Legal Protection of Indonesian Migrant Workers (TKI) Overseas (Case Study of BP3TKI North Sumatera Province)

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Article Info

Abstract

Efforts to deliver overseas labour are considered effective to reduce the high unemployment rate in Indonesia. However, the higher the labour interest that wants to become migrant workers, the more cases experienced by Indonesian Migrant Workers (Tenaga Kerja Indonesia or TKI) abroad such as violence, rape, and wages that are not given during work. The low level of education of migrant workers is considered to be one of the main factors of the violence experienced by TKI. Protection against TKI working abroad has been governed by law No. 18 of 2017 on the protection of Indonesian migrant workers. The Indonesian Manpower Placement and Protection Agency (BP3TKI) is one of three institutions responsible for protecting the TKI working overseas. The purpose of this research is to further the broader explanation of the legal protection of Indonesian migrant workers abroad, conducted by BP3TKI in North Sumatera province. The method used in this study is a qualitative descriptive method consisting of interviews, documentation, and library studies. The results of this study indicate BP3TKI has carried out its duties based on Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. In carrying out its duties, there are several factors and obstacles faced by BP3TKI to provide maximum legal protection to Indonesian migrant workers.

A. Introduction

Indonesia is known as a country that has the numbers of the population and the land of Great Land. However, human resources in Indonesia were swinging not utilized to open jobs. One of the conflict issues faced by
Indonesia is the problem of the divine area of terms of unemployment. Some of the factors who were the rampageous cause of unemployment, the refined rate of work, which is less incompetent work, the lack of information that was able to work, the government's information in giving maximum training, and lazy cultures that are agonizing the job of labour.

One of the government's efforts that have been considered effective to overcome the problem of unemployment is to carry out the sending of Indonesian workers abroad through a Work Agreement. Work Agreement is a written agreement between Tenaga Kerja Indonesia or TKI and users that contain the work requirements, rights, and obligations of each party. These efforts at least bring significant benefits for Indonesia, namely: 1) Speed up relations between countries. 2) Encourage work experience and technology experts. 3) increase payments in the country / foreign exchange balance of payments.

Even though they have to work far from their families, but until now the number of TKI who want to work abroad has continued to increase from year to year especially since the economic crisis that hit Indonesia. The reason Indonesian workers choose to work overseas, one of them is because the wage system for workers is relatively large compared to the wage system in Indonesia.

In the International Labor Organization (ILO) in 2015, the country of Indonesia was known as the second country after the Philippines in the amount of sending labour abroad among ASEAN countries. East Java Province is at the highest route in TKI's shipment abroad. The placement of the TKI 2019 (April-June) periods counted a number of 70.258 souls, made up of 36.012 souls constitute a formal TKI (51%) and 34.246 TKI Formal. From a gender of genital ratio 49.567 female soul (71%) and 66.879 a man (29%).

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3. A. Abdussalam, Desas Furyanto, Hukum Ketenagakerjaan (Jakarta: PTIK, 2016), 15.
4. Z. Asikin, Dasar-dasar Hukum Perburuhan (Jakarta: Raja Grafindo Persada, 2010), 266.
8. TKI Placement and Slight Data Period June 2019, National Agency for Placement and Protection of Indonesian Workers (BNP2TKI).
Table 1. Number of TKI Placements by Country Period 2019 (April - June)

<table>
<thead>
<tr>
<th>NO</th>
<th>COUNTRY</th>
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<th>MAY</th>
<th>JUNE</th>
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<td>6.070</td>
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<td>16.727</td>
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<td>788</td>
<td>5.070</td>
</tr>
<tr>
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<tr>
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<td>6</td>
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<td>Bahrain</td>
<td>5</td>
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<td>2</td>
<td>3</td>
<td>25</td>
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<tr>
<td>26</td>
<td>Lainnya</td>
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<td>47</td>
<td>30</td>
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<tr>
<td></td>
<td>Total</td>
<td>25.442</td>
<td>28.870</td>
<td>15.946</td>
<td>70.258</td>
</tr>
</tbody>
</table>

