

Migrant Protection Approach: Study on Protecting Indonesian Migrant Worker

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A. Background.

Because of globalization, the dramatic expansion of cross-border trade, investment and policy, there has been an increased mobility of international labor. Falling costs of transportation and communication have reduced the distances between people, and the drive for a better standard of living has motivated workers to move to areas where jobs and higher pay are available. Motivation of Indonesian worker seeks another job in other country usually because of poverty. It could be said that in many cases migration is not a voluntary process, but is motivated by a natural need of people to secure their livelihood. Besides, by placing Program of Indonesian Worker to other country, is representing one of effort to settle unemployment problem in Indonesia. Governmental role in this program is on construction aspect, and also protection and give various amenity to related/relevant party, especially to Indonesian migrant worker.

B. Placing of Indonesian migrant worker Program

Placing Program of Indonesian Worker to other country, is useful to lessen the unemployment¹ pressure, this program also give benefit to family prosperity through salary accepted or remittances and upgrade skill of Indonesian migrant worker because its job experience abroad. For state, the benefit that accepted is increased of foreign exchange, because most of migrant worker paid in the form of foreign currency.

The role of Indonesian government in this program, is arranging the regulation that can protect of Indonesian worker who work abroad. By arranging Law Number 13 Year 2003 about Manpower, at CHAPTER of VI Section 31 mentioning that:

Every labor have the same opportunity and rights to chosen, to getting, or move occupation and obtain; get decent income in home country or abroad.

This Law is basic principle in accordance to protect Indonesian migrant worker. And to avoid of an action that can harm of Indonesian worker furthermore at abroad, the government enact Law number 39 Year 2004 about Placing and Protection of Indonesian worker abroad (UU PPTKILN) which have been agreed in Plenary Conference of House of Representative date of 29 September 2004 and signed by President Megawati Soekarnoputri date of 18 October 2004².

C. The Regulation

The enacted of Law No. 39 Year 2004 about Placing and Protection of Indonesian worker abroad (UU PPTKILN), caused by during the time, the law that govern placing and protecting Indonesian worker is Ordonnansi about Conscription of Indonesian people to Do/Conduct the Work outside Indonesia (Staadblad Year 1887 No.8) and Ministerial Decree of Labor and Transmigration No.Kep.104A/Men/2002 about Placement of Indonesian Worker abroad and also its execution regulation, is assumed cannot fulfill the requirement of arrangement of placing and protection of Indonesia Worker who work abroad, completely and comprehensive. The Arrangement through Ministerial Decree of Labor and Transmigration in the reality not able to solve the problem that occurred in placing Indonesian worker abroad, especially in preventing illegal migrant worker placement.

¹ According to Indonesian Statistic Bureau, the sum of unemployment in year 2007 proximately 10,1 million people from 200 million people of Indonesia, see <http://www.bps.go.id/releases/New>,

² Majalah Nakertrans Edisi 05 TH.XXIV-Desember 2004, hlm. 1

According to data which can be obtained from Data and Information of Manpower Minister Office, in the year 2007, Placement of Indonesia Migrant worker in Asia-Pacific and in middle east area shall be as follows³ :

NO	DESTINATION COUNTRY	AMOUNT
1	Malaysia	151.998
2	Singapura	23.613
3	Brunei	4.321
4	Hongkong	21.282
5	Taiwan	35.222
6	South Korea	2.175
7	Japan	49
8	Macau	102
9	US America	861
10	Other	137
	TOTAL AMOUNT	239.760

Table 1
Data of Placement of Indonesian Migrant Worker at Asia-Pacific region Year (Source: BNP2TKI, August 2007)

