

**PLACEMENT PROCEDURES OF INDONESIAN MIGRANT WORKERS
IN MALAYSIA: CASE STUDY AT PPTKIS BANTUL REGENCY**

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Name : Baiq Nuzulia Putri
Student Number : 20140610316
Faculty : Law
Major : International Program for Law and Sharia
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Written by:



Baiq Nuzulia Putri

20140610316

Advisor



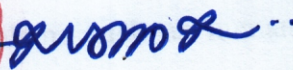
H. Nasrullah, S.H., S. Ag., MCL,

NIK. 1970061720004153045

Endorsed by,

Dean of Faculty of Law

Universitas Muhammadiyah Yogyakarta



Dr. Trisno Raharjo, S.H., M.Hum.

NIK. 19710409199702 153 028

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By: Baiq Nuzulia Putri

International Program for Law and Sharia, Faculty of Law, Universitas
Muhammadiyah Yogyakarta, Brawijaya Street, Tamantirto, Kasihan, Bantul,
Yogyakarta, INDONESIA 55183

Email: baiqnuzuliaputri@yahoo.com

ABSTRACT

The problem of Indonesian Migrant Workers is a never-ending issue in Indonesia. They faced various risks and problems since before their departure, during their employment, and after returning home. This research aims at exploring whether the placement procedures conducted by PPTKIS Bantul Regency had fulfilled or not the requirements mentioned in the Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers in Malaysia. This study also aims to find out their obstacles and problems. The research is normative and empirical legal research using the juridical approach with descriptive and qualitative analysis. The data were collected through library review and field research as well as an in-depth interview with relevant resource persons. The results show that there are some problems in the placement procedures done by PPTKIS Bantul Regency to Indonesian Migrant Workers who are going to work in Malaysia. The placement procedures are not compliance with Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers abroad. Then, they faced many obstacles and problems such as human trafficking, slavery, and human right violation before their departure and during their employment in Malaysia. This research recommends that the placement procedures should be evaluated and revised, and the government should give more attention to Indonesian Migrant Workers during their working session in Malaysia because

they work abroad to earn a good living that cannot be given by Indonesian government.

Keywords: *Indonesian Migrant Workers, Placement Procedures, PPTKIS.*

A. Introduction

Indonesia is one of the migrant worker suppliers. From about 270 million of the Indonesian population, 115 million of them are labor forces; nevertheless, the job opportunities in Indonesia are very limited.¹

The condition of Indonesian society can be seen from the statistics data that the unemployment rate in Indonesia, on February 2015 was 5,81 percent and increased into 6,18 percent on August in the same year. On February 2016 there was 5,50 percent and on August 5,61 percent. Furthermore, within the same period (February-August 2017) the number of unemployment still increased from 5,33 percent to 5,50 percent.² It means that the unemployment figures reflect undeniable fact that the numbers of job seekers in Indonesia are very high.

According to the Budi Wantara, the staff in the Department of Manpower and Transmigration (DISNAKERTRANS) of Bantul Regency, a total of 500 Indonesian Migrant Workers (hereafter is referred to as TKI) departed to Malaysia in 2017.³ It can be inferred that there is an employment scarcity in Indonesia, it is difficult to find a job in Indonesia for those of elementary, high school, diploma, and university graduates. This condition has encouraged them to try their luck by working at formal and informal sectors in Malaysia. Besides, the job vacancies in Malaysia

¹Mahidol Migration Centre, 2017, Migrant Workers Right to Social Protection in ASEAN: Case Study of Indonesia, the Philippines, Singapore and Thailand, Accessed from <http://www.ilo.org>, on Thursday 2 November 2017.

²Badan Pusat Statistik, 2017, “Tingkat Pengangguran Terbuka (TPT)”, <https://www.bps.go.id/Brs/view/id/1376>, accessed on Sunday, 5 November 2017

³Interview’s result with Penata *TKI Pengantarkerja Penyeliain* the Department of Manpower and Transmigration (DISNAKERTRANS) of Bantul Regency, Budi Wantara, on February 13, 2018.

are still opened with promising salaries.⁴ Malaysian is ranked as the most favorite destination for Indonesian workers compared to Middle East or other ASEAN countries because of its geographical proximity factor and similar cultural background.

