

LEGAL PROTECTION FOR INDONESIAN MIGRANT WORKERS ABROAD DURING THE COVID-19 PANDEMIC

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ABSTRACT

Law No. 13 of 2003 concerning Manpower states that every worker has the same rights and opportunities to choose, get, or change jobs both within and outside the country. Then Law No. 39 of 2004 concerning the Placement and Protection of Indonesian workers abroad and its implementing regulations. However, the facts on the ground show that there are still many cases that afflict Indonesian workers abroad who have not received complete and safe protection. In fact, many of them don't even know what protection they get.

The problem in this research is how is the legal protection of Indonesian workers abroad during Covid 19.

This research method uses a sociological juridical approach, with data collection from field studies and literature studies, to determine the legal protection of Indonesian workers abroad. The data obtained were analyzed qualitatively.

Based on the results of the study found that Indonesian migrant workers abroad get legal protection. This protection can be seen from the regulations made by the government in providing protection for the rights of Indonesian migrant workers while carrying out their duties abroad. During the Covid 19 outbreak, the Indonesian government provided various assistance and attention to the affected Indonesian migrant workers. However, the protection of Indonesian migrant workers during Covid 29 from the Indonesian government still has weaknesses. Many Indonesian migrant workers feel that their rights have not been fulfilled during Covid 19. Even the delay in responding makes Indonesian migrant workers feel unnotified. So protection during Covid 19 itself cannot be carried out optimally.

Keywords: Legal protection, Indonesian workers, overseas

INTRODUCTION

Indonesia is a country that has a variety of resources that are extraordinary in abundance and even has very diverse potential. These potentials are spread over 33 provinces of Indonesia, the area of Indonesia as a whole is 1,910,931.32 and

based on the results of the 2019 population census, the total population in Indonesia is 268,583,016 souls.

Indonesia has a lot of human resources, this is inversely proportional to the jobs available in Indonesia, so there are still quite a lot of unemployed in every city. Whereas as we know, the 1945 Constitution of the Republic of Indonesia (UUD NRI) in Article 27 paragraph (3) states that "every citizen has the right to work and a decent living for humanity". With reference to the Act, every citizen should have the right to get a job that is suitable for a decent life so that all their needs are met.

Human nature requires various kinds of needs, be it food, clothing, shelter, or other secondary needs. The situation in Indonesia is even more deplorable, after the storm of crisis that hit this country, which greatly affected all factors of life, including the economic sector which had a significant impact, such as the narrowing of job opportunities and the increasing unemployment rate. So working abroad is an option.

Working abroad is the choice of the Indonesian people due to the limited field or job opportunities in the country, the level of wages is quite low and the poverty rate is quite high in the country, the opportunity to work abroad is very wide and with a high wage rate. There are 3 factors that cause migration, namely:

1. Economic Factor

There are activities to find a decent life outside of their own area and to cover the biological needs of the village from. Another similarity is that in general, a person will be embarrassed to do exclusive work in his own village compared to using it elsewhere. Using one's migration will be borne by the situation and demands a high level of skill and ability to survive.

2. Cultural Factor

choosing the existence of seeds abroad in every boy in his childhood so that the motive for leaving home has become a habit.

3. Environmental factor

The existence of conditions of community life in the area of origin which includes poverty, politics, security, health and education. The security or political situation is especially evident in areas bordering other countries.

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Since early 2020, almost countries around the world have faced the outbreak of the COVID-19 virus, which has made governments busy trying to prevent further transmission for the safety of citizens. In order to contain or prevent the spread of the virus, many countries have quarantined the territory of a national scope. This makes

the government have to increase efforts in managing and protecting its citizens who are abroad, including the Indonesian government.

Protection of Indonesian citizens has always been one of the top priorities for the foreign policy of President Joko Widodo's government, both in the first and second periods of government, which has lasted for about a year. Protection of Indonesian citizens abroad during the COVID-19 pandemic is arguably one of the tests or challenges for the Jokowi government's policy priorities in this second period. The government is highly expected to demonstrate the "presence of the state" in protecting its citizens in the midst of a pandemic, including those outside the country.

