



Reconstruction of the Legal Protection Policy for Indonesian Migrant Workers in Saudi Arabia Who Commit Crimes with the Threat of the Death Penalty

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Abstract. Indonesian Migrant Workers are foreign exchange heroes for this country, but protection is very minimal for the safety of migrants in its implementation, in guaranteeing protection and fulfillment of rights that should be obtained by migrant workers themselves. The approach method in this study is to use a sociological juridical approach (empirical juridical), based on secondary data (legal norms and documents). The types of data used in this study are primary data and secondary data. Primary data were obtained from in-depth interviews with selected key informants. Key informants were determined purposively. The results of the study indicate that the construction of legal protection policies for Indonesian Migrant Workers in Saudi Arabia who commit crimes with the threat of the death penalty currently that the protection efforts provided by the Indonesian Government to Indonesian Migrant Workers who are threatened with the death penalty in Saudi Arabia through two forms of protection, Consular and Diplomatic; 2). Reconstruction of the legal protection policy for Indonesian Migrant Workers in Saudi Arabia who commit crimes with the threat of the death penalty in the future, that there are several other international convention regulations that also regulate the protection of Indonesian citizens, especially Indonesian Migrant Workers, which have been ratified but have not been made into national laws so that in their implementation they do not conflict with the laws and regulations.

Keywords: Legal Protection, Migrant Workers, Death Penalty

1 Introduction

Migration power Work in a way International is phenomenon global Which veryexist, as per data presented by *the International Labour Organization (ILO)* in 2019 there were around 169 million international migrant workers worldwide, on year 2017 there is around 164 million, And on year 2013 amount to around 150.3 million.^[1] The development in the number of migrant workers is one form of global phenomena that

¹ Data presented by the International Labour Organization (ILO) Migration Data Portal <https://migrationdataportal.org/themes/labour-migration> accessed on 17 November 2022

are always present. Poverty, population growth, limited field Work, And convenience access information And transportation For migrate become factor to its influence the occurrence migration Good by power Work International and Workers Indonesian Migration (PMI).^[2]

The regulations regarding the Protection of Indonesian Migrant Workers were initially regulated in Law Number 39 of 2004 concerning Placement and Protection Indonesian Migrant Workers Abroad (hereinafter referred to as Law Number 39 of 2004), Which Then changed in Constitution Number 18 Year 2017 about Protection Worker Migrant Indonesia (furthermore called Constitution Protection Indonesian Migrant Workers), the Law still does not provide a way out, especially for the state in protecting/providing protection and prospective PMI in order to achieve ease and security of working abroad. We can see this from several problems experienced by PMI so far.

Indonesia is one of the largest migrant worker sending countries in Asia. southeast. Based on World Bank data, the number of Indonesian migrant workers was 3.25 million people in 2021. This number increased by 1.88% compared to the previous year which was 3.19 million people. Placement data shows an increase in the number of placements of Indonesian Migrant Workers when compared to June 2021 and June 2022. In the period January-June 2023, formal placements dominated 57% of the total number of placements. Furthermore, placements by BP2MI G to G program (Japan, Korea, and Germany) until June 2023 were 6,968 placements.^[3]

This can be seen in the data from the Indonesian Migrant Workers Protection Agency. (BP2MI) for the period August 2022 consisting of Placement Data and Complaint Data Worker Indonesian Migrants. According to data from the Placement of Indonesian Migrant Workers (PMI) in August In 2022, there will be 21,018 placements, which is the highest placement in Hong Kong as big as 29%, Malaysia 28%, Taiwan 19%, Korea South 8% And Singapore 3%. Can be seen in Table 1 below

Table 1. PMI Placement in 2022

²Aswatini Raharto and Mita Noveria, 2012, Advocacy Groups for Indonesian Women's Migrant Workers' Protection, Journal of Population, Vol. VII, No. 1, pp. 1–17.