NO	Destination Country	Formal		Informal		Amount
		Male	Female	Male	Female	
1	Saudi arabia	1,579	1,145	9,788	137,723	150,235
2	Kuwait	-	-	25	16,817	16,842
3	UEA	93	17	8	5,504	5,622
4	Bahrain	5	-	-	16	21
5	Qatar	145	20	9	828	1,002
6	Yordania	-	-	-	2,081	2,081
7	Tunis/Oman dll	282	729	39	166	1,216
	Total Amount	2,104	1,911	9,869	163,135	177,019

Table 2
Informal and Formal Indonesia worker Placement at Middle-East Region by State and gender Year 2005

³ http://www.nakertrans.go.id/pusdatinnaker/tki/index_tki.php, Januari 8, 2007, time 09.15

Source: Manpower Minister Office - Ditjen PPTKLN s / d December 2005.

The enacted of Law No. 39 is relevant to Law No.13 Year 2003 about Manpower, as in Section 34 of Law No.13 that order the rule of labor placement abroad regulated separately. In another word, Law No. 39 represents the mandate of UU No.13 year 2003 about Manpower to protect the Indonesia migrant worker.

The enacted of those laws is related to Section 27 Sentence (2) Constitution of State of Republic Of Indonesia Year 1945, This Law no. 39, was expected can give protection for Indonesian migrant worker to use their right to get occupation abroad, so that they can obtain; get the service of labor placement fast and easy and still give priority to safety of migrant worker weather are physically, morality and also dignity. The law No. 39 was expected to be able to formulate norms that protecting Indonesia migrant worker from various exploitative effort and treatment from anyone.

The consequence from existence of Law no. 39 is appearance of National Body of Placement and Protection for Indonesian migrant worker (BNP2TKI) which arranged in Section 94 up to Section 99. As for duty from this body, is arranged in Section 95 Article 1 as follows:

National Body of Placement and Protection for Indonesian migrant worker as referred to in Section 95 have it function to implant placement policy and protection for Indonesian migrant worker abroad coordinative and integrated.

To make realize function as in Section 95 Article 1, hereinafter BNP2TKI own the duty in the form of:

1. Conducting migrant worker placement on the basis of agreement between Government of destination country or Legal entity User at destination country as referred to in Section 11 sentence (1).
2. Giving service, coordinating, and do the observation for:
 - a. Document;
 - b. final provisioning of departure;
 - c. Problem Solver;
 - d. Financing source;
 - e. Departure until repatriating
 - f. Upgrading of quality of migrant worker candidate;
 - g. Center of information;
 - h. Quality of placement executor of migrant worker; and
 - i. Upgrade of migrant worker prosperity and their family.

D. Problem that occurs

From the picture above, Placement of Indonesian migrant worker to abroad should be no problem, because there is guarantee from constitution, labor act, and even made a special law (Law No. 39) to protect migrant worker abroad and existence of National Body of Placement and Protection for Indonesian migrant worker (BNP2TKI).

But in the reality, there are so many cases occurs with proves that there is torturing (physical abuse) experiences by Indonesian migrant worker who abroad, for example case Nirmala Bonat, who was abuses by her employer in Malaysia, and in Saudi Arabia, Housemaid from Indonesia tortured till death by her employer.

These realities indicate that lower protection for migrant worker from government of destination country and the government of Indonesia who have already enacted the law to protect Indonesian worker.

According to data that observed by Migrant Care⁴, NGO which care to Migrants Worker, level of death of Indonesian migrant worker in Malaysia during year 2007 reaching 71

⁴ <http://www.migrantcare.net/mod.php?mod=publisher&op=viewarticle&cid=3&artid=70>, January 8, 2007, Time 21.30

persons or 35% from totalizing 206 death of entire/all migrant worker over there. The root cause that migrant worker death is work accident 25%, pain 24%, mysterious death 24%, falling from height 13%, torturing 11%, the rest suicide.

Malaysia is country that threats Indonesian citizen (WNI) who work as migrant worker with the capital punishment namely as much 297 people, later; then Saudi Arabia as much 4 person, Singapore as much 1 person, and Egypt as much 1 person.⁵ If related into Section 33 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, required all Party State (that ratified the convention) to take the steps to guarantee migrant worker and its family member have been given the information as many as possible, by request or without with no charge.

