

## **CHAPTER FOUR**

### **FINDING AND ANALYSIS**

#### **A. The Overview of Illegal Indonesian Workers**

In Indonesia the protection of Indonesian migrant workers is clearly mentioned in the fourth Paragraph of 1945 Constitution which stated the government shall protect the whole people of Indonesia and the entire homeland of Indonesia included *Pekerja Migran Indonesia* (PMI). Migrant workers are Indonesian citizen who will work, currently work or has gotten a job for wage outside the territory of Indonesia. Indonesian Migrant Workers are also regulated by the Law No. 18 of 2017 of Protection of Indonesian Migrant Workers, and forms of protection are all efforts to protect the interests of prospective Indonesian migrant workers and/or Indonesian migrant workers and their families.

##### **1. Factors that Influence for being Indonesian Migrant Workers**

There are many factors that encourage people to become Indonesian migrant workers such as economic factors. The desire to improve the economics level is their main reason; there are also many reasons for these economic factors such as: people want to have a high salary (compensation) with a low level of education (among Junior High School graduates and High School graduates), add their savings to start a business in Indonesia later; then the people want to immediately have a decent home because some migrant workers who have worked there for a long time can improve their standard of living. Beside economy factors,

there are several other things that also encourage the society to become Indonesian migrant workers. Among other factors are as follows:

a. Looking for work experience

Some Indonesian migrant workers also do not only make the work as a boost to their economy but also to add and seek work experience. This is proven by the presence of Indonesian migrant workers when they are no longer young or at a productive age. It is also proven by their working period that is not too long, only around 3-5 years.<sup>38</sup>

b. Family

Not a few people choose to become Indonesian migrant workers on the basis of encouragement from the family or even ordered by their parents who had previously become Indonesian migrant workers. Not a few of the migrant workers in a family of which almost 80 percent of its members ever been a migrant worker (some are former and still become Indonesian migrant workers) could be from father, mother, brother, uncle, aunt, even brother in law, etc. It can be said that the job or profession of being an Indonesian migrant workers is a work that has gone downhill.<sup>39</sup>

c. Limited employment opportunities that available in Indonesia

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<sup>38</sup> Heni Widiastuti, Staff of Workforce Placement of Department of Manpower and Transmigration (DISNAKERTRANS) Daerah.I. Yogyakarta.

<sup>39</sup> Heni Widiastuti, *Ibid.*

The lack of employment is also a factor driving Indonesian workers desire to become migrant workers. In fact, this is also not something new anymore because it has become a disease and homework of government, due to the increasing number of unemployed people in Indonesia from year to year. The increasing number of unemployed prove that employment opportunity in Indonesia is very limited, especially for people who have minimal education and this makes people find the work in other countries even with various risks. Job opportunities that are limited for the community due to minimal educational factors and the absence of socialization about the importance of educational factors and oppurtunities for entrepreneurship.

## **2. Requirements to become an Indonesian Migrant Workers**

This protection also guarantees the fulfillment of their rights in all activities before, during and after working in legal, economic and social aspects. Based on Article 5 of the Law No.18 of 2017, it is stated that every Indonesian migrant worker who will going abroad should fulfill requirements:

- a. Being at least 18 (eighteen) years of age;
  - b. Having competency;
  - c. Being physically and mentally healthy;
  - d. Being registered and having Social Security membership number;
- and

- e. Possessing the required documents.

Besides being placed overseas, after fulfilling the requirements of prospective Indonesian migrant workers, they are required to have the following documents:<sup>40</sup>

- a. Statement of marital status, for those who have married disclose a copy of marriage book;
- b. Letter of consent from husband or wife, parental consent, guardianship consent that is acknowledge by village head or *lurah*;
- c. Certificate of work competency
- d. Health certificate based on medical examination and psychology assessment;
- e. Passport that is issued by local immigration office;
- f. Working Visa;
- g. Indonesian Migrant Workers Placement Agreement; and
- h. Employment Contract.

Provisions related to procedures and requirements for registration of Indonesian migrant workers have also been regulated in the Government Regulation No. 4 of 2013 concerning Procedures for the Implementation of the Placement of Indonesian Overseas Workers by the Government<sup>41</sup> which states that:

- a. Registration of Indonesian migrant workers organized by BNP2TKI

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<sup>40</sup> Article 13 the Law No. 18 of 2017 on Protection of Indonesian Migrant Workers

<sup>41</sup> Article 11 of the Government Regulation No. 4 of 2013 on Procedures for the Implementation for the Placement of Indonesian Workers Overseas by the Government

is done by filling out the registration form and completing the requirements and documents.

