



Legal Protection for Indonesian Migrant Workers (IMW) Affected by Medical Treatment Malpractice in the Placement Country

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Abstract. This research explores about the extent of legal protection for Indonesian Migrant Workers affected by Malpractice. The problem that will be discussed in this study is how the legal protection from Indonesian government provided to their overseas labour who are affected by Malpractice when receiving medical treatment in the host country. Analyzing the issue by Normative Legal Research method which examines the knowledge of existing legal literacy. The results of the study show that the victim has not received quick legal protection in malpractice cases abroad, because if you look at the period from the first time the victim was admitted to the hospital to get legal aid attention, it took a long time, up to five months. It is hoped that with this writing, the government can fulfill the migrant workers' rights and facilitate legal protection for migrant workers who are affected by malpractice, so that they do not stay abroad for too long and oversee the repatriation process quickly.

Keywords: Legal protection; Indonesian Migrant Workers; Malpractice.

1 Introduction

1.1 Background

Indonesia, with the world's fourth biggest population and middle-income status, is facing population challenges. Every year, the number of Indonesians grows significantly, affecting the workforce. Although the labor force increased in the 2021-2023 period by 7.56 million people (5.39%) and the number of working populations increased by 8.8 million people (6.71%), the open unemployment rate only decreased by 1.24 million people, so the unemployment rate looks stable at around 5%[1].

The vast number of unemployed in Indonesia encourages job searchers to migrate, either from one region to another or abroad, and are referred to as Indonesian Migrant Workers (IMW). Article 1 paragraph 2 of Law Number 18 of 2017 defines Indonesian Migrant Workers as any Indonesian citizen who will, is, or has been doing labor and receiving wages from beyond the boundaries of the Republic of Indonesia[2]. A "migrant worker" is defined by International Labour Organization (ILO) instruments as an individual who mobile from home nation to another for the purpose of employment,

excluding self-employment, and encompasses any person regularly authorized as a migrant for work [3].

According to the UN Convention on the Protection of the Rights of All Migrant Workers and their family members, a migrant worker is a person who performs paid activities in a country other than his or her home country [4]. The existence of workers who migrate abroad affected national interest of Indonesian government since its positive impact to increase job opportunities and foreign exchange rate. In practice, there is a gap between expectation and achievement. There are many obstacle experienced in foreign country such as Indonesian workers in Malaysia, Brunei, Saudi Arabia, etc. In these destination countries, many workers experience problems where they are treated inappropriately by the destination country, for example they are affected by malpractice when receiving medical treatment.

Malpractice comes from the English word mal and practice, the word mal means wrong or improper, while practice or practice is the process of managing cases (patients) from a professional in agreement with the work procedures that have been arranged by the professional group. So malpractice can be interpreted as carrying out an act or practice that one of them deviates from the standard provisions or procedures. In the healthcare sector, malpractice refers to a deviation in the treatment of health cases or issues (including diseases) by healthcare professionals, leading to negative consequences for sufferers or patients [5]. As claimed by Fuady, malpractice is the negligence of a A doctor must apply the standard level of skills and knowledge commonly practiced in treating patients or injured individuals, considering the conditions and scale of the surrounding environment. That is meant by negligence here is an attitude of lack of caution, that is, not doing what a person with a careful attitude does reasonably do, but on the contrary doing what a person with a careful attitude will not do in the situation [6]. For example, the Malpractice case experienced by IMW is the one that occurred in Poland. IMW with the initials AL experienced malpractice when receiving medical treatment in Poland. AL is suspected of being affected by Malpractice so that he has been in a coma after tonsil surgery since February 2023. The Navy underwent treatment at Bydgoszcz Hospital at a cost of 3.7 billion and was covered by the insurance company [7].

From the Malpractice case that occurred in Poland and there has been no special treatment for malpractice victims by the Indonesian government, there is a need for legal protection that is able to overcome this kind of problem quickly and appropriately without taking a long time, so that victims immediately get appropriate medical treatment by hospitals abroad.

