

# Legal Protection for Indonesian Migrant Workers

*By* Endeh Suhartini

## THE LEGAL PROTECTION OF INDONESIAN MIGRANT WORKERS IN EFFORT TO INCREASE WAGES FOR WELFARE

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### ABSTRACT

Article 4 of Law No. 13 of 2003 concerning Manpower explains the existence of equal employment opportunities and the provision of labor and protection of workers in an effort to create prosperity for themselves and their families. Work is a necessity for workers to get wages in accordance with their wishes. Indonesian Migrant Workers (PMI) are workers who do work leaving their own country or leaving Indonesia to get a decent wage to meet the needs of life both for themselves and their families.

The purpose of this research is to study and analyze the legal protection of the existence of Indonesian Migrant Workers (PMI) who work outside the territory of the Unitary State of Indonesia in order to get a decent wage to meet the needs of themselves and their families.

The research methodology used in this paper is a normative legal research method which is a legal research that seeks to examine the application of positive law used in society related to Indonesian Migrant Workers. Normative juridical research uses secondary data with primary, secondary and tertiary legal materials. While empirical data as a complement to the analysis of research on the entry into force of regulations in society.

The research resulted in the finding that legal protection and legal certainty are needed for Indonesian Migrant Workers given the many ongoing problems with Migrant Workers Overseas. Indonesian Migrant Workers who work abroad have a desire to get a job and a decent wage from the work done, but in practice there are still Indonesian Migrant Workers who are not fared well and get treatment that violates Human Rights from the employer or employer and or service bureau irresponsible company.

Protection of Indonesian Migrant Workers is any effort that must be carried out continuously on prospective Indonesian migrant workers and / or Indonesian Migrant Workers before, during and after working relations as required by legislation.

Keywords: *Indonesian Migrant Workers, Employment, Wages, Welfare*

## A. INTRODUCTION

The era of globalization, especially as advances in communication and transportation technology require various countries to study the problem intensively. Information entering a country is not only through internal interaction, but can not be prevented and will continue to occur interaction, interconnection and interdependence (interface) between nation.

Human rights which are universally interpreted as those rights which are inherent in our nature and without which we cannot live as human beings by the people in the world of formulation and recognition have been fought for in a very long period of time. Even today this is still ongoing, with various dimensions of problems arising from the various interpretive spectrums involved in them.

Human rights are rights that are gifts from Allah SWT, rights owned by humans from the womb up to the grave, which must get protection by law and obtain legal certainty protected by the constitution in all its implementation activities including Indonesian Migrant Workers who work to obtain wages in other people's countries due to work limitations.

In connection with this, humans in their lives need work to meet the needs of life and survival of themselves and their families. Work is an important factor in human life and has important meaning and benefits that are needed, with the work of a worker will have a meaning in the community, have useful activities, interact with others, and can fulfill the desires and ideals for himself and his family .

The work obtained by a person is a human right regulated in the constitution of the Unitary State of the Republic of Indonesia as stipulated in Article 27.28 and Article 33 of the 1945 Constitution that everyone has the same position in law and government and is entitled to get a job to meet the needs of life that proper and entitled to work by getting fair and wise treatment in the implementation of employment relations to meet economic needs with the principle of kinship, and strengthened with Article 4 of Law Number 13 Year 2003 concerning Manpower, so that the objective of the Unitary State of the Republic of Indonesia in the Opening of Laws Basic 1945 Paragraph 4 can be achieved.

Based on this, it is understood that, the Government has the duty and responsibility to prepare citizens of the Republic by taking into account the rights of citizens to work and get jobs while providing employment as mandated in the constitution, in order to achieve decent living needs for workers and their families. The work that is obtained and needed by citizens is the duty of the government and is a human right. But the reality of employment is very limited so that human rights as citizens have not been fulfilled by the government.