- b. Requirements and documents referred to include:
- 1) Registration card as a job seeker registered in the District/City Department;
  - 2) Minimum age of 18 (eighteen) years is proven by Identity Card
  - 3) Latest education diploma
  - 4) Certificate of physical and spiritual health;
  - 5) Police Registration Certificate (SKCK)
  - 6) Certificate of permission from a husband/ wife for prospective migrant workers, certificate of permission from parents for prospective Indonesian migrant workers who are not married, and a certificate from the guardian for prospective Indonesian migrant workers who are parents, husband/wife have died or not competent in law.
  - 7) Not in a pregnancy condition for prospective female migrant workers and proven by a doctor's certificate; and
  - 8) Other conditions agreed upon in the agreement.

Those procedures are inline with the explanation of Mrs. Heni Widiastuti, S.H (Staff of Workforce Placement) at the Department of Manpower and Transmigration (DISNAKERTRANS) of Daerah.I. Yogyakarta.<sup>42</sup> The explanation is based on the Regulation of the Minister

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<sup>42</sup> Heni Widiastuti, *Op.Cit.*

of Manpower and Transmigration of the Republic of Indonesia Number 14/MEN/X/2010 concerning the Implementation of the Placement and Protection of Overseas Indonesian Workers regulates the Procedure for Registering Prospective Indonesian Migrant Workers,<sup>43</sup> namely:

- a. Prospective Indonesian migrant workers must be registered in the Regency/ City Department without being charged;
- b. Prospective Indonesian migrant workers must meet the following requirements:
  - 1) Minimum age of 18 (eighteen) years, except for Indonesian migrant workers who will be employed by individual users of at least 21 (twenty-one) years of age, as evidenced by an Identity Card and Birth Certificate from the competent authority;
  - 2) Health Certificate and not pregnant from a doctor for prospective female migrant workers;
  - 3) Permit from husband/ wife/ parents/ guardian known by the Head of Village;
  - 4) Have a registration card as a job seeker from the District/ City Departement; and
  - 5) Have qualifications/ educational requirements that are required by the user.

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<sup>43</sup> Article 8 of the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia No. 14 of 2010 concerning the Implementation of the Placement and Protection of Overseas Indonesian Workers

In the process of registering prospective Indonesian migrant workers, *Balai Pelayanan Penempatan dan Perlindungan Tenaga Kerja Indonesia* (BP3TKI) acts as a vertical body of the *Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia* (BNP2TKI). BNP2TKI which has the main task, namely:

- a. Placing based on a written agreement between the Government with the Government of the country of user of Indonesian migrant workers or user of legal entity in the placement of destination country.
- b. Provide services, coordinate and supervise regarding: documents; the final debriefing of departure (PAP); problem solving; sources of financing; departure until return; improving the quality of prospective Indonesian migrant workers; information; the quality of implementing Indonesian migrant worker placement; and improving the welfare of Indonesian migrant workers and their families.

While BP3TKI has the main task in the process of registering prospective Indonesian migrant workers, namely providing services in processing all placement documents and solving problems in Indonesian migrant workers in a coordinated and integrated manner in their respective work areas. BP3TKI also provides counseling and outreach to prospective Indonesian migrant workers for one day starting from 10 working hours.

Then before entering the final debriefing departure, BP3TKI firstly will verify the data of prospective Indonesian migrant workers in accordance with the data registered in the local Department of Population and Civil Registration. This is in line with the statement of Mrs. Sri Purnawati as the Head of Protection division of BP3TKI D.I. Yogyakarta in an interview conducted at the office of BP3TKI D.I. Yogyakarta on Wednesday, August 29<sup>th</sup>, 2019.<sup>44</sup>

To realize the welfare and quality of Indonesian migrant workers, a support from the Manpower Office is also needed as the first agency to collect data on prospective Indonesian migrant workers who register. In the registration process, of course, there is no charge for prospective Indonesian migrant workers.<sup>45</sup> Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number PER/14/MEN/2010 states that the recruitment of prospective Indonesian migrant workers begins by providing detail information starting from the departure process, recruitment until arriving in the country of placement of prospective Indonesian migrant workers.<sup>46</sup>

There are several benefits that prospective Indonesian migrant worker can receive if they follow the applicable registration procedures,

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<sup>44</sup> Sri Purwanti, Head of Protection Division of BP3TKI D.I. Yogyakarta

<sup>45</sup> Article 8 Paragraph 2 of the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia No. 14 of 2010 concerning the Implementation of the Placement and Protection of Overseas Indonesian Workers

