countries

The protection of Indonesian Migrant Workers includes protection before, during, and after work [10]. Protection of Indonesian Migrant Workers while working in the country of placement is regulated in Article 21 of Law No.18 of 2017 which states that protection during work includes data collection and registration by the employment attaché or appointed foreign service official; monitoring and evaluation of employers, employment, and working conditions; facilities for fulfilling the rights of Indonesian Migrant Workers; facilitation of settlement of employment cases; providing consular services; assistance, mediation, advocacy, and provision of legal assistance in the form of facilitation of advocate services by the central government and/or representatives of the Republic of Indonesia and guardianship in accordance with local state law; development of Indonesian Migrant Workers; and repatriation facilities [11]. Therefore, the Government established an agency that can serve and protect Indonesian migrant workers or what is usually called BP2MI. In 2021, BP2MI received 1702 complaints from Indonesian migrant workers, of which 874 complaints have been completed, 770 complaints are still in the process of being resolved, and 58 complaints have just been received [12].

Based on the explanation that has been stated in the article above, it shows that the Indonesian government cannot violate the applicable laws and regulations in the country of placement of Indonesian Migrant Workers. The government can only provide protection to Indonesian Migrant Workers through consular officials who have been recognized by the country of placement. Basically, the issue of legal protection of Indonesian Migrant Workers involves between countries so that an agreement is needed between Indonesia and the country of placement concerned. The form of such agreements is called an international agreement. Article 1 paragraph 1 of Law No.24 of 2000 states that an international treaty is a treaty in a certain form and name that is regulated in international law that is made in writing and gives rise to rights and obligations in the field of public law[13].

As to Indonesia's relations with the country of placement, the Indonesian government can work on political relations between the two nations. The motivation behind the public authority's strategic endeavors is to guarantee the security and ideal satisfaction of the privileges of Indonesian migrant workers in the country of placement. However, the government experienced obstacles, one of which was regarding the difference in the legal system between Indonesia and the country of placement. Indonesian Migrant Workers who commit violations in their country of placement must follow the sentencing process in accordance with the legal system of the country of placement [14]. This is due to the absence or absence of an extended Memorandum of Understanding (MoU) between Indonesia and the placement country related to the protection of Indonesian Migrant Workers, especially in the informal sector.

International agreements in their use to protect Indonesian Migrant Workers still have limitations, namely the problem of protecting Indonesian Migrant Workers is subject to the national law of the country of placement so that international agreements that have been made between the two countries do not sufficiently solve a problem that occurs in Indonesian Migrant Workers and also cannot provide optimal protection. The bilateral agreement that the two countries have agreed to will only be a commitment between the two countries to provide protection. Any problems that occur in Indonesian Migrant Workers will still be resolved through the national law in which the Indonesian Migrant Workers are placed [15].

3.1.2 Weak Protection of Indonesian Migrant Workers in Placement Countries

Indonesian Migrant Workers have a considerable influence in economic development because they are one of the largest contributors to the country's foreign exchange. However, not only does it have a positive effect on improving the country's economy, the number of Indonesian migrant workers that continues to increase every year can bring bad risks. Currently, there are many cases of violations of rights, including regarding the safety of work for Indonesian Migrant Workers. In addition, there are also cases of employers who often treat Indonesian Migrant Workers inhumanely. In 2022, there were cases of 60 Indonesian Migrant Workers being arrested and subjected to physical violence in Sihanoukville, Cambodia. This happened because the Indonesian migrant workers were deceived to get a large salary by working in the Cambodian company through unprocedural or illegal channels [2].

Protection of Indonesian Migrant Workers has been regulated in Law No.18 of 2017 concerning the Protection of Indonesian Migrant Workers. However, basically the law protects Indonesian Migrant Workers who have gone through established procedures before being dispatched to work abroad or are usually referred to as procedural Indonesian Migrant Workers. If an Indonesian Migrant Worker goes through an unprocedural route, it can cause many problems because the Indonesian Migrant Worker is not recorded by the government. That is what makes it difficult for the government to provide protection to its citizens.

Based on data from the BP2MI Data and Information Center in February 2022, complaints of Indonesian Migrant Workers in February 2022 reached 149 complaints. There are 21 categories of complaints against Indonesian Migrant Workers from a total of 26 placement countries such as Indonesian Migrant Workers who want to be repatriated,

unpaid salaries, accidents, deaths in the destination country, fraudulent job opportunities, human trafficking, and so on [3]. This problem occurs due to internal and external factors. Internal factors include low education of Indonesian Migrant Workers, cultural shock, limited language of placement countries (especially for Indonesian Migrant Workers in the informal sector) [4]. External factors are the status of unprocedural Indonesian migrant workers, which until now there is no concrete data on the number of unprocedural Indonesian migrant workers in each placement country. Indonesian Migrant Workers who go through this unprocedural route are usually smuggled by scalpers due to the incomprehension of prospective Indonesian Migrant Workers regarding legal procedures that should be carried out before working abroad.

