

Does the Placement Termination Policy of Migrant Workers Provide Protection?

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Abstract—The rise of cases affecting migrant workers encourages the Indonesian government to carry out a policy of stopping the sending of migrant workers. Enactment of placement termination policies of workers in several countries taken as policy that is expected to provide protection for migrant workers. In the provisions of Law No. 18 of 2017 article 32 the policy of placement termination as form of legal protection for migrant workers. In the previous Law, the Law No. 39 of 2004 also regulated the placement termination of migrant workers. On the implementation of the enactment of Migrant workers placement termination in several countries have actually increase the number of illegal migrant workers. The research method used is normative. Legal material in the form of regulations and literature studies. Data analysis is done by content analysis and descriptively. The placement termination policy of migrant workers is temporary termination policy for sending migrant workers to country where there is no memorandum of understanding or MOU between Indonesia and the concerned country. In addition, the state condition that is conflict prone and the large number of migrant workers cases occurs in the country are also become the reasons for the these policies implementation. The placement termination of migrant workers is applied to informal sector.

Keywords—*placement termination, migrant workers.*

I. INTRODUCTION

Every person needs work, work is not only to earn income for someone to fulfill their life needs for themselves and their families, but can also be interpreted as a means to self-actualize so that person feels his life is more meaningful for himself, others and his environment. Considering the importance of the work, Article 28D paragraph 2 of Constitution 1945 states that every person has the right to work and get fair and decent compensation and treatment in a working relationship[1].

The placement of migrant workers is done by utilizing the international worker market through improving the quality of workforce competency with optimal protection since before departure, while working abroad until arriving back in Indonesia. The placement program for migrant workers abroad is one of the efforts to overcome the huge problem of unemployment in Indonesia [2]. In addition Indonesia has six popular destination for IMW namely Saudi Arabia, Malaysia, Singapore and Taiwan [3]. Malaysia is still the main destination country for Indonesian migrant workers though there were a number of undocumented migrant workers and deportation[4].

The placement of migrant workers abroad can only be done to destination countries whose governments have made written agreements with the Government of Indonesia or protect foreign workers. With security considerations, the Indonesian Government determines that certain countries closed for the placement of Indonesian migrant worker, including countries in war, natural disasters, or get outbreaks of infectious diseases. Temporary termination or moratorium in sending workers imposed by the Government aims to protect migrant workers and to press the destined state government to sit together to make bilateral agreements.

It turns out that the policy of placement termination of migrant workers has a negative impact such as the increasing number of migrant workers who entering illegally and the increasing number of deported workers from Malaysia. The moratorium policy itself has been regulated in Law No.18 of 2017 article 32 paragraph (1) which aims to protect migrant workers. The things that should be observed during the moratorium implementation for Malaysia the number of illegal workers sending has actually increased. This is certainly not the governmental goal, but when becoming migrant worker is solution to get out of poverty, the societies will take any action to work abroad. The next consequence of illegal procedures is the registration existence. According to data from the Indonesian Embassy in Kuala Lumpur, in 2010 there were at least 28. 745 migrant workers who were deported from Malaysia. The biggest deportations handled by BNP2IMW of East Java are from Madura. The Madura region which is one of the Indonesian migrant worker pockets with the main objectives of Malaysia and Saudi Arabia, the moratorium policy certainly has impact on people who want to work abroad. With their moratorium about 15-20 thousand workers who are usually sent to Saudi can not be sent. For that it should be analyzed whether placement termination policy of migrant workers needs to be done or not.

II. RESEARCH METHODS

The research type used is doctrial research. The approach taken is the statute approach and the conceptual approach[5]. The statuted approach used for analyzethe positive law governing the process of placement and protection of Indonesian migrant workers that had been carried out and the conceptual approach used to analyze the concept of termination migrant workers. Legal material is obtained by studying literature. Analysis is done by contentanalyze.

