

Review of the Law on the Protection of Indonesian Illegal Workers (TKI) Abroad

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ABSTRACT

The purpose of this study is to analyze: 1) Describe and explain the legal arrangements of illegal Indonesian Workers (TKI) in Indonesia; 2) Analyze legal reviews of the protection of illegal Indonesian Workers (TKI) abroad. The research method used is normative juridical with a statutory approach, concept approach, and case studies.

The results showed that: 1) In Indonesia, Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers regulates protection for Indonesian migrant workers, including migrant workers who work officially abroad. However, for illegal migrant workers, their presence abroad illegally makes them vulnerable to exploitation, oppression, and injustice. To minimize the problems faced by workers abroad and protect the dignity and dignity of these workers, the regulation on the placement of Indonesian workers abroad in Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad is a way out. 2) In legal reviews of illegal migrant workers abroad, it is important to consider efforts to prevent illegal departure of migrant workers and also improve protection for those already abroad. This could include measures such as education about the risks of illegal migration, law enforcement against illegal entrepreneurs or brokers, and increased access to legal and consular assistance² for migrant workers in need.

Keywords: Review, Law, Protection, Workers, TKI, Illegal.

INTRODUCTION

Background

Indonesia is a developing nation. Ongoing development is a comprehensive (inclusive) development. Development is a systematic and planned effort by each and all components of the nation to change a situation into a better state by utilizing available resources optimally, effectively, efficiently, and accountably, so as to improve the quality of life of the community to be more prosperous. The definition of National Development is an effort carried out by all components of the nation in order to achieve state goals. National Development itself is carried out based on democracy with the principles of togetherness, justice, sustainability, environmental insight, and independence by maintaining a balance of progress and national unity.

The development that is being promoted by our nation in fact still leaves problems, especially regarding labor protection. This is because Indonesia is one of the suppliers of labor to several countries that use the services of our workforce. In stark contrast to development jargon in all fields, it turns out that our country has not been able to absorb the available labor optimally. Indonesia is one of the countries that sends its

workforce abroad in large numbers. The large number of workers, the high number of unemployed, and the lack of available jobs in Indonesia are factors supporting the increase in the number of migrant workers working abroad. This is an alternative for Indonesia to reduce problems related to employment in the country.

Labor issues in the perspective of international law have also been regulated in several treaties (international agreements) one of which is There are many international treaties that regulate the rights of migrant workers, the last of which is *The International Convention on The Protection of The Rights of All Migrant Workers and Members of Their Families*, (International Convention Relating to the Protection of the Rights of All Migrant Workers and Members of Their Families) issued by the United Nations in 2003 as international law. This Convention has been ratified by 43 countries, and Indonesia in 2012 has ratified it by passing Law Number 6 of 2012. Although Indonesia has ratified, there have been no concrete steps to update various laws and regulations related to the protection of migrant workers to be aligned with the content of the convention.¹

Juridically constitutionally the issue of labor has been regulated in Article 27 Paragraph (2) of the 1945 Constitution, it is said that every citizen has the right to work and a decent living for humanity, further emphasized in the definition of labor according to Law No. 13 of 2003 concerning Manpower explaining that Labor is "*Everyone who is able to do work to produce goods and/or services both to meet his own needs and for the community.*"² Furthermore, in the same law in Article 13 it is also explained that every worker has the same rights and opportunities to choose, get, or change jobs and earn a decent income at home or abroad.

The causes of the emergence of labor problems abroad according to the Ministry of Foreign Affairs (Kemenlu) are unpaid salaries, work accidents, torture / physical violence, sexual harassment, inappropriate workload, inappropriate working hours, not at home and disagreements.³ In addition, according to the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI), the cause of the emergence of problematic migrant workers can also be due to incomplete document problems, congenital diseases, and pregnant migrant workers. This labor problem is not only migrant workers who work in the informal sector, such as domestic helpers, but also migrant workers who work in the formal sector.⁴

Problems during the placement period also cannot be ignored. Migrant workers abroad often have difficulty in extending work agreements, which has an impact on overstay problems. Based on information from the Ministry of Foreign Affairs, the extension of work agreements is often constrained by data collection problems.⁵ TKI often departs by manipulating data, as a result when going to extend the data becomes unequal so that representatives find it difficult to grant requests for extension of work agreements. Some migrant workers also reported that they were placed in countries where they were originally placed. This case is currently quite rife in Middle Eastern countries because several countries are undergoing a

¹ Article 1 of Law no.13 of 2003 concerning Manpower

² Consideration of Law No.39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad.