Problem

Based on the above background, the formulation of the problem in this study is as follows:

"How is the legal protection for Indonesian workers who are abroad during COVID-19?"

Research Methods

1. Method Approach

The approach used in this research is a sociological juridical approach, which is a legal research that examines and analyzes legal behavior and the data sources used are primary data.

2. Research design

The type of research design used is descriptive design, namely research conducted to answer questions about who, what, when, where and how it relates to certain research. Descriptive research is used to obtain information about the status of variable phenomena or situation conditions.

3. Sampling

Sampling in this study is by using accidental sampling technique, which is a technique of determining the sample based on chance. In this case, the researcher determines for himself which respondents are considered capable of representing the population.

4. Research variable

The element of this research which is the independent variable amounted to 2 people. The independent variable in this study is the perpetrators of TKI abroad.

5. Data collection technique

Data collection techniques in this study were carried out by means of library research and field studies. The field study in this research was carried out by conducting online interviews using a smartphone.

6. Data analysis

The data analysis technique in this study uses qualitative analysis techniques, which are methods that emphasize more on aspects of in-depth understanding of a problem than looking at the problem for generalization research. The qualitative analysis in this study is used to answer the problem of how the legal protection of Indonesian Migrant Workers (TKI) abroad.

Discussion

Protectionthe law of Indonesian workers who are abroad during covid 19

In Law Number 13 of 2003 concerning Manpower there is one article which reads "every worker has the same rights and opportunities to choose, get, or change jobs, and earn a decent income at home or abroad". This article explicitly states that these workers can choose, get or change jobs not only within the country but also abroad. Furthermore, it is also explained in Article 33 of Law Number 13 of 2003 concerning Manpower which states that the placement of workers consists of the placement of workers in the country and the placement of workers abroad. This is what can be used as the basis that the Government can place workers abroad.

In Law No. 39 of 2004, the placement and protection of prospective Indonesian workers must be based on integration, equal rights, democracy, social justice, gender equality and justice, anti-discrimination, and anti-trafficking. Individuals are prohibited from placing Indonesian citizens to work abroad. The government is responsible for increasing efforts to protect Indonesian migrant workers abroad. In carrying out their duties and responsibilities, they must ensure the fulfillment of the rights of prospective Indonesian workers, both those who depart through the executor of the placement of Indonesian workers and who depart independently, supervise the implementation of the placement of prospective Indonesian workers, establish and develop an information system for the placement of prospective Indonesian workers abroad, make diplomatic efforts to ensure the optimal fulfillment of the rights and protection of Indonesian workers in the destination country, and provide protection to Indonesian workers during the pre-departure, placement and post-placement periods. In Law number 39 of 2004 article 1, it is stated that the definition of Indonesian workers and prospective Indonesian workers are:

1. Indonesian Migrant Workers, hereinafter referred to as Indonesian workers, are every Indonesian citizen who meets the requirements to work

abroad in an employment relationship for a certain period of time by receiving wages.

2. Prospective Indonesian Migrant Workers, hereinafter referred to as Indonesian workers candidates, are Indonesian citizens who meet the requirements as job seekers who will work abroad and are registered with the district/city government agencies responsible for the manpower sector.

Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers was ratified on November 22, 2017 by President Joko Widodo and promulgated on the same date in the State Gazette of the Republic of Indonesia of 2017 Number 242 accompanied by an explanation of Law Number 18 of 2017 concerning Protection of Workers Indonesian Migrants in the State Gazette of the Republic of Indonesia Number 6141. The 1945 Constitution of the Republic of Indonesia guarantees that every Indonesian citizen has the same rights and opportunities without discrimination to obtain a job and a decent life. Work is a human right that must be upheld, respected, and guaranteed to be enforced. Indonesian Migrant Workers must be protected from human trafficking, including slavery, forced labour, victims of violence, abuse, crimes against human dignity, as well as other treatments that violate human rights. Protection of Indonesian Migrant Workers needs to be carried out in an integrated system that involves the Central Government, Regional Government, and the community. Protection of Indonesian Migrant Workers includes institutional protection that regulates the duties and authorities of the ministry as a regulator or policy maker with the Agency as the operator or policy implementer.

