



PROTECTION OF MIGRANT WORKERS: A STUDY OF INTERNATIONAL AND INDONESIAN LAW

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ABSTRACT

This study aims to analyze international law and Indonesian law which serve as guidelines for protecting migrant workers who experience problems that can harm these migrant workers. This research method uses Normative Juridical, namely by using secondary data as a research source which aims to examine legal issues based on existing norms in international law legislation and Indonesian law. The results of this study indicate that the role of international law and Indonesian law in protecting migrant workers can be shown through the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. In these regulations it has been explained in detail what are the rights and obligations of migrant workers and their families, as well as what legal actions are taken if problems occur.

Keywords: Migrant Workers, Legal Protection, International Law, Indonesian Law

INTRODUCTION

In general, a migrant worker is someone who goes from their home country to another country to work. Based on Article 2 Paragraph (1) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) the term “migrant worker” refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. The International Labour Organization (ILO) also has a definition related to migrant workers which is defined as someone who migrates, or has migrated from one country to another, with a picture that the person will be employed by someone who is not himself, including anyone who is usually recognized as a migrant, to work. In Indonesia itself, the term Indonesian Migrant Worker is known, which based on Article 1 Number 2 of Law

Number 18 Year 2017 concerning the Protection of Indonesian Migrant Workers, it is explained that the definition of Indonesian Migrant Worker is every Indonesian citizen who will, is, or has done work by receiving wages outside the territory of the Republic of Indonesia.

The number of Indonesian Migrant Workers continues to increase from the previous year, this shows the great enthusiasm of the Indonesian population to migrate to other countries with the aim of working. Based on data from Badan Perlindungan Pekerja

Migran Indonesia (BP2MI), in the period of 2024 from January to October, a total of 227,526 Indonesian Migrant Workers have been recorded and this number will continue to grow until the end of 2024. BP2MI noted that Hong Kong is the main destination country for migrant workers or the placement of Indonesian Migrant Workers with a total of 77,799 workers. This is followed by Taiwan, which is the second largest destination country for Indonesian Migrant Workers with a total of 66,373 workers. And the third largest destination country for Indonesian Migrant Workers is Malaysia with 38,175 workers. Not only these three countries, other countries such as Japan, South Korea, Singapore, Saudi Arabia, Italy, Turkey, and Brunei Darussalam are the most destination countries for Indonesian Migrant Workers.

There are several factors that cause many Indonesians to choose to become migrant workers abroad. First, the limited job opportunities in Indonesia, where from year to year the number of job seekers continues to increase while the available jobs are very limited. Therefore, unemployment in Indonesia continues to increase. This is unfortunate because some of the unemployed population is highly educated. With a high level of education, these people hope to have a decent job, but due to the limited job opportunities, they find it difficult to get one. Secondly, low income; not everyone who works gets a salary that is sufficient to meet the needs of their family. This is due to the high cost of living and the large number of dependents they have. The difference in income between the area of origin and the destination area, where the destination area has a high level of income, will encourage residents to become migrant workers, with the hope that this high income can provide welfare. These two factors are the main factors that cause high interest in becoming migrant workers.

However, the fact is that being a migrant worker is not always easy. Many problems arise and are experienced by migrant workers such as discrimination, human rights violations, exploitation, violence, and many other cases that can harm migrant workers. Therefore, it is necessary to have a law that regulates the protection of migrant workers, both international law and Indonesian law. So that migrant workers get legal protection and legal certainty while working abroad.

RESEARCH METHODS

The writing of this article uses the Yuridis Normatif research method, which uses secondary data as a research source that aims to examine legal issues based on existing norms in international law and Indonesian law. The secondary data is obtained through references to literature books, laws and regulations, scientific works, and other relevant sources. The focus of this approach is to understand and interpret the applicable legal provisions relating to the protection of migrant workers.

RESULTS AND DISCUSSION

a. How International Law Regulates the Protection of Migrant Workers

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) is an international treaty adopted by the UN General Assembly that provides for the protection of the rights of migrant workers and their families. This treaty was motivated by the case of African workers

who were illegally transported to Europe and faced slavery and forced labor that was very concerning. With these cases, the importance of guaranteeing the rights of migrant workers and measures to improve the situation and guarantee the human rights and dignity of all migrant workers began to be discussed. The ICRMW text began to be drafted in 1980 and was completed in 1990, precisely on December 18, 1990. And this agreement came into force on July 1, 2003 after being ratified by 20 countries. Indonesia ratified the treaty which was enacted into Law Number 6 of 2012 concerning the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on May 2, 2012 and became the 46th country to ratify the ICRMW.