<sup>46</sup> Article 10 the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia No. 14 of 2010 concerning the Implementation of the Placement and Protection of Overseas Indonesian Workers



namely: when Indonesian migrant workers have problems in the placement country, there is a place to complain if there are problems such as lost passports/salary issues/being held/even problems of violence/assault. Then BP3TKI with BNP2TKI will work together to mediate and will trace the data of Indonesian migrant workers along with the company or agent to which the Indonesian migrant worker departed.<sup>47</sup> However, when the problems that arise are in the form of criminal matters, the BNP2TKI together with the *Indonesian Embassy* (KBRI) and the *Consulate General of the Republic of Indonesia* (KJRI) will be assisted.<sup>48</sup>

Although there are many benefits to be gained by the lawful Indonesian migrant workers, many of them still choose to leave illegally or unprocedurally. Legal or illegal status is one of the obstacles in this work. Not a few Indonesian migrant workers who are illegal because of the lack of funds for maintenance.<sup>49</sup> Illegal also makes the risk faced by Indonesian migrant workers increase, because those who are illegal must face their own fears when there are raids from the authorities in the placement country.

According to the results of an interview with Ms. Heni Widiastuti, S.H as the Staff Placement DISNAKERTRANS D.I. Yogyakarta on

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<sup>47</sup> Sri Purwanti, Head of Protection Division of BP3TKI D.I. Yogyakarta

<sup>48</sup> *Ibid*

<sup>49</sup> Maulidyah Amalina Rizkqi, *Analisis Faktor-Faktor yang Mempengaruhi Masyarakat untuk Menjadi Tenaga Kerja Indonesia di Luar Negeri (Studi Kasus pada Masyarakat Gresik Utara)*, Seminar Nasional dan Call for Paper (Fakultas Ekonomi dan Bisnis Universitas Muhammadiyah), 2018, p. 1173.

Wednesday, August 28, 2019 from the regulations that have been established, it is clear that the impact will occur if they force themselves to become Indonesian illegal migrant workers.<sup>50</sup> Most of them assume that the registration and departure procedures carried out by the relevant agencies are too complicated and many conditions do not make sense.

These prospective Indonesian migrant workers tend to trust informal brokers or agents compared to related agencies. On the contrary, the process of registering Indonesian migrant workers at the Department of Labor guarantees that there is also specialized training given by instructors to prospective Indonesian migrant workers where the prospective Indonesian migrant workers work and can also understand their customs.

As the case found in 2017, an Indonesian migrant worker residing in Bantul, Yogyakarta, departed from the persuasion of a broker as a household assistant in Malaysia. Under the pretext of high salaries that can be obtained when becoming the Indonesian migrant. Because his age has exceeded the maximum limit as a prospective Indonesian migrant worker, his identity was falsified by stating as Madiun origin because the rules of Yogyakarta does not dispatch Yogyakarta residents through non-formal channels.<sup>51</sup>

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<sup>50</sup> Heni Widiastuti, *Op.Cit*

<sup>51</sup> Article 19 The Regional Regulation of Yogyakarta No. 13 of 2009 concerning Implementation of Employment

He faced the first problem when he has work for three months in Malaysia. He did not get the salary as promised by the broker. Because of the falsified identity, the government tends to be challenging to find data and protect the Indonesian migrant workers.<sup>52</sup>

### 3. Types of Illegal Workers

There are several types of migrant workers who can be categories as Indonesian illegal workers such as:

- a. Non-procedural, the intention is Indonesian Workers whose departure process does not meet administrative requirements, or the departure is not through official institutions.
- b. Overstay, meaning that Indonesian workers are remaining someplace longer than the allowed or wanted period. In traveling, exceeding happens on the off chance that you live in a remote nation longer than the time of remain legitimate for the visa. Overstay is categorized as a violation of the law, so there are various risks that follow. There are various risks such as having to pay a fine, difficulty in making the same visa at another time, being detained, or even being deported.<sup>53</sup>
- c. Human Trafficking, In Article 1 paragraph 1 of the Law Number 21 of 2007 concerning Eradication of the Criminal Act of Human Trafficking clarifies that Human Trafficking is the demonstration of

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<sup>52</sup> Heni Widiastuti, Staff of Workforce Placement of Department of Manpower and Transmigration (DISNAKERTRANS) Daerah.I. Yogyakarta.