Based on the Article 27 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia also mentions that “*Every citizen has the right to work and to live in human dignity*”.⁵ These articles proved that all citizens who are willing and able to work should be given work so they can live as human beings who have rights protected by law.

The placement program of Indonesian Migrant Workers by the private agency (Pelaksanaan Penempatan TKI Swasta, hereafter is referred to PPTKIS) Bantul Regency in Malaysia is one of the efforts to combat the problem of unemployment. The role of the government in the program is focused on the coaching aspect, such as protecting and providing various easiness on the hooked parties, especially of TKI and private agency (PPTKIS).

Based on the background above, the researcher is very interested in conducting a research entitled “**Placement Procedures of Indonesian Migrant Workers in Malaysia (Case Study at PPTKIS Bantul Regency)**”.

B. Research Method

The type of this research is normative-empirical legal research with juridical approach. The methods of collecting data are by library research and field research (interview). This research was conducted in the Department of Manpower and Transmigration of Bantul Regency, the office of Center for Placement and Protection of Indonesian Migrant Workers (BP3TKI) of Yogyakarta, PT. Dian Yogya Perdana as the Private

⁴ Redatin Parwadi, “Penyimpangan Kebijakan Pengiriman TKI ke Luar Negeri”, Fisip Universitas Tanjungpura, *Jurnal Kebijakan Publik*, Vol. 3, No. 1, Maret 2012, hlm. 1-57

⁵ Republik Indonesia, 2004, *Law on Placement and Protection of the Indonesia Migrant Workers*, Law No 39 of 2004, Statute book No 133, Supplement statute book No 4445, part of explanation.

Worker Placement Agency (PPTKIS) of Bantul Regency. The respondents are Mr. A. Habib Ma'sum (Head of Administration and Finances) in PT. Dian Yogya Perdana, Mrs. Desliana Kumala Sulistyan as the candidate of TKI, Mrs. Pariah as the ex TKI, Mrs. Mei Sarani as the candidate of TKI. The informant is Mr. Budi Wantara (Pengantar kerja Penyelia) in the Department of Manpower and Transmigration (DISNAKERTRANS) of Bantul Regency, Mrs. Ari Soemarni (Pengantar kerja Ahli Madya) in the Office of Center for Placement and Protection of Indonesian Migrant Workers (BP3TKI) of Yogyakarta.

C. Finding and Analysis

1. Placement procedures of Indonesian Migrant Workers in Malaysia Case Study at PPTKIS Bantul Regency

a. The PPTKIS

The Private Worker Placement Agency, private agency, is a legal entity having obtained a written permit (SIPPTKI) "*Surat Izin Pelaksana Penempatan TKI*" from the government to conduct worker placement service abroad. Based on the Article 13 of Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad, in order to obtain SIPPTKI, the private agency should fulfill requirements:

- 1) A limited liability company (PT) established based on regulations;
- 2) Has deposited capital as stated in the company establishment deed minimum Rp.3.000.000.000.- (three billion rupiah);
- 3) Deposit as a guarantee is a form of time deposit of Rp. 500.000.000.- (five hundred million rupiah) to the Government Banks;
- 4) Has worker placement and protection scheme abroad minimum for 3 (three) current years;
- 5) Has training units; and

6) Has worked placement facilities.

b. The Placement Procedure of Indonesian Migrant Workers Abroad

1) Based on the Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad

According to the Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad, as regulated further in the Government Regulation No. 3 of 2013 on the Protection of Indonesian Migrant Workers Abroad, there are several stages of placement procedure of TKI abroad, namely: Pre-placement, Placement Period, and Post Placement.

a) Pre-placement

(1) The Worker Supply Permit (SIP)

The Worker Supply Permit hereinafter called as SIP “Surat Izin Pengerahan” is the permit given by the government to a private agency to recruit candidate worker from a certain area, for a specific position, and to be employed with the particular candidate profession. In order to acquire a SIP, the private agency should possess:

- (a) Placement agreement;
- (b) Worker demand letter from Employer;
- (c) Draft of placement agreement; and
- (d) Draft of an employment contract.