³ "Service and Protection of Indonesian Citizens / TKI Abroad", in a hearing meeting (RDP) with the TKI Supervisory Team of the House of Representatives of the Republic of Indonesia on January 30, 2014.

⁴ The presentation BNP2TKI in a hearing meeting (RDP) with the TKI Supervisory Team of the House of Representatives of the Republic of Indonesia on January 30, 2014.

⁵ Commission IX Hearing Meeting on February 25, 2016 with the Ministry of Law and Human Rights and the Ministry of Foreign Affairs regarding the protection of Indonesian workers abroad

moratorium or temporary suspension of sending migrant workers so that PPTKIS seeks to send migrant workers to countries close to countries affected by the moratorium.⁶ From that country, migrant workers are sent to work in countries affected by the moratorium.⁷ In addition, a number of problematic migrant workers also reported the length of handling from representatives of the problems they faced.⁸

The weak protection system of Indonesian workers abroad has also resulted in an increase in cases of violence, mostly experienced by women. Data from the Ministry of Manpower and Transmigration (Kemenakertrans) related to the repatriation of Indonesian workers abroad through Special Terminals shows that every year at least 25,000 Indonesian workers abroad experience problems.

Problem Statement

1. What is the legal regulation of illegal Indonesian Migrant Workers (TKI) in Indonesia?
2. What is the legal review of the protection of illegal Indonesian Workers (TKI) abroad?

Theoretical Framework

1. Theory of Legal Certainty

Legal certainty is a matter of certainty. The law must essentially be certain and just. Legal certainty is a question that can only be answered normatively, not sociologically. Normative Legal Certainty is when a regulation is made and promulgated with certainty because it regulates definitely and logically.⁹ Legal certainty as one of the goals of law and can be said to be an effort to realize justice. The real form of legal certainty is the implementation and enforcement of the law against an action regardless of who committed it. The existence of legal certainty everyone can predict what will happen if they take these legal actions. Legal certainty is needed to realize justice. Legal certainty is one of the characteristics that cannot be separated from the law, especially for written legal norms. Laws without certainty value will lose meaning because they cannot be used as a code of conduct for everyone.¹⁰

Apeldoorn argues, legal certainty has two aspects, first regarding the question of the formation (*bepaalbaarheid*) of law in concrete matters. This means that parties seeking Justice want to know the law in a specific matter before starting a case. Second, legal certainty means legal security. It means protection for the parties against the arbitrariness of the Judge. According to Jan Michiel Otto, real legal certainty is indeed more juridical in dimension. However, Otto provides further limits on legal certainty that define legal certainty as the possibility that in certain situations, namely: 1) Clear (clear), consistent and accessible rules are available; 2) The ruling agencies (government) apply these rules of law consistently and also submit and obey them; 3) Citizens adjust their behavior to these rules in principle; and 4) Independent and impartial judges apply these rules of law consistently as they resolve legal disputes and judicial decisions are concretely implemented.¹¹

⁶ Arrahmah, "Moratorium on Growing Migrant Workers in Human Trafficking Mode," <http://www.arahmah.com/read/2011/07/22/14182-moratorium-tumbuhanpengiriman-tki-bermodus-perdagangan-manusia.html>, retrieved 18 March 2016.

⁷ *Ibid.*

⁸ Dian Syafitri, Indonesian Diplomacy in the Protection of Women Workers in Malaysia during the SBY Government in 2004 – 2009, Thesis, Makassar: Hasanuddin University, 2012, p.103.

