

INDONESIAN LABOR PLACEMENT AND ILLEGAL EMPLOYMENT PROBLEMS IN MALAYSIA

Thamrin s
Faculty of Law Islamic University of Riau
Jl. Kaharuddin Nasution, Marpoyan, Pekanbaru 28284
Riau, Indonesia
Email: thamrins1954frtiemail.com

Abstract

The problem of unemployment can cause various social, political, and security impacts. One of the social impacts of unemployment is poverty. The high rate of poverty in Indonesia, then the Government needs to find various solutions, namely by providing employment opportunities to the workforce to work abroad. The choice to become Indonesian Workers working abroad is still a *prima donna*. This study aims to analyze the procedures for Operation of Indonesian Overseas Workers Placement. And want to know the factors that cause illegal TKI in Malaysia. This study is a normative legal research using literature review with the intention to obtain secondary data in the form of legislation as legal documents and other references relevant to Indonesian Workers, especially those working abroad. The procedure of working abroad (Malaysia) can be through PPTKIS, Mandiri, G to G and TKI sent to work in the company itself. In order for the domestic workforce to no longer choose to work overseas, the government should open up the widest possible employment opportunities for the labor-seeking workforce, paying wages comparable to the wages overseas.

Keywords: *Work, Basic Rights, Citizens.*

1. INTRODUCTION

The right to work is an inalienable right of a person. Therefore it is obligatory to be high and respected. In accordance with the mandate of the 1945 Constitution of the Republic of Indonesia In Article 27 Paragraph (2) of the Fourth Amendment, which states "Every citizen is entitled to decent work and livelihood for humanity". Likewise Article 28 Paragraph (2) of the 1945 Constitution "Every person shall have the right to work and to receive fair and appropriate remuneration and treatment in the employment relationship" .

A large population (over population), becomes a problem for the provision of jobs, and can result in potential conflicts. Census, 2015 estimated population of Indonesia reached 252.164.800 inhabitants. The large population becomes an issue that can not be avoided by the government of the Republic of Indonesia. In addition, the poverty rate in 2014 reached 28,000,000. soul. And the unemployment rate in February 2015 is estimated to reach 7.4 million people .

Estimated worker population in February 2015 has reached 120.8 million people, or increased by 6.2 million people compared to the situation in August 2014. Meanwhile, when compared to the conditions in February 2014, the number of working population in February 2015 showed an increase of 2.7 million people. Overall in February 2015 the total number of Indonesian labor force was 128.3 million people, or 6.4 million more increase compared to August 2014. "The amount means an additional 3.0 million people compared to the position of the Indonesian labor force in February 2014. The Level Open Unemployment (TPT), in February

2015 was 5.81 percent, or decreased compared to the Unemployment Rate (TPT) in August 2014 which reached 5.94 percent, and increased compared to the Open Unemployment Rate (TPT) in February 2014 of 5, 70 percent.

The problem of unemployment can cause various social, political, and security impacts. One of the social impacts of unemployment is poverty. Poverty is a tough task to be solved by the Indonesian nation. Poverty has made millions of children unable to get a good education

Given the still high poverty rate in Indonesia, the Government of Indonesia needs to find solutions, and establish various policies and programs in order to realize the fulfillment of basic rights and social welfare for every citizen, in accordance with the mandate of the 1945 Constitution.

One solution to addressing the high rate of domestic unemployment is to provide an opportunity for the workforce to work abroad. The choice to become Indonesian Workers working abroad is still a *prima donna*. This is due to the limited job opportunities in the country. In addition, it is also due to higher wage rates than wages received in the country. During the limited employment and low wage levels in the country, the choice to work abroad as Indonesian Workers remains an option.

The government considered the employment policy, looking at outside employment remained relevant, arguing that the Indonesian nation still faces many labor issues, as the growth of the high labor force with available employment opportunities is limited. This resulted in higher unemployment rates.

From the high interest of Indonesian workers to work abroad, the government should also improve the service and all efforts to protect the interests of Indonesian Workers in order to realize the fulfillment of basic rights of Indonesian Workers, as well as the protection of Human Rights as mandated by Law -No. 39 of 1999, on Human Rights (HAM).

