



The Dynamics of Indonesian Migrant Workers' Problem (Regulation and Protection Based on Job Creation Law and International Civil Law)

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Abstract. The high unemployment rate in Indonesia encourages people to choose as migrant workers or Pekerja Migran Indonesia (PMI). The government seeks to stimulate the domestic economy to provide new job opportunities in the community. Based on this situation, the Job Creation Law was drafted, which resulted in quite an ambitious economic policy package. However, this policy still reaps advantages and disadvantages, especially for PMI. In addition, PMI protection is also a problem if the employer experience legal issue on placement. Therefore, understanding international law, especially international civil law is required in solving problems and protecting PMIs. The problem in this research is, (1) how the omnibus law on job creation regulates the protection of PMIs. Is it better than the regulation in the previous law, namely Law Number 18 of 2017, concerning the protection of Indonesian migrant workers, and (2) how the regulation of International Civil Law can help various problems experienced by PMI while working abroad? The research method used is normative legal research. The research results illustrate that after the enactment of the Job Creation Law, the migrant workers' protection, especially in the licensing sector, has undergone many changes. This is considering that all permits have been integrated into the labor sector. Thus, no overlapping authority exists for licensing manning agents in the labor and transportation sectors. The Job Creation Law has significantly impacted Indonesian Migrant Workers (PMI). The licensing process for PMI has become shorter than before. PMI protection is also strengthened by the arrangement based on international civil law known as technical assistance. PMI can provide technical assistance in the case of civil problems.

Keywords: International Civil Law · Job Creation Law · Migrant Workers

1 Introduction

The state constitution has guaranteed the right to work as one of the constitutional rights in modern welfare. This is stated in Article 27, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which reads, "Every citizen has the right to work and a

decent living for humanity.” These provisions indicate that the mandate and active role of the government is needed to create job opportunities for everyone [1].

Lack of job opportunities is the leading cause of the high unemployment rate in Indonesia. For example, in February 2022, the labor force increased to 144.01 million people [2]. However, the number of unemployed people in Indonesia reached 8.4 million. This amount reached 5.83% of the total workforce [3]. High unemployment in Indonesia is the cause of people experiencing economic difficulties (poverty). This encourages Indonesians to choose to work as migrant workers. Skeldon, Professor of geography at the University of Sussex, said migration is often seen as a way out of poverty: “the absence of locally available opportunities causes people to migrate to survive” [4].

The high number of people who migrate makes Indonesia the country with the most significant number of migrant workers in Asia [5]. According to data from the Indonesian Migrant Workers Protection Agency (BP2MI), around 21,737 migrant workers were sent to various placement countries with three main destinations, namely Asia and Africa (92.5%), Europe and the Middle East (6.9%), and America and the Pacific (0.6%), in September 2022 [6]. Bank Indonesia (BI) recorded that in the second quarter of 2022, remittances or remittances of Indonesian migrant workers (PMI) from abroad to the country reached US\$2.39 billion [7]. This condition is equivalent to one percent of Indonesia’s total GDP [8].

However, the government must rely more upon PMI to boost economic growth. The government is also trying to stimulate the domestic economy by providing convenience for business actors to do business and attracting foreign investment [9]. One of its goals is to provide new job opportunities in the community. On this basis, the Job Creation Law was drafted by producing a relatively ambitious economic policy package.

The job creation law has always been controversial since it was discussed in the legislative plenary meeting. Previously, several representatives, including the Confederation of All Indonesian Trade Unions (KSBSI) and Migrant Care, had submitted a petition to the Constitutional Court to review several articles in the regulation. One of the exciting things is the substance of the regulation, which is considered to weaken the position and protection of PMI. The policy is still reaping the benefits and disadvantages of social.

The form of protection for PMI is usually based on work agreements or employment contracts in several countries. The work agreement outlines each party’s rights and obligations in the employment relationship, namely the worker’s rights and obligations and the employer’s rights and obligations. In fulfilling these rights and obligations, it is standard for PMI and their employers to have disagreements that will later cause problems.