⁹ Cst Kansil. 2009. Dictionary of Legal terms. Gramedia Library. London.p.385

¹⁰ *Ibid.* p 270

¹¹ L.j Van Apeldoorn in Shidarta. 2006. *The morality of the legal profession offers a framework of thinking*. Bandung: PT. REVIKA Aditama. pp.82-83

2. Law Enforcement Theory

There are quite a lot of laws and regulations governing the protection of migrant workers in Indonesia, ranging from the level of law (UU) to regional regulations. This condition shows that regulators highly value the role of laws and regulations in providing protection for migrant workers. This legislation certainly needs to be enforced. As for what is meant by law enforcement, it is a series of activities in the framework of efforts to implement legal provisions both enforcement and prevention which include all activities, both technical and administrative, carried out by law enforcement officials so as to create a safe, peaceful, and orderly atmosphere to obtain legal certainty in the community.¹²

Regarding the purpose of law enforcement, Satjipto Rahardjo argues that law enforcement is not only to obtain legal certainty but also to bring social benefits and justice.¹³ Legal certainty can prevent a person from and commit arbitrary acts; Social benefits are related to the results of law enforcement that do not cause unrest in the community; While justice is related to various interests of society. To produce law enforcement that can create legal certainty, expediency as well as justice is very difficult because these three things are difficult to unite. Law enforcement plays a role in synergizing these three things.¹⁴

Research Methodology

This research is included in the type of *doctrinal research*, in this case it emphasizes more on the conception that law can be viewed as a set of laws and regulations that are systematically arranged based on certain regulations.¹⁵ So that this research will be prepared using the type of normative juridical research, which is research focused on examining the application of rules or norms in positive law.¹⁶ This research uses various approaches, the approaches used in this study are the *statute approach*, the *case approach*, and the conceptual approach.¹⁷ *The analysis used is qualitative descriptive analysis*, namely by observing data and linking each data obtained with provisions and legal principles related to the problem under study with inductive logic.¹⁸

RESEARCH RESULTS

Indonesian Labor Law Regulation (TKI) is Illegal in Indonesia

The protection of migrant workers is based on Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad. Based on Article 2 of Law No. 39 of 2004, the placement and protection of prospective migrant workers / migrant workers is based on integration, equal rights, democracy, social justice, gender equality and justice, anti-discrimination, and anti-human trafficking. The objectives of migrant worker protection as mentioned in Article 3 of Law No. 39 of 2004 are as follows:

¹² Bima Anggarasena, Law Enforcement Strategy in order to improve Traffic Safety and Realize a Law-Abiding Society, Thesis, Semarang: Diponegoro University, 2010

¹³ Tonny Rompis, Sociological Study of Law on Declining Public Trust in Law and Law Enforcement Officers in North Sulawesi, *Lex Crimen* Vol. IV/ No. 8/Oct/2015, <http://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/10302/9888>, retrieved March 29, 2016

¹⁴ *Ibid*

¹⁵ Suteki and Galang Taufani. 2018. *Legal Research Methods (Philosophy, Theory and Practice)*. Depok: PT. King Grafindo Persada. p. 265

¹⁶ Johnny Ibrahim. 2006. *Normative Legal Research Theory and Methodology*. Malang: Bayumedia Publishing. p. 12.

¹⁷ Peter Mahmud Marzuki. 2008. *Legal Research*. Cet.2, Jakarta: Kencana. p. 29 .

¹⁸ Abdulkadir Muhammad. 2004. *Law and Legal Research*. Bandung: PT. Image. Aditya Filial piety. p. 127

- a. empowering and utilizing the workforce optimally and human;
- b. guarantee and protect prospective TKI/TKI from within the country, in the destination country, until returning to the place of origin in Indonesia;
- c. improve the welfare of migrant workers and their families.

