



Protection of Women Migrant Workers from Exploitation and Trafficking

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Abstract. Article 27 paragraph (2) of the 1945 Constitution states that "Every citizen has the right to work and a life worthy of humanity". Human Rights (HAM) are two words that are difficult to separate. As is the case with female migrant workers from East Nusa Tenggara (NTT) who are victims of human trafficking. Lack of job opportunities and cultural traditions of migration make women tend to look for jobs abroad for a better life without having awareness of their migrant rights. The problems in this study are that female migrant workers are vulnerable to illegal recruitment, discrimination, human trafficking, long working hours, low wages, extortion, violence and sexual harassment as well as the rights of female migrant workers. The practice of recruiting women migrant workers and the difficulty of access to accurate information result in low awareness of the legal rights, risks and protections that exist. Work in the household sector is one of the jobs filled by female migrant workers by becoming domestic workers. Another sector where women migrant workers work is the commercial sex industry, where women are forced and trapped to become sex workers. These two sectors are closed, unmonitored, and difficult to supervise work environments. As a result, women migrant workers in this sector are vulnerable to discrimination, exploitation and violence. They are enslaved by citizens of other countries, because their countries are unable to protect them. So it is necessary to protect women migrant workers from exploitation and trafficking.

Keywords: Protection Law, Women Migrant Workers, Trafficking

1. Introduction

Trafficking in persons in international migration, especially in escorting Indonesian women workers who are often victims, through a comprehensive analysis of external factors from international and regional commitments on handling human trafficking, as well as internal factors from the national commitment contained in the prevention of criminal of human trafficking Law, which is linked to the implementation of public policy and the various factors that influence it, this paper elaborates on four things. First, the government's efforts to change the mindset of the existence of female workers as housemaids, servants and entertainers because they do not have the skills; Second, the weak commitment of international organizations is due to unclear rewards and sanctions for member countries and the secrecy of information on member countries related to sovereignty issues; Third, the weak commitment of

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regional organizations, the low awareness of the state regarding the importance of joint management of member countries' border lines and the weak consolidation of bordering countries from institutions and communities in their border areas; fourth, the application of anti-trafficking in human beings contained in the prevention of criminal of human trafficking Law, is still facing a number of obstacles from the aspects of resources, communication, disposition and the environment in which the policy is implemented. The results of this study indicate that however the success of the government's role in eradicating human trafficking depends on the ability of the people, because human trafficking is basically influenced by the pattern of gender bias which cannot be separated from other dimensions related to age, economic powerlessness, social, culture and politics related to the process of industrialization and globalization. On the other hand, the role of the government, through law enforcement officials and various related public officials, requires better, firmer and cleaner coordination in the prosecution, prevention and protection of victims of human trafficking. through the Association of Southeast Asian Nations Declaration due to patterns of gender-based violence and discrimination that occur in the form of physical, psychological and sexual violence (including sexual harassment, rape, forced prostitution), trafficking in persons (prevention of criminal of human trafficking Law.), debt bondage, threats and extortion, violations of the right to information, document manipulation, and document confiscation, all occur from the recruitment process to the return. There have even been violations of maternity rights, such as the prohibition to get pregnant by coercing contraception.

The factors behind human trafficking, especially women and children, who work as women migrant workers cannot be separated from the problems backwardness or poverty. In book IV on Trafficking in Women and Girls published by the International Labor Organization (ILO) in 2004, it was found that the process of feminization of poverty, chronic unemployment and lack of economic opportunities are some of the factors that influence trafficking in women and children. The poor are the first reason why the risk and vulnerability to human trafficking occurs. Meanwhile, the United Nations Global Initiative to Fight Human Trafficking reveals the general causes of trafficking, namely:

- a. Gender-based violence;
- b. Discriminatory employment practices;
- c. Patriarchal social structure;
- d. Fading family bond networks;
- e. Ethnic, racial and religious marginalization;
- f. Corrupt and failed government;
- g. Status issues (as a citizen or legal resident related to work);
- h. The role and position of women in the family;
- i. Hierarchy of power and social order;

- j. Responsibilities and roles of children;
- k. Early marriage;
- l. The high rate of divorce and the social stigma that accompanies it;
- m. Damage to personality development;
- n. Limited achievement or educational attainment; and
- o. Limited economic opportunities.

