

## ABSTRACT

### **Strengthening Regulation ASEAN Consensus 2017 : A Case of Protection for Indonesian Migrant Worker**

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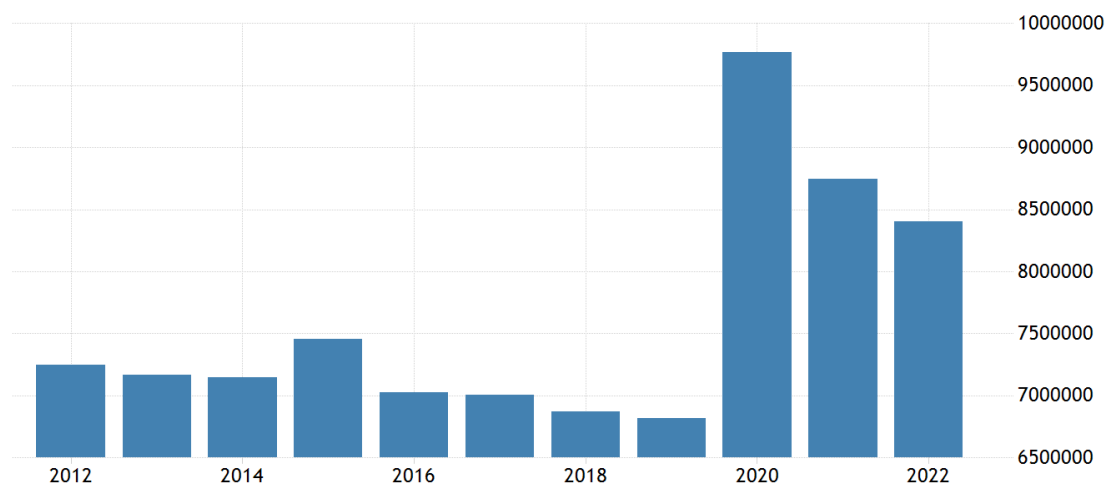
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**Abstract.** Limited job opportunities and high job competition affect the number of job seekers in Indonesia. With the availability of jobs with guaranteed income abroad, people choose to work as migrant workers. The facts reveal that there have been several large cases of Indonesian Migrant Workers in Malaysia, Singapore and in several countries in Saudi Arabia due to the low level of education. Migrant workers face legal problems, especially those who work as domestic helpers for illegal migrants. This study will analyze the reasons and legal issues that cause Indonesian migrant workers to experience rights violations, especially before departure. The 2017 ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers 2017 which regulates the protection of migrant work, including illegal migrant workers. This study uses descriptive qualitative research methods by analyzing normative juridical law, analyzing legal documents in applicable laws and regulations and some literature related to migrant workers and using a single case study approach. The analysis technique used by the author is a pattern matching technique, namely matching data from information and evidence from previous research according to empirical data so as to strengthen the data analysis process. The results of the research in this paper are the first related to the violation of the rights of migrant workers in Indonesia, which is still minimal in the application of before departure protection, referring to the provisions of Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. Second, Indonesia's cooperation with ASEAN countries in the 2017 ASEAN Consensus to resolve cases of illegal migrant workers through laws and regulations. Third, case studies of Indonesian migrant workers who have experienced criminal acts in the countries where they work.

## INTRODUCTION

### **1. Background**

Indonesia is one of the countries that is considered to be developing at this time. This causes Indonesia to experience several problems, one of which is related to population. Every year Indonesia experiences a significant increase in population so that it affects the addition of the workforce. However, the addition of this workforce cannot be channeled properly because the available employment opportunities are actually limited, so this causes another problem, namely unemployment which is also increasing, as well as migrating abroad, hereinafter referred to as Indonesian migrant workers or better known as TKI (Indonesian Workers).



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According to Article 1 number (2) of Law no. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, "Indonesian Migrant Workers are every Indonesian citizen who will, is currently, or has done work by receiving wages outside the territory of the Republic of Indonesia." With the presence of workers who have migrated abroad, of course, the Indonesian government will benefit greatly, because in addition to reducing the number of unemployed in the country, it can also increase the country's foreign exchange. In practice, not all dreams or hopes can be achieved perfectly, this is experienced by many Indonesian workers who migrate abroad, such as to Malaysia, Brunei, Saudi Arabia, etc. In these destination countries, many workers experience problems where they are mistreated by their employers.