The poverty and inequality of income distribution is due to inequality in the distribution of opportunities and employment between rural and urban areas. This inequality is evident in the development of the workforce that goes much more rapidly than the ability of employment. The vast majority of employment in companies at low organizational levels that do not require specific skills, provides more opportunities for women workers. Poverty, urgent economic demand, and reduced opportunities and incomes in agriculture that do not provide a precise and routine result, and the opportunity to work in industry have provided a strong appeal to the workforce. In fact, many Indonesian women strengthen themselves to work abroad with a relatively larger salary offer.

The large number of Indonesian Workers who work abroad and the large number of Indonesian Workers who are working abroad, on the one hand has a positive side, which can increase the country's foreign exchange and overcome unemployment in the country, but in addition it has a negative side, risk of possible inhumane treatment of Indonesian Workers

Identification of problems

1. What is the procedure of Operation of Overseas Indonesian Workers Placement.
2. What Is The Factor Of Illegal Indonesian Workers In Malaysia

2. METHODOLOGY

Normative Legal Research, ie library research or secondary data research. Legal research conducted by way of researching library materials or secondary data only, can be called normative legal research or legal literature research **Research Approach**

Approach (approach) used in this legal research, researchers utilize the results of legal findings by legal experts and other scientists for the purposes of analysis and explanation. So the approach in this research is the staute approach, meaning to examine and review the legislation and regulations related to Indonesian Workers Working in Malaysia illegally. So this research is done by approach on legal aspect of state responsibility to Indonesian Workers (Illegal) abroad

Case approach (case approach), meaning to examine the various cases experienced by Indonesian Migrant Workers abroad through documentation. The cases are studied to gain an overview of the impact of the norm dimension in a rule of law in legal practice. The use of this approach is intended to understand the relationship of cases that occur with the legal aspects of the responsibility of the state to the Indonesian Workers abroad. The results of his analysis can be an input for the government (state), especially in terms of state responsibility to Indonesian citizens abroad who work illegally.

Nature of Research

Judging from its nature, this research is an analytical descriptive research, with a view to obtaining a picture of the state responsibility for illegal Indonesian Workers in Malaysia. This research seeks to find facts by providing an appropriate interpretation of the data, and the theory underlying the purpose of the state is connected with the protection of human rights. On the other hand seek an explanation of the state's responsibility to citizens who work illegally overseas. It is intended to make a description or description and facts about the problems of Illegal Indonesian Workers abroad. This research seeks to find the right solution of state responsibility from the perspective of Human Rights. So that Indonesian Workers who work abroad as citizens should get legal protection seen Human Rights

3. RESULT AND DISCUSSION

1. Procedure for Implementation of Indonesian Overseas Placement Abroad can be implemented through among others:

a. Executing Private Employment Placement Indonesia (PPTKIS).

The placement of Indonesian migrant workers abroad can be done by Indonesian Private Employment Executives (PPTKIS). The Indonesian Private Employment Executor, who is a legal entity and has obtained written permission from the government to organize the overseas Indonesian Worker placement service, which is required to hold a letter from the Minister of Manpower appointing the Head of the National Agency for the Placement of Indonesian Workers Protection to issue the Letter Deployment Permission. The Deployment License (SIP) granted by the government to PPTKIS to recruit prospective migrant workers from certain areas, for certain positions, and to be employed to certain potential users within a certain period of time

b. Individual Indonesian Employment Placement

Indonesian Migrant Workers who work abroad individually should report to the Government agency responsible for manpower affairs and representatives of the Republic of Indonesia. By requiring documents required to work abroad, such as:

1. Identity Card (KTP), latest education certificate, birth certificate, or birth certificate of birth certificate.
2. Certificate of marital status, bai who have married attach copy of marriage book.
3. of husband or wife, parent's permission, or guardian.
4. Certificate of work competence.
5. Health certificate based on the result of medical examination and psychology.
6. Passport issued by the local Immigration Office.
7. Work visa.
8. Indonesian employment placement agreement.
9. Employment agreement.
10. Having a Foreign Worker Identity Card (KTKLN), an identity card for Indonesian Migrant Workers (TKI) that meets the requirements and procedures for working abroad.