<sup>53</sup> Article 1 paragraph 1 of the Law Number 21 of 2007 concerning Eradication of the Criminal Act of Human Trafficking

enlisting, shipping, gathering, sending, moving or tolerating somebody with the risk of viciousness, utilization of power, seizing, seizure, falsifying, misrepresentation and maltreatment of influence or defenseless position, entanglement of cash or installment or advantages, so the assent of the individual responsible for that individual is done inside the State or between States with the end goal of abuse or bringing about misuse.<sup>54</sup> The types of Criminal Human Trafficking,<sup>55</sup> among others:

- 1) People who move from their origin to somewhere else and afterward work in the new place for a generally changeless timeframe,
- 2) Child Labor (both as activities and endeavored activities),
- 3) Prostitution wrongdoing which is legitimately characterized as the clearance of sexual administrations which incorporates sexual acts not as much as fornication and sexual relations,
- 4) Trafficking of Children through Adoption or Appointment of Children,
- 5) Bondage under the appearance of Marriage and Bride Orders,
- 6) Illegal organ transplantation.

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<sup>54</sup> Abdul Rahman Prakoso dan Putri Ayu Nurmalinda, "Kebijakan Hukum Terhadap Tindak Pidana Perdagangan Orang", *Jurnal Fakultas Hukum Universitas Negeri Semarang*, Vol. 4 No. 1, 2018, p. 9.

<sup>55</sup> Wahyu Riadi, "Implementasi Pencegahan Perdagangan Orang ditinjau dari Perspektif Pertahanan Negara", *Jurnal Strategi Perang Semesta*, Vol. 3 No. 2, 2017, p. 24.

## **B. The Protection of Indonesian illegal Migrant Workers in Malaysia**

According to data from Migrant Care in 2018, there were 23 Indonesian migrant workers departing non-procedurally; 17 people were registered as overstayed; 5 people were recorded as having problems in the Migration process, 4 people in Malaysian prisons, 2 people who have legal problems, and 6 Indonesian migrant workers are indicated as victims of trafficking.<sup>56</sup> Therefore the Government of Indonesian has paid more attention to Indonesian illegal workers in Malaysia.

It has been explained above that in general, the problems that arise in the placement country are issues related to human rights, so the sanctions contained in the Law No. 18 of 2017, quite a lot in the form of criminal sanctions. Not even fulfilling the requirements for one of the specified documents is also a criminal offense.<sup>57</sup> It is based on the fact that the document is the primary evidence that the worker in question has met the requirements for working abroad. If prospective Indonesian migrant workers do not meet one of the requirements, it is risky or illegal to work in the destination country, and then illegal to work in the country of placement. This condition makes Indonesian migrant workers vulnerable to inhuman treatment or not even getting their rights.<sup>58</sup>

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<sup>56</sup> Ika Masruroh, Administration staff of Migrant Care on September 3<sup>rd</sup>, 2019

<sup>57</sup> Article 79 the Law No. 18 of 2017 on Protection of Indonesian Migrant Workers

<sup>58</sup> Soraya Taufik, Dewa Gede Rudy, I Made Dedy Priyanto, "Peran Dinas Tenaga Kerja dalam Mencegah Terjadinya Masalah TKI di Luar Negeri", *Jurnal Fakultas Hukum Universitas Udayana*, 2012, p. 4

Therefore prospective Indonesian migrant workers are aware of the importance of the data collection process and the fulfillment of requirements that must be determined as a form of concern from the government for prospective Indonesian migrant workers who will work abroad.<sup>59</sup>

Every citizen has the right to work and a decent life for humanity<sup>60</sup>. So that it becomes a logical consequence that the government of Indonesian must fulfill the rights of its citizens, including to meet the need for jobs for every citizen who is willing and able to work.<sup>61</sup> According to the protection theory by Lili Rasjidi and I.B Wya Putra that the law can be utilized to figure it out insurance that isn't simply versatile and adaptable, yet in addition preductive and antipative. Lawful insurance is a portrayal of the capacity of the capacity the law to acknowledge objectives law, to be specific equity, practicality and lawful conviction. Lawful security is an insurance given to lawful subjects as per the principles the law, regardless of whether that is preventive what's more, in a structure that is severe, both recorded as a hard copy and not written so as to maintain lawful guidelines. Basically everybody qualified for insurance from law. Practically all lawful connections must get insurance from the law.

