LEGAL PROTECTION OF INDONESIAN MIGRANT WORKERS IN THE PERSPECTIVE OF HUMAN RIGHTS

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ABSTRACT

Labor rights need to be protected because for the sake of business continuity, so the role of labor is needed. The purpose of legal protection for workers is to guarantee the basic rights of workers. The basic rights of workers or human rights are guaranteed and upheld in the Constitution of Republic Indonesia Year 1945. It is a right for every citizen to work and a decent living as specified in Article 27 paragraph (2) of the Constitution of Republic Indonesia Year 1945, and is a right for citizens The state is free to choose a place to work, therefore it is possible for Indonesian citizens who want to work not in the territory of the State of Indonesia but abroad so that the person is referred to as Indonesian Workers, so that the State should guarantee the fulfillment of the rights of Indonesian Workers. This study has 2 (two) problem formulations, first: what is the regulations form of Indonesian Workers?; Second: what is the legal protection form for Indonesian Workers who work outside the territory of the Indonesian State?. The research method in writing this journal is juridical-normative legal research, with secondary data covering primary legal material, which includes the Constitution of Republic Indonesia Year 1945, and Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers, secondary legal material which includes legal books, journals, law and thesis / legal scientific research discussing employment, and tertiary legal materials which include language dictionaries, etc.

Keywords: Indonesian Migrant Workers, Legal Protection, Human Rights (HAM).

A. INTRODUCTION

In carrying out business activities, it is necessary to have the role of Manpower in the continuity of the business world, for this reason, Manpower must have their rights protected. The purpose of legal protection for workers is to guarantee the basic rights of workers and guarantee equality and non-discriminatory treatment on any basis to realize the welfare of workers and their families while still taking into account the progress of the business world and the interests of employers.1 Worker’s basic rights as well as citizens' rights are always guaranteed and upheld in the Constitution of Republic Indonesia Year 1945 with the terminology of Human Rights. Human rights are defined as rights inherent in human dignity as God's creatures and these rights are under human since birth to the earth so that these rights are natural (natural) and do not constitute human or state gifts.2

Based on Article 28D paragraph (1) of the Indonesia Constitution Year 1945 Constitution of Republic Indonesia Year 1945 it is mandated that “every person has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law”, the principle contained in that article is that for all Indonesian citizens at the same time its position in the law and its rights must be upheld in law. More specifically for the Workers, that it is the right of every citizen to decent work and livelihoods as specified in Article 27 paragraph (2) of the Constitution of Republic Indonesia Year 1945 that “Every citizen has the right to work and livelihood that is decent for humanity.” So that the State should guarantee the rights of its citizens who work, including also guaranteeing freedom for citizens to choose where to work and work as what, so it is possible for Indonesian citizens who want to work not in the territory of the State of Indonesia but abroad so that this person is referred to as Indonesian Workers.

Indonesian Workers who work abroad or can be referred to as migrant workers is "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". Migrant workers exist in all economic sectors. They play an important role in economic growth both for the home country and the host country.4

Based on this, a question arises as to whether Indonesian law can protect and uphold the human rights of Indonesian Workers working abroad in Indonesian Legislative Regulations considering that Indonesian Workers do not work in the territory of the Indonesian State. However, because human rights have universal values which means they do not know the limits of space and time,5 it is necessary to analyze the Indonesian Legislation that regulates Indonesian Workers and how to protect their law.

B. PROBLEM STATEMENT

The formulation of the problems that can be discussed in this study are as follows:
1. What is the Regulations form of Indonesian Workers?
2. What is the legal protection form for Indonesian Workers who work outside the territory of the Indonesian State?

