

Legal Protection for Indonesian Migrant Workers Based on National Philosophy Values

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Abstract: The purpose of this study is to examine and to analyze and find the ideal legal protection for Indonesian migrant workers based on the value of Pancasila justice. The research method used was empirical juridical. In this study the data used were primary data and secondary data. The collected data was analyzed descriptively and analytically. The legal theory of law and justice protection is used as an analysis knife. The results of the study found that the legal protection of Indonesian migrant workers is still a concern, where the rights of Indonesian Migrant Workers as mandated by legislation are still violated and ignored. Therefore legal protection based on the value of Pancasila justice includes through preventive protection, where IMW must have soft skills and hardskills. The repressive supervision and assistance is done to ensure IMW rights are fulfilled during the destination country and IMW monitoring until returning to the beloved Indonesian homeland. So it is very important to provide education and skills for post-repatriation IMWs so as not to become IMWs for life, of course there needs to be restrictions on IMW.

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I. Introduction

One of the complex problems faced by the government of the Republic of Indonesia is unemployment. The high unemployment rate will have a return to society, namely poverty, crime and other social problems. Unemployment itself is the number of workers in the economy who actively seek employment but have not yet obtained it (Sukirno, 2004). Not yet available employment opportunities cannot be filled by job seekers because the quality is not in accordance with the needs of the workforce. This triggers an imbalance in the growth of employment every year (Soepomo et al., 1995).

Various problems faced by Indonesian Workers, it is even developed towards human trafficking that could be categorized as crimes against humanity. Indonesian migrant workers abroad are often used as objects of human trafficking, including slavery and forced labor, victims of violence, abuse, crimes of human dignity, and other treatment that violates human rights. The Constitution mandates in the provisions of Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that every citizen has the right to work and a decent livelihood for humanity. Based on Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers

Abroad, provides an opportunity for every Indonesian citizen who is qualified to work abroad. Therefore, from the relevant Government and private institutions, of course, they must be able to provide protection to guarantee the rights of Indonesian Workers who work abroad to remain protected Protection of Prospective Indonesian Migrant Workers and Indonesian Migrant Workers aims to guarantee the fulfillment and enforcement of human rights as citizens and Indonesian Migrant Workers; and to guarantee the

legal, economic and social protection of Indonesian Migrant Workers and their families.

Data shows approximately 92.43% or a number of 11,507 cases are problems experienced by Indonesian Workers (abbreviated as IMW) abroad. 460 (3.69%) cases are faced by Ship Men and 483 (3.88%) by other Indonesian Citizens (www.bnp2tki.go.id). An overview of cases that occur and efforts to resolve them statistically are presented in the following table:

Table 1. Case Events Related to Migrant Workers Abroad

Kind of Case	Total Case	Complete Case	On Going Case
Employment (Salary, work accident, too heavy workload, layoffs, etc.)	1.785	753	1.032
Immigration (overstay, misuse of residence permit, etc.)	6.610	6.191	419
Civil Cases (Divorce, child custody, etc.)	23	9	14
Criminal Law Violations (Narcotics, Murder, robbery, etc.)	816	243	573
Others (Lost contact, died, sick, natural disaster, political riots, etc.)	2.273	1.619	654
Total	11.507	8.815	2.692

There has been a conflict of legal norms for the protection of Indonesian migrant workers. Therefore, it is interesting to examine in depth the legal protection of Indonesian migrant workers based on justice values.

II. RESEARCH METHODS

The method used in this research was non-doctrinal legal research methods, namely understanding and researching the law in its social context because the focus is more on the problem of the operation of law in society (George, 1992). The research specifications used are descriptive analytical, namely describing the phenomena that exist in the environment in accordance with the research method (Susanto, 1990). In this study, the data sources used are primary data and secondary data. Sampling in this study used a purposive non random sampling technique (purposive sampling), data collection was done through: Literature and field studies (Ashofa, 2004). Furthermore, the data that has been obtained were then analyzed descriptively qualitatively (Susanto, 1990).

