

# **Provision of Employment as a Form of Legal Protection for Indonesian Manpower**

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## **ABSTRACT**

There are various legal issues faced by Indonesian Manpower (TKI) who work abroad starting from administrative to criminal categories. Some examples are the wages which are not paid by the employer, persecution up to rape. In addition to problems, overseas Indonesian workers who have just come from abroad also have some problems, such as extortion and illegal levy as revealed by the Corruption Eradication Commission on July 26, 2014.

As a sovereign state Indonesia has the obligation to provide legal protection to workers who are facing legal problems. There are some forms of legal protection that have been conducted by the government namely making laws and regulations governing migrant workers, and the establishing the bodies that oversee workers (BNP2TKI) and legal efforts by the Indonesian government in case there are workers who are charged with death sentence.

From all the above legal protections, there is one more important thing to do to protect migrant workers that is in the form of providing the employment in Indonesia. It is stipulated in the 1945 Constitution article 27 subsection (2) which says that every citizen has the right to get work which is based on humanity. The availability of employment will let Indonesian workers get the job in Indonesia instead of abroad. The next impact is a classic problem associated with the Indonesian government limitations in providing legal assistance in connection with the *locus delicti* outside Indonesia will also be resolved. The forms of provision of employment is started with the establishment of Law governing the ease of forming a business entity as well as the ease of investing equally in all parts of Indonesia. It should also be established a law that requires every business entity either owned by the government or the private sector to employ Indonesian in a large percentage. With these steps, the problems related to workers which happen from year to year can be resolved completely.

**Keywords: Employment, Legal Protection, Indonesian Manpower**

## INTRODUCTION

The number of Indonesian labor force in 2010 was approximately 116 million (Central Bureau of Statistics, 2010). Of this amount, based on the report of the National Agency for Placement and Protection of Indonesian Workers (BNP2TKI) in 2013, the number of Indonesian Workers who work abroad (TKI) reached 512.168 people, consisting of 285.197 the formal sector (56%) and 226.871 the informal workers (44%). According to Law Number 39 Year 2004 Concerning the Placement and Protection of Indonesian Manpower Abroad, "Indonesian migrant manpower hereinafter Referred to TKI is every Indonesian citizen qualified to work abroad in the employment relationship for certain period of time and get the wage." TKI chooses to work abroad for employment in Indonesia is not able to accommodate the massive number of Indonesian workers.

Working abroad on one hand has the positive side that is not found by those who work in Indonesia. Among them are the standard salary which is generally higher than that of Indonesia, the opportunity to gain experience in a foreign country and the wider network that exists because it involves people from various countries. On the other hand, workers also get a variety of issues related to the status of those working in other countries, some of the examples are the wages which are not paid by the employer, persecution up to rape (for women). In addition to problems, Indonesian workers who have just come from abroad also have some problems, such as extortion and illegal levy as revealed by the Corruption Eradication Commission on July 26, 2014.

In connection with the problems faced by workers as mentioned above, the Indonesian government has made some efforts to protect Indonesian citizens. There are some forms of legal protection that have been conducted by the government namely making laws and regulations governing migrant workers, and the establishing the bodies that oversee workers (BNP2TKI) and legal Efforts by the Indonesian government in case there are workers who conducted crime.

Unfortunately, government efforts to protect migrant workers do not resolve problems totally. From year to year, there are always large numbers of workers

who experience legal problems abroad so as if what had been sought by the government are meaningless. The root of the problem is Indonesia has limitations in protecting its citizens due to the International Law that gives full powers to the territorial state to exercise its jurisdiction. Under these conditions, this paper aims to find out what form of legal protection that can be provided by the Indonesian government to the workers so that the workers legal problems do not occur again in the future.

## **LITERATURE REVIEW**

### **Indonesian Manpower**

The regulation of labor is in article 1 point 2, Law Number 13 Year 2003 Concerning Manpower which states that "Manpower is every individual or person who is able to work in order to produce goods and / or services either to fulfill his or her own needs or to fulfill the needs of the society." Furthermore, as the number of Indonesian people who work abroad is increasing from year to year and requires a separate regulation that their rights can be maintained, it is necessary to set up Law which regulates Indonesian workers who work abroad. According to Law Number 39 Year 2004 Concerning the Placement and Protection of Indonesian Manpower Abroad, "Indonesian migrant manpower hereinafter Referred to TKI is every Indonesian citizen is qualified to work abroad in the employment relationship for certain period of time and get the wage.