SIP can be extended for a period of 3 (three) months with the provisions of the demand time period has not

ended with the candidate of workers who will be recruited yet/ not yet fulfilled.⁶

(2) The Recruitment

The recruitment of candidate worker by PPTKIS to be carried out to candidate worker who fulfills the requirements:

- (a) Aged minimum 18 (eighteen) years old except for the candidate worker who will be employed by individual employers minimum aged 21 (twenty-one) years old;
- (b) Healthy physically and mentally;
- (c) Not in pregnancy for the candidate of the female worker; and
- (d) Have an education background minimum Junior High School (SMP) graduates or equivalent.⁷

(3) Education and training

In this education and training process, the candidate workers obliged to process working competence certificate according to job requirements or according to the job required in the destination country, and if TKI does not yet have the working competence certificate, so PPTKIS obligate to do educate and trained them based on the job required in the destination country.

The candidate workers shall have the right to obtain education and training on job required, with purposes below:

- (a) To prepare, improve, develop the candidate worker's competence;

⁶ The Ministerial Manpower and Transmigration No. 17/MEN/VIII/2009 regarding of the Pre-departure Training Implementation of Indonesian Migrant Workers abroad

⁷Zaeni Asyhadie, 2007, *Hukum Kerja: Hukum Ketenagakerjaan Bidang Hubungan Kerja*, PT Raja Grafindo Persada, Jakarta, hlm. 203

- (b) To provide knowledge and understand about the situation, condition, customs, culture, religion, and the risk to work abroad;
- (c) Prepare communication and language ability of destination country, and
- (d) To provide knowledge and understand about right and duties of candidate workers.

(4) Healthy and psychological examination

Healthy and psychology examination for candidate of TKI aimed to know their health condition, and psychological readiness condition and also the personality of candidate workers with the jobs are about to conduct in the destination countries.

(5) Document processing

To be placed abroad, the candidate of TKI must possess the document including:

- (a) Identity card (KTP), last education diploma, birth certificate;
- (b) Marital statutes certificate, for a married person to attach a copy of the marriage certificate; and
- (c) A written permit from husband or wife, permit from parents or guardian;
- (d) Working competence certificate;
- (e) Health certificate as the result of health and psychological examinations;
- (f) Passport issued by the local Immigration Office;
- (g) Working visa;
- (h) Worker placement agreement;
- (i) Employment contract;
- (j) KTKLN (Overseas Worker Card)

(6) Competence assessment

Every candidate of TKI who undergo training obligate to carry out the next process that is competence assessment. This step is done to ascertain whether the TKI can be a candidate as fulfilling the qualifications of the skills needed to carry out the work that he will hold abroad.

(7) Pre-departure training “*Pembekalan Akhir Pemberangkatan*” (PAP)

For pre-departure training hereinafter calls as (PAP) “*Pembekalan Akhir Pemberangkatan*,” PPTKIS is obliged to involve the candidate of TKI in PAP program which is held by BP3TKI and facilitated by the provincial service.

PAP is intended to provide an understanding about the legislation of the placement country, which includes the materials:

- (a) The legislation of immigration;
- (b) The employment regulations; and
- (c) The regulations relating to the criminal provisions in the destination country.

(8) Departure

In this departure, the PPTKIS must report every candidate worker departure to the Representative of the Republic of Indonesia in destination countries. Besides, every worker obliges to report his/her arrival to the Representative of the Republik of Indonesia in destination countries.

b) Placement Period

Before the departure, every PPTKIS accommodates the candidate of TKI and accommodating adjust to position

and/or type of job required abroad. During the accommodate time, the PPTKIS treats by the candidate of TKI properly and humanity.⁸ Moreover, every TKI obligate to report his/her arrival to the Representative of the Republic of Indonesia in the destination countries. PPTKIS is prohibited to place workers who are not mentioned in the employment contract and signed by the concerned worker.