In solving problems and protecting PMIs, it is necessary to regulate and understand Indonesian national law and international law, such as international civil law, because this law often intersects with PMI problems. If PMIs do not understand or even know about the law, they are vulnerable to becoming victims of rights violations, both the rights of every human being and the rights of workers. Therefore, researchers are interested in researching how the work copyright law regulates the protection of PMIs. Is it better than the regulation in the previous law, namely Law Number 18 of 2017, concerning the Protection of Indonesian Migrant Workers? As well as how the regulation of International

Civil Law can help various problems experienced by PMI while working abroad. The research method used by the researcher is a normative legal research method.

2 Discussion

A. Protection of Indonesian Migrant Workers (PMI) after the enactment of the Job Creation Law

The presence of the Job Creation Law and its derivative Government Regulations have succeeded in resolving overlapping licensing arrangements to ensure the protection of Indonesian migrant workers. This is considering that all permits have been integrated into the labor sector. Thus, no overlapping authority exists for licensing manning agents in the labor and transportation sectors.

The enactment of the Job Creation Law made changes to Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, which are as follows [10]:

- Article 1: There is a change related to the meaning of the Permit for the Placement of Indonesian Migrant Workers (SIP3MI), namely: the Permit previously issued by the Minister after this revision was given to the Central Government.
- Article 51: Changes in licensing previously applied to the Minister, the revision of the licenses that must be owned must be issued by the Central Government.
- Article 53: The establishment of a branch office of a migrant worker placement company must comply with the provisions of business licensing in each Provincial Government.
- Article 57: The validity period of the company's permits and obligations is removed.
- Article 89A: Companies that already have permits prior to the revision of this rule must still comply with the provisions of business licensing

In terms of licensing, the provisions for licensing for manning agents are regulated in KBLI code 78102 regarding Activities for the Selection and Placement of Overseas Workers. In terms of licensing, the provisions for licensing for manning agents are regulated in KBLI code 78102 regarding Activities for the Selection and Placement of Overseas Workers. However, this has not fully resolved the problems surrounding the protection of migrant Indonesian Fishing Vessel Crews (AKPI). The provisions stipulated in KBLI code 78102 are general in nature, which means that there are no specific requirements for manning agents in the recruitment and placement of fishing vessel crews abroad. Therefore, it is necessary to have an instrument that forms the basis for licensing arrangements for the placement of migrant AKPI activities to ensure protection [11].

Besides being found in the employment sector, KBLI code 78102 can also be found in the transportation sector. The difference is only in the title of the KBLI, which is more specific, namely the Activities of Selection and Placement of Overseas Workers (Recruitment and Placement of Migrant Trade Crews Abroad). It can be understood that the types of activities regulated for licensing in the transportation sector are only limited to the recruitment and placement of migrant commercial ship crews and do not

include migrant fishing boat crews. This is because there are no specific requirements in the Attachment to Government Regulation Number 5 of 2021, including in the marine and fishery sector. Thus, licensing for the recruitment and placement of migrant fishing vessel crews is still subject to the requirements of the labor sector [12].

Although the transportation sector has been regulated explicitly in Government Regulation Number 5 of 2021 Appendix II – Transportation Sector, if we look at the OSS system administered by BKPM, there is no specialization in licensing arrangements. All business actors who fall into the KBLI code category 78102 still only need to follow the requirements found in Appendix II – Employment Sector.⁴⁶ In other words, although the requirements for recruitment and placement of migrant merchant ship crews in the Attachment to Government Regulation Number 5 of 2021 have been regulated special, in the OSS system, this specialization is not applied [13]. As previously explained, the problems faced by AKPI migrants are specific. Therefore, to solve the problem of inadequate licensing requirements for manning agents for recruitment and placement of migrant fishing vessel crews, it is not enough to provide special licensing arrangements in a regulatory instrument. However, it must be ensured that these special requirements can be accommodated in the OSS system [14].

There is a requirement to ensure that manning agents in the recruitment and placement sector of migrant AKPIs have adequate competence in selecting migrant AKPIs who have met the requirements to minimize the risk of harm to the migrant AKPIs themselves. Therefore, it becomes essential to ensure that manning agents can participate in ensuring their safety. In this case, special permits are considered insufficient to protect because they do not provide special requirements for manning agents to recruit and place migrant AKPIs [15]. Therefore, BP2MI must monitor manning agents engaged explicitly in the recruitment and placement of migrant AKPIs. Furthermore, concerning the competence of manning agents, it is necessary to distinguish between manning agents who place sailors on commercial ships and manning agents who place sailors on fishing vessels. This distinction is made considering that the manning agent referred to in the P3MI Law tends to be broad.

