

CHAPTER IV

FINDING AND ANALYSIS

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

1. 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:

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

According to the condition progress, the amount of deposited capital as stated in paragraph 1 and guarantee in the form of deposit as stated in paragraph 3 can be reviewed and amended by the Minister Decree. Besides, the Minister may revoke SIPPTKI if the private agency:

- a. Did not fulfill the requirements anymore as stated in Article 13; or
- b. Did not fulfill its obligations and responsibilities and/or violate prohibitions in the worker placement abroad arranged by the Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad.

2. The Placement procedures of Indonesian Migrant Workers abroad

a. 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.

1) Pre-placement

- a) 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:

- 1) Placement agreement;
- 2) Worker demand letter from Employer;
- 3) Draft of placement agreement; and
- 4) Draft of an employment contract.

According to worker demand letter from Employers and employment contract should be approved by the relevant officials of the Representative of the Republic of Indonesia in the destination countries. Besides, SIP issuance procedure further arranged by the Ministerial Regulation No. 22 of 2014 Article 3 Paragraph 1 on the Implementation of the Placement and Protection of Indonesian Migrant Workers abroad, there are:

- (1) The cooperation agreement of placement of TKI between PPTKIS with user or business partner;
- (2) Letter of request for TKI/ Job Order/ Employment Order/ Demand Letter/ *Wakalah* for PPTKIS;
- (3) Draft agreement; and

(4) Placement agreement.

The documents referred to in letters 1 and 2 are made in two languages, they are the language of the destination country and the Indonesian language. Furthermore, SIP must be issued no later than 5 (five) days after the application is filed and includes:

- (1) The number and date of request letter of TKI/ Job order/ Employment Order/ Demand Letter/ *Wakalah*;
- (2) The name candidate users or business partners in the destination countries of placement;
- (3) The number of candidate workers who will be recruited from each district/city;
- (4) The types of work/ occupation, the term, and conditions of work;
- (5) Applicable time period;
- (6) Recruiting area.

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.²⁸

²⁸ The Ministerial Manpower and Transmigration No. 17/MEN/VIII/2009 regarding of the Pre-departure Training Implementation of Indonesian Migrant Workers abroad

b) The Recruitment

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

- (1) 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;
- (2) Healthy physically and mentally;
- (3) Not in pregnancy for the candidate of the female worker; and
- (4) Have an education background minimum Junior High School (SMP) graduates or equivalent.²⁹

The job seeker who wants to work abroad, should be registered in District/City Government Institutions responsible for manpower, where in the recruitment carried out by private agency of job seeker registered in district/city responsible in the manpower where to makes and signs placement agreement with job seeker who fulfilled administrative requirements, and in this process approved by institution responsible in manpower in district/city.³⁰

²⁹Zaeni Asyhadie, 2007, *Hukum Kerja: Hukum Ketenagakerjaan Bidang Hubungan Kerja*, PT Raja Grafindo Persada, Jakarta, hlm. 203

³⁰Sawitri Yuli Hartati, "Peranan Perusahaan Penempatan Tenaga Kerja Indonesia Swasta (PPTKIS) Dalam Perekrutan Calon TKI ke Luar Negeri Melalui Skema P to P", Fakultas Hukum Universitas Muhammadiyah Jakarta, *Social Justitia*, Vol 1 No. 1 Juli 2017, P. 1-19.

c) 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:

- (1) To prepare, improve, develop the candidate worker's competence;
- (2) To provide knowledge and understand about the situation, condition, customs, culture, religion, and the risk to work abroad;
- (3) Prepare communication and language ability of destination country, and
- (4) To provide knowledge and understand about right and duties of candidate workers.

In the process of education and training, should carried out by private agency or training institute that fulfills the requirement based on the legislation. The candidate of TKI who does not

pass in working competence examination is prohibited to be placed.

d) 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.

Besides, every candidate of TKI must undergo health and psychological examination to the institution which has been appointed by the government.

