



Analysis of the protection of Indonesian migrant workers overseas in the perspective of government regulation No. 59 year 2021

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ABSTRACT

The opportunity to work abroad with a relatively high income compared to domestic income is an attraction for some citizens to go work abroad. The purpose of this study is to analyze the protection of Indonesian migrant workers abroad in the perspective of Government Regulation No. 59 of 2021. This type of research is normative juridical research. Data sources are primary and secondary data. In primary, data collection techniques are carried out by means of deep interviews at institutions or ministries as well as from international organizations and civil society organizations that have a commitment to the issue of placement of workers abroad. Secondary data collection through literature review (literature review). The results of the research show PP No. Policy.PMI protection is carried out in a mutually integrated manner between the Central Government, Representatives of the Republic of Indonesia, B2PMI, Regional Governments, and Village Governments in a coordinated manner. Until the village government was also involved in the migration process. The existence of this research is expected to be input for the government to coordinate with each other.

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1. INTRODUCTION

In human social life, work has a very important meaning to fulfill life's needs, so that everyone needs a job in order to fulfill their right to life. Work has a goal to meet the needs of a person and his family that comes from the source of income obtained (Rosida, 2017; Widodo & Belgradoputra, 2019). The lack of domestic employment has resulted in many citizens trying to find work abroad in the hope that their needs will be met (Ketherin Sabaru, 2019; Sepang et al., 2021). Law number 39 of 1999 article 38 paragraph 2 concerning human rights states that citizens have the right to freely choose the job they like. (Puspitawati & Darmadha, 2019). Therefore, Indonesian citizens cannot be prohibited from working anywhere, including overseas, provided that they have fulfilled all the requirements set by the government for the safety, comfort, and welfare of Indonesian workers from the time they leave, on placement, and after becoming workers. Indonesian work (Natalia, 2019).

In addition, the opportunity to work abroad with a relatively high income compared to domestic income, has become an attraction for some citizens to go work abroad. (Anwartinna, 2019). Placement of Indonesian Migrant Workers abroad is carried out in the context of fulfilling the constitutional rights of every citizen as stated in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia, namely that "every citizen has the right to work and a decent living for

humanity". The right to get this job both in the country and abroad (Chintya, 2017; Robert Khuana, 2020).

The high interest of the people to work abroad is increasing from year to year and the number of job seekers who are interested in and enrolled to work abroad is increasing and even those who are looking for their own work abroad directly (independently) are also increasing too. (Widodo & Belgradoputra, 2019). The existence of Indonesian Migrant Workers (PMI) abroad as workers is acknowledged to provide benefits for both parties, both sending and receiving countries. The contribution of Indonesian Migrant Workers in economic development in destination countries needs to be appreciated by providing decent and humane treatment on a par with local workers, especially regarding the protection of their human rights.

Based on BP2MI data in 2019 the number of PMI working abroad reached 277,489 PMI. When the Covid 19 pandemic occurred in 2020 the number of PMI placements fell to 113,419 PMI. Likewise, in 2021 only 59,050 PMI will work in destination countries. By country of placement **PMI** until June **2022**, the highest receiving country **PMI** namely Hong Kong with a total of 24,753 people, Taiwan with a total of 17,890 people, South Korea with a total of 3,030 people, Malaysia ranks fourth with a total of 1,200 people. Ministry of Manpower during January-May 2022, 46.56 thousand PMIs received work placements abroad (YAZID, 2022).

Indonesia's lack of protection for Indonesian Migrant Workers abroad causes many problems for PMIs when working abroad. Human rights violations often occur to PMI. Not only that, workers also often get themselves into trouble for being someone who is illegal in another country. As a result of the emergence of problems faced by PMI, some legal protection is needed to prevent similar problems from occurring (Alexandrakis, 2019; Sepang et al., 2021).