³ <https://bp2mi.go.id/statistik-detail/data-penempatan-dan-pelindungan-pekerja-migran-indonesia-periode-juni-2023> accessed 15 June 2024

Penempatan PMI Tahun 2022 (s.d Agustus)

Berdasarkan Negara Penempatan PMI

NO	NEGARA	JAN	FEB	MAR	APR	MEI	JUN	JUL	AGU	TOTAL
1	Hongkong	4.048	2.823	3.708	4.377	4.766	5.049	5.382	6.165	36.318
2	Malaysia	23	29	33	46	257	815	3.754	6.038	10.995
3	T A I W A N	887	1.150	3.280	4.402	3.207	4.963	3.824	4.139	25.852
4	Korea Selatan	265	422	473	437	491	942	1.952	1.771	6.753
5	Singapura	435	376	607	482	491	628	511	690	4.220
6	Jepang	1	2	1.182	918	258	571	405	498	3.835
7	Italia	144	190	324	303	297	392	312	326	2.288
8	Saudi Arabia	169	197	510	422	236	529	442	290	2.795
9	Polandia	124	117	185	179	111	206	216	198	1.336
10	Q A T A R	31	13	29	24	40	128	53	152	470
11	Maldivest	61	81	81	97	91	72	133	122	738
12	T U R K I	39	23	137	505	187	217	90	102	1.300
13	Brunai Darussalam	1	10	11	30	36	20	32	73	213
14	Papua New Guini	41	34	56	40	54	52	44	60	381
15	Solomon Islands	0	0	1	11	43	46	22	53	176
16	United Emirate Arab	46	41	41	49	30	35	28	52	322
17	Kuwait	24	4	63	78	61	94	74	48	446
18	Yordania	6	8	4	21	7	12	4	36	105
19	Inggris	0	0	1	0	161	771	451	43	1.420
20	Rusia	14	10	0	22	7	19	29	33	134
21	O M A N	9	3	4	9	5	7	14	24	75
22	Hongaria	18	22	10	1	3	0	1	20	75
23	Cyprus	1	6	12	11	18	7	11	15	81
24	Suriname	0	29	17	3	19	18	4	10	100
25	Bahrain	1	7	5	10	2	0	4	9	38
26	Lainnya	37	61	61	98	145	100	94	51	647
Total		6.425	5.658	10.835	12.575	11.023	15.693	17.886	21.018	101.113

*Periode data di tarik pada tanggal 01 September 2022

www.bp2mi.go.id

Pusat Data dan Informasi

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Based on Indonesian Migrant Worker Placement (PMI) data for January 2022 until with month August 2022, Arab Saudi occupy position eighth with total 2,795 people. Can be seen in Table 2 below

Table 2. PMI Complaints in 2022

Pengaduan PMI Tahun 2022 (s.d Agustus)

Berdasarkan Negara Penempatan PMI

NO	NEGARA	JAN	FEB	MAR	APR	MEI	JUN	JUL	AGU	TOTAL
1	Saudi Arabia	26	13	23	21	35	84	47	41	290
2	Malaysia	77	48	62	52	26	28	28	28	349
3	Taiwan	28	8	22	11	13	12	20	17	131
4	Poland	8	8	11	3	2	3	6	16	57
5	United Arab Emirates	4	11	7	9	2	19	10	16	78
6	Japan	0	0	13	3	1	2	5	14	38
7	Hong Kong	10	3	8	5	13	6	14	11	70
8	Cambodia	0	4	2	0	1	2	5	7	21
9	Korea Selatan	3	18	5	5	6	2	7	6	52
10	Kuwait	1	0	1	0	0	0	0	4	6
11	Netherlands	0	0	0	0	0	0	0	4	4
12	Singapore	3	2	4	6	6	10	2	4	37
13	Iraq	4	3	3	2	3	6	2	3	26
14	Brunei Darussalam	0	3	0	1	1	3	1	2	11
15	Laos	0	0	0	0	0	0	0	2	2
16	Myanmar	0	0	0	0	1	0	0	2	3
17	Qatar	0	0	1	1	0	0	4	2	8
18	Australia	0	3	1	0	0	1	3	1	9
19	Bahrain	0	1	1	1	0	0	2	1	6
20	Macao Sar	0	0	0	0	0	0	0	1	1
21	Mauritius	0	1	0	50	0	0	0	1	52
22	Mozambique	0	0	0	0	0	0	0	1	1
23	Philippines	0	0	0	0	0	1	0	1	2
24	South Africa	0	0	1	0	1	0	0	1	3
25	Thailand	0	0	0	0	0	0	0	1	1
26	Lainnya	14	21	14	10	31	14	7	2	113
TOTAL		178	147	179	180	142	193	163	189	1.371