The distinction refers to qualifications and expertise. Thus, manning agents that could replace migrant AKPIs on foreign-flagged ships are only manning agents with particular expertise. The competence of the manning agent will affect the readiness, competence, and protection of the assigned migrant AKPI. In contrast to the establishment of a manning agent, which currently does not recognize specific certification obligations, several other agency professions, such as property agents and insurance agents, require special agency certification to carry out these services [16].

In response to the difference in qualifications and expertise between manning agents on commercial ships and fishing vessels, as proposed in this paper, it is also necessary to regulate special certification obligations for manning agents who place migrant AKPIs on foreign-flagged vessels. On the one hand, the certification obligation can be the difference between the manning agent of commercial vessels and the manning agent of fishing vessels. On the other hand, certification can also guarantee the expertise and competence of related manning agents in providing migrant AKPI placement services on foreign-flagged vessels.

Thus, the protection of related migrant AKPIs can also be guaranteed. In realizing optimal protection for AKPI migrants, there are at least three options for action. The first is arranging a particular permit scheme for manning agents in the recruitment and placement sector for migrant AKPIs as stipulated in the BP2MI regulatory instrument. Based on the identification, there are several points of regulation's content recommendation that agents in the recruitment and placement sector of migrant AKPIs must fulfill, including the following:

- Proof of ownership of experts;
- Manning agreement between the manning agent and ship owner;
- Draft placement agreement between manning agent and seafarer;
- Draft sea work agreement between seafarers and ship owners;
- Ownership of the quality management system;
- Never been sentenced to a criminal sentence related to the placement of Indonesian workers abroad.

As described in the previous sub-chapter, some of these provisions are considered to play an essential role in determining legal protection for AKPI migrants who are placed [17].

Second, the option of action that can be taken is to issue a Government Regulation instrument to implement the provisions of Article 64 of Law Number 18 of 2017. This is considering the article mandates the existence of a Government Regulation that further regulates the placement and protection of seafarers, crews of commercial ships, and fishing seafarers. After enacting the Job Creation Law and its derivative Government Regulations, it is known that the government regulatory instruments regarding the placement and protection of seafarers, crew members, and fishers have yet to be promulgated. As of May 2021, it is known that the Draft Government Regulation has been harmonized and submitted to the State Secretariat. However, the author believes that the issuance of this Government Regulation is no longer urgent after the enactment of the Job Creation Law which has changed the OSS provisions in Indonesia [18].

It should be understood that the mandate to make a Government Regulation on the placement and protection of crew members has existed since 2017 Law Number 19 of 2017, completed in 2021. The mandate in the law certainly does not consider the existence of the job creation law in 2020. Thus, the government must also consider issuing government regulations after the job creation law, which at least resolves the overlapping licensing problem. The problem that remains today is no longer in terms of administration (with the end of overlapping licensing authorities) but is related to the substance of licensing requirements [19]. Besides not looking urgent, the issuance of the new Government Regulation is also feared to complicate the regulatory regime because Government Regulation Number 5 of 2021 has already been issued. In other words, the issuance of the new Government Regulation will separate the regulation of licensing requirements for manning agents in the recruitment and placement sector for migrant AKPIs from the regime of Government Regulation Number 5 of 2021 [20].

In addition, Government Regulation issuance needs to be followed up with adjustments to the requirements in the OSS. Thus, regulation through Government Regulation

instruments is no longer necessary and sufficient with the issuance of BP2MI regulations. Third, another action option that can be taken to optimize the protection of migrant AKPIs is to establish a new division under B2PMI, which precisely monitors the implementation of manning agent activities in the recruitment and placement sector of migrant AKPIs. The establishment of this particular division can be justified by the fact that migrant AKPI occupies the second position as the group most vulnerable to exploitation, slavery, and discrimination among other migrant work sectors [21].