Based on the Regulation of the Head of National Agency for Placement and Protection of Indonesian Workers. PER.04 / KA / 2011, concerning the Technical Guidance of Indonesian Workers who work individually (independently). The provisions that must be considered for Indonesian Workers (TKI) who work individually / independently, among others:

- a. Prospective Personnel (TKI) should seek overseas employment opportunities independently and not justified through other parties, but prospective Indonesian Migrant Workers (TKI) should be in direct contact with users in the country.
- b. Prospective Indonesian Migrant Workers (TKI) are not allowed to work on individual users or households but work with legal users.
- c. Prospective individual worker (TKI) can meilih own type of work in accordance with the ability and skills or competence owned.
- d. The costs incurred can be minimized and there is no salary deduction by the other party.

Procedures to be followed by Indonesian Workers (TKI) working individually, namely:

- a. Individual Candidate (TKI) must enroll in the District / City Labor Office.
- b. Individual Candidates (TKI) singles apply to users by attaching a list of resumes and proof of work competence.
- c. If the user receives the candidate of the Indonesian Labor (TKI) concerned, the applicant will submit the Work Agreement to the Indonesian Labor Force (TKI) for approval.
- d. Prior to signing a Work Agreement, Indonesian Workers' Candidates (TKI) must study and understand the contents of the work agreement well before deciding to accept the work being signed and signed the Work Agreement.
- e. Individual Candidates (TKI) apply for the issuance of Foreign Employee Identification Card (KTKLN) to the Indonesian National Placement and Protection Agency (BNP2TKI) or the local Human Settlements and Protection Agency (BP3TKI) by applying, Passport, and Work Agreements that have been signed by the users and Indonesian Workers (TKI) concerned.
- f. Indonesian Workers Placement Through Government to Government (G to G) Government and Government to Private (G to P).
- g. The placement of Indonesian Migrant Workers (TKI) by the government is the placement of Indonesian Migrant Workers (TKI) to the state of the country conducted by the government on the basis of a written agreement between the Government of the Republic of Indonesia and the Government of the destination country of placement through Government to Government (G to G), or the Government Republic of Indonesia with legal user in destination country of placement through Government to Private (G to P).
- h. The placement of Indonesian Migrant Workers (TKI) by the Government, may only be made on the basis of a written agreement between the government and the Government of

the country of the user of the Indonesian Migrant Workers (TKI) of the legal user in the destination country.

i. The Placement of Indonesian Migrant Workers for Overseas Company Ownership

Placement of overseas migrant workers for the benefit of the company itself must obtain written permission from Menetri Tenaga Kerja, by fulfilling the requirements, namely:

- a. The company concerned must be a legal entity established under Indonesian law.
- b. Indonesian workers (TKI) who are placed are the workers of the company itself.
- c. The Company has evidence of ownership relations or employment agreements known to representatives of Republic Indonesia.
- d. Indonesian Migrant Workers (TKI) already have employment agreements.
- e. Indonesian Migrant Workers (TKI) have been enrolled in social security program of workforce and / or have insurance policy.
- f. Indonesian Migrant Workers (TKI) who are placed must have Overseas Working Identity Card (KTKLN)

The placement of Indonesian Migrant Workers (TKI) for the sake of the company itself can only be done by, State-Owned Enterprises (BUMN), Regional Owned Enterprises (BUMD) and private companies, which have ownership relationships with overseas companies, obtaining employment contracts in the field expanding business in the placement country, and improving the quality of human resources, in addition to obtaining written permission from the Manpower or appointed officials.

In order to obtain a placement pennit for Indonesian Migrant Workers abroad, the company must submit a written application by enclosing among others:

- a. A declaration that Indonesian Migrant Workers (TKI) will be placed in their own company domiciled abroad for state-owned companies and private companies not Private Implementing Officers of Private Indonesian Workers (PPTKIS).
- b. Contract of employment between the applicant company and the overseas employer for the company which has a contract of employment in the field of business.
- c. Evidence from an overseas authorized institution indicating the expansion of the enterprise / investment of die company concerned abroad for the enterprise in die placement country.
- d. Employment status document of Indonesian Migrant Workers (TKI) to be placed. Written statement of willingness to be fully responsible for the safety, welfare, repatriation and protection of Indonesian Migrant Workers (TKI).
- e. Indonesian Migrant Workers (TKI) to be placed by the company for their own account must be included in the social security program and / or have insurance insurance

Before the prospective Indonesian Migrant Workers (TKI) departs, the company for its own sake, the company must perform data collection through the on-line system in computerized system of Foreign Workers

2. Illegal Indonesian Workers in Malaysia

Adnan Hamid said there were 2,590,398 Indonesian citizens in Malaysia who were mostly migrant workers. Although there is no exact number of illegal migrant workers but certainly more illegal TKIs are undocumented than legal workers.