ICRMW is a minimum protection standard for migrant workers and their families. There are 4 features of ICRMW as follows:

1. Provides standardized protection guarantees to every migrant worker and their families at every stage of migration (preparation, working period, and return), in every migration area (origin, transit, and destination countries), and in all migration statuses (regular/documented and irregular/undocumented).
2. Become the basis for the formation of every legislation and policy as well as the governance of safe and dignified labor migration, both at the regional, national, and the formation of bilateral and multilateral agreements related to labor migration.
3. Bind all state parties, both countries of origin, transit, and destination of migrant workers to provide policies and services for the protection and fulfillment of the rights of migrant workers and their families.
4. Prevent unsafe migration and human trafficking. Every migrant worker with various legal statuses has the same rights. However, documented workers will not get more rights than undocumented ones. If state parties consistently implement this ICRMW in earnest, then every citizen who wants to migrate from the beginning has been conditioned and directed to work safely and with dignity, because migration policies and systems are already in place.

In part II of Article 7 of the ICRMW, namely non-discrimination in relation to rights, States Parties shall respect and ensure that all migrant workers and their families within their territory or subject to their jurisdiction enjoy the rights set out in the ICRMW without distinction as to sex, race, color, language, religion or belief, political or other opinion, nationality, ethnic or social origin, citizenship, age, economic position, wealth, marital status, birth status and others.

Part III of Article 8 through Article 35 of the ICRMW, namely human rights for all migrant workers and their family members, contains the rights of migrant workers and their families without discrimination. Some examples of the rights of migrant workers and their families are as follows:

- a. Migrant workers and their families should be free to leave any country including their country of origin without restriction;
- b. Migrant workers and their families are protected by law;
- c. Migrant workers and their families shall not be subjected to torture or cruel treatment;
- d. Migrant workers and their families shall not be enslaved;
- e. Migrant workers and their families shall not be subjected to forced labor;

- f. Migrant workers and their families shall have the right to freedom of thought, conscience and religion;
- g. Migrant workers and their families shall have the right to freedom of expression without interference;
- h. Migrant workers and their families shall have the right to freedom of expression;
- i. Migrant workers and their families shall not be arbitrarily or unlawfully interfered with in matters of personal, family, household affairs;
- j. Migrant workers and their families shall not be arbitrarily deprived of their property;
- k. Migrant workers and their family members shall have the right to effective protection from the State against acts of violence, physical injury, threats, intimidation perpetrated by government officials or by individuals, groups or organizations.

Part IV of Article 36 to Article 56 of the ICRMW, namely other rights of migrant workers and their family members who have documents or who are in a regular situation, contains the rights of migrant workers who migrate regularly or have documents. ICRMW conditions the protection and administration of safe, dignified and documented migration. So that migrant workers who migrate regularly or who have documents deserve more rights than those who are undocumented.

Part V of Article 57 through Article 63 of the ICRMW, namely provisions that apply to certain groups of migrant workers and their family members, contains rights for certain groups of migrant workers. The specific groups in question are cross-border workers, seasonal workers, project workers, itinerant workers, self-employed workers, and migrant workers with certain jobs.

Part VI of Article 64 to Article 71 of the ICRMW, namely the promotion of good, equal, humane and legal conditions in connection with the international migration of workers and members of their families, contains efforts that must be made by States Parties, both countries of origin, transit countries, and destination countries to provide protection tools to migrant workers and their family members. States Parties shall provide appropriate services to address issues concerning the international migration of workers and their families.

b. How Indonesian Law Regulates the Protection of Migrant Workers

Indonesian law regulates the protection of migrant workers as stipulated in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. The law considers that Indonesian Migrant Workers must be protected from human trafficking, slavery and forced labor, victims of violence, arbitrariness, crimes against human dignity, and other treatment that violates human rights. Protection of Indonesian Migrant Workers is all efforts to protect prospective Indonesian Migrant Workers and/or Indonesian Migrant Workers and their families in realizing the guaranteed fulfillment of their rights in all activities before work, during work, and after work in legal, economic, and social aspects. Protection of Indonesian Migrant Workers aims to ensure the fulfillment and enforcement of human rights as citizens and Indonesian Migrant Workers; and ensure legal, economic, and social protection of Indonesian Migrant Workers and their families.