In the point of view of The Universal Declaration of Human Rights confirms that "every single individual are brought into the world free and equivalent in respect and rights". The extensive system of universal human

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<sup>59</sup> *Ibid*, p. 5

<sup>60</sup> Article 27 Paragraph 2 of the 1945 Constitution

<sup>61</sup> Adnan Hamid, "Perlindungan dan Hak Tenaga Kerja Indonesia Yang Bekerja di Luar Negeri: Harapan dan Tantangan, *Themis*, No. 1 Vol 1, 2006, p. 78.

rights law and benchmarks is aimed at guaranteeing the pleasure by the entirety of every human right. Likewise, every individual must approach the principal human rights set out in the Declaration and the nine center global human rights arrangements. Part States of the United Nations are bound by these human rights standards set out in the Declaration and expounded in the nine center instruments, and are obliged to ensure that everybody under their purview appreciates these rights. States have obligations to regard, ensure and fullfil human rights.

In addition, the eight fundamental Conventions of the International Labour Organization (ILO) as well as ILO Conventions No. 97 and 143 address the protection of the labour rights of migrant workers. Recent ILO Convention No. 189 provides additional standards on decent conditions of work for domestic workers. Combined with Recommendation No. 201 on Domestic Workers, ILO Convention No. 189 builds up a lot of standards and principles for the viable advancement and security of the privileges of household laborers, regardless of whether they are nationals or non-nationals. ILO Convention No. 189 applies to every single household specialist, including vagrants<sup>62</sup>, and has arrangements that address the circumstance of transient residential laborers.

It expresses that vagrant residential laborers ought to get, before takeoff, a composed agreement that they can comprehend and that is enforceable in

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<sup>62</sup> ILO Convention 189 Art 2.1

the nation of work<sup>63</sup>. It urges States gatherings to team up to guarantee the powerful use of the Convention to vagrant local specialists<sup>64</sup>. It approaches States to direct enlistment of residential laborers by private business offices<sup>65</sup>. It likewise approaches States to finish up two-sided, territorial or multilateral understandings to counteract misuses and deceitful practices in the enrollment, arrangement and work of transient household laborers. Article 15.1 (e) further expresses that expenses charged by private business offices ought not be deducted from the compensation of residential specialists.

In the perspective of positive law of Indonesia, Indonesian migrant workers have the right to receive protection from the government of Indonesia.<sup>66</sup> As regulated in the Law No. 13 of 2003 concerning Manpower and the Law No. 18 of 2017 concerning Protection of Indonesian Migrant Workers is expected to be able to protect all Indonesian migrant workers who work abroad. It is supported by the Minister of Manpower and Transmigration Regulation No. 14/Men/2010 concerning the Implementation of the Placement and Protection of Indonesian migrant workers abroad is also a legal basis for protecting Indonesian migrant workers. However, the protection provided by the government has not been able to cover all Indonesian migrant workers, especially to Indonesian illegal migrant workers.

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<sup>63</sup> *Ibid* Art 8

<sup>64</sup> *Ibid* Art 8.3

<sup>65</sup> *Ibid* Art 15

<sup>66</sup> Triyan Febriyanto and Agus Taufiqur Rohman, *Perlindungan Hak-hak Tenaga Kerja Indonesia (TKI) yang Bekerja di Luar Negeri*, Fakultas Hukum Universitas Negeri Semarang, 2018, p.3.



Protection of Indonesian illegal workers become more difficult because procedural procedures for Indonesian migrant workers are not registered. If they are not registered procedurally, they can not obtained their rights, one of which is insurance or social security. So when there are problems faced by Indonesian migrant workers in the target country, then the problem cannot be covered by the insurance.

Besides, the process of protecting Indonesian illegal migrant workers tends to be longer than the process of protecting Indonesian migrant workers who depart procedurally or legally. An example of a case that occurred with Indonesian migrant workers from Gunung Kidul, Yogyakarta, was reported that the Indonesian migrant workers died in Malaysia at the end of December 2018. However, the data obtained by BP3TKI D.I. Yogyakarta is different from the data of Indonesian migrant workers, so the process of returning bodies tends to be more difficult as BP3TKI D.I. Yogyakarta must find the family and verify the identity of the body in the local civil registry, and this requires a 6-month process. While the time is limited considering the condition of the corpse, if left too long it will be rotten, and the hospital costs will also increase; the government of Indonesia in this case the Indonesian Embassy decided to bury his body in Malaysia.<sup>67</sup>

In the Law No. 18 of 2017 of Protection of Migrant Workers, it is sated that there are 3 (three) kinds of protection, namely, before working protection, during working protection, and after working protection.