III. VALUES OF JUSTICE FOR INDONESIAN CITIZENS AS INDONESIAN MIGRANT WORKERS

Justice is one of the legal objectives in addition to legal certainty and the benefit of the law. The principle of law rests on the idea of justice and moral strength. The idea of justice has never been separated from its relation to the law, because talking about the law, clearly or vaguely is always a discussion of justice as well (Rahardjo, 1982).

Sumadi (2016) stated that social justice is another display of justice. Furthermore, it is explained that the substance of justice must be formulated at three levels, namely First; at the outcome level, second at the procedure level, third at the system level (Sumadi, 2016). At the outcome level, justice is related to distributive and and commutative exchange, so that justice in this case relates to an object which, in practice, among other things, can be objects or services.

The procedure relates to the method of determination and the system relating to the interrelationships between the prevailing structures. In the justice of division and exchange, namely

justice at the first level which is related to the outcome, in practice the level of unequal often occurs in the process. In procedural justice, justice at the second level relates to the method of determination, which is related to the process and treatment of the people involved. It requires the existence of three components, namely First: the nature of the rules is formal applicable procedure. Second is explanation of procedures and decision making. Third is interpersonal treatment. Procedural justice is substantially more determined by the second and third components, because based on these two components procedural justice embodies justice that can be seen by the public, which in the end makes looking fair more important than being fair. In system justice, namely justice at the third level relating to the system, which is the third level associated with the system, which is a pattern that becomes the basis of procedures, distribution and exchange in general is a general policy that is realized as a basis in determining procedures and outcomes.

Masyhur (1985) stated what is called the fair as follows put something in its place; to accept rights without more and give the rights of others without lack; the right of every right to complete without lacking between fellow who has the right, under the same circumstances, and the punishment of a bad person or who violates the law, in accordance with their mistakes and violations. One can regard justice as an absolute idea or reality and assume that knowledge and understanding of it can only be obtained partially and through very difficult philosophical efforts. Or one can assume that justice is a result of the general view of religion or philosophy about the world in general. So, people can define justice in one sense or another understanding of this view.

The existence of justice always exists in two places, namely human justice which is subjective and relative and divine justice who is objective and absolute, the truth is not because of the subject that justifies it, because there is no objective truth

depends only on the object and not the subject (Saebani, 2013).

IV. LEGAL PROTECTION FOR INDONESIAN MIGRANT WORKERS BASED ON THE VALUE OF PANCASILA JUSTICE

The sustainability of Indonesian Migrant Workers abroad does not always run smoothly, there are often cases of violence and sexual harassment, especially for female Indonesian workers. To protect Indonesian migrant workers abroad the government has established Law Number 39 year 2004 concerning Placement and Protection of Indonesian Migrant Workers Abroad and Regulations for its implementation. In consideration of weighing letters c, d and e, the Law states that Indonesian workers abroad are often used as objects of human trafficking, including slavery and forced labor, victims of violence, abuse, crimes for human dignity and other treatment which violates human rights.

Even so, Indonesian migrant workers have not been properly protected in the pre-placement stage, during placement, and after placement (post placement) and repatriation (Naovalita et.al, 2016). In terms of repatriation of Indonesian workers in certain situations the government issued a Republic of Indonesia Presidential Regulation Number 45 of 2013 concerning the Coordination of the Return of Indonesian Workers to overcome them, but in its implementation there were still obstacles which occurred mainly in the funding sector.

The Minister of Social Affairs, Khofifah Indar Parawansa, said the number of troubled Indonesian workers managed by his ministry was increasing, the data showed the repatriation of Indonesian Migrant Workers until the beginning of December 2014 as many as 20 thousand people. As a result, the ministry of women's empowerment must bear the debt to the ministries and institutions that helped to repatriate Indonesian migrant workers to their original regions. Andi Zainal Abidin Dulung, Director General of Social Protection and Security,

said that the average cost of returning one problematic IMW was Rp 1.5 million. These costs include the components of ticket purchases to hometown and business capital. Estimated funds for taking care of troubled IMW next year are around Rp. 15 billion.