The reason is the number of illegal migrant workers in Malaysia, because to make the documents considered difficult and the process is long. In addition, many TKI who do not know how to process documents to be legal. This condition causes the TKI to take shortcuts. "They do not complete the documents and are desperate to work abroad.

In fact, in Malaysia many employers require illegal undocumented labor. "Undocumented workforce can cost 40 percent less employers for employee repayment costs." The large number

of illegal Indonesian migrant workers is also encouraged by the high demand for employers for illegal migrant workers.

The Minister of Foreign Affairs of the Republic of Indonesia, Retno Marsudi, said that employers are the factor of many illegal migrant workers in Malaysia. That's what then became the main discussion Retno with Malaysian Foreign Minister Dato 'Sri Anifah Aman in the Ministry of Foreign Affairs of the Republic of Indonesia. According to Retno, the problem of Unlicensed Foreigners (PATI) and illegal immigrant workers in Malaysia is not only focused on the workers but also on every employer who insists on employing immigrants with illegal status. "Indonesia hopes Malaysia will continue to uphold the fair regulation between the roles of workers and employers in the issue of illegal immigrant workers. This hope was expressed by Retno following the raid which was being intensified by Malaysia since early July. In the raid, about three thousand illegal immigrants were arrested by Malaysian police, at least 695 of whom were Indonesian Migrant Workers (TKI).

In addition to the lack of skills to make Indonesian Workers working abroad, especially in Malaysia, are vulnerable to problems. During 2016 alone, 1,334 Indonesian Troubled Workers (TKIB) were repatriated by the Embassy of the Republic of Indonesia (KBRI) Kuala Lumpur. While in 2017, until June 2017, 454 Indonesian Troubled Workers (TKIB) have been repatriated back to Indonesia.

Nonetheless, repatriation is not the right solution in dealing with the Troubled Indonesian Workers (TKIB). For this reason, the Embassy of Kuala Lumpur launched a skills training program "I Want to Succeed" for the Troubled Indonesian Workers (TKIB) which is currently housed in the temporary shelter of the Indonesian Embassy in Kuala Lumpur. "The training program itself has been started since September 6, 2017. Hopefully with this program they do not return so informal workers abroad," said Indonesian Ambassador to Malaysia Rusdi Kirana in Kuala Lumpur, Monday (11/09/17). According Rusdi, not only trained in the Embassy, when returning to Indonesia the Troubled Indonesian Workers (TKIB) will be cultivated in order to become a member of SMEs. The government also plans to provide assistance for the workers to get business credit to open a business in Indonesia.

The reality of cases of undocumented Indonesian labor abroad continue to recur from time to time. While the government has made efforts to reduce, in fact, other similar cases have sprung up almost in the same mode.

The main secretary of BNP2TKI Hermono said that the cause of the number of illegal Indonesian migrant workers abroad can not be separated from the two factors behind it both from within and abroad, because there is an encouragement from within the country that makes people out, such as the difficulty of finding employment. On the other hand there is also a pull factor from outside (the country). Despite similar cases, the two countries with the highest number of illegal migrant workers such as Malaysia and Middle East countries

such as Saudi Arabia, have a slightly different typology. Especially Malaysia, more because there is a traditional migration where people are used to passing by. In addition, ease of access such as transportation, visa-free and even crossing lines make Malaysia a lot of people hunted for a living. But if to the Middle East, purely because of the strong demand that has been dimoratorium since May 2015 so that there prices rise high. This is what encourages traffickers to take advantage of this situation.