Workers contribute a large domestic income. According to Gatot Abdullah Mansour, Head BNP2TKI, "in 2010 the money sent to the families from the migrant workers abroad to Indonesia is Rp 60.766 trillion with the assumption that the exchange rate at that time 1 US dollar was equal to Rp 9,022. In the year 2011 it increased to Rp 61.390 trillion. Then in 2012 rose to Rp 67.867 trillion. It Rose again in 2013 to Rp 90.360 trillion and in 2014 until the end of May, the number is Rp 37,837 trillion. "(Www.bnp2tki.go.id, accessed on August 30, 2014).

Unfortunately the workers in doing their job does not always go well, there are several examples of prominent workers who, some of them, even were

sentenced to death. One of the cases is TKI named Ceriyati who worked in Malaysia. One day she tried to run away from her employer's apartment. Ceriyati tried to go down from the 15th floor apartment because she could not stand against torture done by her employer. In her attempt Ceriyati used a rope which was made from her own series of fabric. Her attempt to go down less successful because she stopped on the 6th floor and eventually had to be helped by local Fire Department. (id.wikipedia.org, accessed on 2 September 2014). Another case is extortion carried out by the Embassy/consulate in Malaysia. Indonesian citizens who worked in Malaysia and had an interest to take care of immigration documents were charged with illegal fees. Most of Indonesian citizens at that time were workers. The modus operandi is by issuing double Decree. The Decree adding illegal fees was imposed when dealing with the public, while the decree which did not include illegal charges was used during the time they deposited money to the state. Extortion was detected by the Center for Financial Transaction Reports and Analysis Center (PPATK) who detected unnatural flow of funds from the employee at the Consulate General of the Republic of Indonesia in Penang in October 2005 After the development, apparently the same thing happened in The embassy of the Republic of Indonesia in Kuala Lumpur.

### **Legal Protection**

In the relationship between employers and workers, there are very rare in nature aligned as normatively desirable by the Law. Generally, employers have more power than the workers and therefore tend to control workers. Based on this fact, it is necessary that there should be interference from the government to provide legal protection. Legal protection according to Philip M. Hadjon as quoted by Wijayanti (2010) are:

"Legal Protection is always associated with power. There are two powers are always a concern, the government power and economic power. In connection with the powers of government, issues of legal protection for the people (the governed), the government (which ruled). In connection with the economic power, the problem is the legal protection for the protection of the

weak (economic) against the strong (economic), such as the protection of workers against employers'

Relating to the legal protection for workers, Supomo (1980) mentioned that there are five areas of labor law, namely:

1. "field of deployment / employment
2. field of labor relations
3. field of occupational health
4. field job security
5. field of social security of workers."

Field deployment / employment is the time in which the worker has not undergone the employment relationship. This period is commonly referred to as pre-placement. The next stage is the field of labor relations workers which is started since the time held by the employer industrial relations marked by the signing of the working agreement. After undergoing workers working relationship then he should get the protection of health considering the principle of labor law which is "no work no pay" which means worker will not be paid if he/she does not work. In addition to the health, workers also need protection from the security aspect at the time of his work. It is an obligation for employers to provide safety equipment for workers such as helmets, boots, gloves, masks and so forth. The latter is a guarantee of legal protection that includes social workers Accident Insurance, Life Insurance, Retirement security and Health Insurance.