Source: TKI Placement and Protection Data Report by BNP2TKI, June 2019 Period

Based on table 1, data managed by BNP2TKI in the period 2019 shows that the number of TKI most employed in Taiwan, then Malaysia and Hong Kong. According to Law No. 18 of 2017 Article 5 states that there are several requirements to become an official TKI, as follows: (a) at least 18 years of age, (b) have competence, (c) Healthy physical and spiritual, (d) registered and numbered Participant of Social Security, (e) has the full documents required.  

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9 Law No. 18 of 2017 Article 5 concerning Requirements to Become TKI
The legal protection of TKI is governed by Law No. 18 of 2017, which is divided into several articles. The protection of the candidate TKI is governed by article 7, protection during the recruitment of TKI stipulated in article 8-19, the protection during the work is outlined in article 21, and the protection after employment is governed by section 24-27.

The Government, in this case, the Indonesian Workers Placement and Protection Service Center (BP3TKI) is tasked with providing facilities to process all placement, protection and TKI issues in a coordinated and integrated manner in the respective work areas of each BP3TKI. The ease of service is carried out together with the Regional Central Government agencies.10

In the 2017 period, the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI) recorded 2,949 cases reported by TKI. Various cases experienced by TKI, such as TKI want to be repatriated, salary not paid, termination of employment, overstay, TKI failed to leave, violence by an employer, until death. Related to TKI data that died abroad, as many as 145 people died TKI during January - August 2017, and the average cause of death due to TKI sick, work accidents, and violence committed by employers.11

Government efforts to protect TKI abroad by issuing 31 policies in the form of laws, presidential decrees and ministerial regulations that are directly related to the protection of TKI working abroad.12 However, strategies issued by the government to protect TKI have not been effective. This is seen by the high number of cases affecting TKI.

The following cases are experienced by legal and illegal TKI who have been victims of criminal offences in the destination countries they have worked for the past few years:

1. Legal TKI from West Nusa Tenggara, Sumiati (23) experienced cruel treatment by her employer, namely: stabbing, beating and burning Sumiati in November 2010. The punishment for the employer was carried out ten days after the case was publicly revealed. However, the suspect was released because the evidence was not strong.13

2. Suyanti (19), the legal TKI from Kisaran, North Sumatera. Suyanti worked as a domestic worker on 8 December 2016, but only worked for a week

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11 Work Unit Agenda. 29 September 2017. 2,949 Complaints of TKI Cases Processed by BNP2TKI.
after Suyanti began tortured by the employer until a permanent injury. The government of Indonesia was disappointed by the decision of the judge who only sentenced the perpetrators to do good for five years and a fine of 20,000 Malaysian ringgit.  

3. Adelina Lisa (21), an illegal TKI from a remote village in Nusa Tenggara who was killed by being tortured by his employer in February 2018. In addition to being tortured, Adelina was not given a salary during work and forced to sleep on the porch home for two months with the employer's pet dog. Employer Adelina proved guilty of violating Article 302 criminal law with the maximum threat of death verdict. However, on 18 April 2019, the government was surprised by the decision of the judge who freed the perpetrator.

4. In July 2018, Zulfa Nur Chintia (24) TKI from Pringsewu, Lampung. While working in Malaysia, Zulfa often suffered abuse by her employer by beating her neck fractures, cutting the tip of her tongue, and forcibly removing four teeth, breaking her index finger. The Pringsewu Health Office is responsible for providing escort to restore Zulfa's health and will regularly visit Zulfa. Members of the Pringsewu DPRD Commission I will immediately ask for clarification from the recruitment agency sending Zulfa abroad.