In the placement and protection of migrant workers abroad, the government has the duty to regulate, foster, implement, and supervise the implementation of the placement and protection of migrant workers abroad, where in carrying out these duties the Government can delegate as its authority and / or assistance duties to local governments in accordance with laws and regulations. This is intended as the responsibility of the Government in increasing protection efforts for migrant workers abroad.

As a consequence of this responsibility, in accordance with Article 7 of Law No. 39 of 2004 the Government is obliged to:

- a. ensure the fulfillment of the rights of prospective TKI/TKI, whether they depart through the implementation of TKI placement, or those who depart independently;
- b. supervise the implementation of the placement of prospective migrant workers;
- c. establish and develop an information system for the placement of prospective migrant workers abroad;
- d. make diplomatic efforts to ensure optimal fulfillment of migrant workers' rights and protection in the destination country; and
- e. provide protection to migrant workers during the previous period of departure, placement period, and retirement period.

State protection for its citizens is a citizen's right guaranteed by law. In terms of protection for migrant workers, the right to protection starts from pre-placement, placement period, until post-placement. Abroad, protection for migrant workers is carried out by the Representative of the Government of the Republic of Indonesia, where the protection is based on laws and regulations as well as international laws and customs. In order to provide protection during the placement of migrant workers abroad, the Representative of the Republic of Indonesia conducts guidance and supervision of representatives implementing the placement of private migrant workers and migrant workers placed abroad. During the placement period, it is stated in Article 80 of Law No. 39 of 2004 that the Government / government representatives are also tasked to:

- a. provision of legal assistance in accordance with the provisions of laws and regulations in the destination country and international laws and customs;
- b. defense of the fulfillment of rights in accordance with the employment agreement and/or laws and regulations in the TKI country is placed.

The establishment of the TKI Placement Service Center (BP2TKI) at the end of 2006, the laws and regulations are the elaboration of the mandate of Law 39 of 2004. Permenakertrans number PER-14 / MEN / X / 2010 regulates the registration of sending migrant workers abroad, including:

1. Job seekers who are interested in working abroad must register with the district / city office free of charge.
2. Job seekers as referred to in paragraph (1) meet the following requirements:
 - Be at least 18 (eighteen) years old, except for TKI who will be employed by individual users at least 21 (twenty-one) years old, as evidenced by a National Identity Card (KTP) and a birth certificate/birth certificate from the authorized agency;

- Certificate of health and not pregnant from a doctor for prospective female workers;
- Permission letter from husband/wife/parent/guardian known to the Village Head or Lurah;
- Have a registration card as a job seeker (AK/I) from the district/city office; and
- Have qualifications/educational requirements required by the user.

It is hoped that the existence of regulations governing the legal protection of migrant workers will further ensure the welfare of Indonesian workers. So that there will be no problems related to TKI, especially problems when registering prospective TKI to become TKI.

In Indonesia, Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers regulates protection for Indonesian migrant workers, including migrant workers who work officially abroad. However, for illegal migrant workers, their presence abroad illegally makes them vulnerable to exploitation, oppression, and injustice.

Illegal Indonesian Migrant Workers (TKI) is a complex issue and demands serious attention in terms of law, security, and humanity. Although the Indonesian government has made various efforts to protect migrant workers working abroad, there are still many cases where migrant workers operate illegally and are vulnerable to exploitation and human rights violations. In this paper, we will discuss the legal review of the protection of illegal migrant workers abroad, including challenges and possible solutions.

Illegal migrant workers face various legal challenges that threaten their security and well-being. Some of the key challenges include:

1. **Absence of Legal Protection:** Illegal migrant workers generally work without valid permits or documents, so they do not have adequate legal protection in the country where they work.
2. **Exploitation and Human Rights Violations:** Due to their illegal status, migrant workers are vulnerable to exploitation by unscrupulous employers or job search agencies. Human rights violations such as low wages, excessive working hours, and other inhumane treatment often occur.
3. **Risk of Criminalization:** In some countries, illegal migrant workers may be subject to legal action or deportation if caught by authorities, which can increase their insecurity.