III. RESULTS AND DISCUSSION

A. *Legal Perspective of Placement Termination of Migrant Workers*

The perspective of global power that understand immigrant not as a stranger in a country but as an actor that connect the realm of local presence the people, the process that occur globally. This research referred to the use of term general or transnational approach [6]. The placement of migrant workers abroad on the one hand can be seen as positive thing because it can open employment opportunities or to reduce the unemployment rate and bring in foreign exchange. However, along with the increase in the sending of migrant workers abroad, the problems of Indonesian migrant worker also increase, such as disputes between migrant workers and employers regarding unpaid wages, torture or mistreatment, rape and murder of migrant workers.

Termination of the migrant worker placement in terms is known as the moratorium, which according to the Big Indonesian Dictionary is a termination of debt payments based on the law in order to prevent a more severe crisis, or also delay or termination [7]. The moratorium word became popular because there was an "incident" that afflicted migrant workers abroad. The heartbreaking event made the moratorium word increasingly echoed by those who were involved in matters that brought the migrant worker grief. Not only that, the word moratorium is also often used by government officials in determining various policies related to delays, terminations, or termination in the political, economic and cultural fields.

The consequence of a form of a legal state, in which "the state of Indonesia is based on law (rechtstaat) is not based on mere power (machtstaat)" [8]. The government based on the constitution is not absolutism. The conception of legal protection for the people in the West comes from the concepts of rechtstaat and rule of the law. The principle of legal protection against government actions is based on the concept to recognition and protection of human rights because according to its history in the west, the birth of concept about the recognition and protection of human rights is directed a restrictions and laying down the obligation soft he community and government [9].

The policy of termination placement of migrant workers is done because there were regulated in article 81 number 1 of Law Number 39 of 2004 concerning Placement and Protection of Indonesian Migrant Workers Abroad, that:

with consideration to protect prospective migrant workers / migrant workers, equal employment opportunities and / or for the sake of worker availability in accordance with national needs, the government can stop and / or prohibit the placement of migrant workers in certain positions abroad.

From this article it is clearly stated that the Government must protect workers who are abroad considering the many violent cases that befall our workforce. In Law No. 39 of 2004 article 7 has clearly regulated several Government obligations, namely: a) Ensuring the fulfillment of the rights of prospective

IMW, both those who go through the placement of migrant workers, and those who depart independently, b) Supervise the placement implementation prospective Indonesian Migrant Workers, c) Establish and develop information systems for the placement of prospective migrant workers abroad, d) Make diplomatic efforts to ensure the fulfillment of the rights and protection of Indonesian migrant workers optimally in the destination country, e) Provide protection to migrant workers during the period before departure, placement period and period full placement [10].

Since the enactment of Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, the provisions of Law No. 39 of 2004 become invalid. In Law No. 18 of 2017 also regulates the placement of migrant workers, namely in article 32 which reads:

(1) The central government can stop and / or prohibit the placement of Indonesian migrant workers for certain regions abroad with consideration of: a) security, b) protection of human rights, c) equal employment opportunities, d) the importance of worker availability in accordance with national needs.

(2) In prohibiting and / or restricting the placement of migrant workers as referred to in paragraph (1), the central government considers the fish suggestions and considerations representatives of the Republic of Indonesia, of Ministry / agencies, migrant worker placement company, society

(3) The placement of certain countries and certain positions as referred to in paragraph (1) is determined by the central government.

The differences between the new and old provisions is that the parties who can provide input for the enactment of the termination of migrant workers placement, namely in Law No. 18 of 2017 states that the parties are representatives of the Republic of Indonesia, ministries / institutions, placement companies of migrant workers, communities. Whereas in the old law only received advice or input from BNP2TKI alone.