A clear example is the case that occurred on December 7, 2018 at around 14:00 at exit D, Clementi MRT station, Singapore. The identity of the migrant worker, 41 years old, was not published at the time of the incident. The migrant workers are victims of employer violence. He was pushed from an escalator that was going down by his employer. In 2020 Indonesian migrant workers in Malaysia were tortured, there were cuts and burns all over their bodies. In 2020, a Violence Case Befalls Ms. RK TKI from Indonesia in Taiwan. The employer pours hot water on Ms. RK's body.

Based on several examples of cases mentioned above, it is necessary to have a protection that is able to overcome existing problems or problems related to the placement and protection of Indonesian Migrant Workers, either before leaving, during work, or after returning home to Indonesia. There is a need for coordination between relevant agencies starting from the Regional Government, the Ministry of Manpower and Transmigration, Indonesian Migrant Workers Protection Agency (BP2MI), as well as the Ministry of Foreign Affairs so that there is no overlap of authority and mutual tug of war between institutions. In the government can monitor every step of the journey of the Indonesian Migrant Workers, so that if a problem occurs, it can be traced where the real fault lies.

## 1.2 Research problem

Based on the background described above, there are two formulations of problems that will be discussed, namely:

1. What are the government's efforts in realizing legal protection for Indonesian Migrant Workers?
2. How is Indonesia's cooperation with ASEAN countries in the 2017 ASEAN Consensus to resolve cases of illegal migrant workers?
3. What are some examples of case studies of Indonesian migrant workers who have experienced criminal acts in the countries where they work?

## 1.3 Research Objectives

The purpose of this paper is to analyze the government's efforts in realizing legal protection for Indonesian Migrant Workers, to understand Indonesia's cooperation with ASEAN countries regarding cases of illegal migrant workers and to examine more deeply the rights of Indonesian Migrant Workers according to Law no. 18 of 2017 concerning the Protection of Indonesian Migrant Workers.

## LITERATURE REVIEW

In conducting this research, the authors found some literature related to this research, namely the journal belonging to Siva Anggita Maharani from Diponegoro University in 2016 entitled Indonesian and South Korean Government Policies in Handling Overstay migrant workers in South Korea in her writing Siva stated that, based on International Labor Organization there are two categories of migration, namely permanent migration and temporary migration. Migrant workers is one example of temporary migration, namely the entry of workers to foreign countries within a certain period of time. Based on the ILO (2013), Indonesia is the second largest sending country for workers. This is evidenced by the presence of 700,000 Indonesian migrant workers who are registered and have worked abroad, especially in Southeast Asian and East Asian countries. 78% of migrant workers who work abroad work as domestic workers. The sending of migrant workers abroad also has a positive impact on the Indonesian economy, namely in the form of remittances. For example, one of the corporations in sending migrant workers is the Government to Government (G to G) bilateral agreement between Indonesia and other countries. Indonesian migrant workers need strong protection from the Indonesian government when working abroad.

Then the next literature that is used as a reference for the author is a journal belonging to Singgih Susilo from the State University of Malang in 2016 entitled Several Factors That Determine migrant workers In Choosing a Destination Country as a Place to Work, Studies in Aryojeding Village, Tulungagung Regency in his writing Singgih argues that there are 5 aspects of population problems, namely : problems of birth, death, migration, low human resources, and employment problems. Employment problems that generally occur due to labor market imbalances, namely that there are more job seekers than the availability of existing job opportunities, which in turn leads to unemployment. The limited job opportunities in Indonesia are one of the reasons why some workers prefer to work abroad, becoming migrant workers because they are motivated by economic problems. It is also from this background that prospective Indonesian Migrant Workers choose a destination country for work that has a high standard of wages, with the lowest possible departure costs. The government also makes it easier for prospective migrant workers to work abroad because for the Government, migrant workers who work abroad will contribute to the country's foreign exchange which is not small in the form of remittances.

And the last literature is the thesis of Mohamad Nico Diemoz Priastomo De May from Brawijaya University in 2013 with the title Implementation of the Protection System for Indonesian Migrant Workers Overseas Derived from East Java in Regional Autonomy. In his writings, Mohamad Nico discusses how the implementation of protection for migrant workers in East Java Province in Regional Autonomy specifically wants to explore how the form of handling cases experienced by migrant workers in the Work Destination Country. According to him, becoming a migrant workers is one of the solutions given by the Government to prevent the high unemployment rate, but being a migrant workers still has risks that must be borne. In his writings, Mohamad Nico examines the implementation of the protection of Indonesian migrant workers, using the symbolic interactionism approach. In his research, it was found that there was already a procedure and in standard form in the form of SOP (Standard Operating Procedure) made by the Indonesian Migrant Workers Protection Agency. however, it is not effective at the local government level, both at the provincial and district/municipal levels. As well as the lack of active role and commitment from the district government to implement the protection procedures.