c) Post Placement

The returning of TKI from the destination country to his/her origin point departure become the responsibility of the PPTKIS. Then, in the process of post placement, the TKI still have the protection especially for PPTKIS or the government. The protection of TKI during placement includes:

- (1) The PPTKIS is prohibited to the place of TKI who is not in accordance with the work as defined in working agreement;
- (2) The Representative of the Republic of Indonesia give the protection until placement of TKI abroad, the Representative of the Republic of Indonesia carried out guidance and supervision of the executing of PPTKIS and TKI who placed abroad;
- (3) The protection of TKI during the placement abroad perform by providing legal assistance in accordance with the provisions of the legislation in the destination country and international law practice.
- (4) The fulfillment of right in accordance with the working agreement and the applicable legislation in TKI placed.

⁸Djuaidji, FX dan Wiwoho Soedjono. Perjanjian Perburuhan dan Hubungan Perburuhan Pancasila, Bina Aksara. Jakarta. 1987

2) Based on the PPTKIS

Based on the description above, there were several procedures that should be in compliance with the legislation, such as:

- 1) Pre-placement;
- 2) The recruitment and selection;
- 3) Education and training;
- 4) Healthy and psychological examination; and
- 5) Document processing.

2. The Obstacle often Encountered by Indonesian Migrant Workers in Malaysia are:

- a. The competence assessment for TKI still lacks because it is only implemented one time, and this is not guarantee for TKI who will work in destination country 2 (two) years or beyond the specified times. Besides the questions of competence assessment, just related to multiple questions, and not related to what TKI will get in the destination country.
- b. The duration of waiting time to departure to destination country is still long time. It takes 2 (two) months to wait for departure to Malaysia, and this is the outside of agreement of TKI.
- c. There are 20 candidate of migrant workers who have not received a visa because the PPTKIS still recruiting the candidate of TKI even though the branch office has closed.
- d. Lack of coordination of report submission by PPTKIS to BP3TKI regarding of the returning TKI from the destination country. This report can be used to find out how many of Indonesian society work abroad and can influence the relevant training for TKI to work in the destination country.

D. Conclusion

1. The placement procedure of Indonesian Migrant Workers in Malaysia at PPTKIS Bantul Regency is not compliance with the Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad, because:
 - a. Pre-departure training just implemented only one time, and this is not guaranteed for TKI who will work in the destination country for 2 (two) years or more.
 - b. From the competency assessment, this competence for the questions just related to basic mathematics, for the example of multiple questions.
 - c. Lack of coordination by PPTKIS to BP3TKI concerning the data of returning TKI from Malaysia, because one of the purposes is related to empowerment programs of BP3TKI.
2. The obstacles often encountered by Indonesian Migrant Workers is an endless problem, including:
 - a. The duration of departure to destination country takes a long time. In this duration of departure, the TKI can take 2 (two) months to wait for departure to Malaysia and this is outside of the agreement.
 - b. There are 20 candidate migrant workers who have not received a visa because the PPTKIS still recruiting the candidate of TKI even though the branch office has been closed.

E. Recommendation

1. The PPTKIS

The PPTKIS should collect the data of TKI from the destination country completely, because it can utilize for empowerment of TKI after what they got from the destination country.

2. The Government

The government should do equitable policy in the term of placement of workers considering and their education whether they graduated from

bachelor degree or elementary, junior high school, senior high school and prefer to Indonesian society, not to the foreigners.

3. For TKI

The best ways to avoid any unacceptable risks while in the destination country are as follows:

- a. Being careful in planning to work abroad;
- b. Knowing the information centers about working abroad through a legitimate office like the Department of Manpower and Transmigration (DISNAKERTRANS) in district/city.
- c. Preparing legal documents.
- d. Showing the original document but never giving the original one to the officer. Moreover, only giving the copy of original document to the officer and then keeping the copy documents by TKI and family, to avoid them from forgery, lost and stolen;
- e. Understanding what is written in the placement agreement and the employment contract and making sure to have an insurance card.

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