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<sup>67</sup> Sri Purwanti, *Op.Cit*

## 1. Before working protection

Protection before working protection is regulated in Article 8 of the Law No. 18 of 2017 of Protection of Migrant Workers. Before working, protection consists of Administrative protection and Technical protection. Administrative protection covers the culmination and legitimacy of position report and also cover the assurance of work conditions and terms of business.<sup>68</sup> While Technical protection covers socialization and scattering of data; quality improvement of Prospective Indonesian Migrant Workers through instruction and employment preparing; government disability, encourage the satisfaction of Prospective Indonesian Migrant Workers' privileges; job reinforcing for work specialist useful staff; arrangement administration in one-stop administration and assurance of Indonesian Migrant Workers; and training and supervision.<sup>69</sup>

## 2. During working protection

During working assurance is led without assuming control over crook as well as common obligations of Indonesian Migrant Workers and directed as per enactment, the law in goal nation, just as International law and custom.<sup>70</sup>

The protection given by the government covers<sup>71</sup>:

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<sup>68</sup> Article 8 Paragraph 2 of the Law No. 18 of 2017 of Protection of Migrant Worker

<sup>69</sup> Article 8 Paragraph 3 of the Law No. 18 of 2017 of Protection of Migrant Worker

<sup>70</sup> Article 21 Paragraph 2 of the Law No. 18 of 2017 of Protection of Migrant Worker

<sup>71</sup> Article 21 Paragraph 1 of the Law No. 18 of 2017 of Protection of Migrant Worker

- a. Data accumulation and enlistment by work attache or designated remote issues official;
  - b. Supervision and assessment on Employers, occupations, and work conditions;
  - c. Facilitation of the satisfaction of privileges of Indonesian Migrant Workers;
  - d. Facilitation of the settlement of work cases;
  - e. Provision of consular administration;
  - f. Assistance, reflection, advocacy, and legitimate help arrangement as supporter benefits by Central Government as well as Indonesian Missions just as guardianship as per the neighborhood State law;
  - g. Development on Indonesian Migrant Workers; and
  - h. Facilitation of repatriation.
3. After working protection

After working protection is conducted by Central Government along with Local Governments<sup>72</sup> and this kind of protection covers: assistance of the repatriation until the places where they grew up; settlement of privileges of Indonesian Migrant Workers that have not been satisfied; help of the game plan of Indonesian Migrant Workers who are debilitated and dead; social rehabilitation and social reintegration; and strengthening of Indonesian Migrant Workers and their families.<sup>73</sup>

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<sup>72</sup> Article 24 Paragraph 2 of the Law No. 18 of 2017 of Protection of Migrant Worker

<sup>73</sup> Article 24 Paragraph 1 of the Law No. 18 of 2017 of Protection of Migrant Worker

In the Law No. 18 of 2017 it is explained comprehensively all forms of protection provided by the government of Indonesia both for the protection of Indonesian migrant workers and their families. It was also mentioned that every citizen who would, was, or had done the work by receiving a salary in the target country.<sup>74</sup> Therefore the government of Indonesia is obliged to protect Indonesian migrant workers from:

1. Human trafficking, trafficking is an action or activity to exploiting individuals or more, with or without the consent of the victim to gain benefits both material and immaterial.<sup>75</sup> Human trafficking occurs when an available supply can meet market demand. This is certainly different from fair and voluntary transactions wherein both parties benefit. Human trafficking is synonymous with trafficking for exploitation through slavery, oppression, extortion, and physical acquisition.<sup>76</sup>
2. Slavery, slavery is a condition in which workers do not get rights, such as wages, leaves or potentially allow. The victims of slavery do not just lose all specialist over their workers, yet also over themselves including their character.<sup>77</sup>
3. Forced labor, forced labor can be understood as work that is

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<sup>74</sup> Ratna, M.S, *Perlindungan Hukum Tenaga Kerja Indonesia di Malaysia Dalam Perspektif Undang-Undang RI No. 39 Tahun 2004 tentang Penempatan dan Perlindungan TKI di Luar negeri*. Semarang. Universitas Diponegoro. 2011. p. 11.

<sup>75</sup> Darwiansyah Minin, "The Strategy in Dealing with Trafficking in Indonesia", *Kanun Jurnal Ilmu Hukum* Vol. XIII No. 54, 2011, p. 22.

<sup>76</sup> Ridwan Wahyudi, "Illegal Journey: The Indonesian Undocumented Migrant Workers to Malaysia", *Journal Faculty of Social Sciences and Humanities, Universiti Kebangsaan Malaysia, Bangi, Selangor, Malaysia* Vol. 25 No. 2, 2017, p. 25.