The case of the return of illegal IMW occurred on Tuesday, December 23, 2014, as many as 1,428 people were repatriated gradually from Malaysia using Hercules aircraft belonging to the Indonesian National Army. The return of migrant workers is more dominant due to work permit problems. Placement of migrant workers abroad is divided into occupational sectors: informal (employment between individuals) and formal (employment in legal entities or institutions). Among these two occupational sectors (informal and formal, red), those who are problematic and often have problems are informal IMWs; in the field of Housekeeping (domestic workers IMW). On the other hand, formal IMWs do not face too many problems, because from the side of legal protection they are more protected (Hidayat, 2018).

Most migrant workers who work abroad are migrant workers who work in the informal/domestic sector such as housekeepers and drivers. The percentage of migrant workers in the domestic sector reached 64%. This cannot be separated from the reality of Indonesia's profile of human resources, where 51.94% of the total 113.74 million. Indonesian workforces do not graduate from elementary school, and had a direct impact on the quality and competency of human resources (BNP2TKI, 2008). As a result, most IMWs can only fill the labor market share in the informal sectors available abroad.

Data from the International Labor Organization (ILO), around the world there are 105.4 million people working outside their country (international migration). 43% are from 11 countries in Asia. According to Minister of Manpower and Transmigration, Muhaimin Iskandar and the Indonesian government in February 2010, migrant workers abroad reached 2,679,536 people. They are

in several Asia Pacific and Middle East countries, Malaysia 1.2 million people, Saudi Arabia 927,500, Singapore 80,150, Jordan 38,000, Bahrian 6,500 people, UAE 51,350 and Qatar 24,586. Here it appears that Malaysia is one of the main objectives of migrant workers, this is due to geographical proximity and cultural factors (Hadi, 2008).

This political reason was also still valid in this era. It is permitted that the entry of Indonesian migrant workers is more aimed at balancing the race composition of China and India which are also rapidly increasing in Malaysia. Indonesian migrant workers in this case are accepted as a unified nations which tends to be more easily assimilated with local residents because of the similarity of language, culture and ethnicity (Hadi, 2008). Current employment problems in Indonesia include the number and population growth problems, age structure and the limited level of utilization of labor, population distribution, level of education, and limited absorption of the economy (Kiswandari, 2014). According to the census, Indonesia's population has exceeded 240 million, and population growth is estimated at 1.49% of this year (Harmadi, 2013).

The amount of enthusiasm of workers who will work abroad and the large number of migrant workers who are working abroad in one way has a positive side, namely overcoming some of the unemployment problems in the country but also has the negative side of the risk of possible inhumane treatment of migrant workers. These risks can be experienced by migrant workers both during the departure process, while working abroad and after returning to Indonesia (Husni, 2001).

Indonesian workers abroad are often used as objects of human trafficking, including slavery and forced labor, victims of violence, abuse, crimes for human dignity and dignity and the treatment and protection of the rights of their citizens who work both at home and abroad based on principles equality, democracy, social justice, gender equality and justice, anti-discrimination and anti-trafficking in persons. The presence of Indonesian workers is

much needed by other countries now. Tends to offer jobs that are often called 3-D (Dirty, Difficult, and Dangerous) jobs that are due to the population of developed countries tend to be reluctant or expensive to sell for the job. On the other hand, with the excessive amount of labor, Indonesia has a surplus of cheap labor. At present there is a fact that Indonesia is experiencing an excess of unskilled labor, with a low wage of authenticity. In addition, many countries that are more advanced than Indonesia have reached the stage of importing unskilled labor. From this point of view, the supply of unskilled labor from Indonesia gets the demand for skilled labor indeed and is presumably very large. In a more technical language, it is said that there is latent demand and supply for unskilled and cheap labor from Indonesia (Grant & Solicitors, 2005). In general, those who have low skills and education work in the domestic sector as domestic servants / housekeepers.