There are four main factors that are dominant in influencing legal protection for illegal migrant workers abroad, namely laws and regulations, government policies, private parties and private parties of illegal female migrant workers

a) Laws and Regulations

In terms of laws and regulations, the basis for protection from illegal migrant workers can be drawn until the 1945 NRI Constitution as the constitution as well as the highest law. Human rights, in the 1945 Constitution has been guaranteed its regulation in the preamble, namely in the phrase "..... protect all Indonesian virgins." The guarantee of human rights protection is also contained in the body of the 1945 Constitution, namely in articles 27, 28, 29, 30, 31, and article 34. After the 1945 Constitution was amended, the protection of human rights was guaranteed to be more comprehensive when compared to the 1945 Constitution before the amendment.

Through this provision, it can be the basic basis that the protection of illegal migrant workers is a constitutional mandate as the highest law. Legal protection of illegal migrant workers is an obligation of the state towards its citizens. So even though it has illegal status, legal protection cannot be simply ruled out. Of course, there are different mechanisms when compared to migrant workers who have official

documents as a guarantee of legal certainty. However, the government must still be present in efforts to protect these illegal female migrant workers.

In addition to the 1945 NRI Constitution, the legitimacy of legal protection for illegal migrant workers can be traced to the PPMI Law. Unfortunately, in the law a quo there is not a single article related to the protection of illegal migrant workers. Even the PPMI Law implicitly framing the protection of migrant workers. Indirectly, the PPMI Law only confirms that legal protection is only provided for migrant workers who have official documents.

Even so, the PPMI Law provides strictness in the form of criminal sanctions for parties who dispatch PMI illegally. This point is important as an effort to break the chain of illegal PMI departure. Article 83 affirms a maximum criminal threat of 10 years or a maximum fine of 15 billion rupiah for people who do not meet the requirements by deliberately placing PMI. Article 84 paragraph (1) provides provisions for officials who dispatch PMI illegally, they will be threatened with a maximum prison sentence of five years and a maximum fine of one billion rupiah. Legal protection for illegal female migrant workers in the PPMI Law can be categorized as a preventive effort

b) Government Policy

The second factor is government policy as an application of laws and regulations. Government policy towards illegal migrant workers is strongly influenced by political will. The current government paradigm of illegal migrant workers is that when someone becomes an illegal migrant worker, their rights disappear. This condition is certainly contrary to the principle of good governance where the government must be the bearer of the mandate as well as the servant of the people. In this case, there is a legal gap between laws and regulations, especially the 1945 NRI Constitution, and the policies of the government itself. The problem of illegal female migrant workers abroad is a fact that must be resolved by establishing a legal protection system. Without this mechanism, it will create a legal vacuum (*rechtsvacuum*) where illegal female migrant workers are prone to losing their inherent rights.

c) Private Parties

In the placement of migrant workers, the role of the private sector is very large since the pre-placement, placement, and post-placement processes. So that the influence of the private sector, in this case PPTKIS, becomes a factor that influences the direction of legal protection policies for illegal female migrant workers abroad.

From the data collected, it can also be seen that PPTKIS is one of the main factors although it is not the only emergence of illegal PMI. Information was delivered by Anies Hidayah from Migrant Care who stated that the high cost of handling official documents resulted in the emergence of illegal migrant workers. Unfortunately, even by holding official documents, there is no legal certainty for migrant workers. Such as the case of PT SSS, where victims who register officially but are actually placed not in accordance with the employment agreement so that they have illegal status

The PPTKIS mode as described above can be classified as trafficking. Another mode is to "sell" prospective migrant workers through foreign agents, so that when PMI works most of the salary goes to the "pockets" of PPTKIS and foreign agents. Another fraudulent practice carried out by PPTKIS is dispatching migrant workers who are not old enough

With such a large portion, when the private sector follows the placement mechanism as it should, the possibility of the emergence of illegal migrant workers is relatively small. Therefore, the government through BNP2TKI needs to conduct regular monitoring and controlling or *money* on PPTKIS. The results

of the money were followed up by a review of the license given to PPTKIS as well as sanctions both in administrative and criminal terms against parties who violated the law.

d) Personal Illegal Migrant Workers

The last factor that affects the legal protection of illegal female migrant workers abroad comes from the individuals of these illegal migrant workers. There is a kind of fear felt by illegal migrant workers abroad to report their cases. The absence of official documents makes illegal migrant workers indirectly have committed violations of the law, especially in the field of immigration. This condition places illegal female migrant workers as victims as well as suspects.