*Periode data di tarik pada tanggal 01 Juli 2022

**Sumber Data: Database Crisis Center

www.bp2mi.go.id

Pusat Data dan Informasi

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One example of a case that occurred with an Indonesian Migrant Worker who was sentenced to death in Saudi Arabia was Siti Zainab, which occurred in 2015. Siti Zainab who came from Bangkalan Madura was executed on Tuesday, April 14 year 2015 o'clock 10.00 time Arab Saudi Which charged on murder wife his employer Which named The Truth Sister Abdullah Duhem Almaruba, without There is previous notification that Siti Zainab had been languishing in Madina prison since 5 October 1999 and was suddenly executed. The Indonesian government has do effort For give mentoring law to Zainab by pointing lawyer Khudran Al Zahrani in every trial, even effort diplomatic has done by Government Indonesia For to free Zainab, besides efforts diplomatic head Representative Republic of Indonesia in Riyadh and in Jeddah Also has send letter official to Emir in Mecca And Medina For lighten Zainab's sentence. However, the execution of the death penalty was still carried out without giving notification to Indonesian government.^[4]

The principle that applies in a country and is used by all countries in the world in criminal acts is the territorial principle. According to Moeljatno, the territorial principle means that the criminal law legislation of a country applies to all people who do action criminal in country the, Good by inhabitant country That Aloneand inhabitant country foreign.^[5] Besides principle territorial, in frame anticipate various crimes committed outside the territory of a country, criminal law recognizes the existence of expansion jurisdiction territorial. Expansion jurisdiction territorial based on citizenship can called Also principle personality or principle national active, Which meansthat criminal law legislation applies to all criminal acts done inhabitant country anywhere He is at including outside region his country.^[6]

The model for protecting Indonesian migrant workers is outlined as referred to in Article 2 of Minister of Foreign Affairs Regulation No. 05 Year 2018 about Protection Inhabitant Indonesian country In Outside Country with principle Which First with put forward involvement of responsible and/or authorized parties in accordance with the provisionslegislation, secondly, does not take over criminal responsibility and/or civil Indonesian citizen And third, in accordance with provision regulation legislation invitation, law Country Local, as well as law and habits international. So it is felt that in substance this law is not yet fair and does not provide

⁴<https://nasional.kompas.com/read/2015/04/15/00452961/16>.

[Tahun.Memohon.Ampun.TKI.Siti.Zae](#)

[nab.Executed.Dead.in.Saudi.Arabia](#), accessed November 20, 2022

⁵Moeljatno, 2008, *Principles of Criminal Law*, Revised Edition, Rineka Cipta, Jakarta , p. 37

⁶Eddy OS Hiariej, 2009, *Introduction to International Criminal Law*, Eirlangga, Jakarta , pp. 37-38

legal protection.

Effort protection Indonesian citizen in outside country by representative Republic of Indonesia put forward with use approach between other:^[7]

1. Approach law in the form of mediation And conciliation, consultation law, And lawyer.
2. Approach humanity in the form of visit routine For Consultation, giving help beginning, mentoring spiritual, Handling health, shelter, return Indonesian citizen to Indonesia (Repatriation) and help funds return.
3. Diplomatic approaches such as diplomatic relations between governments, people with person like Which done between perpetrator with family victim, diplomacy between government with organization non-governmental, Cooperation government with organization international and so on.

Based on the background description above, the researcher wants to analyze Protection Laws against Indonesian Migrant Workers who commit crimes, especially in Arab Saudi as well as analyze constraint And problem Which faced government Indonesia in implement Protection Law the. Then researcher Also want to to study model Protection Law Which ideal For protect power Work Indonesia in cases criminal Which Possible happen in Arab Saudi Arabia in the Future.