Hermono further explained that if the problem of Illegal TKI can be analogy as a tangled thread that is difficult to unravel, Hermono said that this matter should be dissected. Because there is push and pull factor from inside and outside the country why the number of illegal workers abroad is still so much. Why are illegal workers in the Middle East or Malaysia so large, due to high demand. Another factor is the ease of getting a job though undocumented but brave people passing out into the two countries, especially Malaysia. Different for example with Singapore, Taiwan, or Hong Kong. Undocumented is difficult to find employers. If there is, usually escaped from the employer. But when the first entry there is certainly legal, there are blurred and become illegal.

TKI factors become illegal, Minister of Labor Hanif Dhakiri reveal the reasons why the workers can work illegally in the neighboring countries, there is a false agent, there is a company ketipu, there is a willingness of its own, there to the legal there but there is a problem then run blurred. Finally have no documents even the employer's passport and so on, "In addition, there are also other factors that cause it. There are Tenaka Kerja Indonesia (TKI) who enter Malaysia with tourist visa.

Furthermore, Director of Protection of Indonesian Citizens of the Ministry of Foreign Affairs of Indonesia, Lalu Muhammad Iqbal, said that of the estimated 5 million workers in Malaysia, 2.5 million of whom are illegal foreign workers. Of the 2.5 million, 1.25 million of which are from Indonesia. Iqbal added that the largest unlawful entrants (PATI) are in the construction sector with a total of 78,172 people. While other sectors in the service sector (43,415 people), factory or manufacturing industry (approximately 15 thousand people), agriculture (9,500), and the sector of cultivation or oil palm (8,160 people).

The case experienced by Indonesian Workers in Malaysia

1. Suyanti case sticking out on December 21, 2016 at around 12:00 pm. Keduataan Besar Republik Indonesia (KBRI) in Kuala Lumpur obtained information about the discovery of migrant workers in a state of unconsciousness near the sewer at Jalan PJU 3/10 Mutiara Damansara

After receiving the report, the Indonesian Embassy immediately referred the TKI to the Medical Center Hospital of Universiti Malaysia (RS PPUM) to get intensive care. The Embassy has also reported this incident to the Malaysian Police and based on the report, the perpetrators of torture have been detained by Polisi Di Raja Malaysia (PDRM). From the search results of the Embassy, it is known that the TKI victims of torture named Suyanti binti Sutirno, age 19 years, came from Kisaran, North Sumatra. When taken to the hospital, Suyanti was wounded all over her body and bruised her eyes because of torture. During Suyanti's stay in the hospital, the Indonesian Citizens Protection Task Force (PWNI) of the Embassy of the Republic of Indonesia (KBRI) Kuala Lumpur continues to provide assistance.

Upon awakening, based on information from Suyanti, he entered Malaysia on December 7, 2016 through Tanjung Balai to Port Klang. When he arrived at Port Klang, he was picked up by an agent named Ruby. On December 8, 2016, Suyanti was escorted to the home of an employer, a Malay woman. Just one week Suyanti worked, the employer began to physically torture Suyanti. At its peak on December 21, 2016, Suyanti fled from her employer's house for being direatened_ with a large knife by her female

employer. Then, on December 25, 2016, Suyanti was allowed to leave the hospital and accommodated at the embassy shelter. For some time to come, Suyanti also still have to undergo ambulatory. Suyanti has also been given communication facilities with his family in Medan via telephone line. However, on the same day, information was obtained that the perpetrator had been released on bail.

The Embassy itself has sent a memorandum to the Malaysian foreign ministry to express protests, as well as a deep concern over the incident and at the same time requested that the perpetrators be given a punishment in accordance with Malaysian law

2. Siti Hajar, a domestic worker from Garut, West Java, was tortured and not paid her salary for 34 months by her employer in Malaysia. According to Siti Hajar, he was always tortured, doused with hot water, beaten with hard objects to suffer serious injuries, "Indonesian Ambassador to Malaysia Da'i Bachtiar told a press conference in Kuala Lumpur on Monday afternoon, -the victim's picture whose body and head are still full of blood

In fact, according to Amirudin, head of Satgas Protection and Service of Indonesian Citizens of the Indonesian Embassy in Kuala Lumpur, Siti Hajar also tortured her body, torn with scissors. Da i explains the torture to the press after his employer Hau Yuang Tyng or called the familiar "Michelle" was handed over to the Malaysian police for review and prosecution under the law.