The rules governing the use of contraception must be accompanied by the consent of the person who will use it. These provisions are stipulated in Law No. 36 of 2009 concerning Health, Law No. 52 of 2009 concerning Population Development and Family Development, and Government Regulation No. 61 of 2014 concerning Reproductive Health. In addition, according to Article 8 of Law No. 12 of 2022 concerning Crimes of Sexual Violence (crime of sexual violence) it contains a maximum prison sentence of 5 years and/or a maximum fine of Rp. 50 million for each person who forces another person to use contraceptives so as to make them lose their function. reproduction for a while. Likewise, Article 9 which stipulates that coercion to use contraception causes permanent loss of reproductive function, which is punishable by a maximum imprisonment of 9 years and/or a maximum fine of Rp. 200 million. Not to forget Law No. 18 of 2017 states that the implementation of the protection of Indonesian migrant workers requires strict supervision and law enforcement including administrative sanctions and criminal sanctions. Supervision also targets the quality of services and the dimensions of fulfilling human rights (both as citizens, as migrant workers, as women in the case of migrant workers who are women). This report presents data on the placement and protection of Indonesian Migrant Workers in the period January-June 2023.[1] Several important issues are presented in this report, including: placement data showing an increase in the number of placements for Indonesian Migrant Workers when compared to June 2021 and June 2022. During the January-June 2023 period, formal placements dominated as much as 57% of the total placements. Furthermore, there were 6,968 placements by Indonesian Migrant Worker Protection Agency in the G to G program (Japan, Korea and Germany) until June 2023. Meanwhile, compared to June in 2021 and 2022, data on complaints has increased in June 2023. Complaints in June 2023, the majority came from Saudi Arabia, Malaysia and Hong Kong, while West Java and Central Java were the provinces with the highest number of complaints in June 2023. The highest number of arrivals came from Indonesian Migrant Workers placed in Singapore, then Taiwan and Hong Kong. Indonesian Migrant Workers from the Provinces of Central Java, West Java and East Java lead the number of arrivals of Indonesian Migrant Workers in June 2023. This is to take more effective and sustainable protective measures to avoid criminal acts of human trafficking.[2]

However, the success of the government's role in eradicating human trafficking depends on the capabilities of the community, because human trafficking is basically influenced by the existence of gender bias patterns which cannot be separated from other dimensions related to age, economic, social, cultural and

political helplessness related to the industrialization process and globalization. On the other hand, the role of the government, through law enforcement officers and various related public officials, requires better, firm and clean coordination in prosecuting, preventing and protecting victims of human trafficking, especially the protection of female migrant workers.

2. Problems

Through this research, the implementation of anti-human trafficking policies in Indonesia is examined comprehensively regarding how the Indonesian government's policies provide protection for women migrant workers. Next, what is the commitment to handling human trafficking, which is then linked to the conception of successful implementation of a public policy along with various factors that influence it. handling the protection of women migrant workers from exploitation and trafficking as well as obstacles to the protection of women migrant workers. So this research aims to explain the causal relationships that occur in the implementation of the national anti-human trafficking policy implemented in Indonesia and identify various obstacles and challenges that need to be overcome by the Indonesian government.

3. Method

The normative juridical research method uses a statutory and conceptual approach in this study. And later the descriptive analysis method in the form of elaboration of some of the data collected comes from several primary, secondary and tertiary legal materials through data collection methods in the form of library research. By applying normative legal research, the collected data is then analyzed to obtain conclusions about the suitability of the data between theory and practice.[3]

4. Discussion

4.1. Exploitation and Trafficking

Please note that the first paragraph of a section or subsection is not indented. The first paragraphs that follows a table, figure, equation etc. does not have an indent, either. Subsequent paragraphs, however, are indented Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harboring or receipt of persons by threat, use of force, abduction, coercion, deception, coercion with force (including abuse of authority), debt bondage for the purpose of placing or detaining a particular person, whether paid or not, in forced labour, or practices such as slavery Exploitation and Trafficking Most overseas migrant workers work in jobs that have been assessed as low-skilled and hidden, such as construction, plantation work , fisheries and work in the domestic sphere, domestic workers (PRT). The work is in an environment that is difficult to monitor and supervise, especially domestic workers. Because of this, migrant workers who work in these jobs are vulnerable to exploitation by employers.