Based on the description above, the problem formulations that can be made include:

1. How is the construction of legal protection policies for Indonesian Migrant Workers in Saudi Arabia who commit crimes with the threat of the death penalty currently?
2. How is the reconstruction of the legal protection policy for Indonesian Migrant Workers in Saudi Arabia who commit crimes with the threat of the death penalty in the future?

2 Research methods

The approach used in this study uses a socio-legal approach, namely studying the law without placing it as a given material, isolated from the culture of the system of thought, the system of knowledge and the power relations between legal formulators, law enforcers, and the wider community.^[8] References are also obtained from other related documents such as the results of previous research, seminars and/or workshops, related books and

⁷Agency for Policy Assessment and Development of the Ministry of Foreign Affairs of the Republic of Indonesia, 2015, *Study on Efforts to Improve the Quality of Protection and Services for Indonesian Migrant Workers Abroad*, Ministry of Foreign Affairs, Jakarta , h. 52

⁸ Sulistyowati Irianto and Shidarta, ed. 2013, *Constellation and Reflection Legal Research Methods*, Jakarta: Yayasan Obor Indonesia. p. 177

scientific journals, and data from various media, both print and electronic. The tradition of research using mass media reports, especially newspapers and the internet, has grown rapidly over the past few decades related to the study of legal protection for Indonesian migrant workers.

3 Research Results and Discussion

3.1 Current Construction of Legal Protection Policy for Indonesian Migrant Workers in Saudi Arabia

Basic protection for Indonesian migrant workers is accessibility to information regarding migrant worker requests, both from business partners and prospective employers in the destination country. Article 22 of the PPMI Law states that in order to improve bilateral relations in the field of employment and protection of Indonesian migrant workers abroad, the central government establishes the position of labor attaché at the Republic of Indonesia Representative Office in certain countries. The implication of Law No. 18 of 2017 is the importance of the Republic of Indonesia Representative Office and Labor Attaché to be the spearhead of protection for Indonesian migrant workers abroad. Indonesia is one of the largest countries of origin for migrant workers in the region. At least more than nine million Indonesian migrant workers work worldwide (BPJS and World Bank data).

Employment development is based on Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states: "Every citizen has the right to work and a decent living for humanity", and to overcome this problem the government has taken a policy by issuing Law Number 13 of 2003 concerning Employment. Based on Article 86 paragraph (1) of Law Number 13 of 2003, every worker/laborer has the right to receive protection for occupational safety and health, morals and decency, treatment in accordance with human dignity and values, and religious values. ^[9]The government, in order to provide protection for Indonesian migrant workers abroad, has formed Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers.

In the consideration of letters c, d and e, it is stated that Indonesian workers abroad are often made objects of human trafficking, including slavery and forced labor, victims of violence, arbitrariness, crimes against human dignity and other treatment that violates human rights. According to Article 1 number (2) of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, Indonesian migrant workers are "every Indonesian citizen who will, is, or has done work for wages outside the territory of the Republic of Indonesia." With the existence of workers who migrate abroad, of course the Indonesian government benefits greatly, because in addition to being able to reduce the number of unemployed in the country, it can also increase the country's foreign exchange. ^[10]The purpose of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers is that Indonesian Migrant Workers must be protected from human trafficking,

⁹Didit Purnomo, "The Phenomenon of Labor Migration and Its Role in Regional Development of Origin", *Journal of Development Economics* Vol. 10, No.1, June 2019, p.84

¹⁰Adharinalti, "Protection of Irregular Indonesian Migrant Workers Abroad". *Jurnal Rechtsvinding*, Vol.1 No. 2 Year 2016, p.45

must be protected including slavery and forced labor, victims of violence, arbitrariness, crimes against human dignity and other treatment that violates Human Rights (HAM).^[11]

Minister of Manpower Muhaimin Iskandar called this agreement as a new milestone in the history of labor cooperation between the two countries. The agreement was made after a Joint Working Committee *succeeded* in reaching agreements, especially related to Indonesian migrant workers. For example, about the work contract which must contain job specifications, wages and the rights and obligations of the parties. It was also agreed about access to information, vacation rights, leave, and importantly passports held by workers.