After reporting the torture suffered by Siti Hajar to the police station, the victim was then taken to the University of Malaya hospital for a visum. Siti Hajar, West Limbangan villager, Garut, West Java began working as a maid since July 2, 2006. In her first employer only work five days. With her second employer, Michelle, she has been working for 34 months For 34 months, he never received a salary of 500 ringgit per month so that a total of 17,000 rixdollars, said the former Chief of Police.

"From the very beginning, Siti Hajar was often tortured, but the longer her torture became so severe that the victim was seriously injured Sunday night she finally escaped from the employer's house and then took a taxi to the embassy by the taxi driver, the victim was given 10 ringgit

"We thank the taxi driver for not receiving money from passengers, even passengers given money," said Da i..

KBRI then advocate to Siti Hajar since Monday at 08.30. After listening to the victim's information, the Embassy then summoned her employer and Michelle came to the Indonesian embassy at 11 am local time. "At the embassy, Michelle admitted all acts of torture as told by Siti Hajar. Her employer also wailed and wailed while apologizing to Siti Hajar.

4. CONCLUSION

1. The social gap, poverty is still a serious country problem that is very difficult to overcome. Large population (over population), a separate problem for the provision of employment in Indonesia. One solution to reduce domestic unemployment, can be done by providing opportunities to work abroad. To work abroad can be done through, Private Indonesian Employment Placement Company (PPTKIS), Placement of Individual Migrant Workers, Government to Government (G to G), and for the Company's own interests overseas. To cope with working out of the country is not a choice of labor force, it is better for the government to open up employment opportunities with better wage payments.

2. Factors that cause many illegal migrant workers in Malaysia antara other, because of geographical factors that are close between Indonesia and Malaysia, the same cultural factors, factors from employers who can accept Illegal TKI, factor because Malaysian businessmen provide convenience to dapa accepted work without documents and so forth. To overcome the occurrence of Illegak TKI, the government should be able to provide easiness in document management, as well as the relatively low cost to the TKI either going or going to TKI residing in Malaysia

REFERENCES

- Edith Ratna Mulyaningrum Soerjosoeminar, *Perlindungan Hukum Tenaga Kerja Indonesia di Malaysia dalam Perspektif UU. No. 39 Tahun 2004 Tentang Penempatan dan Perlindungan Tenaga Kerja Indonesia di luar negeri*, Disertasi, Program Doktor Ilmu Hukum UNDIP, 2011.
- Lalu Husni, *Hukum Penempatan dan Perlindungan TKI*, Universitas Braw8ijaya, Malang. 2010.
- Setyo Widagdo, *Hukum Diplomatik dan Konsuler*, Bayumedia, Malang, Tahun 2008.
- Undang-Undang DasarRI Tahun 1945
- Undang-Undang NO. 39 Tahun 2004, Tentang P{enempatan dan Perlindungan TKI di Luar Negeri
- Peraturan Kepala Badan Nasional Penempatan dan Perlingungan Tenaga Kerja Indonesia di Luar Negeri (BNP2TKI), No. Per. 10/KA/IV/2010.
- <http://intansaf.wordpress.com/2014/09/26/>, *Perniasalahan Kependudukan di Indonesia*.
- [http://setkab.go.id/bps-penduduk-bekeria-bertambah-62-iuta-orang-pengangguran-terbuka-tu-run-5 81/](http://setkab.go.id/bps-penduduk-bekeria-bertambah-62-iuta-orang-pengangguran-terbuka-tu-run-5-81/).
- <https://www.cnnindonesia.com/internasional/20170811162013-106-234062/majikan-disebut-jadi-faktor-banyaknya-tki-ilegal-di-malaysia/>
- <http://citizen6.liputaii6.co.in/read/3090672/kbri-di-malaysia-luncurkan-pelatihan-keterampilan-tki-bermasalah>
- <http://news.metrotvnews.com/news/GN167vgk-bnp2tki-banyaknya-tki-ilegal-karena-dua-faktor>
- <http://www.republika.co.id/berita/nasional/umum/14/04/25/n4kjq2-ini-penyebab-tki-ilegal-jauh-lebih-banyak>
- <https://news.detik.com/berita/d-3381679/tki-suvanti-disiksa-di-malavsia-penierintah-lavangkan-nota-protes>.