From this article it can be seen that the Indonesian government can stop sending workers abroad in certain types of work, and to ensure the safety of workers and fulfillment of worker rights abroad, the government has the right to terminate sending. At the time of the placement termination, there were indeed many cases that happened to our workers abroad, especially for our workers in the informal sector or domestic workers. From several cases that happened to migrant workers abroad, especially domestic workers, the government began to impose moratorium on migrant workers or temporary termination of sending migrant workers abroad so there will be no more violence to our workforce. Because so far, many human rights violations to our workforce, many occur in the informal sector. And also from the implementation of migrant workers placement must be in accordance with the objectives of the workforce and also the placement process with the country that has agreed on the work placement agreement abroad.

Indonesia as part of the world community and as part of ILO members has a moral obligation to implement international provisions to be applied in the practice of industrial relations in Indonesia.[2] In the International Convention which has been ratified into Law No. 6 of 2012 concerning the Ratification of the International Convention on Protection of the Rights of All Migrants and Members of Their Families, it can be seen in article 10 of the Migrant Convention that;

" No migrant worker or family member may be subjected to torture or inhuman or degrading treatment or punishment." [11]

From this article it can be seen that Indonesia fully supports what has become agreement on the Migrant Workers Convention. It is then ratified and made into law. Also remembering that the Migrant Workers Convention opposes Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Considering that the ILO objectives, as stated in their Constitution, are to protect the workers interests when they are employed in countries that are not their own countries, and remember the organization's expertise and experience in matters relating to migrant workers and their family members.[11]

The legal basis for the moratorium implementation or the temporary termination of workers placement abroad issued by the Indonesian government is also in accordance with the Constitution of the Republic of Indonesia article 28D paragraph 2 of 1945 which states that :

"Everyone has the right to work and get fair and decent compensation and treatment in work relationship" .

In this article contained the meaning that everyone has the right to get a job at home and abroad and get wages or rewards in accordance with his work and also without treatment that violates and destroys human dignity. From the 1945 Constitution it is known that the freedom of every person to obtain work without getting violence is a right of the workforce.

Further mentioned in Law No. 13 of 2003 concerning Manpower, namely article 31 that

"Every workforce has the same rights and opportunities to choose, get, or move jobs and earn decent income within or outside the country".

Article 32 paragraph 1 "that worker placement is carried out based on an open, free and objective principle, as well as fair, and equal without discrimination".

And paragraph 2 "that the workers placement is directed to place the workforce in the right position in accordance with the expertise, skills, talents, interests and abilities by paying attention to dignity, human rights, and legal protection".

From this point it can be used as reference as a legal basis for the Indonesian government to impose temporary termination of sending migrant workers abroad. In the article it can be seen that every citizen has right to obtain decent work abroad

without discrimination or violence, many our workers who work abroad still get violent treatment from their employers. The government wants the policy of termination placement migrants workers as a form to protect from violence and arbitrariness acts

B. Termination Placement Policy and The Impact

According to Jayati Gosh, migration is a multidimensional phenomenon that has positive and negative impacts. The positive impact is that it can increase opportunities for productive work and bring to a broader perspective on social issues between migrants and populations in the destination country. Meanwhile, the negative impact of migration is to allow abuse of migrant workers by the employer and others [12].

Neoclassical theory is a theory of migration that focuses on the push and pull factors as factors for a person to migrate. Castells said this theory briefly emphasizes moving from densely populated places to more tenuous locations or from low-income areas to volatile business cycles or high-income areas [13]. Someone's decision to move is a rational decision made by calculating cost and benefits in order to obtain income maximization [14].

In the policy of temporary termination of placement issued by the Indonesian government to the departing workers or prospective workers who will depart, of course it will have big impact on the PMI / prospective PMI who will depart, with the increasing number of unemployed workers who have failed to work abroad. Also with the many losses suffered by PMI that have signed contracts with IMW service users in the destination country.