The success is also inseparable from the political stance of the Saudi Arabian Council of Ministers who agreed to the principles of regulations for domestic service workers and the like. This is also supported by the results of the Saudi Arabian Cabinet Council meeting on August 26, 2013 which approved the principle of protecting domestic workers from various forms of violence. Muhaimin is confident that through this agreement, the protection of Indonesian migrant workers in Saudi Arabia can be maximized.

The 1945 Constitution of the Republic of Indonesia guarantees that every Indonesian citizen has the same rights and opportunities without discrimination to obtain decent work and a decent living. Working is a human right that must be upheld, respected, and guaranteed as mandated in the 1945 Constitution of the Republic of Indonesia. The state guarantees the rights, opportunities, and provides protection for every citizen without discrimination to obtain decent work and income, both at home and abroad according to their expertise, skills, talents, interests, and abilities. Every human being needs a job to fulfill every need in their life. Human needs can be fulfilled by doing a job. The work done is to get wages to fulfill their life needs, both for themselves and their families. The limited employment opportunities and less attractive economic conditions in their home countries, trigger people to look for work in other countries, thus triggering labor mobility. The occurrence of migrant labor mobility continues to increase and triggers growth in the workforce and the availability of domestic jobs. The occurrence of migrant worker mobility abroad requires the Indonesian Government to fulfill every right of these migrant workers. The large number of migrant worker mobility abroad is due to the higher quality of life offered abroad. However, this is not comparable to the cases of violence that occur against migrant workers abroad, requiring the government to pay attention to the survival of migrant workers. The problems that occur against Indonesian migrant workers abroad are at least several cases, such as cases of abuse, sexual harassment, cases involving criminalization of migrant workers, cases of unpaid wages, to cases of unilateral termination of employment.^[12]

The government in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers dominates the provision of protection to prospective migrant workers/migrant workers from before working, during working, and after working. The

¹¹Adnan Hamid, *Towards a Fair Policy for Migrant Workers*, FHUP Press, Jakarta, 2018, p.4

¹² Interview with Muhammad Ali Albar, SS (Former Indonesian Migrant Worker in Saudi Arabia), on June 1, 2024.

form of protection provided is also specific and touches on various aspects such as providing legal, social, and economic protection for migrant workers. Another aspect covered in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers is protection for migrant workers and their families. As in Law Number 39 of 2004, it has not guaranteed the protection of migrant workers and their families. Thus, it can be said that there is an increase in the protection of migrant workers and their families in all aspects.

The responsibilities, duties, and obligations of the Government are stated in Articles 5, 6, and 7 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, namely that the Government has the task of regulating, fostering, implementing, and supervising the implementation of the placement and protection of Indonesian Migrant Workers abroad. The Government's responsibility is to increase efforts to protect Indonesian Migrant Workers abroad. In addition, the Government has an obligation to guarantee the rights of prospective migrant workers/migrant workers, both those who depart through the migrant worker placement agency and the independent agency, to be fulfilled, to supervise the implementation or organization of the placement of prospective migrant workers, to form and develop an information system for the placement of prospective migrant workers abroad, to make diplomatic efforts to optimally fulfill the rights and protection of migrant workers in the destination country, and to provide protection to Indonesian Migrant Workers from the pre-placement period, placement period, and post-placement. In providing comprehensive protection to migrant workers working abroad, the Government collaborates with several related agencies such as the Indonesian Ministry of Manpower, the Ministry of Foreign Affairs, and the Indonesian Migrant Worker Protection Agency (BP2MI), as well as the private sector such as Placement Agencies

Indonesia as the country with the largest Muslim population in the world, in fact has had close relations with the entire Muslim world. For example, Indonesia has maintained close relations through brotherhood (*tarikat*) with the Hadramaut Arab community living in the Indonesian Archipelago, through exchanges at the university level; however, through the hajj and sending workers that make Indonesia much closer to Middle Eastern countries. ^[13]The relationship between Indonesia and Saudi Arabia has been rooted since 700 years ago, namely when Arab traders came to Indonesia during the spread of Islam. Since then, the relationship between the two countries has continued to grow steadily in various ways such as trade, exchange activities, mutually beneficial cooperation. ^[14]In addition to the above factors, Saudi Arabia is one of the first countries to recognize Indonesia's independence in 1945. ^[15]The Indonesia-Saudi Arabia relationship was first initiated in 1948 with the establishment of the Indonesian Embassy in Jeddah; two years later, the Saudi Arabian Representative Office was built in Jakarta which in 1955 the status

¹³Husson, Laurence, "Indonesians in Saudi Arabia: Worship and Work", *Studi a Islamika*, Vol. 4, no. 4. 1997

¹⁴ Ibid.