This study seeks to examine the legal safeguards for Indonesian Migrant Workers (IMWs), specifically those impacted by malpractice and abuse. According to the Preamble of the 1945 Constitution, the Indonesian government is obligated to safeguard its citizens, especially migrant laborers. Nevertheless, notwithstanding Law No. 18 of 2017 about IMW Protection, issues such as contract breaches, wage fraud, and workplace maltreatment continue to endure.

This study is urgent due to the need to resolve deficiencies in policy enforcement, enhance bilateral agreements, and promote improved legal support. Migrant workers substantially impact the economy via remittances; nonetheless, their socioeconomic

wellbeing and reintegration are frequently neglected. This study will offer recommendations to improve governmental accountability, labor rights, and pre-departure training. The findings will also enhance global labor migration discourse, ensuring Indonesia fulfills its constitutional obligation to protect IMWs.

2 Methodology

This paper used normative legal research. Normative legal research is also known as library research, document analysis, or doctrinal legal study [8] where it has sources obtained through primary legal materials and also secondary legal materials. First of all, primary legal material is an authoritative legal material, in the form of laws and regulations [9] Secondary legal materials refer to all publications on the law that are informal or unofficial documents. These sources are derived from previously collected and researched legal materials[10], and these materials are naturally connected to the topics explored in this writing, such as legal books, law journals, and relevant online resources.

2.1 Research Objectives and Targets

The primary objective of this research is to evaluate how normative law implemented in case of malpractice medical treatment experienced by Indonesia migrant. This study put the role of host country's government to secure the protection for Indonesian worker abroad.

Therefore, the target of this research is Indonesian Workers overseas who experience malpractice treatments in placement country without any secure protection. This study also as a recommendation toward government to more interactive about legal protection process.

2.2 Data Collection Techniques

As this research use qualitative method, the data collected by systematic literature review related documents, news, journal, law documents related the issues, and legal documents.

3 Findings

3.1 Analysis

The Indonesian government has demonstrated a strong commitment to safeguarding Indonesian Migrant Workers (IMW) employed overseas, ensuring their protection from the recruitment stage through to their return home. Legal protection refers to the safeguarding of individuals' human rights when they are harmed by others, ensuring they can fully exercise the rights granted by law. In other words, it includes various

legal measures enforced by authorities to guarantee both mental and physical safety from threats and disruptions by any party [11].

According to legal dictionaries, legal protection refers to coercive regulations that dictate human behavior within a societal framework. These regulations are established by authorized official bodies, and violations of these regulations result in legal action being taken [12]

Regarding the elements of legal protection, Rikha Y. Siagian outlines that legal protection can be considered as such if it fulfills the following elements [13]:

1. Protection from the government for the public.
2. Assurance of legal certainty provided by the government.
3. Connection with the rights of citizens.
4. The existence of sanctions or punishments for those who violate the law.

Considering the function and status of the workforce, labor development is crucial for improving its quality and contribution to progress while protecting the rights and interests of workers in alignment with value of humanity. Labor development must be organized in a manner that ensures the fulfillment of fundamental rights and protections for workers [14].

The legal foundation for the protection of Indonesian Migrant Workers serves as a framework to identify provisions and regulations concerning all matters related to migrant workers (Koesparmono 2016). These legal foundations include:

1. Laws:

- Act No. 13 of 2003 regarding Employment.
- Act No. 13 of 2006 concerning the Protection of Witnesses and Victims.
- Act No. 18 of 2017 on the Safeguarding of Indonesian Migrant Workers.
- Act No. 39 of 1999 related to Human Rights.

2. Government Regulations:

Government Regulation No. 59 of 2021 on the Implementation of Protection for Indonesian Migrant Workers.

3. Ministerial Regulations:

Minister of Manpower Regulation No. 4 of 2023 concerning Social Security for Indonesian Migrant Workers Regulation No. 4 of 2023 issued by the Minister of Manpower regarding the Social Security Program for Indonesian Migrant Workers.

This extensive legal framework supports the efforts of the government to safeguard migrant workers and guarantee that their basic rights and security are maintained during their migration process.

The Regulation of the Minister of Manpower Number 4 of 2023 delineates the framework for securing Indonesian Migrant Workers (IMW) and their families, in accordance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This Government Regulation incorporates the substance of the International Convention ratified by the Indonesian

government. The implementation seeks to ensure the protection of IMW's rights prior to, throughout, and following employment.