Regarding efforts to protect Indonesian workers who have to face the Covid 19 pandemic while in other countries, the Indonesian government seeks to ensure the fulfillment of the premier needs of Indonesian citizens through representatives abroad. Along with the Indonesian workers protection program, Indonesian representatives abroad, both the Indonesian Embassy, the Indonesian Consulate General, and other representative offices are trying to help the needs of Indonesian workers during the Covid 19 pandemic through a number of logistical supports. For example, the Indonesian Embassy in Bandar Seri Begawan (BSB) on Wednesday, May 6, 2020, distributed aid for basic needs for Indonesian workers whose work was affected by the Covid 19 outbreak. in May 2020 in the midst of the Covid 19 pandemic. More than 200 Indonesian workers received various basic necessities containing rice, sugar, instant noodles, soy sauce, cooking oil, coffee, canned milk, and canned sardines. This amount is part of the 700 basic necessities distributed by the Indonesian Embassy in BSB according to the people's request. The provision of basic food assistance is a form of embodiment of the state's presence for Indonesian citizens in Brunei. Previously, on March 29, 2020, the Indonesian Embassy in BSB had also distributed assistance in the form of masks and hand soap for vulnerable groups as an effort to prevent the transmission of Covid 19. The Covid 19 pandemic has brought a considerable economic impact to Indonesian citizens in Brunei, especially workers.

migrants working in the restaurant, catering and hotel sectors. The Indonesian Embassy noted that many Indonesian workers were affected by salary cuts,

Since the beginning of the COVID-19 outbreak, the Indonesian Embassy in London through the Covid 19 Task Force that he formed has implemented the protocol for assistance and collected data on the potential economic impact on Indonesian workers. This effort is made to ensure that the data collection is accurate if at any time there are Indonesian workers who need assistance. The Indonesian Embassy in London has compiled the KBRI SIAGA program, which includes preparing various logistical needs for Indonesian workers affected by Covid 19. This anticipatory step makes it easier for the Indonesian Embassy to deliver assistance efficiently. In addition, the Indonesian Embassy in London together with a team of PPI UK student doctors also provide consulting services for Indonesian workers who have symptoms of Covid 19, send medicine for Indonesian workers who are sick but live alone, and provide medical equipment for families whose members are infected with Covid 19.

Considering the Covid 19 pandemic that has lasted for quite a long time, Indonesian representatives abroad also use communication technology to continue to provide assistance and establish friendships with Indonesian workers. For example, the Indonesian Embassy in London runs the KBRI MENYAPA program by calling or sending messages to ensure the health of Indonesian migrant workers residing in the United Kingdom. Various educational programs and virtual dialogues were also held, both regarding the prevention of Covid-19 transmission, mental health maintenance during the pandemic, children and family programs, and the Virtual Coffee Bareng event. Furthermore, during the pandemic which lasted for almost a year, the Indonesian Embassy and other representatives of Indonesia also held various virtual events and activities to continue to accompany Indonesian migrant workers abroad. One of them is during the month of Ramadan. The Indonesian Embassy in Amman held a number of online activities, ranging from lectures and Ramadan recitations, MTQ competitions to virtual da'wah competitions to keep fasting worshipping solemnly in an atmosphere of simplicity. Not only that, the celebration of Eid Al-Fitr 1441 H was carried out with online friendship activities between the Indonesian Embassy and other representatives of Indonesia and Indonesian workers abroad. Indonesian representatives hold various virtual or online activities to continue to live and celebrate life together with Indonesian workers abroad in the midst of a pandemic. There are iftar events together during Ramadan, online friendships in the context of Eid al-Fitr celebrations, online halalbihalals, to online ceremonies to commemorate the Independence Day of the Republic of Indonesia.