¹⁵Al-Qurtubi, Sumanto and Aldamer, Shafi, "Saudi-Indonesia Relations: Historical Dynamic and Contemporary Development", *Asian Perspective*, 42 (2018).p.122

using the concept of diplomacy this can be analyzed because the stages that need to be taken to be able to resolve diplomatic problems include pre-negotiation steps, negotiations on the table, diplomatic momentum, and formulation of agreements. The focus of this study is on the function of negotiation carried out using discussion techniques between official representatives appointed by the state to achieve its national interests through formal agreements with other countries regarding the resolution of a problem. In conducting negotiations, of course, preparation is needed before the actual negotiations are carried out, because negotiation is a way to get what is desired. ^[19]The discussion in this study is about the pre-negotiation steps that are the beginning of negotiations which according to Berridge (2010) ^[20], this stage consists of three stages, but in Tuti's case, the diplomatic steps taken by the Indonesian Government were hampered in the first stage regarding the agreement to negotiate, because it was related to Saudi Arabia's considerations regarding the benefits for them to involve themselves in negotiations on the problems faced by Tuti Tursilawati. Discussing other aspects that are obstacles in the Indonesian Government's efforts to free Tuti is regarding the legal systems of the two countries, that Saudi Arabia which implements Islamic law in full which is rigid and cannot be intervened by anyone.

3.2 Reconstruction of the Legal Protection Policy for Indonesian Migrant Workers in Saudi Arabia Who Commit Crimes with the Threat of the Death Penalty in the Future.

The Indonesian government's efforts to resolve the problems faced by Indonesian migrant workers in Saudi Arabia have been carried out in various ways, one of which is protection diplomacy. Protection diplomacy itself is a way for a country to provide protection for its citizens through negotiation or non-violence. In resolving the problems of Indonesian migrant workers in Saudi Arabia, the Indonesian government has discussed protection for Indonesian migrant workers several times with the Saudi Arabian government. The Indonesian government has held a meeting between high-ranking officials in Jeddah in 2011 to discuss improvements in the protection and placement of Indonesian migrant workers in Saudi Arabia which resulted in the signing of a pre-Memorandum of Understanding (MoU) between Saudi Arabia and Indonesia. ^[21]

Indonesia's diplomatic struggle is also always carried out in the protection and escort of advocacy related to Indonesian migrant workers who are entangled in legal problems in Saudi Arabia. In the period from 2011 to 2018, there were 102 Indonesian workers sentenced to death in Saudi Arabia, three were executed, but 85 of them were successfully freed from execution due to the success of the Indonesian Government in

¹⁹Fisher, R., & Ury, W. (2003). *Getting to YES*. London: Random house business books.p.21

²⁰Berridge, G. R. (2010). *Diplomacy: Theory and Practice*. Leicester: Palgrave Macmillan.p.40

²¹Ismail. (2019). Reasons for the Indonesian Government to Implement a Moratorium on Domestic Migrant Workers to Saudi Arabia After the 2014 MoU. *International Relations*, Vol 7 No 1, 481-496

negotiating to fight for the rights of Indonesian workers and protect Indonesian migrant workers, and the remaining 17 are still being held in prison and are still in the legal process for clemency.^[22]

Handling death penalty cases in Saudi Arabia has its own procedures, this is because the punishment system in Saudi Arabia consists of three categories, namely *ta'zir*, *qishas*, and *hudud*. What needs to be known is that when the late Tuti Tursilawati was sentenced to death in 2018, the judge sentenced her to *hadd ghillah*, not *qishas*, after she was proven to have murdered her employer.