Article 1 point 1 and 2 PP no. 59 of 2021 explaining the Placement and Protection of Indonesian Migrant Workers Abroad mandates that the executors of the placement of Indonesian Migrant Workers abroad consist of the Government and the private sector. Placement of Indonesian Migrant Workers by the Government can only be carried out on the basis of a written agreement between the Government and the government of the user country or between the Government and Legal Entity Users in PMI user countries, the implementation of which is carried out by the National Agency for Placement and Protection of Indonesian Migrant Workers (Atedjadi, 2015).

The purpose of this Government Regulation is to serve as a legal umbrella for the National Agency for the Placement and Protection of Indonesian Migrant Workers in the context of implementing the placement of Indonesian Migrant Workers abroad by the Government in a coordinated and integrated manner so as to create services that are easy, inexpensive, fast and safe. This Government Regulation regulates the procedures for implementing the placement of Indonesian Migrant Workers carried out by the National Agency for the Placement and Protection of Indonesian Migrant Workers starting from the recruitment process, psychological and health examinations, placement agreements, passport arrangements, visa arrangements, Final Departure Provisions (PAP), and departure, including protection for Indonesian Migrant Workers (Robert Khuana, 2020).

The results of studies of government regulations and laws and regulations regarding PMI have been carried out a lot. The research results show that Migrant worker protection laws are considered unable to protect Indonesian female migrant workers, there are no specific regulations related to the protection of female migrant workers and have not been consistent in implementing various conventions that have been ratified regarding the protection of migrant workers (Hakim & Havez, 2020; Natalis & Ispriyarso, 2018). This is different from the results of other studies which show that there are already many legal instruments in terms of protecting both Indonesian citizens and legal entities abroad so that the implementation of protection by the government must be optimized. Awareness from citizens, especially migrant workers in terms of reporting to representatives of the Government of the Republic of Indonesia abroad, is a supporting factor in implementing the protection of migrant workers. All technical protection techniques carried out by the government are in accordance with international and national legal regulations (Manurung & Sa'adah, 2020). The results other, show that the responsibility of local government, especially in the pre-placement, post-placement, and empowerment phase of placement of migrant workers,

while the placement of migrant workers is the responsibility of the central government. Implementation of local government responsibilities should be supported by regulations established by local governments (Lasatu, 2017). Other research results show that special attention must be given to the Immigration Office to be stricter and more selective in issuing passports and other documents to minimize illegal migrant workers (Pusat et al., 2017). Research on analysis of the latest Government Regulation, namely No. 59 of 2021 not much has been done. Based on this, the purpose of this research is to analyze the protection of Indonesian migrant workers abroad in the perspective of Government Regulation No. 59 in 2021. The implications of this research are expected to be input for the government to coordinate with each other.

2. RESEARCH METHOD

This type of research is normative juridical research which discusses the application of protection for Indonesian migrant workers before, during and after working abroad and the protection provided by Government Regulation No. 59 in 2021. (Adiyanta, 2019; Efendi & Ibrahim, 2018). The data source is primary and secondary data. Data collection techniques on primary data are well carried out through deep interviews at institutions or ministries as well as from international organizations and civil society organizations that are committed to the issue of placement of workers abroad. Secondary data collection through literature review (literature review) based on evidence using an empirical approach (Tan, 2021). The data sources come from primary legal materials from the 1945 Constitution, Government Regulation Number 59 of 2021 concerning the Implementation of Protection for Indonesian Migrant Workers. Where in this writing normative research on the legal principles of protection for Indonesian Migrant Workers or commonly called PMI is based on government regulations and legal principles that exist in Indonesia and looks at the implementation in the field that occurs at PMI abroad.

3. RESULTS AND DISCUSSIONS

The Government of Indonesia has promulgated Government Regulation Number 59 of 2021, hereinafter referred to as PP RI No 59/2021 concerning the Implementation of Protection for Indonesian Migrant Workers (PP No. 59/2021). This PP contains rules that further explain the substance of the Law, hereinafter abbreviated as Law no. 18 of 2017 which is an important legal instrument to improve placement governance and protection for migrant workers (Ratihtari & Parsa, 2019).