Based on the results of interviews with several Indonesian workers, namely waiters on the Holland American Line cruise ship and Indonesian workers in the United Kingdom, they stated that in fact the Indonesian government's own legal protection was quite good. However, during the Covid-19 outbreak, they felt that the

government's role was not fast enough to act. Indeed, there has been a complaint service provided regarding various problems during Covid 19, but the response from this service has not been maximized, a little difficult to contact. They also explained that they are very grateful to the Indonesian government for being very concerned about Indonesian workers during Covid 19 with various assistance and attention. It should only be emphasized that they regret the significant delay in responding to this case from the Indonesian government.

A number of migrant workers spoke of the difficulties they face in the coronavirus pandemic abroad. April, an Indonesian migrant worker in Malaysia, said she had been out of work for almost three months. The situation is made worse because April must still pay the room rent and for daily food and drink needs. Mat Kecil, an Indonesian migrant worker in the Netherlands also feels the same way. He once couldn't pay his room rent last March because he didn't work. He said about 20 of his friends had returned to Indonesia because they no longer had jobs in the Netherlands. Not only financial problems, some of them also had to move due to health factors.

Satjipto Raharjo stated that legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law.

According to Soedikno Mertokusumo, legal protection is a guarantee of human rights and obligations in the context of fulfilling their own interests and in human relations.

Protection of Indonesian workers according to Article 1 point (4) of Law Number 39 of 2004 which explains that the protection of Indonesian workers is all efforts to protect the interests of prospective Indonesian Workers and Indonesian Workers in realizing the fulfillment of rights in accordance with laws and regulations, both before, during, and after work.

So legal protection is an act that is given to someone on the basis of applicable laws and regulations so that someone's rights are guaranteed, after someone has carried out his obligations, so that welfare and peace are realized in the association of community life. The provision of legal protection for Indonesian workers is regulated in Law Number 39 of 2004 Article 77 which states that:

1. Every prospective Indonesian workers has the right to obtain protection in accordance with the laws and regulations
2. The protection as referred to in paragraph (1) is carried out starting from placement, placement period, until after placement.

From the article above, it shows that the government provides protection for Indonesian workers or prospective Indonesian workers in case of problems abroad, the presence of representatives abroad in providing protection for Indonesian workers is in accordance with Law No. 39 of 2004 article 78 which states that:

1. Representatives of the Republic of Indonesia provide protection for Indonesian Migrant Workers abroad in accordance with laws and regulations as well as international law and practice
2. In the context of protecting Indonesian Migrant Workers abroad, the government may assign positions for employment to certain representatives of the Republic of Indonesia.
3. The assignment of manpower as referred to in paragraph (2) is carried out in accordance with the laws and regulations

The legal basis for the protection of Indonesian Migrant Workers abroad is carried out by representatives of the Republic of Indonesia. Meanwhile, legal protection abroad is provided based on Law Number 39 of 2004 article 80 which states that:

1. Providing legal assistance in accordance with the legal provisions of the laws and regulations of the destination country as well as international law and practice.
2. The defense of the fulfillment of rights in accordance with the work agreement and the laws and regulations in the country of the Indonesian workers is stipulated

From the description above that has been analyzed, the researcher can conclude that Indonesian workers abroad get protection from the government through existing regulations. This protection can be seen from the regulations made by the government in providing protection for the rights of Indonesian workers while carrying out their duties abroad. During the Covid 19 outbreak, the Indonesian government provided various assistance and attention to the affected Indonesian workers. However, the protection of Indonesian workers during Covid 19 from the Indonesian government still has weaknesses. Many Indonesian workers feel that their rights have not been fulfilled during Covid 19. Even the delay in responding makes Indonesian workers feel unnoticed. So protection during Covid 19 itself cannot be carried out optimally

CONCLUSION

After researching the protection of Indonesian workers abroad, it can be concluded that the Indonesian government has provided legal protection for Indonesian workers as stated in Law no. 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad, Law Number 18 of 2017

concerning the Protection of Indonesian Migrant Workers, so that the rights and obligations of Indonesian migrant workers abroad can be fulfilled properly. During the Covid 19 outbreak, the Indonesian government provided various assistance and attention to the affected TKI. However, it is unfortunate that the Indonesian government is a bit lacking in responding to this. So that the Indonesian workers had doubts about the performance of the Indonesian government. Even though it is clearly stated in the legislation.