## METHOD, DATA, AND ANALYSIS

The writing method used in this paper is based on descriptive qualitative research by analyzing normative juridical law. Another term for normative legal research is library research, document study, or doctrinal legal research which has sources obtained through primary legal materials and also secondary legal materials. First of all, primary legal material is authoritative legal material, in the form of statutory regulations. Meanwhile, secondary legal materials are all legal publications which are informal/unofficial documents.

The source data is obtained through legal materials that have previously been collected and researched, and of course also related to the problems in this writing in the form of legal books, legal journals, and also related to the internet. On the other hand, there is some literature related to migrant workers using a single case study approach to use in the main questions of a research regarding 'how or

why', if the researcher still has little opportunity to control the events to be studied, and if the focus of the research is lies in contemporary phenomena (present) in the context of real life.

Basically, the case study method in research uses descriptive analysis in explaining a problem. Descriptive analysis is carried out by focusing on one particular case which will be described, observed and analyse carefully and thoroughly. The case study method can be divided into two, namely single case study and multiple case study. The research focus is the main key basis in the single case study method. The reason researchers use a single case study are; 1) the selected cases are unique; 2) the case selected is a representative case of another case; and 3) the selected case is trending so that it provides a special opportunity for the author. Meanwhile, multiple case studies were carried out by obtaining broad and detailed data regarding several cases (Yin, 2009: 45-46). The author uses a single case study method which is expected to find the essence of the cases discussed.

## **RESULT AND DISCUSSION**

### **2.1 Government Efforts in Realizing Legal Protection for Indonesian Migrant Workers**

Currently, the government has expressed a high commitment to protecting Indonesian workers or now known as Indonesian Migrant Workers (PMI) who work abroad. This protection even starts from recruitment until the migrant workers return to their homeland. Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, legal protection of crime victims as part of community protection, can be realized in various forms, such as through the provision of restitution, compensation, medical services, and legal assistance.

According to Philipus M. Hadjon, legal protection is the protection of dignity and worth, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness. Likewise, legal protection for the people according to Philipus M. Hadjon includes two things, namely:

- a. Preventive legal protection (prevention), namely a form of legal protection in which the people are given the opportunity to file objections or opinions before a government decision gets a definitive form;
- b. Repressive legal protection (coercion), which is a form of legal protection which is more aimed at resolving disputes.

In 2017, the House of People Representatives officially passed the Bill on the Protection of Indonesian Migrant Workers to replace Law no. 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad into Law no. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. A number of differences from the previous law are one of them that local governments are required to play a major role in managing and protecting Indonesian Migrant Workers since recruitment. This is realized by the development of one-stop services for Indonesian Migrant Workers in all districts and cities, especially in the pockets of Indonesian migrant workers.

Law no. 18 of 2017 concerning the Protection of Indonesian Migrant Workers is a form of progress when compared to Law no. 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad. This progress can be seen from the existence of specific chapters and articles regarding the Protection of Migrant Workers, Migrant Workers' Rights, Social Security, Duties and Responsibilities of the Central Government and Regional Governments, as well as the One-Stop Integrated Service for the Placement and Protection of Indonesian Migrant Workers. Article 29 paragraph (1) of Law no. 18 of 2017 concerning the Protection of Indonesian Migrant Workers states that "In an effort to protect Indonesian Migrant Workers, the Central Government provides Social Security for Indonesian Migrant Workers and their families." With this provision, Indonesian Migrant Workers no longer use private insurance, but BPJS Employment. This law emphasizes and gives a greater role to the government and reduces the role of the private sector in the placement and protection of Indonesian Migrant Workers.

Law no. 18 of 2017 provides Social Security protection for Indonesian Migrant Workers which has been implemented by insurance companies that are members of an insurance consortium with protection programs covering pre-placement, placement and post-placement protection. This protective role is currently being transferred and implemented by the Social Security Administration Body in accordance with Law no. 40 of 2004 concerning the National Social Security System and Law no. 24 of 2011 concerning the Social Security Administering Body. For certain risks that are not covered by the Social Security program, BPJS can cooperate with government or private institutions.