The provisions about healthy and psychological examination for the candidate workers and the appointment of health institutions and institution holding a psychological examination of candidate of TKI should relate to the legislation.

e) Document processing

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

- (1) Identity card (KTP), last education diploma, birth certificate;
- (2) Marital statutes certificate, for a married person to attach a copy of the marriage certificate; and
- (3) A written permit from husband or wife, permit from parents or guardian;

- (4) Working competence certificate;
- (5) Health certificate as the result of health and psychological examinations;
- (6) Passport issued by the local Immigration Office;
- (7) Working visa;
- (8) Worker placement agreement;
- (9) Employment contract;
- (10) KTKLN (Overseas Worker Card)

In worker placement agreement of TKI should contain at least:

- (1) Name and address of private agency;
- (2) Name, sex, age, marital status, the address of workers candidate;
- (3) Name and address of candidate of employers;
- (4) The right and duties of parties which should in accordance with the agreement contained in placement agreement;
- (5) The candidate worker's position and the type of job according to employers requirements;
- (6) The guarantee of a private agency to candidate workers in case the employers do not fulfill their obligations to workers according to the employment contract;
- (7) The Candidate of worker departure time;

- (8) The placement fee should borne by candidate worker and its payment procedure;
- (9) The responsibility on dispute settlement;
- (10)The result of the placement contract violation by either party;
and
- (11)The signatures of the parties in placement agreement.

Based on the description above, every provision related to worker placement agreement may not against law and regulation, and also the TKI placement agreement should make in writing and signed by the candidate worker and PPTKIS after the requirement selected. Besides, the worker placement agreement may not be revoked and/or amended, except on mutual agreement of the parties.

Besides, another type of document to be processed is working agreement. According to Soepomo, the working agreement is an agreement made by worker and employer, where worker declares his ability to pay the worker wages.³¹

Furthermore, Wibowo Soedjono said, that the working agreement is the legal relationship between the person as a worker or laborer with a person as an employer, or an agreement of an

³¹Erwan Baharudin, "Perlindungan Hukum Terhadap TKI di Luar Negeri Pra Pemberangkatan, Penempatan, dan Purna Penempatan" Puspren Jurnal Ilmiah, UIEU, *Lex Jurnalica* Vol.4 No. 3 Agustus 2007: p. 170

individual on one side with the other as an employer, to carry out a job with a wage.

The working agreement between employer and TKI apply after both of parties sign working agreement, and this is as the basis for the implementation of the right and obligations of each party.³² This working agreement contains several provisions, as follows:

- (1) The industrial relation between employers and workers shall occur after the employment contract approved and signed by the parties;
- (2) Every worker should sign an employment contract before the worker departing abroad, where from PPTKIS responsible in this working agreement;
- (3) The employment contract signed before officials responsible for manpower;
- (4) The employment contract contains at least:
 - (a) Name and address of employer;
 - (b) Name and address of worker;
 - (c) Worker position and type of job;
 - (d) Right and the obligations of the parties;

³²*Ibid.*, p.70

- (e) The conditions of work and the requirements covering working hours, wage and payment procedure, leave right and rest of the time, the facilities and social security; and
- (f) The period of the employment contract.

The working agreement made for the maximum period of 2 (two) years can be extended for the maximum period of 2 (two) years, except the period of contract working that provisions for certain position or type of job.

Based on Article 30 Paragraph 1 of the Ministerial Regulation No. 22 of 2014 on the Implementation of the Placement and Protection of Indonesian Migrant Workers Abroad that the extension of employment contract period it is should fulfill the requirements, below:

- (1) The content of the working agreement should be better or at least equal to the previous work before;
- (2) The term of extension of the working agreement is 2 (two) years;
- (3) The approval from family/ parent/ guardian, and
- (4) TKI have the insurance/ health insurance and another social insurance against the risk arising from employment during the period of the working agreement.

Furthermore, based on Article 2 (two) the extension of the working agreement referred to in Paragraph 1 (one) is obliged to guarantee:

- (1) The insurance premium of TKI in accordance with the Ministerial Regulation;
- (2) The legalization of the extension of working agreement;
- (3) Rewards (company payment) for PPTKIS senders and business partner, and individuals also employment of the legal entities in accordance with the employment agreement.

The extension of the employment contract may be conducted by TKI itself or through PPTKIS, where should be mutually agreed by the parties at least 3 (three) months before the first employment contract terminates. The extension of employment contract should be approved by official of the Representative of the Republic of Indonesia in the destination country, and the processing to acquire approval carried out by the private agency. However, for TKI who works in individual employer and their employment contract expired and intend to extend the employment contract, the worker must return firstly to Indonesia.