<sup>77</sup> Endro Sulaksono, "The Patterns of Human Trafficking of Indonesian Migrant Workers: Case Study of the Riau Islands and Johor Borders Crossing", *Jurnal Sosiologi* Vol. 23, No. 2, 2018: 167-186, p. 175.

automatically and under the threat of any punishment. It alludes to circumstances where people are forced to work using savagery or terrorizing, or by increasingly inconspicuous methods, for example controlled obligation, maintenance of recognizing papers or dangers of criticism to movement experts.<sup>78</sup> According to the ILO (International Labour Convention), forced or compulsory labor is all work or administration which is claimed from any individual under the risk of punishment and for which the individual has not offered oneself willfully.<sup>79</sup>

4. Violence and criminal acts, violence mean any unlawful demonstration, with or without the utilization of an instrument, against the physical and mental part of an individual that compromises the life or body or causes the hardship os such individual's opportunity. A criminal act is a demonstration committed by an individual that abuses a law and which is deserving of the legislature. Criminal acts are offenses against the open which are culpable. It very well may be any demonstration or oversight or ownership which represents a danger to people in general.<sup>80</sup>
5. Discrimination or unfair treatment that violates Human Rights, Discrimination or unfair treatment in the working environment depends

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<sup>78</sup> Riri Anggriani, "Perlindungan Hukum Bagi Irregular Migrant Workers Indonesia di Kawasan Asia Tenggara (Dalam Perspektif Hukum HAM Internasional)", *Yuridika* Vol. 32 No.2 Mei 2017, p. 316.

<sup>79</sup> ILO, "General Survey on the Fundamental Conventions concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization", <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>, Accesseed on September 14<sup>th</sup>, 2019 at 23.54 p.m.

<sup>80</sup> Ernawati, "Kejahatan Kekerasan dalam Perspektif Kriminologi", *Jurnal Mizani* Vol. 25 No. 2, Agustus 2015, p. 109.

on specific biases and happens when a representative is a deal with negatively due to sex, sexuality, race, religion, pregnancy and maternity or incapacity.<sup>81</sup>

Unfortunately, the protection of Indonesian illegal workers cannot be appropriately implemented because Indonesian workers who work abroad, especially in Malaysia, many had departed before the Law No. 18 of 2017 concerning Protection of Indonesian Migrant Workers was enacted. The protection of Indonesian illegal workers is comprehensively explained in the Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers in which the local government has also played a significant role in managing and also protecting migrant workers since recruitment.<sup>82</sup>

The protection provided by the government has not been able to fulfill the protection regulated in the Law No. 18 of 2017 concerning Protection of Indonesian Migrant Workers. However, if Indonesian illegal workers are involved in criminal things, the Indonesian government protects the form of legal assistance to Indonesian illegal workers who are caught in criminal matters.<sup>83</sup>

If Indonesian illegal workers are sentenced to death then the Indonesian government will negotiate with the government in the placement country so that the Indonesian Migrant workers can be punished in Indonesia with applicable law in Indonesia. Other forms of protection such as if Indonesian

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<sup>81</sup> Endro Sulaksono, "Disharmonisasi Hak Pekerja Migran di Wilayah Perbatasan Kejahatan Perdagangan Manusia di Luar Negeri", *Jurnal Keamanan Nasional* Vol. 2 No. 1, 2016, p. 177.

<sup>82</sup> Ika Masruroh, *Op.Cit.*

<sup>83</sup> Heni Widiastuti, *Op.Cit.*

illegal workers have immigration problems and are threatened with deportation, the government will bear the costs required if the Indonesian illegal workers do not have money.

Fortunately, the government of Indonesia through the Migrant Care has a mechanism to prevent the citizens from becoming illegal migrant worker. It is known as the Village of Migrant Workers Care (DESBUMI) program. The program is expected to carry out tasks that can help both in the service, protection, empowerment of prospective Indonesian migrant workers.<sup>84</sup>

Desbumi has several forms of service in preventing Indonesian workers from leaving illegally,<sup>85</sup> including:

1. Information Services, DESBUMI formed Integrated Information Service Center (PPIT) which contained data on migrant workers of its citizens, information related to safe migration and DESBUMI activities. This information is available on the village website.
2. Document Management Services provides document services for prospective migrant workers, including Identity card, Family card, and certificate. This document will be the basis for making a valid passport based on the document.
3. Economic Empowerment Services for post-migrant workers, DESBUMI supports groups of former migrant workers who develop joint ventures.
4. Case Complaints Service, DESBUMI serves its citizens who are troubled

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<sup>84</sup> Fitri Lestari, Staff of Protection Division of Migrant Care

<sup>85</sup> Migrant Care, "DESBUMI, Desa Peduli Buruh Migran", <http://www.migrantcare.net/desbumi/>, Accessed on September 25<sup>th</sup>, 2019 at 23.09 p.m.

migrant workers. Any problematic migrant worker can file a problem with DESBUMI.