1 Joni Bambang, 2013, Hukum Ketenagakerjaan, Pustaka Setia Bandung, Bandung, hal. 269.
2 Mahfud MD, 2001, Dasar dan Struktur Ketatanegaraan Indonesia, Rieneke Cipta, Jakarta, hal. 127.
3 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, which has been ratified with Law Number 6 Year 2012.
5 Muladi, 2005.Hak Asasi Manusia, Refika Aditama, Bandung, hal. 70.
C. LITERATURE REVIEW

Indonesian Workers

Indonesian Workers who work abroad or can be referred to as migrant workers is “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” Migrant workers exist in all economic sectors. They play an important role in economic growth both for the home country and the host country. Indonesian Workers or Indonesian Migrant Workers are all Indonesian citizens who will, are, or have done work by receiving wages outside the territory of the Republic of Indonesia. Indonesia has several statutory regulations that specifically regulate Indonesian Workers, namely Law Number 6 Year 2012 which ratifies the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (International Convention Concerning Protection of the Rights of All Migrant Workers and Members of Their Families), and Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers.

D. RESEARCH METHOD

The research method in writing this journal is juridical-normative legal research, with secondary data covering primary legal material, which includes Constitution of Republic Indonesia Year 1945, and Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers, secondary legal material which includes legal books, journals law and thesis / legal scientific research that discusses employment, and tertiary legal materials which include language dictionaries, and others.

E. ANALYSIS AND DISCUSSION

1. Regulations Form of Indonesian Workers

The sending of labor abroad is mostly done by developing countries which have limitations in providing employment in their countries, and tend to have a very large population without being offset by opening new jobs. Indonesia, which is one of the developing countries that have a large population (or the 4th largest in the world after China, India and America) is also not spared from this problem so that one of the policies taken by the Government in solving this problem is to send workers it works abroad. Indonesian Workers or Indonesian Migrant Workers are all Indonesian citizens who will, are, or have done work by receiving wages outside the territory of the Republic of Indonesia. Unlike the case with Foreign Workers or Foreign Migrant Workers, where each person is not an Indonesian citizen who is able to do work, both inside and outside the employment relationship, in order to produce services or goods to meet the needs of the community.

One of the causes of the complexity of the problems faced by Indonesian Workers is the lack of protection and fulfillment of their rights and their family members from almost all parties concerned. At the same time, problems also occur because Indonesian Workers themselves consciously or unconsciously lack understanding of legal and human rights issues that are actually very important to protect themselves during migration. For this reason, legal instruments that function to protect Indonesian Workers working abroad are needed.

One form of commitment of the State of Indonesia in providing maximum protection for Indonesian Workers is to ratify several International Conventions related to manpower. Several International Conventions relating to labor have been ratified by the Government of Indonesia to date, namely: (a) Convention No. 29 concerning Forced Labor; (b) Convention No. 98 concerning the Applicability of the Basics of the Right to Organize and Collective Bargaining; (c) Convention No. 100 on Equal Remuneration; Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize; (d) Convention No. 105 concerning the Elimination of Forced Labor; (e) Convention No. 111 concerning Discrimination in Employment and Occupation; (f) Convention No. 138 concerning Minimum Age for being allowed to Work, and (g) including Law No. 5 of 1998 concerning Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment. In addition, Indonesia also has several statutory regulations that specifically regulate Indonesian Workers, namely Law Number 6 Year 2012 which ratifies the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (International Convention Concerning Protection of the Rights of All Migrant Workers and Members of Their Families), and Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers.

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6 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, which has been ratified with Law Number 6 Year 2012.
8 Article 1 point 2 Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers.
9 Deny Tri Wahyudi, Perlindungan Hukum Terhadap Tenaga Kerja Indonesia Di Luar Negeri, Mimbar Keadilan, Jurnal Ilmu Hukum Juli – November 2015, hal. 173.
10 Abdul Khakim, 2009, Dasar-Dasar Hukum Ketenagakerjaan Indonesia, Citra Aditya Bakti, Bandung, hal. 27.
2. Legal Protection Form For Indonesian Workers Who Work Outside The Territory Of The Indonesian State

Legal Protection according to the definition of Satjipto Raharjo is to provide protection for human rights that are harmed by others and the protection is given to the community so that they can enjoy all the rights granted by law. Legal protection must also be given to Indonesian Workers even if they work outside the territory of the Indonesian State. But in reality, even though the government has made various efforts to fulfill the rights of Indonesian Workers, these rights cannot be fulfilled well and caused various problems. Becoming an Overseas Indonesian Worker is a difficult choice for the workforce itself because working in another country requires more capabilities and skills, whereas they are generally armed with very minimal skills and expertise, as a result large risks are inevitable. Problems arise from when they leave until arrived home again. Before leaving, the problems that arose were document forgery, inadequate provisions and markup of service fees such as the cost of making a passport. In workplaces abroad, problems that arise are work violations of work contracts, documents taken by employers, acts of sexual harassment, are not permitted to communicate with family, physical, psychological, sexual violence, etc.