If the extension is conducted by TKI his/herself, then the PPTKIS has no responsibility for the risks that may happen to the worker during the employment contract extension, and during the employment contract period change in position or type of job, or move to another employer, then the PPTKIS representative obliged to process the employment by making new agreement and report to the Representative of the Republic of Indonesia.

f) 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.

This competence assessment is related to basic mathematics, and this competence test just implemented in 1 (one) day. Based on Article 22 of The Ministerial Regulation and Transmigration No PER/14/MEN/X/2010 on the Placement and Protection of Indonesian Migrant Workers Abroad, also explained that every candidate of TKI obligate to have work skills or

competencies obtained through education, job training/ work experience.³³

g) 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. Every payment of PAP is charged to the local government and/or government budget, and PPTKIS is required to register every candidate of TKI who has fulfilled the administrative requirements and has documents to follow PAP to the PAP operators and must attach the draft of employment agreements, passport, work visa candidate of TKI. This process to be finished within 2 (two) days before TKI leaving for overseas.

PAP is intended to provide an understanding about:

- 1) The legislation of the placement country, which includes the materials:
 - (a) The legislation of immigration;
 - (b) The employment regulations; and

³³Dewi Trisnawati. “Peran Pemerintah dalam Memberikan Perlindungan Terhadap Tenaga Kerja Indonesia yang Bekerja di Luar Negeri”. Studi pada Dinas Tenaga Kerja dan Transmigrasi Provinsi Jawa Tengah. Jurnal, Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Diponegoro, Semarang (2015): p. 1-15

(c) The regulations relating to the criminal provisions in the destination country.

In certain matters of PAP, organizers may include other resources that required in the placement and protection of TKI. The candidate of TKI who has followed the PAP is given a letter of certification following the PAP published by BP3TKI. In the case of the candidate of TKI will work again in the same country and already have the letter of following PAP is not required to follow PAP as long as no more than 2 (two) years since TKI return from destination country to Indonesia.

h) 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.

2) 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.³⁴ 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.

3) Post Placement

Based on the regulation that stated in Article 75 Paragraph 1 (one), that every TKI who will return to Indonesia obligate to report his/her return to the Representative of the Republic of Indonesia in the destination country. 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:

- a) The PPTKIS is prohibited to the place of TKI who is not in accordance with the work as defined in working agreement;
- b) 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;

³⁴Djuaialdji, FX dan Wiwoho Soedjono. Perjanjian Perburuhan dan Hubungan Perburuhan Pancasila, Bina Aksara. Jakarta. 1987

- c) 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.
- d) The fulfillment of right in accordance with the working agreement and the applicable legislation in TKI placed.

b. 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.

There are several procedures in compliance with the regulation, including:

- 1) The Manpower Supply Permit

PPTKIS still delivers the information to the candidate of TKI but do not have recruitment recommendations (SIP) and then still recruiting the candidate of TKI even though the branch office has been closed,

so there are 20 candidate migrant workers who have not received a visa.³⁵

2) Competence assessment

The competence assessment for TKI only done 1 (one) day, and the questions for the competence related to basic mathematics. So, its mean that this cannot guarantee for TKI who will work in the destination country for 2 (two) years or beyond for the specific time.

3) Pre-departure training (PAP)

In this procedure, Pre-departure (PAP) which is held by BP3TKI and facilitated by the provincial service. The materials for PAP including the legislation of immigration, the employment regulations, and the regulations relating to the criminal provisions in the destination country. The Pre-departure training is only carried out by 1 (one).

B. The Obstacle often Encountered by Indonesian Migrant Workers in Malaysia

There are several procedures of TKI before their departure or after returning home, but this procedure cannot guarantee that they are free from obstacles. Among several obstacles often encountered by TKI before departure and return from destination country are:

³⁵Ari Hernawan, "Penerapan Sanksi Terhadap Pelanggaran PPTKIS dalam Pra Penempatan TKI di Luar Negeri", *Mimbar Hukum*, Vol. 19, No. 3, Oktober 2007, P. 335-485

1. 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.
2. 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.
3. 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.
4. 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.