5. The legal TKI from Cirebon, Turini (51), was repatriated in March 2019 after 21 years of work in Saudi Arabia. Turini was forced to work in two different places, but the two employers still had family relations. While working in Saudi Arabia, Turini always received inhumane treatment from employers and never even been paid for 21 years of work. After the Indonesian Embassy in Saudi Arabia coordinated with Dawadmi's police, Turini finally got his right, namely the salary that was not paid while working at his employer's house and even Turini could finally be repatriated to Indonesia.

Based on the facts regarding the cases experienced by TKI working abroad, the writer is interested in wanting to know and explore the picture of the Indonesian government in providing legal protection for TKI working abroad.

B. Discussion

The protection of workers is an inseparable part of the protection of citizens as a state obligation. Fundamental rights as humans must be fulfilled by getting protection wherever they work to get their basic rights. There is no difference between the status of its citizens and the status of its citizens, they are still entitled to a decent living following Article 28 D paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that 'every citizen has the right to work and receive compensation and fair and proper treatment of labour relations'. Law No. 39 of 2004 on placement and protection of Indonesian workers abroad has been revised into Law No. 18 of 2017 on the protection of Indonesian migrant workers, then the term TKI in law previously amended The term Indonesian migrant worker (TKI). The difference between the two laws is not very significant to the TKI protection that focuses on the research.

Definition of TKI in Article 1 paragraph (2) of Law No. 18 of 2017 is every Indonesian citizen who will, is, or has done work by receiving wages outside the territory of Indonesia. The definition can be concluded that TKI is an Indonesian citizen who is looking for a livelihood outside the territory of Indonesia, and TKI is not fully within reach of the protection of the Indonesian state because of the existence of TKI who has entered the jurisdiction of a country where they work. The government effort to implement the placement of Indonesian workers to work abroad is an effort to realize equal rights and opportunities for Labor to obtain decent and deep employment and income in its implementation should pay attention to the harkat, human dignity and legal protection side. Therefore, the country is obliged to actively guarantee and protect the rights of citizens who work both in and out of the country based on the principle of equality of rights, democracy, social justice, gender equality, and anti-human trafficking.

The increasing number of Indonesians who want to work abroad and a large number of TKIs currently working abroad also increases cases of inhumane treatment of TKI working abroad. Cases related to the fate of TKI are increasingly diverse and even develops towards human trafficking which is categorized as a human crime.

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20 Article 1, Law No. 18 of 2017 concerning Protection of Indonesian Migrant Workers.
21 L. Husni, Hukum Ketenagakerjaan Indonesia, (Jakarta: Raja Grafindo Persada, 2007), 89.
The development of the mobility of Indonesian workers abroad needs to get attention from the government. Article 86 paragraph (1) of Law No. 13 of 2003 on employment states that each worker or Labour has the right to exercise the protection of occupational safety and health, morality, morality, and treatment per the Human dignity and religious values. According to article 86, it is integrated between government and regional agencies and the Community's role is obliged to protect every worker.

Concerning the protection of TKI, Indonesia has three competent authorities to address the issue of TKI. The three agencies are the Department of Energy and Transmigration (Depnakertrans), the State Department, and the National Agency for Placement and Protection of Indonesian Labour (BNP2TKI).

To guarantee the realization and protection of TKI abroad, it is necessary to service from BNP2TKI which is a non-departmental government institution responsible to the President based in the national capital. While BP3TKI is a technical implementing unit in the BNP2TKI environment which is under and responsible to the head of BNP2TKI. The main task of BP3TKI is to provide ease of processing service of all placement documents, protection and problem solving of TKI coordinated and integrated into their respective working areas.

BP3TKI of North Sumatera Province provides protection against TKI in accordance with Article 3 of the Law No. 18 of 2017 on placement and protection of migrant workers abroad aims to ensure the fulfilment and enforcement of human rights as Indonesian citizens and Migrant workers and guarantees the legal, economic, and social protections of TKI and his family.