The government has commenced the amendment of Law Number 39 of 2004 regarding the Placement and Protection of Indonesian Workers Abroad to uphold its commitment to safeguarding Indonesian migrant workers. A noteworthy distinction in Law Number 18 of 2017 for the Protection of Indonesian Migrant Workers, in contrast to the preceding legislation, is the requirement for local governments to play a crucial role in the management and safeguarding of migrant workers, commencing with recruiting. This is achieved by establishing one-stop assistance facilities for migrant workers in all regencies and cities, especially in regions with significant populations of IMWs.

The Basic Principles for Migrant Workers include non-discrimination, anti-slavery, anti-trafficking, anti-human smuggling, equality before the law, and universality. These principles constitute the fundamental rights of workers that must be protected and serve as a foundation for forming international and national legal instruments. This places an obligation on host countries to implement these legal provisions and on migrant workers to comply with the laws of the countries where they work.

The objectives of protecting Indonesian Migrant Workers, as mention in Article 3 of Law Number 18 of 2017[2] are:

- a. To ensure the protection and fulfillment of human rights for citizens and Indonesian migrant workers.
- b. To provide legal, economic, and social security for Indonesian migrant workers and their families.

Malpractice Cases Involving Indonesian Migrant Workers must receive special attention to solicit provision from the central government prompt and appropriate protection to victims. In August 2023, the Indonesian Ministry of Foreign Affairs confirmed that an Indonesian migrant worker, identified as AL, allegedly became a victim of malpractice at a hospital in Poland. The Indonesian Embassy in Warsaw has been assisting the victim since February 2023, noting that complications arose during a tonsillectomy. The Ministry of Foreign Affairs, the Embassy, and the victim's family in Poland continue to pursue legal action against the hospital for alleged malpractice. This case went viral on social media, with the victim's sibling appealing for donations to fund the victim's return to Indonesia and requesting then-President Joko Widodo's assistance in facilitating the return.

Article 24, Paragraph 1, of Law Number 18 of 2017 states that: "Post-employment protection includes facilitating the return of migrant workers to their regions; resolving unmet rights of Indonesian migrant workers; aiding the management of Indonesian migrant workers who are ill or deceased; and recovering and reintegrating them".

Rights of All Migrant Workers and Their Families as stipulated in the 1990 Convention include:

1. The right to exit any nations, comprising their home nations, and return to it (Article 8).
2. The legal protection of the right to life by law (Article 9).
3. Freedom from torture and inhumane or degrading treatment (Article 10).

4. Protection from exploitation or coerced labor (Article 11).
5. Freedom of thought, conscience, and religion (Article 12).
6. Liberty of expression (Article 13).
7. Liberty to communicate with family and for personal matters (Article 14).
8. The right to own property (Article 15).
9. The right to personal liberty and security (Article 16).
10. Humane treatment if deprived of liberty (Article 17).
11. Equal rights with nationals of the host country in judicial and tribunal proceedings (Article 18).
12. Protection against penalties exceeding those prescribed by national or global laws at the time the offense was committed (Article 19).
13. Freedom from imprisonment for failure to fulfill contractual obligations (Article 20).
14. Protection of personal documents from confiscation or destruction, except by authorized government officials (Article 21).
15. Protection against mass expulsion (Article 22).
16. The right to request protection and assistance from consular or diplomatic officials (Article 23).
17. Recognition before the law (Article 24).
18. Equal rights with nationals of the host country concerning remuneration (Article 25).
19. The right to decent working situation, considering appropriate working hours, overtime pay, weekly rest, paid leave, occupational safety and health, severance pay, minimum working age, and other employment conditions per national legal practices (Article 25).
20. Equal treatment with nationals of the host country in terms of social security (Article 27).
21. Access to urgent healthcare necessary for survival (Article 28).
22. The right of migrant workers' children to a name, birth registration, and nationality (Article 29).
23. The right of migrant workers' children to access basic education (Article 30).
24. The entitlement to convey income and personal possessions under applicable laws (Article 32).
25. The right to information regarding the rights and obligations of migrant workers and their families (Article 33).