The excesses of this reality make illegal migrant workers tend to remain silent and not report to the authorities when their rights as human beings and workers are castrated. Illegal female migrant workers tend to receive any inhumane treatment. If it reaches the limit, illegal female migrant workers choose to run away to find a new employer or return to their hometown. So that cases of violations of the law against illegal female migrant workers are not smelled by the public except for a handful of cases that have become the focus of the mass media. As a result, public and government attention is not so great on efforts to arrange a legal protection mechanism for illegal female migrant workers.

Legal Review of the Protection of Illegal Indonesian Workers (TKI) Abroad

As an effort to provide protection for prospective Indonesian Workers Abroad/Indonesian Workers Abroad, the Government together with the House of Representatives of the Republic of Indonesia (DPR RI) have established Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad (Law No. 39 of 2004). The government also established Presidential Instruction No. 6 of 2006 concerning the Policy for Reform of the Placement and Protection of Indonesian Workers (Inpres No. 6 of 2006) in order to optimize efforts to protect migrant workers and established the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI). At the level of implementing regulations, the Government issued Regulation of the Minister of Manpower and Transmigration Number 22 of 2014 concerning the Placement and Protection of Workers Abroad, however, these policies are not effective in improving the service and protection of Indonesian Workers Abroad.

Related to legal protection for migrant workers working abroad has actually been regulated in several laws and regulations. Such as Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. Article 33 explains that in general, the government does have an obligation to provide legal protection to migrant workers working abroad.

Furthermore, in the same Law, the explanation of Indonesian Migrant Workers (PMI) is explained in the general provisions in article 1 point 1, that: "Prospective Indonesian Migrant Workers are any Indonesian workers who are qualified as job seekers who will work abroad and are registered with the district/city government agency responsible for employment." This point explicitly only recognizes and provides legal protection for migrant workers registered with official agencies.

This means that in the perspective of Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, unregistered or illegal migrant workers cannot get legal protection. Even though the facts on the ground reveal that cases of law violations are more common for illegal migrant workers working in Malaysia, users of illegal worker services are aware of the weakness of workers before the law, especially

illegal migrant workers. Even if these migrant workers are exploited and violated legally, they will not dare to report it, they are constrained by official documents.¹⁹

This requires the government not to turn a blind eye. Although the migrant workers are illegal, they still have the status of Indonesian citizens. Article 28 D paragraph (1) of the 1945 Constitution explains that, "Everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law". This article mandates the country to be responsible for every citizen, regardless of when and where. Moreover, Indonesian citizens in other countries, especially Malaysia as the country most get the supply of legal and illegal migrant workers, including the violations they receive.

Regarding the implementation of legal protection for illegal migrant workers in Malaysia, it is interesting to quote Hardijan Rusli's writing, which he quoted from article 49 of Law No. 39 of 1999 concerning Human Rights, that women have the right to get special protection in the implementation of their work and profession against things that threaten their safety and / or health regarding women's reproductive function. As well as the special rights inherent in women due to their reproductive function, guaranteed and protected by law.²⁰

Although illegal migrant workers face major challenges, several legal protection measures have been made:

- 1. Migrant Worker Protection Regulations:** The Indonesian government has issued various regulations to protect migrant workers working abroad, although its main focus is on migrant workers operating legally.
- 2. Diplomatic Efforts:** The Government of Indonesia through its representatives abroad often makes diplomatic efforts to protect illegal migrant workers, although limited by limitations in international law and bilateral relations with destination countries.
- 3. International Cooperation:** Cooperation with countries where illegal migrant workers work can enhance their protection, although such cooperation is often difficult to implement.