In the Law Number 13 Year 2003 Concerning Manpower, as inferred by Khakim (2003), mentioned that the scope of protection of the workers / laborers includes:

1. "The protection of the basic rights of workers / laborers to negotiate with employers
2. Protection of health and safety
3. special protection for women, children and person with disabilities workers / laborers
4. Protection of wages, welfare and social security "

The right to bargain with employers generally considered very important to remember because when creating a work agreement the one who is an active party is employers and workers do not have the opportunity to express consent in the employment agreement. Safety and health are the two things that have been submitted by Supomo (1980) and because of its importance it is included in the Law Number 13 Year 2003 Concerning Manpower. New things which are not preset before is special protection to women, children and the person with disabilities workers. Considering they also have the same rights as others, the employer must give a chance to work, but on the other hand it cannot be denied that women, children and persons with disabilities are in fact a group that is weaker than the others. That is why government needs to provide special protection. The latter is related to the protection of wages, welfare and social security. Wage is basically the result of an agreement between workers and employers when negotiating labor agreements, but as stated before that the real position of the worker is under the employer. This resulted in the inability of workers to determine the appropriate wage for his/her work. Worker tends to accept what is offered by the employer resulting in inhumane wages. In this regard, the government should intervene in the formulation of wages to determine the minimum wage that must be adhered by employers.

In connection with the workers, the government explicitly sets its protection mechanisms in Law Number 39 Year 2004 Concerning the Placement and Protection of Indonesian Manpower Abroad. In line with the increasing labor force who want to work abroad and the massive number of workers currently work abroad, so did cases of inhumane treatment of migrant workers both within and outside the country. The case relates to the migrant workers even more diverse and evolving towards human trafficking that can be categorized as a crime against humanity. This law essentially should provide protection for the citizens who will exercise his right to get a job, especially a job abroad, so that they can obtain employment services quickly and easily, placement of the labors and the importance of physical labor safety, moral and dignity. Any workers who work outside of the country are immigrants or foreigners in the country where he works. They can be employed in any region in the country, the conditions that may be

beyond suspicion or hope when they were still in his homeland. Based on the understanding we have to admit that on the first occasion that the best protection must arise from the workers themselves, so we cannot avoid the need to be given a certain limits for workers who will work abroad. The main limitation is the skill or education and the minimum age which are allowed to work abroad. With the restrictions, it is expected to minimize the possibility of exploitation of migrant workers.

## **RESULT AND DISCUSSION**

As an initial part of the discussion we need to remember that Indonesia has experienced a very severe economic crisis in 1997-1998 that were marked by the exchange rate to the United States dollar, i.e. 1 \$US was equal to Rp 16,000. At that time many companies in Indonesia eventually went bankrupt and lay off workers in a very large number. Indonesia eventually managed to move from the crisis but based on the Ministry of Manpower and Transmigration (2011), it stated that

"In many ways, the Indonesian labor market never fully recovered from the Asian financial crisis. The percentage of informal employment and underemployment (underemployment) remained more or less the same since 1996, i.e. before the crisis occurred. Employment opportunities for young people was nearly stagnant over the last decade. "

Further, it can be explained that a result does not recover fully while population growth rate is at 1.49% per year (BPS, 2009) coupled with the increase in life expectancy based on the report of the United Nations Development Program (2010) of 54 years in 1980 to 71 years in 2010 led to the increase of unemployment in Indonesia.

The rising of unemployment caused some people tried to work outside Indonesia with the hope of getting a decent job and wages according to his work. As has been delivered at the beginning of this paper that some of the workers who work abroad and earn a decent income getting humane treatment of the employer but some workers at the other hand experienced problems when working abroad.

Based on the data by BNP2TKI (2008), there were 45.626 cases of migrant workers abroad ranging from mild cases such harsh treatment to rape and murder.

Based on the above facts the government has conducted several things to protect its citizens who have problems when working abroad. Among the things that have been done are to make laws and regulations related to workers. Law Number 39 Year 2004 Concerning the Placement and Protection of Indonesian Manpower Abroad is the actual seriousness of the government in protecting workers. Under this Act are Presidential Regulation Number 81 Year 2006 Concerning BNP2TKI. BNP2TKI is also the government's efforts to ensure that workers rights are protected because according to article 18 Presidential Regulation Number 81 Year 2006 Concerning BNP2TKI, "Deputy Protection has the task to formulate, coordinate, implement and oversee the implementation of technical policy of protection of Indonesian Workers covering standardization, dissemination and implementation of protection ranging from pre-departure during placement, up to Repatriation. "