The BP3TKI position is governed by Presidential Regulation No. 81 of 2006 on the National Agency for Placement and Protection of Indonesian Labour (BNP2TKI) in Articles 23, 24 and 25. In Article 23 (1) states that to facilitate the implementation of the placement services of TKI, then formed BP3TKI in the provincial capital, and in Article 25 (2) states that the formation of BP3TKI stipulated by the head of BNP2TKI after the approval of the Minister Responsible in the field of utilization of State apparatus.

In providing legal protection against TKI, several provisions have been implemented in law No. 18 of 2017 on the protection of Indonesian migrant workers, Law No. 37 of 1999 on Foreign Relations, International Covenant on Civil and Political Rights (ICCPR) which has been ratified by the

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22 Law No. 13 on 2003 of Employment.
24 BNP2TKI is a Non-Departmental Government Institution in Indonesia which has the function of implementing policies in the field of placement and protection and Indonesian workers abroad in a coordinated and integrated manner.
25 Peraturan Presiden Republik Indonesia Nomor 81 Tahun 2006 tentang Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia (BNP2TKI).
Indonesian Government, the law No. 12 of 2005 on the International Covenant endorsement on Civil and Political Rights, the International Convention on Rights Protection All migrant workers and their families in 2000 and law No. 16 of 2011 on legal aid.

The protection in Black's Law Dictionary aims to ‘protect a person from further harassment or abuse service of process or discovery’ so, to achieve that goal formed a rule, order, or protective order. Each worker has the right to conduct safety, occupational health, morals, morality, and treatment by the dignity and respect of human beings and religious values. The National Labor Relations Act (NLRA) mentions that workers ‘ rights are: 1) rights to self-organization. 2). Right to strike. and 3). Right to supervise strikes.

The issue of migrant workers is a concern for the UN organization, so the UN has established special protections for migrant workers, namely: protection from discrimination, protection from exploitation, protection from violence, and Protection of migrant workers' rights. BP3TKI is tasked with protecting TKI as much as possible from pre, time and after Penenampilan, to provide security to TKI at every stage of placement starting from the initial process of recruit, at work to completion Contracts back to Indonesia.

Based on the results of interviews with the section of protection and empowerment BP3TKI North Sumatera province Dadang Agus Pitriono and Amir Hakim Sihotang said that every TKI working abroad is getting protection starting from to return to Indonesia and to guarantee the fulfillment of the rights of TKI optimally in the destination country. Dadang continued that any TKI distributed by the company from each region will get the same protection because BP3TKI is based on law No. 18 of 2017 Article 1.

Regarding legal protection for TKI, BP3TKI provides legal protection starting from before work, during placement, until after work. Amir added, while to minimize violence and TKI disputes against employers or companies, BP3TKI is required to provide protection and placement of TKI while working abroad and North Sumatra province BP3TKI has provided supplies such as training and education for prospective TKI who will go to destination countries.

BP3TKI has implemented Article 6 paragraph (1) letter f and Article 8 paragraph (3) letter b of Law No. 18 of 2017. Article 8 paragraph (3) states that to improve the quality of Indonesian Migrant Workers, TKI candidates are entitled to work education and training. The provisions in Article 6 paragraph (1) letter f state that each TKI has the right to obtain wages in with the prevailing wage standards in the destination country.

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Although the law has set up the wages of TKI that victims are not paid to the agreement. Amir added that the employer or company bears TKI's return fee to Indonesia. If there is a TKI that returns to Indonesia by self-expense, it can be ensured because the TKI is problematic with the employer or violates the contract as TKI seeks a new employer before the contract expires with the employer or previous company.

BP3TKI is instrumental in protecting TKI, including the protection of TKI's return from the destination country until arriving in Indonesia. Dadang added that BP3TKI provides facilities to the TKI to return to Indonesia and even provide health facilities for the sick TKI during the return journey to Indonesia according to the provisions of article 24 of the law No. 18 of 2017 on protection after work.