Although the late Tuti Tursilawati was sentenced to death under the *hudud* category, which in this case cannot be forgiven by either the King or the victim's family, the Indonesian Government has always sought consular protection for the person concerned, both in the form of legal efforts in court and diplomatic protection in the form of a request for release from the Kingdom of Saudi Arabia. The government's legal protection efforts in reducing Tuti's sentence are in the form of 3 appointments of Tuti's lawyers during the period from 2011 since the verdict of *hadd ghillah* was determined by the court until 2018 when the person concerned was executed; 3 appeals; and 2 Judicial Reviews (PK), where Qadha al-'Ala replaced the panel of judges to re-examine the case. In addition, the Government also facilitated visits by Tuti Tursilawati's family to her prison in 2012, 2015, and 2018, and visits to the pardon institution Lajnah 'Afwu and the Thaif Mayor's Office¹⁰.

The form of legal protection for Indonesian workers abroad who are forced to defend themselves beyond the limits of the laws and regulations in Indonesia. Based on Article 78 paragraph (1) of Law No. 39 of 2004, representatives of the Republic of Indonesia provide protection for Indonesian migrant workers abroad in accordance with laws and regulations and international customs. Article 17 of PP No. 3 of 2013 concerning the protection of Indonesian workers abroad provides legal assistance efforts such as providing assistance and other assistance. And provides diplomatic efforts to negotiate with the victim's family. Article 18 of the International Convention also mentions the protection of the rights of all migrant workers regarding assistance efforts when migrant workers are involved in criminal cases.

The case of Indonesian migrant workers who were sentenced to death in Saudi Arabia is clear evidence that the Indonesian government has not maximized its efforts in providing protection for Indonesian migrant workers working in Saudi Arabia to be free from the death penalty. For example, the case of Tuti Tursilawati from Majalengka, West Java, was executed in Saudi Arabia without notification to the Indonesian government in 2018, which basically the request for a judicial review of Tuti's case was granted by the court in Saudi Arabia. The government also tried to free Tuti, but the Indonesian migrant

²²Politics, MM (2020, December 12). Government Diplomacy Fails to Protect Indonesian Migrant Workers in Saudi Arabia. Retrieved March 3, 2022, from <https://www.matamatapolitik.com/news/diplomasi-pemerintah-gagallindungi-tki-di-saudi>

worker from Majalengka was executed too early.^[23] The aspect of protection for Indonesian migrant workers abroad is related to the management and regulation system carried out by various parties involved in sending Indonesian migrant workers abroad. For the steps to place workers abroad, Indonesia has established a mechanism through three phases of placement responsibility, namely the pre-placement phase, during placement and post-placement. Regulations regarding the placement of Indonesian migrant workers abroad are in Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad which was later amended to Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers.^[24]

The state is obliged to guarantee and protect the human rights of its citizens who work, both domestically and abroad based on the principles of equal rights, democracy, social justice, gender equality and justice, anti-discrimination and anti-human trafficking. In this case, the placement of Indonesian migrant workers in Saudi Arabia is an effort to realize equal rights and opportunities for every citizen to obtain decent work and income, the implementation of which still pays attention to dignity, human rights and legal protection as well as equal employment opportunities and the provision of workers in accordance with national needs.^[25]

In addition to being in accordance with the principle of *siyasah dauliyah*, this effort is also in line with the principle of protection stated in Law No. 18 of 2017. The efforts of the Indonesian Government in lobbying by sending representatives from the Indonesian Government to the victim's family or to the Saudi Arabian Government are aimed at obtaining justice in the eyes of the law. Because basically in the protection of Indonesian citizens abroad, the State is not authorized to take over the applicable criminal or civil responsibilities and does not aim to intervene in the law in the local country. This has been stated in Law No. 18 of 2017.