In the implementation of the temporary termination, it did not reduce the interest of prospective workers who want to work abroad. Although many did not know about the temporary termination of the sending migrant workers imposed by the Indonesian government, the desire to work abroad and become legal PMI are getting bigger. Many are known to be migrant workers now difficult and increasingly strict. To become PMI or work abroad, you must have a cover letter from the village from where the workforce will depart. And also later will be selected whether prospective workers who will depart are feasible or not eligible to work abroad. From this it can be concluded that the implementation of the moratorium is going well, or the moratorium itself can work to reduce the problems that occur in our workforce abroad. Because of the temporary termination.

One of local governments efforts after moratorium on the implementation of migrant worker termination to suggest the potential migrant workers who want to go abroad to find states that have MOU or agreement about protection of migrant workers. This is very important because the memorandum of understanding on the protection of migrant workers is a form of protection for migrant workers who will work abroad, so that their rights can be fulfilled and create sense of security for migrant workers [15].

According to the field data, migrant workers who depart legally abroad inversely related to illegal migrant workers. From the Dinsosakertrans data in 2011 it can be seen that there are 113 legal migrant workers, and 318 illegal migrant workers. From the number of illegal migrants who go abroad and are sent back to Indonesia many through tekong / plancong. Based on the field data, those who depart illegally working in construction / construction workers while the workers depart legally for the informal sector is also not as many migrant workers working in the construction sector.

In an effort to overcome the impact of moratorium governmental program, here the Government continues to make various policies to increase the bargaining power of Indonesian migrant workers. Informal sector workers in the country of Saudi Arabia, the wages received at the time became PLRT around 500 reals. working in Saudi Arabia does not require special foreign language skills and educational prerequisites [16]. This small wage makes the government have to start making policies to offer wage prices that are suitable for informal sector workers and also, communication access that is not provided by employers to migrant workers. In the revised memorandum of agreement, it can be explained as follows: passports must be held by Indonesian migrant workers, supervision through Joint Tasks Force and minimum wages must be regulated.

Regarding the passport must be held by Indonesian migrant workers, previously so far the migrant workers who work abroad, especially domestic workers (informal), passports that should be held by themselves are mostly held by the employer. It make the workers unable to get out when there is violence by the employers. The passport held by the employer is because the employer does not seem to trust the migrant workers, and is afraid that the workers will run away so that the passport is mostly held by the employer. From this condition, the employer can act arbitrarily against Indonesian migrant workers. With the revision of the memorandum of understanding between Indonesia and Malaysia on the use of passports held by Indonesian migrant workers, it is expected that Indonesian migrant workers can pay more attention to the rights of migrant workers. Joint Task Force / supervision of the implementation of amendments from the MOU or memorandum of understanding that has been made between Malaysian and Indonesian countries. Under its supervision, the government cooperates with the Malaysian Embassy. Meanwhile in Malaysia in cooperate with the Indonesian Embassy in Kuala Lumpur. In the agreement there are a lot of irregularities that will occur, where the Indonesian government which only oversees the implementation of the signed memorandum of agreement does not look directly at the field what happened actually. So many possibilities for the Joint Task Force are not going well.

The policy program for the temporary termination of workers sending abroad announced by the Indonesian Government by the majority of prospective migrant workers don not aware about the temporary termination or moratorium of workers sending abroad. Ignorance of prospective workers who will go abroad or who have worked abroad who have

returned to this country is due to this there is no socialization that should be carried out by the government to improve good quality standards for migrant workers who will depart. This socialization is useful for prospective workers who will go to see our country sending a lot of its workforce abroad. And also to reduce the number of migrant workers who will become victims of violence acts by their employers abroad.

IV. CONCLUSION

The conclusions that can be drawn from this research are: First, the placement termination of migrant workers aims to provide more protection, especially for domestic types. So far, many people have departed illegally, so the moratorium was deemed not to bring great changes, then the moratorium has no significant impact on reducing the number of illegal migrant workers. Even with the moratorium enactment which increasingly tightened procedures, making Indonesian migrant workers choose more to illegal.

ACKNOWLEDGMENT

The research was done with fund support from Faculty of Law, Universitas Trunojoyo Madura.

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