However, this option will be constrained because divisions within a state agency have been strictly regulated through a Presidential Regulation. In this case, the organizational structure of BP2MI has been explicitly regulated in Presidential Regulation Number 90 of 2019 concerning the Indonesian Migrant Worker Protection Agency. Thus, efforts will be needed to revise the Presidential Regulation to form the new division. Based on the three actions above, the author assumes that tightening these requirements is essential regardless of the government's choice of action because it is manifested in the OSS system as the first and last access to obtaining permits [22].

B. International Civil Law Regulations Related to the Protection of Indonesian Migrant Workers Abroad

In International Civil Law, technical assistance is known. There are two forms of delivery of legal and technical assistance in civil matters based on the Memorandum of Understanding between the Supreme Court and the Ministry of Foreign Affairs dated February 20, 2018:

- A Rogatory Letter in Civil Matters (rogatory commission) is a request letter from another country to obtain legal, technical assistance in the civil sector regarding, but not limited to, assistance in finding or identifying people, seeking or identifying assets or property, obtaining witness statements, documents or other evidence, and conduct civil proceedings.
- Submission of Judicial Documents, namely assistance in submitting documents including but not limited to civil lawsuits, summons for civil cases, witness examination letters, legal remedies, statements for examining files, court decisions or decisions, letters, deeds, and other civil documents [23].

In Article 4 and Article 5 of the Memorandum of Understanding between the Supreme Court and the Ministry of Foreign Affairs of 2018, the provisions for the delivery of legal and technical assistance in civil matters from the Indonesian Courts to Foreign Courts are regulated as follows:

- Submission of Rogatory Letters from Foreign Courts to Indonesian Courts (Article 6 Memorandum of Understanding between MA-MoFA 2018)
- A rogatory letter in civil matters from a foreign country must be addressed to the Supreme Court and submitted through its diplomatic representative in Indonesia or whose concurrent territory includes Indonesia.
- The rogatory letter in civil matters, as referred to in paragraph (1), must be accompanied by the following:

- The name and precise address of the authority of the Foreign Country applying;
- The names and addresses of the litigants (plaintiffs and defendants) or their representatives;
- summary of the case regarding the reasons and demands of the case (fundamentum and petitum);
- The legal and technical assistance requested;
- Names and addresses of witnesses who will be presented for examination;
- Questions that need to be addressed to witnesses or issues that they need to explain;
- Documents or items that need to be reviewed;
- Notification to the institution which contains the application's name, date, and place of execution, as well as the institution or official' name and address;
- Taxes and fees eligible for a refund;
- Date of application;
- Signature and official stamp of the competent authority in the Foreign Country.
- As referred to in paragraph (1), the rogatory letter and other related documents must be accompanied by a translation in Indonesian unless otherwise stipulated based on an agreement for mutual legal assistance in civil matters with the Foreign Country.
- As in paragraph (1), the diplomatic representative shall forward a rogatory letter to the Ministry of Foreign Affairs c.q. Directorate of Law and Socio-Cultural Agreements, Directorate General of Law and International Treaties.
- Ministry of Foreign Affairs c.q. The Directorate of Law and Socio-Cultural Agreements, the Directorate General of Law and International Agreements shall forward the rogatory letter as referred to in paragraph (2) to the Supreme Court for follow-up.
- The Supreme Court shall send to the Ministry of Foreign Affairs proof of receipt of a rogatory letter to be forwarded to the diplomatic representative of the foreign country.
- The Supreme Court will follow up on the handling of rogatory letters by forwarding them to the competent court in Indonesia.

The Supreme Court conveys to the Ministry of Foreign Affairs the follow-up results to the handling of rogatory letters in the form of an Examination Report (BAP) to be forwarded to diplomatic representatives from the foreign country.

3 Conclusion

After the enactment of the Job Creation Law, the protection of migrant workers, especially in the licensing sector, has undergone many changes. This is considering that all permits have been integrated into the labor sector. Thus, no overlapping authority exists for licensing manning agents in the labor and transportation sectors. The existence of the Job Creation Act has had a pretty good impact on Indonesian Migrant Workers (PMI). The licensing process for PMI has become shorter than before. PMI protection is also strengthened by the arrangement based on international civil law known as technical assistance. PMI can provide technical assistance in case of civil problems.

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