There are many legal protection toward migrant and their family from violence abuse. Based on the several law, we analyze that normative law focus on the existence, structure, and application of legal norms to achieve justice. The idea of this concept to promote the universal human right principle in social life. In the IMW case, there are many Indonesian law are particularly relevant, such as Article 9 on the right to life protected by law, Article 10 on freedom from inhumane treatment, Article 16 on personal liberty and security, Article 21 on access to urgent healthcare, and Article 23 on the right to seek protection and assistance from consular officials. The element of this law about healthcare, protection and legal status.

The legal structure that underpins PMI functions at both the national and international levels. Nationally, Law No. 18 of 2017 on the Protection of Indonesian

Migrant Workers requires comprehensive protection measures, such as pre-departure planning, placement, and post-placement support [15]. This law assures that PMI obtain legal aid, health care, and that their personal documents are not unlawfully confiscated. Internationally, Indonesia abides by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, that guarantees equal rights, safeguards against abuse, and facilitates access to justice in the host countries. Diplomatic channels have an important role in malpractice cases by providing diplomatic assistance and lobbying for PMI in distress.

In the event of malpractice, PMI has many legal options. They can file complaints with Indonesian diplomatic missions to start investigations, get medical care for malpractice-related injuries, and seek legal redress in the host country's judicial system, where they are guaranteed equal treatment. If their rights are threatened, the government must ensure their safety and repatriation. However, putting these safeguards into practice is frequently difficult. Delays in government response, as witnessed in the case of AL, exacerbate victims' suffering. Furthermore, many PMI are unaware of their rights, which prevents them from seeking timely aid, and jurisdictional constraints in host nations might impede their pursuit of justice.

To overcome these issues, it is critical to raise PMI legal literacy through mass awareness programs, expand consular support to give immediate legal and healthcare aid, and establish better bilateral labour agreements with host nations. Establishing crisis response systems, such as a rapid response team for emergency cases, will help to guarantee PMI patients receive faster repatriation and medical attention. While the legislative framework serves as a solid foundation for safeguarding PMI against malpractice, its effectiveness is ultimately dependent on continuous implementation, institutional responsiveness, and empowering PMI to defend their rights. With these steps, Indonesia can meet its commitment to safeguard and uphold the dignity and well-being of its migrant workers.

4 Discussions

4.1 Key Results

The issue of malpractice case in international law impact in multilevel area of national and international law. Regarding the case of Indonesian migrant worker who became a victim of Malpractice case highlight the needs of legal experience related of Indonesian Migrant Worker Abroad. Unfortunately, in some cases, tis issue became more complicated when the process of working itself illegal or undocumented. Those limitation affected the Indonesia Government to find the best way to solve future problem for Indonesian Migrant Worker who migrate irregularly. On The other hand, there are limitation of Indonesia government law to radically respond the issue of malpractice. Meanwhile, the Poland Hospital itself should have good reputation in healthcare, and the insurance already protected any people with legal status in Poland.

Solving this problem must improve several actors to create good governance in the protection of Migrant worker who violence of malpractice medical treatment.

The legal framework governing the protection of Indonesian migrant workers (IMWs) affected by medical negligence is characterized by considerable deficiencies and obstacles. Despite the existence of laws and regulations, including Indonesian Law No. 18 of 2017, intended to safeguard IMWs overseas, the efficacy and accessibility of these legal protections are insufficient. This paper examines the deficiencies in the legal system, the obstacles encountered by IMWs in pursuing legal recourse, and the ramifications of these hurdles.