5. Socialization socializes to its citizens about how to migrate safely.
6. Data Collection regularly records its citizens who become migrant workers abroad, including those who have returned to their villages.

The service provided by DESBUMI is very useful in preventing Indonesian illegal workers; this is evident from the case in Gerunung Village, Central Lombok, where before DESBUMI was created, recruiting of prospective Indonesian migrant workers were tended to be uncontrolled and lead to a non-process procedural. After the DESBUMI the village had data on the mobility of its citizens' migration, the village could monitor its citizens everywhere.

Eventhough DESBUMI is seem very perfect to protect the illegal migrant worker, actually is not. Because DESBUMI only prevent the migrant worker to became illegal migrant worker. DESBUMI cannot reach for those who already became illegal migrant worker before DESBUMI was established. To cover that there are some ways that the government of Indonesia can do.

The first method is door to door surveys, this method was ever done by Sweatshop Watch working together with an exploration association and various network to lead a measurably table investigation including 1,200 door to door overviews of Los Angeles worker laborer networks in various regions of the metropolitan region. The point of the examination is to overcome any issues between foreigner networks and nearby policymakers in request to



distinguish and address the scope of wellbeing, business, other financial needs of low-wage foreigners in the "undetectable" workforce, and to find the illegal migrant workers. The method of the Sweatshop watch can be use by the government of Indonesia to collecting the data of illegal migrant worker. The survey can be done by government of Indonesia collaborating with the worker unioin in Malaysia.

Second method is to educating illgal migrant worker about their rights. Advocate for illegal migrant workers utilize an assortment of approaches to impart basic data about these laborers' privileges and the various conceivable outcomes they have for managing misuse and misuse. An important method for illuminating Illegal migrant workers about their privileges is to create printed material that they can allude to.

### **C. The Obstacles of the Government of Indonesia in Protecting Illegal Workers**

To implement the Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers is not easy, there are many obstacles faced by the government to protect Indonesian Migrant Workers especially Indonesian illegal workers, such as:

1. There is no data from Indonesian illegal workers

Indonesian illegal workers often do not provide valid data.<sup>86</sup> This is due to being able to expedite the illegal departure of Indonesian workers.

In the absence of valid data, the Indonesian government has difficulty in

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<sup>86</sup> Sri Purwanti, *Op.Cit*

being able to collect data and also provide protection against Indonesian illegal workers if at any time the Indonesian illegal workers encounter problems.<sup>87</sup>

In the absence of data collection, this makes the Indonesian government sometimes too late to realize that Indonesian citizens who become Indonesian workers are affected. So that the handling given by the Indonesian government is also late.

## 2. The Lack of State Budget

The government of Indonesia often faces obstacles when protecting Indonesian illegal workers, it is because Indonesian state budget is not enough to handle the protection of Indonesian illegal workers. One of the case is the process of returning the Indonesian illegal workers. The expensiveness of returning dead body it make the Government of Indonesia sometimes can not afford the cost of it. Besides of that there is issue of valid data from Indonesian illegal workers makes it difficult for the Indonesian government to return the bodies. Because of those issue the government of Indonesia acts more selective in helping the process of returning the bodies of Indonesian illegal workers.<sup>88</sup>

In the case of Sumhadi, an Indonesian illegal worker from Jamintoro, Sumber Baru District, died in Malaysia after undergoing treatment at a hospital in Malaysia for intestinal cancer. His body should be repatriated

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<sup>87</sup> Lalu Husni, "Perlindungan Hukum Terhadap Tenaga Kerja Indonesia di Luar Negeri", *Mimbar Hukum*, Vol. 23 No. 1, 2011, p. 154.

<sup>88</sup> Ika Masrurroh, *Op.Cit.*

by the government of Jember Regency, but due to airline regulations, the corpse must remain in hospital in Malaysia so that his condition can be repatriated. To repatriate Sumhadi's body, the government of Jember experienced hospital administration problems, the cost of returning the body is very expensive.

The second case is when the Indonesian illegal worker deported. The deportation of Indonesian illegal worker needs money and is too expensive because the number of Indonesian illegal worker which caught by the official of Malaysia is too many.<sup>89</sup>

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<sup>89</sup> Heni Widiastuti, *Op.Cit*