The identified forms of exploitation of migrant workers include: (1) Working for one employer but being employed in more than one place, without any additional salary; (2) Working long hours, 12-20 hours a day, with no breaks, and no extra pay; (3) Working without pay at all or being paid but with low wages that are not in accordance with the work contract; (4) Multiple workloads, especially domestic workers (PRT), such as taking care of children, cleaning the house, cooking at the employer's house with a large size and a large number of family members; (5) Not being fed enough. Food for migrant workers is leftover food, stale food, or food that does not meet nutritional standards; (6) Not being given adequate housing, for example being forced to sleep on the floor, in a warehouse, or even in the bathroom; (7) 6-12 month salary deduction. These salary deductions are made by PJTKI agencies under the pretext of placement fees, which are sometimes overcharging; (8) Forced to serve the male employer's sexual desires by means of threats and violence; (9) Very diverse sexual exploitation, including being trafficked to become sex workers; (10) Not getting work safety equipment. Migrant workers working in the construction sector often do not have helmets, gloves and other safety equipment. [4] Women migrant workers are vulnerable to being trafficked into sex work. One of the biggest channels for trafficking of women and children is the recruitment of migrant workers. Among the various cases of returning migrant workers that are sad are women who are trapped into the commercial sex industry. [5] The large number of Indonesian migrant workers who are victims of human trafficking is what is interesting to study in relation to the government's protection of migrant workers who are victims of this human trafficking. [6] destroy the myth about the existence of cultural barriers for women who migrate to leave their hometowns to seek a livelihood, because this is considered to violate their gender role. [7] Women who are considered as creatures (therefore also protected) are not encouraged to go far. [5] The question that often develops in society is why the practice of trafficking against Indonesian Women Migrant Workers continues to occur. The problem is that Indonesian Women Migrant Workers cannot be separated from other forces besides their own powerlessness.

4.2. Legal Protection in Indonesia

a. Law No 18/2017 concerning Protection of Migrant Workers

Focus on Article 41 and Article 42 concerning the role of regions and villages to protect PMI and protect the interests of CPMI/PMI and their families in fulfilling their rights in activities before work, during work and after work in legal, economic and social aspects. As for legal protection, Indonesian Migrant Workers can only work in destination countries where:

Have Per-UU Regulations that protect foreign workers, Has had a written agreement between the Government of the destination country and the Government of the Republic of Indonesia; and/or, Having a social security and/or insurance system that protects foreign workers, As for social protection, Improving the quality of education and job training through standardization of job training competencies, Increasing the role of accreditation and certification institutions, Providing competent educators and trainers, Reintegration social

services through skills improvement, both for PMI and their families, protective policies for women and children; and Provision of PMI protection centers in destination countries.

b. Law No 06/2012

Ratification of the Convention on the protection of migrant workers and members of their families

c. Law No. 21 of the year concerning the Crime of Trafficking in Persons (TPPO)

d. Law No 06/2014 Regarding Villages Permendes no 1/2015 regarding guidelines for authority based on origin rights and village-scale local authority Permendes No 11 of 2019: Focus on Improving Public Services

e. Presidential Instruction/INPRES No 9/2000 Concerning Gender Mainstreaming to Realize Gender Justice and Equality in Indonesia's Development

Table 1. Population of Working Age by Activity and Gender, 2020-2022

Source: Sakemas, February 2020-2022 processed by the Ministry of Manpower Center

Activity	2020			2021			2022		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Working age population	101.28 3.455	101.31 3.608	202.59 7.063	102.64 0.813	102.71 9.623	205.36 0.436	104.97 1.248	103.57 2.838	208.54 4.086
Workforce	85.021 .016	55.197 .336	140.21 8.352	84.311 .492	55.498 .821	139.81 0.313	87.803 .963	56.210 .085	144.01 4.048
Work	80.660 .108	52.632 .758	133.29 2.866	78.566 .170	52.498 .135	131.06 4.305	82.262 .190	53.349 .705	135.61 1.895
Open Unemployment	4.360 908	2.564 578	6.925 486	5.745 322	3.000 686	8.746 008	5.541 773	2.860 380	8.402 153
Not the Labor Force	16.262 .439	46.116 .272	62.378 .711	18.329 .321	47.220 .802	65.550 .123	17.167 .285	47.362 .753	64.530 .038
School	8.178 743	8.494 098	16.672 .841	7.439 192	7.831 976	15.271 .168	8.040 403	8.214 993	16.255 .396
Taking care of household	3.594 426	34.912 .054	38.506 .480	4.141 236	35.707 .298	39,848 .534	3.564 031	35,892 .313	39,456 .344
Other	4.489 270	2.710 120	7.199 390	6.748 893	3.681 528	10.430 .421	5.562 851	3.255 447	8.818 298
TPAK ¹⁾ (%)	83,94	54,48	69,21	82,14	54,03	68,08	83,65	54,27	69,06
TPT ²⁾ (%)	5,13	4,65	4,94	6,81	5,41	6,26	6,31	5,09	5,83
TKK ³⁾ (%)	94,87	95,35	95,06	93,19	94,59	93,74	93,69	94,91	94,17