A significant deficiency in the legal structure is the absence of specificity in legislation. Indonesian Law No. 18 of 2017 establishes a comprehensive framework for the safeguarding of IMWs, encompassing post-employment protections. Nonetheless, it does not explicitly address medical malpractice cases, resulting in doubt concerning the rights of IMWs in instances of medical negligence or malpractice abroad[16]. In the absence of explicit legal definitions and safeguards, IMWs may struggle to uphold their rights in certain circumstances. Studies demonstrate that enforcement methods for safeguarding migrant workers' rights are frequently insufficient, rendering them susceptible to exploitation. In Kosovo, legislation regarding workplace safety for healthcare personnel is in place but is enforced inconsistently, resulting in hazardous situations[17]. Moreover, despite Indonesia's endorsement of international conventions designed to safeguard the rights of migrants, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, these conventions fail to specifically tackle medical malpractice issues, thereby constraining the international legal recourse accessible to IMWs [15]

International migrant workers (IMWs) face significant challenges in accessing legal and healthcare services due to language barriers and cultural differences. These obstacles hinder their ability to understand legal documents, communicate with legal representatives, and navigate the justice system[18]. Indigenous workers often speak pre-Hispanic languages, complicating their access to fair treatment and legal resources [18]. During health crises like the COVID-19 pandemic, IMWs encounter additional barriers in accessing healthcare services, including inadequate health insurance and stigmatization [19]. To address these challenges, experts recommend developing pro bono services, training lawyers and students in cultural competence, and creating multilingual public health campaigns. Ratifying international conventions to protect migrant workers' rights is also crucial for ensuring global health equity[19]. A significant number of workers lack awareness of their legal rights, especially within a foreign legal framework, hindering their ability to respond effectively to instances of medical malpractice[17]. Access to legal resources is frequently constrained, since numerous IMWs lack the financial capacity to secure legal representation, and locating an attorney who comprehends the intricacies of both the local legal framework and the particular challenges encountered by migrant workers can be arduous.

The deficiencies in the existing legislative framework for the safeguarding of Indonesian migrant workers against medical malpractice are substantial and complex. Despite the existence of regulations designed to safeguard IMWs, their ambiguity, ineffective enforcement mechanisms, and weak international protections render numerous workers susceptible to exploitation. The obstacles of language difficulties, insufficient awareness of legal rights, cultural disparities, and apprehension of

retaliation exacerbate the quest for legal recourse in cases of medical misconduct. To resolve these issues, it is imperative for the Indonesian government and international organizations to develop more comprehensive legal frameworks that specifically target medical malpractice, improve the enforcement of existing laws, and offer accessible legal resources and education for IMWs. Only through these measures can the rights and welfare of Indonesian migrant workers be adequately protected abroad. Return to Indonesia and providing rehabilitation and reintegration services.

5 Conclusions

5.1 Conclusion

The whole case highlights the importance of having robust legal protection for IMW who are affected by medical wrongdoing in the country where they are placed. Indonesia has a comprehensive legal framework in place to protect IMW, but there are still certain gaps in the law and regulations that need to be addressed. The Ministry of Manpower must play an important role in providing quick and sympathetic assistance to victims of medical care misbehavior and their families. Indonesia has the potential to enhance the legal protection for IMW and ensure that they are safeguarded from medical care misbehavior by amending existing laws and regulations, establishing a complaint mechanism, providing training and capacity building, and promoting international collaboration.

In order to ensure that their rights are protected, legal protection for Indonesian Migrant Workers (IMW) must be implemented fairly and appropriately. The Ministry of Manpower should give the malpractice case that AL encountered additional consideration so that such incidents can be handled properly in the future. The government should act fast to ensure that victims receive the care they need and do not have to remain abroad for a long period of time. Over the past five months, the victim and their family have surely put in a lot of time, effort, and resources to help the victim heal. If the government had done more to defend the rights of IMWs, the victim would not have been stranded overseas for such a long time.

5.2 Recommendations:

To strengthen the legal protection for IMW affected by medical treatment malpractice in the placement country, the following recommendations are made:

1. The Indonesian government ought to revise current laws and regulations to tackle medical malpractice and delineate explicit guidelines for safeguarding IMW.
2. Implement a complaint mechanism: The Ministry of Manpower should establish a way for IMW to report instances of medical misconduct and receive prompt assistance.

3. Facilitate training and capacity enhancement: The Ministry of Manpower should instruct authorities on managing medical malpractice claims and efficiently assisting IMW.
4. Strengthen international collaboration: The Indonesian government ought to partner with host countries to guarantee that IMW receive access to quality healthcare and protection against medical malpractice.

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