Looking at the efforts made by the government over the issue of migrant workers, there should be no other cases or at least a reduction from year to year. In fact, cases involving migrant workers persist from year to year in the amount that is still large. Based on this fact, the author wants to convey that as a form of legal protection for the citizens, the most important thing that should be done by the government is to provide employment. At least there are two things that underlie this thinking. First, our Constitution Article 27 Subsection (2) states that "Every citizen has the right to work and decent living for humanity." The meaning of this article is that every citizen should have the certainty that he will get the job worthy of humanity. Workers who work abroad because there is not enough employment in Indonesia are a form of the state's inability to implement this article. Secondly, in an effort to protect workers who work abroad because the country has its limitations with regard to international law which gives power to the state where workers are working to implement the law. Indonesian state has to impose limitations Indonesian law applied to cases involving TKI. As we already know that the Territorial Jurisdiction allows country where the incident takes



place enforce the law, even though the perpetrator or the victim comes from other countries.

In order to implement the provision of employment, there are some steps that can be taken to ensure that the number of jobs available is sufficient order to accommodate Indonesian workers. First, the establishment of law governing the ease of forming a business entity as well as the ease of investing equally in all parts of Indonesia. This is very important because, according to Sutedi (2011) there are some problems in the issuance of a business license after the implementation of regional autonomy that local autonomy has not significantly improve the services in the licensing and implementation of regional autonomy even increasing the amount of the fee. Local governments tend to view that a business license is a source of income that is generally given a target per year. So, they try as hard as possible to increase the cost per unit in hope that it will raise the local revenue. The law is made to be able to describe the spirit of the government to facilitate law subject to create a business entity or legal entity that will absorb labor surrounding the area.

The next effort is establishing a law that requires every business entity owned by either the government or the private sector to employ Indonesian in a large percentage. It is inevitable that the big companies when recruiting workers preferred is competence. Competence is generally measured from the educational background and previous work experience. With this open competition system, the possibility of foreign workers to work in Indonesia is widely open. This of course lead to employment opportunities for Indonesian citizens reduced. The analogy that can be used is a law on the use of local content for the automotive industry where companies that do so will receive large tax incentives that can reduce the selling price to the consumer. A similar thing can be done in companies employing Indonesian people as a percentage and more particularly the people living around the company because it is also a form of corporate philanthropy in the surrounding environment.

Another thing to do is to set the supervision of the implementation of the mechanisms of the above legislation. Given the limitations in the amount of

human resources at the Department of Labor it is necessary to set up a kind of ombudsman for private companies so that the injured party can directly report quickly, not bureaucratic and free of charge. Additional regulatory agencies such as the layering is necessary for the Department of Labor that sometimes excessive work due to the many reports received while they have limited number of human resources. The coming report should be followed up so that it will provide a deterrent effect on the offenders who, in turn, the company and other companies will think deeply if they want to do the same thing.

Implementation of the above three things is actually the implementation of Indonesian sovereignty primarily associated with territorial jurisdiction. In the case of Indonesian citizens working in Indonesia and does not work overseas so the Indonesian government will easily be able to apply the legal system in terms of labor law. The problem is no longer in the realm of international law involving other countries but how law enforcement in Indonesia carry out their duties according to law.

## **Conclusion**

In order to provide legal protection to workers who work abroad, Indonesian government has made several attempts to make the law relating to workers, to form BNP2TKI and legal assistance for workers who committed the crime. These efforts did not make the problems of migrant workers to stop. This paper therefore conveys an important effort that must be done by the government of Indonesia to the problem can be solved in a comprehensive workers that is by the provision of employment for Indonesian workers.

Provision of Employment will lead to people no longer working abroad. This will prevent Indonesia from the difficulty of providing protection to the troubled citizens abroad because it is associated with Territorial jurisdiction. In addition, it is also the mandate of Article 27 paragraph (2) of the Constitution of 1945 The concrete form of employment is the establishment of a law governing the ease of forming a business entity as well as the ease of investing equally in all parts of Indonesia. It should also be followed by the establishment of a law that

requires every business entity owned by either the government or the private sector to employ Indonesian in a large percentage.

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