PP RI No 59/2021 consists of 7 chapters. Chapter I contains General Provisions. Chapter II regulates the protection of Indonesian migrant workers (PMI). PMI protection is a central issue. So that in its implementation, this PP regulates protection before PMI leaves for work, while working in the placement country, until after work. Chapter III regulates the One-Stop Integrated Service (LTSA) for PMI placement and protection. The establishment of LTSA was carried out to improve effective, efficient, transparent, fast and quality services without discrimination. This LTSA will coordinate and integrate 8 agency/institutional services in the form of a desk.

In chapter IV PP No. 59/2021 covers the clear division of tasks and responsibilities between the Central Government and Regional Governments in providing protection for Indonesian migrant workers and their families in an integrated and coordinated manner. Chapter V regulates Indonesian Migrant Worker Placement Companies (P3MI). Chapter VI regulates coaching and supervision. Meanwhile, Chapter VII as the last chapter regulates closing provisions. In this chapter, some of the previous rules, namely PP No. 3 of 2013; PP No. 5 of 2013; PP No. 4 of 2015; and Presidential Decree No. 64 of 2011 is declared no longer valid.

The implementation of PMI protection in PP No.59/2021 is carried out to ensure the fulfillment of the rights of Indonesian migrant workers before working, during work and after work. PMI protection is carried out in a coordinated way between the Central Government, Representatives of the Republic of Indonesia, B2PMI, Regional Governments, and Village Governments involved in the migration process. The government wants an improvement in migration governance. This really requires the commitment of all parties, including the smallest government elements in the village. This protection is given to PMI candidates and/or migrant

workers placed by P3MI, companies that place PMI for the company's own interests and PMI as a whole individual (Indah Sari, 2022; Zakiyah et al., 2020).

The existence of workers migrating abroad, the Indonesian government benefits, because besides being able to reduce the number of unemployed in the country, it can also increase the country's foreign exchange (Celia, O., Magenda, TA, Nainggolan, MG, & Voges, 2021). In practice, not all of these dreams or hopes can be achieved perfectly, this is experienced by many Indonesian workers who migrate abroad, such as to Malaysia, Brunei, Saudi Arabia, etc. (Chintya, 2017). In these destination countries, many workers experience problems where they are treated improperly by the employer.

According to Indonesian labor law, foreigners are responsible to the state. foreign labor law policy from the perspective of state responsibility. Meanwhile, foreign employment law policy is a government policy-making process to determine the direction of adopting and/or implementing foreign labor law in Indonesia in order to achieve the country's goals as stated in the preamble to the said law based on the 1945 Constitution of the Republic of Indonesia. The politics of foreign labor law is based on *ius constituendum* and *ius constitutum* to deal with changes in people's lives (act of choice) in the field of employment in the global era marked by globalization. Globalization encourages the movement of workers across countries, so that foreign workers enter and work in Indonesia. This legal policy is also based on the product, namely the *ius constituendum* chosen for foreign employment in Indonesia.

State responsibility in the field of manpower is carried out by taking into account the basic principles of the state economy as stipulated in Article 33 of the 1945 Constitution of the Republic of Indonesia and the principles of promoting and protecting human rights as stipulated in Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia. This is the constitutional basis for protection law for workers including the use of foreign workers in Indonesia. This means that the state is *ius constituendum* responsible for the right to work which is recognized and protected by the State Constitution. Globalization encourages the movement of labor between countries, so that foreign workers work in Indonesia. This legal policy is also based on products, i.e. constituencies *ius* who are selected to be employed as foreigners in Indonesia.

Based on this background, the 1945 Constitution of the Republic of Indonesia regulates and protects the right to work for every citizen and people in Indonesia, as regulated in Article 27 paragraph (2), Article 28D paragraph (2), Article 28E, paragraph (1), and Article 28I paragraph (4) of the 1945 Constitution of the Republic of Indonesia. The right to work is a constitutional responsibility that must be borne by the state. The responsibility of the state is reflected in the goals of the state as stated in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia namely: a) Protection function, the state protects all of Indonesia's bloodshed, b) Welfare Function, the State is obliged to realize welfare for everyone, c) Educational function, the state has an obligation to educate the life of the nation; And d) Peacefulness function, obligatory to create peace in the life of the state and society, both internally and externally

Even though the influence of Indonesian Migrant Workers brings in foreign exchange for the state and regions and is able to overcome the problem of the large number of unemployed in Indonesia, the protection that PMIs receive is still very limited. This condition is demonstrated by the fact that there are many cases of violations of PMI's human rights abroad that occur from year to year both before, during and after placement. (Anwartinna, 2019; Wulandari, 2020). The rampant cases of violence that have occurred against PMI to date is a matter of great concern.