Every prospective TKI / TKI has the right to obtain protection in accordance with laws and regulations, starting from pre-placement, placement period, to post-placement (Article 77 of the PPTKILN Law). The Private TKI Placement Executor is responsible for providing protection to prospective TKI / TKI in accordance with the placement agreement (Article 82 PPTKILN). Every prospective TKI / TKI who works abroad either individually or placed by the implementation of private TKI placement must participate in the TKI development and protection program (Article 83 PPTKILN). The migrant worker development and protection program is further regulated by Government Regulations. However, the government regulation has not yet been issued.²¹

Legal migrant workers will be registered with the district/city government agency responsible for employment, as well as registered with the relevant agency as foreign workers in the recipient country. Legal migrant workers also have an employment agreement, which is an agreement between workers and employers or employers that contains the conditions of work, rights, and obligations of related parties, based on the principle of open, free, objective, and fair and equal without discrimination, the placement of legal migrant workers is directed to place workers in positions that are in accordance with their skills,

¹⁹ Adharinalti, Legal Protection against Irregular Labor Abroad, *Journal of Rechtsvinding*, vol. 1, No. 1, 2012, 160

²⁰ Hardijan Rusli, *Labor Law*, (Ghalia Indonesia: Bogor, 2011), 81

²¹ Ida Hanifa, *op.cit.*, p. 162

talents, interests and legal protection. Illegal migrant workers are Indonesian workers who work abroad but do not have official permission to work in that place, these migrant workers do not follow the procedures and legal mechanisms that exist in Indonesia and the recipient country.²²

Four categories of foreign workers are considered illegal:

1. Those who work outside their official period of residence.
2. Those who work outside the scope of activity are allowed to their status.
3. Those who work without a status of residence are work permits or without permission. Persons who enter the country unlawfully for the purpose of engaging in k
4. Income-generating or business activities.²³

The policy to send workers in Indonesia should be preceded by the rule of law to protect Indonesian workers abroad. There are many reports recorded that workers have problems with the law, for example involved in cases of murder of employers, mistreatment experienced by migrant workers, unpaid salaries for years, fraud by labor service placement agents, termination of employment before the end of the employment agreement, *overstay*, and many other problems.²⁴

Migrant workers with illegal conditions often receive inhumane treatment. In addition to not being given proper housing, they also often do not get proper food rations. Sometimes in a day they only get food rations once, even though they work from dawn to midnight. They work seven hearts without days off. They also do not have health insurance and life insurance, so if illegal migrant workers get sick or die, there is no guarantee of costs for treatment and return of the body to Indonesia. Many illegal migrant workers work under threat and pressure not to be reported to the police as undocumented workers.²⁵

Legal migrant workers with official documents will be safer and get legal protection when working abroad. In Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad (UU PPTKI LN), the protection of migrant workers is regulated in Chapter VI Article 77-Article 84. As for illegal migrant workers, it is not mentioned that they will get the same protection as legal migrant workers.²⁶

The problem of handling illegal migrant workers is a complicated and complex one. This is due to the legal status of TKI who are *illegal aliens* or illegal inhabitants of a country.²⁷ If you can see that there are still many migrant workers in Indonesia who experience unpleasant treatment by their superiors, there are even many migrant workers who are threatened with the death penalty which in fact these violations are not entirely their fault. From this case, it can be seen that the human rights of others are still lacking to be respected even though human rights are inherent rights in man, which come from God since man was born. And the Indonesian state or other countries must also respect other human rights because human

²² Nina Yolanda, op.cit., p. 203

²³ Novalita, Tita, Social Protection of Women Migrant Workers, Jakarta: Djambatan, 2016.

²⁴ Ida Hanifa, op.cit., p 11

²⁵ Adharinalti, ""Protection of Irregular Indonesian Workers Abroad", *Journal of RechtsVinding*, Vol.1 No.1, 2012, pp 159-160

²⁶ Ibid.