According to Musni Umar, one of the root problems of Indonesian Workers actually arises because the construction of Law Number 39 Year 2004 concerning Placement and Protection of Overseas Workers is not able to protect prospective workers so that the protection of Indonesian Workers cannot be maximized. Therefore, the State seeks to provide legal protection in such a way for Indonesian Workers working abroad where the State has accommodated the problem by revoking and replacing it with a new Law, Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers. The guarantee of legal protection that can be given to Indonesian Workers who work outside the territory of Indonesia is not only given when Indonesian Workers work abroad but also the legal protection is given before and after work. Based on Article 7 of Law Number 18 Year 2017 Concerning the Protection of Indonesian Migrant Workers, which reads: “Protection of Prospective Indonesian Migrant Workers includes: a. Protection Before Work; b. Protection During Work; and c. Protection After Work.”

Legal protection given to Indonesian Workers before working as stipulated in Article 8 Paragraph (1) of Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers, which reads: “Protection Before Working as referred to in Article 7 letter a includes: a. administrative protection; and b. technical protection. “The administrative protection referred to in paragraph (1) letter a includes at least: a. completeness and validity of placement documents; and b. stipulation of working conditions and conditions, and technical protection as referred to in paragraph (1) letter b at least include: a. providing information dissemination and dissemination; b. improving the quality of Prospective Indonesian Migrant Workers through work education and training; Social Security; facilitation of fulfilling the rights of Prospective Indonesian Migrant Workers; e. strengthening the role of job introduction functional employees; f. placement services in one-stop integrated services for the placement and protection of Indonesian Migrant Workers; and g. guidance and supervision (Article 8 Paragraph (2) and Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers).

Legal protection given to Indonesian Workers while working as stipulated in Article 21 paragraph (1) of Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers, which reads: “Protection During Work as referred to in Article 7 letter b includes: a. data collection and registration by the employment attaché or appointed official of the foreign service; b. monitoring and evaluation of the Employer, employment and working conditions; c. facilitate the fulfillment of the rights of Indonesian Migrant Workers; d. facilitation of resolving labor cases; e. providing consular services; f. assistance, mediation, advocacy, and provision of legal assistance in the form of advocacy services by the Central Government and / or Representatives of the Republic of Indonesia and trusts in accordance with local state law; g. guidance for Indonesian Migrant Workers; and h. facilitation of repatriation.”

Then, legal protection given to Indonesian Workers after work as stipulated in Article 24 paragraph (1) of Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers, which reads: “Protection After Work as referred to in Article 7 letter c includes: a. facilitation of returning home; b. settlement of Indonesian Migrant Worker rights that have not been fulfilled; c. facilitation for the management of Indonesian Migrant Workers who are sick and die; d. social rehabilitation and social reintegration; and e. empowering Indonesian Migrant Workers and their families.

F. CONCLUSION

Based on the formulation of the problems in this journal, the conclusion that can be put forward is the form of Indonesian Manpower Regulations is by ratifying international conventions that regulate Manpower so that the protection provided to Indonesian Workers can be maximized, and forming a special regulation governing Manpower Indonesian Work, namely Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers, then forms of legal protection against Indonesian Workers working outside the territory of the Indonesian State based on Article 7 of Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers including Prior Protection Work, Protection during Work, and Protection after Work so as to maximize the protection afforded to Indonesian Workers.

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13 Satjipto Raharjo, 2006, Ilmu Hukum, PT Citra Aditya Bakti, Bandung, hal. 54.
14 Zulfikar Judge, Perlindungan Hukum Bagi Tenaga Kerja Indonesia Di Luar Negeri, Lex Jurnalisca Volume 9 Nomor 3, Desember 2012, hal. 172.
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