Furthermore, on Section 37 of the Convention specified the rights of migrant worker and its family member to get the information before departure, or at least when they enter destination country, about all condition going into effect at the time they enter, and also the conditions that they must fulfill in destination country, and authoritative party that they must contact for all changes in the conditions.

Most of cases that appear, indicating that a large amount of Indonesian migrant worker do not get the information, and do less preparation in face of life and work in foreign State. Most of them do not realize the existence of protection of human right and basic freedom, which guaranteed them according to international law and national law.

E. Effort that has been done to protect migrant worker

Indonesia at this time has not yet ratified International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. So cannot protect its migrant worker in an optimal fashion. As for the time being that can be done/conducted by Indonesia Government is do the inter-states agreement as obliged in Section 7 Law No. 39 that said:

In executing duty and responsibility as referred to in Section 5 and Section 6 Government [is] obliged to:

- a. *guarantying of fulfilling of rights of migrant candidate /migrant worker, both for leaving through/ passing placement executor, and also leaving independently;*
- b. *Observe placement execution of migrant candidate;*
- c. *Create and develop the information system of placement migrant candidate abroad;*
- d. ***Conducting diplomatic effort to guarantee the accomplishment of rights and protection of migrant worker in an optimal fashion [in] destination country; and***
- e. *To give protection for migrant worker during period before departure, period of placement, and a period of repatriating.*

From Section 7 at Letter (d) above, we can take a conclusion whereas Indonesian Government will conduct bilateral or multilateral agreement with the destination country.

According to W. R. Bohning⁶, Director of South-East Asia and the Pacific Multidisciplinary Advisory Team, There are three kinds of approaches to protect migrant worker: the national, bilateral and multilateral approach.

On national approach, States can lay down in their own laws as basic principles of treatment to which their citizens should be entitled when they move abroad, whether temporarily or permanently. They may want to buttress broad principles with detailed standard or model employment contracts to be respected. This approach is used by Indonesian government by enacting Law No. 39.

⁵ *ibid*

⁶ W.R. Bohning, Protection, International Norms and ILO Migrant Workers Standards, Petaling Jaya, Kuala Lumpur, Malaysia, 6-8 December 1999.

Bilateral approach (ordered on Section 7 Letter (d) Law No. 39 as mentioned above) is States can negotiate the treatment to be accorded to their nationals and lay down the agreed principles and procedures in a bilateral treaty or an instrument of a lesser status or effect, such as a declaration of intent or a framework agreement, This approach has already been done by Indonesian government, by making an agreement/treaties with several country like Malaysia. Treaties have the advantage of being subject to the jurisdiction of the courts of the countries involved and to such international jurisdiction as the contracting parties may agree to.

The multilateral approach is where States can - going beyond national measures and bilateral negotiations - attempt to protect their citizens abroad through the promotion of multilateral minimum standards at the regional or global levels; through ratifying and applying them; and through putting pressure on States on whose territories their citizens are, to ratify and apply them as well. By this means, too, migrants can enjoy protection. If Indonesian government ratified International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the protection of Indonesian migrant worker will be optimal.

F. Conclusion

Indonesian Government has already enacted Law No. 39 Year 2004, this is a national approach to protect Indonesian migrant worker, and also made several agreement with several country (Malaysia, Singapore, Japan, Kuwait, and Saudi Arabia⁷) for bilateral approach. Although there are so many cases that happen to Indonesian migrant worker, most of the cases caused of lack of information or less socializations by National Body of Placing and Protection for Indonesian migrant worker. To optimize the protection for Indonesian migrant worker in another country which have not made an agreement with government of Indonesia, Indonesian government need to ratified International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

⁷ <http://www.tki.or.id/memo/ln.php>, time 17.15 date 19 Februari 2008