²⁷ Willyam Saroinsong, "Handling the Problem of Illegal Migrant Workers by the Government of Indonesia", *Journal of International Law*, Vol.5 No.4, 2018, p. 833

rights are objectively the main authorities inherent in humans so that they must be respected by any country.²⁸

Based on the provisions above, every Indonesian Worker has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law. Every migrant worker has the right to work and to fair and decent remuneration and treatment in employment relations. The right to life, the right not to be tortured, the right to freedom of mind and conscience, the right to religion, the right not to be enslaved, and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be diminished under any circumstances and by anyone. Everyone, including migrant workers, has the right to be free from discriminatory treatment on any basis and has the right to protection against such discriminatory treatment.²⁹

To minimize the problems faced by workers abroad and protect the dignity and dignity of these workers, the regulation on the placement of Indonesian workers abroad in Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad is a way out.

To improve legal protection for illegal migrant workers abroad, several solutions can be proposed:

1. **Pragmatic Policy:** The Indonesian government needs to adopt more pragmatic policies towards illegal migrant workers, including providing easier access to legalization channels and legal protections.
2. **Stricter Law Enforcement: Governments of** countries where illegal migrant workers work should increase law enforcement against employers who exploit them, as well as strengthen court mechanisms to handle cases of human rights violations.
3. **Education and Information:** Greater education and information efforts need to be made to provide migrant workers with an understanding of the risks of becoming illegal abroad, as well as their rights and how to obtain assistance if needed.
4. **Better Inter-State Cooperation:** Cooperation between countries, both at regional and international levels, should be enhanced to enhance legal protection for illegal migrant workers, including information exchange and coordination in handling specific cases.

Here are some things that may be considered in a legal review of illegal migrant workers abroad:

1. **Immigration Law:** In the destination country, illegal migrant workers may be subject to immigration legal action for violating the rules of entry and stay in the country. This could result in deportation, fines, or even detention.
2. **Labor Contract Provisions:** Illegal migrant workers may not have a formal employment contract that provides legal protection for salaries, working conditions, and other rights. They may engage in informal agreements that are not legally recognized.
3. **Mistreatment and Exploitation:** Illegal migrant workers are vulnerable to mistreatment, exploitation, and harassment in the workplace. They may not have access to institutions that can provide protection, such as trade unions or human rights organizations.
4. **Consular Protection:** Although migrant workers are legally abroad, they still have the right to consular assistance from the Indonesian Embassy or Consulate in the country. This assistance may include legal assistance or repatriation.

²⁸ Triyan Febriyanto, Agus T. Rohman, "Protection of the Rights of Indonesian Workers (TKI) Working Abroad", *Lex Scientia Law Review*, Vol.2 No.2, 2018, p. 142

²⁹ Law Number 39 of 2004 concerning the Placement and Protection of Migrant Workers Abroad, Article 1 point 4

- 5. International Cooperation:** Indonesia may seek to enhance cooperation with destination countries to enhance the protection of illegal migrant workers, although this can be complex due to the political and legal aspects involved.

In a legal review of illegal migrant workers abroad, it is important to consider efforts to prevent illegal departure of migrant workers and also improve protection for those already abroad. This could include measures such as education about the risks of illegal migration, law enforcement against illegal entrepreneurs or brokers, and increased access to legal and consular assistance for migrant workers in need.

CONCLUSION

The results showed that;

- a. In Indonesia, Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers regulates protection for Indonesian migrant workers, including migrant workers who work officially abroad. However, for illegal migrant workers, their presence abroad illegally makes them vulnerable to exploitation, oppression, and injustice. To minimize the problems faced by workers abroad and protect the dignity and dignity of these workers, the regulation on the placement of Indonesian workers abroad in Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad is a way out
- b. In a legal review of illegal migrant workers abroad, it is important to consider efforts to prevent illegal departure of migrant workers and also improve protection for those already abroad. This could include measures such as education about the risks of illegal migration, law enforcement against illegal entrepreneurs or brokers, and increased access to legal and consular assistance for migrant workers in need.

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