The rights of prospective Indonesian migrant workers or Indonesian migrant workers are as follows:

- a. Get a job abroad and choose a job according to their competence;
- b. Obtaining access to self-capacity building through education and job training;
- c. Obtaining correct information about the labor market, placement procedures, and working conditions abroad;
- d. Obtaining professional and humane services and treatment without discrimination before work, during work, and after work;
- e. Practicing worship in accordance with their religion and beliefs;
- f. Obtaining wages in accordance with the prevailing wage standards in the country of placement and/or the agreement between the two countries and/or the Work Agreement;
- g. Obtaining protection and legal assistance for actions that can degrade dignity in accordance with the provisions of laws and regulations in Indonesia and in the country of placement;
- h. Obtaining an explanation of the rights and obligations as stipulated in the Employment Agreement;
- i. Obtaining access to communication;
- j. Mastering travel documents during work;
- k. Association and assembly in the country of posting in accordance with the provisions of the applicable laws and regulations in the country of posting;
- l. Obtaining guarantees for the protection of safety and security of return of Indonesian Migrant Workers to the area of origin; and/or
- m. Obtaining documents and Work Agreements for prospective Indonesian Migrant Workers and/or Indonesian Migrant Workers.

Not only that, the families of Indonesian Migrant Workers also have the following rights:

- a. Obtaining information about the conditions, problems, and return of Indonesian Migrant Workers;
- b. Receive the entire property of Indonesian Migrant Workers who died abroad;
- c. Obtaining copies of documents and employment agreements of prospective Indonesian Migrant Workers and/or Indonesian Migrant Workers; and
- d. Obtaining access to communication.

Protection of Indonesian Migrant Workers includes Protection Before Work, Protection During Work, and Protection After Work. Protection before work includes administrative protection, namely the completeness and validity of placement documents; and the establishment of working conditions and terms. As well as technical protection, namely the provision of socialization and dissemination of information; improving the quality of prospective Indonesian migrant workers through education and job training; social security; facilitating the fulfillment of the rights of prospective Indonesian migrant workers; strengthening the role of functional employees of job introducers; placement services in one-stop integrated services for

the placement and protection of Indonesian migrant workers; and guidance and supervision.

Protection during work provided is data collection and registration by the labor attaché or designated foreign service official; monitoring and evaluation of employers, work, and working conditions; facilitation of the fulfillment of the rights of Indonesian Migrant Workers; facilitation of the settlement of employment cases; provision of consular services; assistance, mediation, advocacy, and provision of legal assistance in the form of facilitation of advocate services by the Central Government and /or Representatives of the Republic of Indonesia and guardianship in accordance with local state law; coaching of Indonesian Migrant Workers; and facilitation of repatriation.

Protection after work is provided, namely facilitation of return to the area of origin; settlement of unfulfilled rights of Indonesian Migrant Workers; facilitation of management of sick and deceased Indonesian Migrant Workers; social rehabilitation and social reintegration; and empowerment of Indonesian Migrant Workers and their families.

The Government of Indonesia also provides protection in the legal, social, and economic fields to Indonesian Migrant Workers. Legal protection is provided by allowing Indonesian Migrant Workers to work in countries that have laws and regulations that protect foreign workers; have a written agreement between the government of the destination country and the Government of Indonesia; and/or have a Social Security and/or insurance system that protects foreign workers.

Social protection is provided through improving the quality of education and job training through standardization of job training competencies; increasing the role of accreditation and certification institutions; providing competent educators and trainers; social reintegration through skills improvement services, both for Indonesian Migrant Workers and their families; protection policies for women and children; and providing protection centers for Indonesian Migrant Workers in the destination country.

The economic protection provided is by managing remittances by involving banking institutions or non-bank financial institutions in the country and the country of placement; financial education so that Indonesian Migrant Workers and their families can manage their remittances; and entrepreneurship education.

Every Indonesian Migrant Worker Placement Company that commits a violation will be given administrative sanctions which can be in the form of a written warning; temporary suspension of part or all business activities; or revocation of license.

Criminal provisions for someone who is proven to have committed a criminal offense against Indonesian Migrant Workers are regulated in Article 79 to Article 87 of Law Number 18 Year 2017 on the Protection of Indonesian Migrant Workers, which in essence the punishment provided is in the form of imprisonment and fines.

CONCLUSIONS

Migrant workers should get proper protection from the government, both from the government of the country of origin, and the government of the destination country, as well as protection through international law. This is very necessary to avoid problems that will arise by migrant workers such as discrimination, exploitation, violation of human rights, and also violence. The law has regulated the protection of migrant workers through international law contained in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and Indonesian law contained in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. Both regulations have very detailed explanations of the rights and obligations of migrant workers and their families and provide protection in the form of sanctions in the event of violations against migrant workers.

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