## **2.2 Indonesia's cooperation with ASEAN countries in the 2017 ASEAN Consensus to resolve cases of illegal migrant workers**

In 2017, the government of the Republic of Indonesia has approved Law no. 18 of 2017 which regulates the Protection of Indonesian Migrant Workers. Prior to that, Indonesia also had Law Number 6 of 2012 concerning the ratification of the 1990 United Nations Convention. In addition, Indonesia also took part in the negotiations to prepare a follow-up document from the Cebu Declaration (2007). Until 2017, a joint document was agreed upon by ASEAN member countries entitled ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. Through the 31st ASEAN Summit in Manila, Philippines, the leaders of ASEAN countries have agreed on the "ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers." In this case, Indonesia played a role in initiating the consensus because it has a strong interest, namely the protection of migrant workers. Protection can not only be carried out on one party, it needs cooperation from various countries in the form of consensus to legally binding conventions. There are many abuses or acts of violence against Indonesian migrant workers, one thing or another is that receiving countries are still not open to the protection of migrant workers.

The contents of the ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers are the rights of migrant workers, the obligations of sending countries, and the obligations of countries receiving migrant workers. Migrant workers' rights include obtaining visits from family members, as well as keeping personal documents including passports and work permit documents. Migrant workers also enjoy legal equality when detained or imprisoned, pending trial or when detained for other reasons. Meanwhile, the sending country is responsible for providing an orientation program prior to departure which contains human rights, labor rights, working conditions, legal, social, cultural, and so on related to the receiving country (Media Indonesia, 2017).

After the signing of the ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers, Indonesia continued with the ratification of the Indonesian Migrant Worker Law Number 18 of 2017. The enactment of the Law provides flexibility for supervision and protection not only from the Central Government but to the Village Government. According to Hanif Dakiri (Achmad, 2017), there are six other points that are important to understand from the law, namely: first, affirmation of the position of Indonesian migrant workers with Indonesian citizens who carry out activities abroad; second, social security for migrant workers and their families as a form of protection; third, a clear division of tasks between policy makers and policy implementers in the implementation of the protection of migrant workers starting from the stages before work, during work, and after work; fourth, the division of tasks and responsibilities of the central and regional governments in an integrated and coordinated manner; fifth, the duties and responsibilities of the executor of the placement of Indonesian migrant workers abroad are limited by not reducing the government's obligation to provide protection to migrant workers; and sixth, the service and protection of migrant workers is carried out by the central and local governments through the One-Stop Integrated Service (LTSA). The six of them actually provide new hope for the protection of Indonesian migrant workers on paper.

The role of the state becomes very important if we explore it from the perspective of human security. The state is in Indonesia's position as an international actor that needs to make a lot of efforts to protect its migrant workers. Proposing and agreeing on the 2017 ASEAN Consensus is one way for Indonesia to show its commitment and alignment with migrant workers abroad, especially in Southeast Asia. In protecting both legal and illegal PMI, the Indonesian government has made a clear commitment by involving many stakeholders, not only the Central Government but the Regional Governments are also involved in synergizing these commitments. To realize this commitment, efforts need to be made, completed and perfected, both in terms of laws and regulations, coordination, and supervision in dealing with illegal PMI smuggling.

## **2.3 Case studies of Indonesian Migrant Workers**

Cases that occur in migrant workers are usually related to the fraud of middlemen who want to employ them. Most of the time, the victims did not know for sure the brokers who took them. that is the weakness of our migrant workers, who do not clearly know the identity of the people who brought them. If a case like this occurs, it is usually traced to the employers who employ these migrant workers. What is rather difficult is when the victim has changed brokers or employers from hand to hand, for example from Sambas the migrant worker was brought by A, only A knows that the migrant workers. But when they arrive at the Malaysian border, the migrant workers are handed over to B, then brought to the employer, or sometimes some are still changing hands again. It is difficult to find the identity of the brokers.

When there is a problem with the workforce, often the employer does not support the handling of the problem. Likewise, if the problems that arise are related to unpaid salaries, this is more because the employer thinks they have bought the migrant workers from the hands of agents/brokers. It seems that

the employer does not care about the case faced by the migrant workers. In general, the problems experienced by migrant workers in Sambas Regency are mostly caused by illegal departure procedures. People do not know or lack information about the mechanism of working abroad legally. A woman activist in Sambas who cares about the problems of migrant workers in the area where she lives, said that most prospective migrant workers have the assumption that if they already have a passport, it is considered legal/official to become a migrant worker abroad. In fact, they only departed using a tourist visa, not a work visa. There are also those who only use a letter from the Cross-Border Post as a permit to enter Malaysia. There are even those without any documents at all.