3.1.3 The Government's Effort to Protect Indonesian Migrant Workers in Placement Countries

The government's efforts in improving the governance of services for Indonesian Migrant Workers aim to provide protection. In addition, legal certainty regarding the protection of Indonesian migrant workers has undergone a fundamental change in concept and strategy with the issuance of Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. To support the implementation of the issuance of the law, Presidential Regulation No. 90 of 2019 concerning the Indonesian Migrant Workers Protection Agency (BP2MI) was issued. With the issuance of the presidential regulation, BP2MI became an official body and has undergone a fundamental change by prioritizing a protection approach based on the area of the country where Indonesian Migrant Workers are placed. With these changes, it is expected to improve comprehensive and targeted protection [5].

BP2MI is under and responsible to the President through the Minister who organizes government affairs in the field of manpower, as stipulated in Article 3 of Presidential Regulation No.90 of 2019. From the article, it shows that the Minister of Manpower is responsible for dealing with problems that occur with Indonesian Migrant Workers. In addition to the Minister of Manpower, there is also the Minister of Foreign Affairs who is responsible for organizing foreign relations. Therefore, coordination between the two institutions is needed so that optimal protection of Indonesian migrant workers can be realized and there is no overlap related to the authority between one institution and another.

The government has launched a policy to protect Indonesian migrant workers and improve the placement and protection system for Indonesian migrant workers as the state's responsibility to the people. This policy will be implemented to strengthen foreign cooperation at the regional, bilateral and multilateral levels [1]. In 2021, there has been a signed and still valid foreign cooperation, namely The Federal Employment Agency of Germany (Bundesagentur fur Arbeit) regarding the Agreement on the Placement and Protection of Indonesian Health Professionals in the Federal Republic of Germany, NSR Homecare Agency on Letter of Intent between Indonesian Migrant Workers Protection Board of the Republic of Indonesia and NSR Homecare Agency on Collaborative Undertaking for the Placement of Indonesian Care Giver/Home Health Aides and/or other Sectors, International Organization for Migration on the Cooperation

Agreement between the Indonesian Migrant Workers Protection Board and the International Organization for Migration on the Protection of Indonesian Migrant Workers and their Families [16].

3.2 Provision of PMI Center

There are several reasons why the provision of PMI Protection Centers is very important to do. Some of these reasons are the number of migrant workers who need protection for violations of their basic rights. In reality, most migrant workers who are currently working in their respective placement countries receive unfair treatment related to the fullness of basic rights such as salary and all clauses that have been agreed in the employment contract. According to data from the Indonesian Trade and Economic Office in Taipei (KDEI) in 2020, Taiwan's PMI experienced various kinds of problems, including:

Salary Not Paid/Not Paid;
Work Accidents;
Repatriation of Indonesian Migrant Workers;
Sexual Harassment;
Persecution;
Illegal or runaway Indonesian Migrant Workers [6].

From this fact, it can be concluded that protection for migrant workers is an urgency for the Indonesian state to protect every worker in the international realm. The factor that underlies the many problems cannot be separated from the government's less than optimal role in conducting education and debriefing to pmi candidates. More importantly, it is related to the Special Agency that facilitates complaints and the needs of migrant workers that should be provided by the Government of Indonesia in their respective placement countries. So far, the bodies that facilitate each PMI that are currently in the placement country are the Indonesian Embassy, KJRI, the local state Manpower Office, and other agencies in accordance with the provisions of their respective countries. This applicability is considered ineffective in fulfilling protection for migrant workers considering the number and types of cases that are very complex, it is natural for the Government of Indonesia to make new regulations and plan the establishment of special agencies/special agencies in each country of placement to facilitate PMI.

When PMI experiences problems, generally the intended one is the Indonesian Embassy. To further improve the protection of Indonesian Workers Abroad, the Ministry of Manpower and Transmigration established a labor attaché. The labor attaché has the task of providing services to migrant workers in the country of placement such as pmi protection, data collection in the country of placement, monitoring the existence of pmi, assessing business partners in the management of PMI documents, PMI advocacy efforts, legalization of work agreements or contracts and pmi guidance that has been placed. In carrying out their duties, the labor attaché coordinates with the Indonesian Embassy in the recipient's destination country.

The Ministry of Foreign Affairs through the Representative of the Republic of Indonesia acts as the person in charge of all affairs related to foreign relations. This role also includes providing protection for the interests of migrant workers who face

legal problems where this protection is carried out in accordance with the provisions of international law and customs.

Then apart from the existence of the Indonesian Migrant Workers Protection Agency (BP2MI) which plays a role in facilitating pmi from pre-departure, Indonesia needs a special agency domiciled in their respective placement countries. Reflecting on the current facts, BP2MI is still limited in overcoming all problems/complaints of migrant workers who are working in the country of placement.

4 Conclusion

The protection of Indonesian Migrant Workers includes protection before, during, and after work. Protection of Indonesian Migrant Workers while working in the country of placement is regulated in Article 21 of Law No.18 of 2017. There are 21 categories of complaints against Indonesian Migrant Workers from a total of 26 placement countries such as Indonesian Migrant Workers who want to be repatriated, unpaid salaries, accidents, deaths in the destination country, fraudulent job opportunities, human trafficking, and so on. This problem occurs due to internal and external factors. Internal factors include low education of Indonesian Migrant Workers, cultural shock, limited language of the placement country (especially for Indonesian Migrant Workers in the informal sector). Apart from the existence of the Indonesian Migrant Workers Protection Agency (BP2MI) which plays a role in facilitating migrant workers from pre-departure, Indonesia needs a special agency domiciled in their respective placement countries.

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