Thus, the role of the government in providing protection to Indonesian migrant workers sentenced to death is in accordance with the basic principles of *siyasa dauliyah*, although in reality it has not been implemented optimally. Especially in political lobbying through bilateral diplomacy which is still weak, and also because the government has not fully prioritized Indonesian migrant workers in Saudi Arabia, especially those affected by the 115 death penalty cases. This is one of the reasons for not making national interests, namely the protection of Indonesian migrant workers, a topic that is always hotly discussed. To improve Indonesia's bargaining position in the eyes of the Saudi kingdom, Indonesia must at least send more educated and professional workers in the formal sector rather than simply sending Indonesian migrant workers in the domestic or non-formal sector to Saudi. However, in order to respond to cases that have occurred, Indonesia needs to take firm steps

²³Tempo, "chronology of the case of TKI Tuti Tursilawati until her execution" <https://nasional.tempo.co/read/1141430/kronologi-kasus-tki-tuti-tursilawati-hinggadijeksekusi-mati>. Accessed November 28, 2023

²⁴Darwan Print, *Indonesian Employment Law*, (Bandung: PT. Citra Aditya Bakti, 2000), p. 55

²⁵ Ibid

against Saudi. It is not enough to just give a moratorium or submit a note of protest. Hopefully the Indonesian government will always hold bilateral meetings with Saudi Arabia to discuss the protection of Indonesian migrant workers, because it is feared that the death penalty cases will reoccur. The importance of the issue of protecting Indonesian Migrant Workers, no longer needs to be resolved by signing the MoU, but rather more specific and binding regulations related to human rights protection. The governments of both countries must meet and carry out a Memorandum of Agreement (MoA).

With the MoA, the fate of Indonesian migrant workers in the country of placement is more secure because the MoA regulates the technical aspects such as the rights and obligations of Indonesian migrant workers, the creation of a memorandum of understanding for Indonesian migrant workers, or MoA with the country of destination for the placement of Indonesian migrant workers. Thus, the Indonesian government can strengthen security supervision for Indonesian migrant workers abroad. Regarding the recruitment and placement of Indonesian migrant workers, it greatly influences the factors that cause exploitation and cause various legal problems that befall Indonesian migrant workers working in Saudi Arabia, so that the government must increase supervision in the form of protection carried out by the Ministry of Manpower on recruitment agencies to be more professional in recruiting prospective Indonesian migrant workers who will be sent abroad, and encourage migrant workers with non-formal worker status to be encouraged to become formal workers. This is done through improving the training system, strengthening the competence and integrity of migrant workers, and surveying the needs of the country of placement so that there is compatibility between what is desired and what is provided. And it is necessary to have a cultural approach to strengthen the culture of quality in working, build a strong character as a migrant worker, and have a work ethic with a future perspective so that they do not always become migrant workers. Then, Indonesian citizens and/or prospective migrant workers who will travel to Saudi Arabia should first understand the legal system and customs in Saudi Arabia.

Reconstruction of the legal protection policy for Indonesian Migrant Workers in Saudi Arabia who commit crimes with the threat of the death penalty in the future that there are several other international convention regulations that also regulate the protection of Indonesian citizens, especially Indonesian Migrant Workers, which have been ratified but have not been made into national laws so that in their implementation they do not conflict with the laws and regulations. So there needs to be a judicial review of the existing laws regarding the legal protection of Indonesian Migrant Workers who are sentenced to death due to carrying out a defense that is forced to exceed the limit. Especially the conventions that have been ratified so that laws can be made immediately so that they are clearer and firmer in handling problematic cases of Indonesian Migrant Workers. So that there is synergy in substance between international convention regulations and regulations on the legal protection of Indonesian migrant workers.

4 Conclusion

The results of the study indicate that the construction of legal protection policies for Indonesian Migrant Workers in Saudi Arabia who commit crimes with the threat of the death penalty currently that the protection efforts provided by the Indonesian Government to Indonesian Migrant Workers who are threatened with the death penalty in Saudi Arabia

through two forms of protection, namely Consular and Diplomatic. Consular protection is through litigation and non-litigation. Reconstruction of the legal protection policy for Indonesian Migrant Workers in Saudi Arabia who commit crimes with the threat of the death penalty in the future that there are several other international convention regulations that also regulate the protection of Indonesian citizens, especially Indonesian Migrant Workers, which have been ratified but have not been made into national laws so that in their implementation they do not conflict with the laws and regulations.

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