In connection with the large number of problematic workers, according to Sofwan Barnas, Head of the Sub-Department of Training and Manpower Placement, Pontianak Manpower and Transmigration Office, in the last three years there has been a tendency for the flow of illegal migrant workers to come to Sarawak to continue to increase. The problem in the latest development, every month can deport up to 500 troubled migrant workers in the area of West Kalimantan. Most of those who were deported had just been released from prison for violating immigration documents or committing crimes. This condition shows that the traffic intensity of illegal Indonesian citizens in Sarawak is relatively high. "It is estimated that currently no less than 100,000 Indonesian citizens are languishing in a number of prisons, and as soon as they are released they are immediately deported to West Kalimantan every Monday and Friday throughout the year," said Sofwan. If every year there are 100,000 illegal migrant workers entering Sarawak, it is estimated that in the same period the presence of troubled migrant workers could more than double. They are compelled to take shortcuts, due to economic demands and ignorance of the rules, so that they are easy to fall into the clutches of brokers who have formed mafia networks. "It is very difficult to eradicate. The mafia network is very neat. The number of groups deported can usually reach hundreds of people. They are very obedient to a number of instructions from brokers, to then return to Sarawak with another identity in their passport," said Sofwan. Usually, the newly deported migrant workers are persuaded again by brokers or coworkers abroad to change companies with the lure of higher wages. The increasing prevalence of these brokers, one of which is also caused by the JP Visa policy implemented by the Government of Sarawak, which encourages brokers to place migrant workers in Sarawak without being accompanied by adequate requirements and protection. Sofwan said that every year Sarawak needs around 1,000,000 foreign workers to be employed in the plantation, timber and construction sectors. Of that amount, which is sent legally to Sarawak every year via West Kalimantan, less than 10 percent. According to him again, formal and informal migrant workers who returned with problems already contain elements of trafficking. this can happen because the migrant workers were cheated.

Generally, it is difficult to handle cases of illegal migrant workers because almost all of them do not have complete identities. This condition makes it very difficult to hold companies or employers accountable. "This accountability is very important because they need to pay for their return to their hometown, work wages, and medical expenses if they are hospitalized," said Sofwan. According to a report from the West Kalimantan Manpower and Transmigration Office, the employment sectors that are estimated to have a large number of problematic workers include household work (so far there has been no official request); shops and food and beverage stalls (very low demand); home industry and small industry (very low demand); entertainment (no official request); shipping/fishing (no official request); oil palm plantations and other small plantations (locations are not commensurate with the estimated needs), and construction of buildings.

## CONCLUSION

The conclusions in this paper are as follows:

1. The government's efforts in realizing legal protection for Indonesian Migrant Workers according to Law no. 18 of 2017 concerning the Protection of Indonesian Migrant Workers is that Indonesian Migrant Workers no longer use private insurance, but BPJS Ketenagakerjaan. This law emphasizes and gives a greater role to the government and reduces the role of the private sector in the placement and protection of Indonesian Migrant Workers.
2. The 2017 ASEAN Consensus is an instrument that is eagerly awaited by each sending country, especially Indonesia. This document provides a binding commitment for countries in ASEAN to pay more attention to the protection of migrant workers in their respective territories. Until 2019, the implementation of the ASEAN consensus still feels not optimal considering our findings that the document has not been properly disseminated to the regional level.
3. The government has tried to make regulations regarding the placement of Indonesian workers abroad, but it seems that conditions on the ground do not allow prospective workers to implement these regulations. Protection of migrant workers has not been maximized, so that it is one of the causes of many acts of violence against migrant workers. Whether we realize it or not, our migrant

workers with low education are already abroad.

## IMPLICATION/LIMITATION AND SUGGESTIONS

The focus of this paper discusses the violation of the rights of migrant workers in Indonesia, which is still minimal in the application of pre-departure protection, referring to the provisions of Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. Then about Indonesia's cooperation with ASEAN countries in the 2017 ASEAN Consensus to resolve cases of illegal migrant workers through laws and regulations. Finally, the case study of TKI who experienced a crime in the country where they work.

One way that can be done to provide understanding as well as early protection, both to prospective workers and those who are already workers, is to provide them with the right information. Maybe the government can't give them in textbooks, to use other media that are simpler, communicative, and easy to understand.

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