One example is Sumiati who is a victim of violence in Saudi Arabia. Several moderate to severe injuries were found on his body following an investigation in the country where he worked. In fact, his feet were reported by the mass media where he worked as paralyzed after being sentenced by a doctor as a result of the torture. Incidents like this certainly lead to thoughts that the Indonesian government is still lacking in protecting its citizens who are working abroad. In fact, not long ago there was violence against OMI by their employers in Malaysia. Cruelly, all over the victim's body there were cuts and burns.

The role of the government continues to be carried out as a result of the rampant violence against OMI abroad, in addition to providing legal protection provided in the law, Indonesia also directly criticizes the country where OMI has experienced violence there. One of them is the

violence that occurred in Malaysia, the Indonesian government is making efforts so that this incident does not recur by summoning the Malaysian Ambassador in Jakarta, and expressing condemnation for cases of violations that continue to be repeated in the neighboring country. The Indonesian Ministry of Foreign Affairs said that it was pushing to renegotiate the memorandum of understanding regarding the safer placement of OMI between the two countries concerned.

On one of the online news pages, detiknews, in 2020 there was violence experienced by an Indonesian migrant worker (PMI)--formerly called TKI--in Malaysia. PMI, who is often called a foreign exchange hero, was tortured and left abandoned on the terrace by his employer. As explained in the written statement received by detik.com from the Indonesian Migrant Worker Protection Agency (BP2MI), Thursday (26/11/2020), the PMI's name is Mei Herianti (26). Mei is not an illegal migrant worker. Mei is known to have worked as a household helper (PLRT) with passport number AU666196. The woman from Cirebon was procedurally departed through a process at UPT BP3MI Jakarta and had an Overseas Worker Card (KTKLN). In November 2020, The Royal Malaysian Police (PDRM) conducted an operation to raid a house located at Number 23 Jalan J Taman Batu 52000 Kuala Lumpur, where Mei worked. The operation began with a report by the Petaling Workers who coordinated with the Indonesian Embassy in Kuala Lumpur after the workers received complaints from the local community that they saw the victim left to sleep on the terrace by the employer in a deplorable condition. Currently, Mei is still being treated at the Kuala Lumpur Hospital because her condition is quite alarming. Mei was suspected of being cruelly tortured by her employer. Mei received cruel torture for 13 months. Head of BP2MI Benny Ramdhani also criticized. Benny requested that our Indonesian Embassy in Malaysia use its diplomatic powers to provide assistance and legal remedies so that victims get justice. Besides that,

The protection that occurs is not far from having a guarantee, so this guarantee can be used as protection for PMI abroad. In Article 1 point 3 of government regulation number 3 of 2013 states "Protection of TKI is all efforts to protect the interests of prospective TKI/TKI in realizing guaranteed fulfillment of their rights in accordance with laws and regulations, both before, during and after work."

It is explained again in article 15 "Protection of TKI during the placement period starts from the time the TKI arrives at the airport/port of the destination country of placement, while working, until returning to the Indonesian departure airport." Reinforced in article 8 of the Law of the Republic of Indonesia number 29 of 2004 letter g states "obtaining guarantees of legal protection in accordance with laws and regulations for actions that can degrade their dignity and rights as well as violations of the rights established in accordance with laws and regulations during overseas placement;" Then the following is a description of the articles that underlie the guarantee of protection for PMI:

Pre-Deployment

During pre-placement or when preparing for departure, according to article 5 of government regulation number 3 of 2013 that protection for PMI candidates during pre-placement includes: a) Administrative protection; And, b) Technical protection, c) Which is further explained in 6 Administrative protection as referred to in Article 5 letter a includes, d) Fulfillment of placement documents, e) Determination of placement fees; And, f) Determination of terms and conditions of work, g) Also, Article 10 explains that the technical protection as referred to in Article 5 letter b includes, h) Socialization and information dissemination, i) Improving the quality of prospective migrant workers, j) Defending the fulfillment of the rights of Indonesian Migrant Workers; And, k) Guidance and supervision.