The favorite country for IMW is Malaysia. The other destination countries are Taiwan, Singapore, Hong Kong, Saudi Arabia, Brunei Darussalam, South Korea, United Arab Emirates, Japan, New Zealand, Maldives, Oman, United States, Kuwait, Italy, Turkey, Algeria, Qatar, Gabon, Solomon Islands, and Others. The highest IMW placement in Malaysia in 2016 was 87,623 IMW, in 2017, as many as 88,991 thousand and in 2018 as of January-December as many as 90,671 IMW. In the past three years, it has shown that the aim of IMW to Malaysia increases every year. The next IMW destination in second place is Taiwan, ranked third to Hong Kong, ranked fourth to Singapore, ranked fifth to Saudi Arabia, ranks sixth to Brunei Darussalam, ranks seventh to South Korea, and ranks eighth to United Arab Emirates.

Based on the table of the types of problems, IMW seems to be very concerned about the condition of IMW in various countries. Thousands of IMWs have problems in the destination countries listed on BPIMW. The problems are classified as several things, namely migrant workers want to be repatriated, salaries are not paid, layoffs before the

employment contract expires, IMWs are ill, overstayed, undocumented migrant workers, migrant workers fail to depart, salary deductions exceed provisions, work is not according to work agreement, not repatriated even though the employment contract is completed, the legal recruitment of prospective migrant workers, acts of violence from employers, IMW in detention/detention processes, detention of passports or other documents by PPIMW, trafficking in persons, migrant workers have an accident, escape from their employers' homes, labor migrants have no fees to go home, job opportunity fraud, etc.

According to Gustav Radbruch, he stated that "Law is the will to be fair." (Recht ist Wille zur Gerechtigkeit). Positive law exists to promote moral values, especially justice. According to ethical theory, law is solely aimed at justice. The contents of the law are determined by our ethical beliefs about fair and not. Therefore the law aims to realize or realize justice.

Law is a system created by humans to limit human behavior so that behavior can be controlled properly, can be in the form of written or unwritten rules or provisions that regulate human life and provide sanctions for anyone who violates them. Law has a duty to guarantee legal certainty in society. The community has the right to get a defense before the law. The actual law has four elements, namely orders, sanctions, obligations and sovereignty (Muzamil & Mashdurohatun, 2014).

The state must guarantee and protect the rights of its citizens who work both at home and abroad based on the principle of equality, democracy, social justice, gender equality and justice, anti-discrimination and anti-human trafficking. The legal protection of IMW is based on the value of Pancasila justice includes through preventive protection, where IMW is obliged to have soft-skill and hard-skill. This will further prevent IMW from working at informal level. High capability in soft-skill and hard-skill will be more professional in their field. This means that the government must

prepare a higher bargaining power for IMW. If IMW does not yet have high bargaining power, the government is better off doing a moratorium. On the other hand, in a repressive manner supervision and assistance in ensuring IMW rights are fulfilled as long as the destination country and IMW monitoring are returned to Indonesian. In addition, the value of Pancasila justice for IMW has the right to receive education and skills after returning from the destination country back to Indonesia. Limitation to become IMW is maximum of two contract periods or a maximum of five years. The government guarantees employment in Indonesia.

V. CONCLUSION

Legal protection of Indonesian migrant workers is still apprehensive, where Indonesian migrant workers get various problems including unpaid salaries, layoffs before contractual agreements are completed, excessive workload, physical and sexual violence, overstay, illness, salary deductions exceeding provisions, work not in accordance with the agreement work etc. Therefore IMW's legal protection based on the value of Pancasila justice includes preventive protection, where IMW must have softskills and hard-skill- while repressive supervision and assistance in ensuring IMW rights are fulfilled during the destination country and IMW monitoring until returning to Indonesian. In addition, the value of Pancasila justice for IMW has the right to get education and skills after returning from the destination country back to Indonesia, the ban being an IMW for life, the Restriction being IMW is a maximum of two contract periods or a maximum of five years. The government guarantees employment in Indonesia.

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