4.3. Legal Protection Theory

According to Satijipto Raharjo, legal protection is to provide protection for human rights (HAM) that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law. The law can function to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice.[8]

4.4. Handling and obstacles the protection of female migrant workers against exploitation and trafficking.

In the debate that arises regarding trafficking, it cannot be denied that the gender dimension is a determining factor, even the most important factor. Kempadoo stated that women are disproportionately represented among the poor, undocumented, in debt, and international migrant workers. Meanwhile, the world is characterized by discrimination and misogyny which have a huge impact on women's lives, and limit their economic opportunities. This means that whether women like it or not, they must always be in contact with a world order that is based on racial and gender bias in immigrating to find work with better wages.[9] Conflicts often arise between international law and national law, which becomes a significant obstacle to its implementation because they have different social and cultural conditions. International law which was born and applied to countries that already have a conducive government system, is of course different from developing countries which still have problems with poor government systems, so that cultural clashes become "spectacles" or different views when the application of this law is carried out in a country.

5. Conclusion

The main conclusions of the study may be presented in a short conclusions section. The conclusion section should lead the reader to important matter of the manuscript. The flow of globalization has an impact on the migration of female workers abroad. They work in a government agency, factory, company, shop and as domestic helpers. Their departure as migrant workers is legal and illegal, not infrequently they are lied to, deceived, kidnapped and even trafficked by people who are not responsible. This often creates problems not only for migrant workers but also for the government. It is recognized that the presence of female workers abroad can be felt by their family members in fulfilling basic needs. Besides that, it can bring in a large enough foreign exchange and can overcome unemployment. Protection of migrant workers, both legal and illegal, needs to get attention as citizens in relation to upholding human rights. The government of origin of the migrant workers as well as the local government where they work and even their employers make rules to protect them as migrant

workers. Sending migrant women workers needs to be strictly monitored, especially by the relevant agencies. Besides that, agencies for sending female workers must be selective in accepting prospective female migrant workers in the sense that their presence is legal so as to ensure their smooth running..

References

- [1] A. I. Shaleh and R. Nasution, “Perlindungan Hukum Tenaga Kerja Migran Indonesia Di Arab Saudi Sebagai Negara Non Internasional Convention On The Protection Of The Rights Of All Migrant Wokers And Members Of Their Families,” *J. Yustisiabel*, 2020, doi: 10.32529/yustisiabel.v4i1.481.
- [2] L. Husni, “Perlindungan Hukum Terhadap Tenaga Kerja Indonesia Di Luar Negeri,” *Mimb. Huk. - Fak. Huk. Univ. Gadjah Mada*, 2011, doi: 10.22146/jmh.16206.
- [3] S. Yusitarani, “Analisis Yuridis Perlindungan Hukum Tenaga Migran Korban Perdagangan Manusia Oleh Pemerintah Indonesia,” *J. Pembang. Huk. Indones.*, 2020, doi: 10.14710/jphi.v2i1.24-37.
- [4] N. Yolanda, “Perlindungan Hukum Terhadap Tenaga Kerja Indonesia,” *Solusi*, 2020, doi: 10.36546/solusi.v18i2.286.
- [5] A. H. Suryani, “Pengaturan Perlindungan Hukum Bagi Tenaga Kerja Wanita Beserta Keluarganya Berdasarkan Uu No. 6 Tahun 2012 Tentang Pengesahan Konvensi Internasional Perlindungan Buruh Migran Beserta Keluarganya,” *J. Huk. Pembang.*, 2016.
- [6] M. I. Tarmudzi, “Perlindungan Hukum Terhadap Pekerja Anak Di Sektor Informal,” *J. Huk. Pidana Islam*, vol. 1, no. 5, 2015.
- [7] T. Susanto, “Budaya Digital Indonesia,” *m.republika.co.id*, 2016.
- [8] H. N. Rosalina and L. T. Setyawanta, “Perlindungan Hukum Terhadap Pekerja Migran Sektor Informal dalam Perspektif Teori Bekerjanya Hukum di Masyarakat,” *J. Pembang. Huk. Indones.*, 2020, doi: 10.14710/jphi.v2i2.174-187.
- [9] R. Daniah and F. Apriani, “Kebijakan Nasional Anti-Trafficking dalam Migrasi Internasional,” *J. Polit. Din. Masal. Polit. Dalam Negeri dan Hub. Int.*, vol. 8, no. 2, pp. 137–162, 2018, doi: 10.22212/jp.v8i2.1140.

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