The BP3TKI effort to protect TKI is not easy. There is a factor of constraints or barriers faced by the Balai representing the Indonesian Government in providing legal protection to TKI. According to Amir, various factors are, among others:

1. Elements of workers/TKI
   a. Less understanding of employment and content of employment agreements;
   b. Language mastery weakness So it is difficult to communicate at the time of expressing an opinion;
   c. The gap in maintaining the agreed rights;
   d. Not appropriate working time causing physical fatigue and health.

2. Training factors and employer services
   a. Education and skills training does not match the talents, interests, and types of work;
   b. Need physical, mental, and discipline to steadfast in the challenges of the challenge;
   c. Laws, customs and customs are poorly understood to know the circumstances of the workplace;
   d. Lack of understanding and mastering the language in the country of the purpose of working;

3. The body factor or the placement agency for TKI abroad
   a. Limitation of facilities and infrastructure and the restriction of budget funds in the process of service to migrant workers who have been placed to work overseas.
   b. Weak support from local government in the placement program of TKI, and overlapping regulations due to the legal differences between two regulations in different areas.
   c. The less maximal cooperation between the government agencies that put TKI overseas, so that there is still an illegal TKI from the Indonesian embarkation point.

Among these factors, there are many cases that TKI 80% is backed by TKI's unpreparedness to work overseas. Dadang added this is due to the low
education that TKI has taken in Indonesia. They are not familiar with the regulations, the rights and obligations of TKI and the state conditions of their destination will work. These factors led to a dispute between TKI and the employer.

The low level of TKI education that works abroad often makes the fate of TKI increasingly less profitable. Although it is not entirely true, almost all cases of injustice are detrimental to most of those whose education is low. It can be concluded that the quality of education is an important factor as a consideration in sending workers abroad.

The efforts of BP3TKI to address the various problems experienced by the TKI are explained by Dadang as follows:
1. For prospective workers, BP3TKI need to provide an understanding to the candidate TKI that:
   a. Working abroad as a national ambassador who must safeguard and sell high dignity and dignified nation and state, so that workers foster a close relationship between both nations and countries;
   b. Migrant workers must maintain good manners and social procedures by not forgetting human nature and nature, especially for female workers;
   c. To pursue and observe the agreed work agreement;
   d. should be able to demonstrate identity that able to work in the employment market between countries;
   e. Understand and master the field of work under the employment agreement based on the qualification of the specified department;
2. The protection of TKI overseas placement conducted by BP3TKI, namely:
   a. The placement of workers abroad is carried out through the process of preparing quality and providing protection;
   b. Attempting to resolve conflicts between service users and workers;
   c. To provide education and training to TKI candidates in an integrated order to improve workers' quality and skills;
   d. Manage the implementation of the placement of workers professionally, and empowered to get increased welfare of workers, and the income of foreign exchange for the country.

Each migrant worker has rights and obligations protected by law and is part of the government’s effort to grant the constitutional rights of citizens. Amir and Dadang said that BP3TKI has been trying to protect TKI from the recruitment process back to Indonesia, even though the effort is not maximal because several factors become obstacles and obstacles in running Protection tasks against TKI

C. Conclusion

Various cases experienced by TKI abroad received less attention from the government. Protection is needed to be able to overcome problems or problems related to TKI protection and income from recruitment, while working abroad, to returning to Indonesia. Judging from Law No. 18 of 2017 states that the government is responsible for increasing TKI protection efforts abroad. Then the active role of the government is needed to protect Indonesian migrant workers without pressure from other parties. The Indonesian Workers Placement and Protection Service Center (BP3TKI) in carrying out its duties are guided by Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. Even though BP3TKI has a duty based on laws and regulations, but in providing legal protection, it can be said that the role of BP3TKI has not been maximized. It is because there are several obstacles and obstacles faced by BP3TKI in supporting the implementation of tasks.

Acknowledgement

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