SUGGESTION

The suggestions from researchers regarding the main problems that arise in this study are as follows:

1. The government needs to evaluate the delivery or socialization of legal protection for Indonesian workers abroad to Indonesian workers and prospective Indonesian workers.
2. Increasing the role of each institution that has the obligation to carry out protection for Indonesian workers during the Covid 29 outbreak.
3. Private parties as distributors need to evaluate their programs, especially during Covid 19.
4. The public needs to understand first what a Indonesian workers is and how the legal protection is before they decide to register as Indonesian workers.

References

Journal

- Ariani, A., & Syakti, "Decision Support System for Indonesian Migrant Workers Overseas Eligibility Using FMADM" *Journal of Information Systems*. p. 337-343.
- Arpangi, "Legal Protection of Indonesian Migrant Workers Abroad" *Journal of Legal Reform*. Volume III No. January 1 - April 2016
- Adarihanlty "Protection of Irregular Workers Abroad" *Rechtsvinding Journal*.. Vol 1 no 1, April 2014
- Ahmad Firdaus Sukomono, "Protection of Indonesian Migrant Workers Abroad Through Competency Certification" *Journal of Business and Investment Law* .Vol 8 No. April 2, 2017
- Frihartomo, "Legal Protection of Indonesian Migrant Workers" Jakarta: University of Indonesia
- Husna, "A Study of Government Policy in the Placement and Protection of Indonesian Migrant Workers" Yogyakarta: Gadjah Mada University

Sefriani, "Protection of the Human Rights of Undocumented Migrant Workers Based on International Human Rights Law and Law" *Journal of Legal Dynamics*. p. 246-256.

Triyan Febriyanto, Agus T. Rohman, "Protection of the Rights of Indonesian Migrant Workers (TKI) Working Abroad" *Lex Scientia Law Review*. Volume II No. 2, November, p. 139-154

LEGISLATION

1945 Constitution of the Republic of Indonesia (UUD NRI) in Article 27 paragraph (3)

Law Number 13 of 2003 concerning Manpower

Law Number 39 of 2004 concerning Indonesian Migrant Workers

Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers

INTERNET

Ari welianto, 2020, Factors Causing the Occurrence of Migration. Accessed on : <https://www.kompas.com/skola/read/2020/07/10/213500469/factor-pengebab-terjadinya-migration?page=all>. (June 15, 2022)

Joseph Franky L. Bere, 2019, Indonesian Employment Policy And Legal Protection Efforts Overseas Migrant Workers. Accessed on : <http://www.nttonlinenow.com/new-2016/2019/07/15/policy-ketenagakerjaan-indonesia-dan-Effort-perlindungan-Hukum-tki-di-luar-negeri/> (the 15th J uni 2022)

Human Rights Reference, 2014, Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad. Accessed on : <https://reference.elsam.or.id/2014/12/uu-nomor-39-tahun-2004-about-penempatan-dan-perlindungan-labor-indonesia-di-luar-negeri/#:~:text=Country%20%E2%80%93%20Reference%20HAM-,Law%20Number%2039%20Year%202004%20About%20Placement%20And,Work%20Indonesia%20In%20Outside%20Country&text=In%20UU%20this%20placements%20dan,discrimination%2C%20and%20anti%20trafficking%20human>. (June 15, 2022)

Tia Mutiasari, 2022, Observing the Protection of Indonesian Citizens Abroad During Covid 19. Accessed at:

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<https://www.antaraneews.com/berita/1790333/menilik-usaha-perlindungan-wni-di-luar-negeri-ditengah-pandemi-corona>. (July 5, 2022)