So the guarantee given to PMI during pre-placement relates to documents and preparations for PMI to depart. Given the size and number of Indonesian migrant workers who will go abroad. So, the passport as a document of immigration policy in providing services and supervision in the protection of PMI is one of the most crucial things in the departure of Indonesian migrant workers. Immigration policies and innovations in terms of preventing Indonesian migrant workers are one of the functions of immigration, namely a balance of security and a development facilitator for the country. Another thing that immigration considers in terms of supervision is to prevent acts of violence abroad that befall PMI.

Placement

a) The government's efforts to guarantee the protection provided to PMI during placement are contained in article 17 of Government Regulation number 3 of 2013 that, b) Guidance and supervision, c) Consular assistance and protection, d) Provision of legal assistance, e) Defending the fulfillment of the rights of Indonesian Migrant Workers, f) Protection and other assistance in accordance with statutory provisions as well as international laws and customs; And, g) Diplomatic efforts

The government itself has clearly regulated this regulation. Where when PMI is placed abroad, they are guaranteed good protection and even get legal assistance too. But only in its implementation is a little lacking.

Full Placement

At post-placement or during preparation for PMI's return it is regulated in article 26 of government regulation number 3 of 2013, that protection for post-placement TKI is provided in the form of: a) Providing facilities or facilities for the return of Indonesian Migrant Workers, b) Provision of efforts to protect TKI from possible actions of other parties who are irresponsible and can harm TKI when they return from the country of destination, at debarkation, and on their way to the area of origin, c) Facilitate the processing of insurance claims, d) Facilitating the return of migrant workers in the form of transportation services, financial services, and goods handling services, e) Monitoring the return of Indonesian migrant workers to their place of origin, f) Facilitation of troubled TKI in the form of facilitating the rights of TKI; And, g) Handling of sick TKI in the form of facilitation of health care and physical and mental rehabilitation.

Term of Protection

According to Article 11 of the Regulation of the Minister of Manpower of the Republic of Indonesia Number 18 of 2018 concerning Social Security for Indonesian Migrant Workers, the protection provided by the government has a period of time, namely: a) The maximum period of protection before work is 5 (five) months, b) If PMI has not left for the destination country for more than 5 (five) months, PMI will register for protection before starting work by paying back the pre-employment contribution, c) The maximum period of protection while working is 25 (twenty five) months with the following details, d) Maximum 24 (twenty four) months in destination country; And, e) Maximum 1 (one) month when preparing to return to the destination country, f) Individual PMIs receive additional protection while working for a maximum of 1 (one) month after registration and payment of contributions until PMI departs for the destination country of placement, in the form of JKM program benefits, g) The maximum period of protection after working is 1 (one) month in Indonesia, h) If the specified time period has expired, the PMI status must be renewed in order to obtain guarantees in accordance with existing regulations in Indonesia.

4. CONCLUSION

PP Policy No. 59 of 2021 concerning PMI protection abroad on pPMI protection is carried out in a mutually integrated manner between the Central Government, Representatives of the Republic of Indonesia, B2PMI, Regional Governments, and Village Governments in a coordinated manner. Until the village government was also involved in the migration process. The government wants an improvement in migration governance. This really requires the commitment of all parties, including the smallest elements of government in the village, considering aspects of labor law and protection as well as efforts to strengthen the authority of foreign governments in international forums. It is advisable to strengthen the policy to protect Indonesian Migrant Workers abroad through a rule-of-law-based strategic partnership mechanism, which is expected to be a good solution for the future government and also for long-term national needs. The implications of this research are expected to be input for the government to coordinate with each other.

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