Legal recitation and appreciation is not considered excessive, because if the law belongs to the community, the community must have pride as a law-

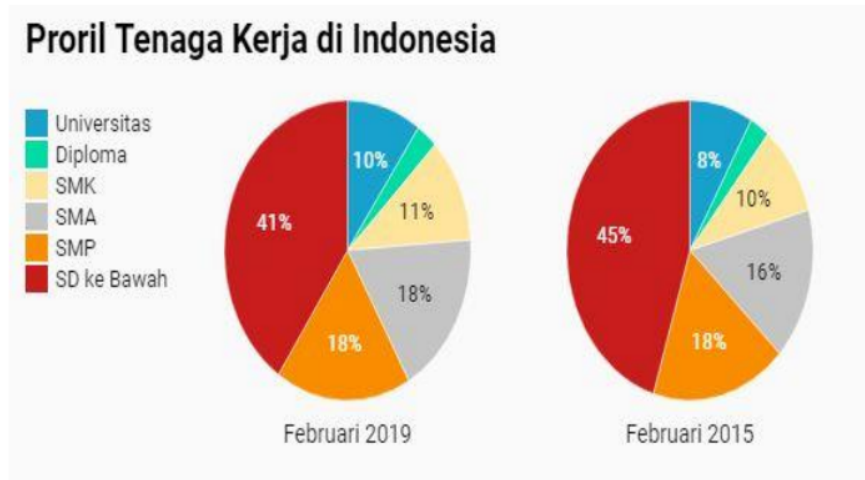
abiding social group so that it reflects the maturity of the law. In addition to helping steer society towards the ideals of the law, it is time the law can provide a kind of social prestige that shows its own "legal civilization". With the growth of social prestige like this will simultaneously foster embarrassment to other groups who are not yet mature in the law at the same time motivate and invite them to participate in social achievements that are socially proud. This is what is called by law as economic goods.

Thus, to meet the legal protection and legal certainty of Indonesian Migrant workers who work outside the territory of Indonesia, the Government must make various efforts to make it happen. Legal protection and legal certainty for Indonesian Migrant Workers by implementing laws and regulations including implementing Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, which was previously regulated in Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad .

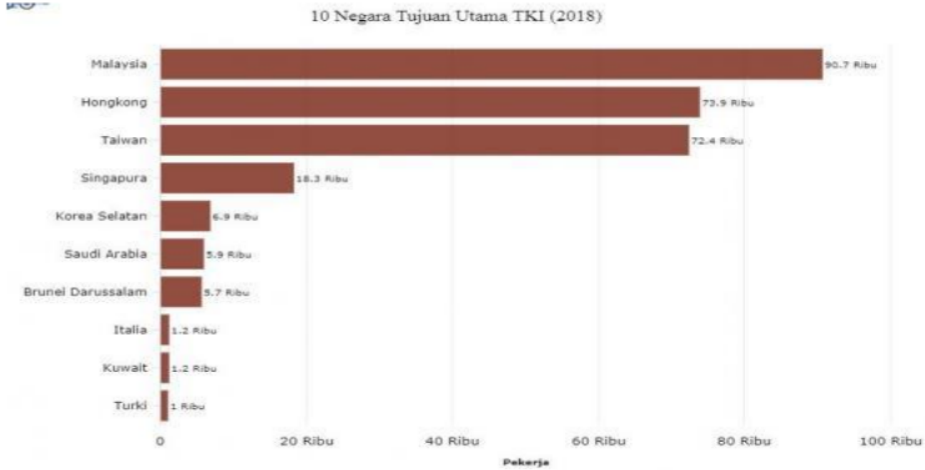
The enactment of Law Number 18 Year 2017 concerning the Protection of Indonesian Migrant Workers which was ratified on October 25, 2017 by the Parliament gives new hopes and very high ideals in order to realize legal protection and legal certainty for Indonesian Migrant Workers as a very large foreign exchange contributor to country. The Government's authority and a very large role this law give great hope that the creation of legal protection and legal certainty for Indonesian Migrant Workers (PMI) can be done from the beginning before work, at work and after work so that companies sending services for employment against Migrant Workers are correct - be supervised since from the region to the Center, and the company is only a giver of placement.

Based on these data, it was examined that from January to April 2018, as many as 87 thousand Indonesian Migrant Workers (PMI) had departed to try their luck overseas. On average there are 20 thousands of workers who leave every month in this four-month period, both from 2016 to 2018. The proportion of jobs, between the formal and informal sectors, is fairly balanced this April. The percentage of those sent to work in the formal sector is somewhat higher, at 56 compared to 44 percent. As many as 61 percent of migrant workers in April 2018 are women. (MN)

Based on the above explanation, the data profile of the workers can be seen as follow:

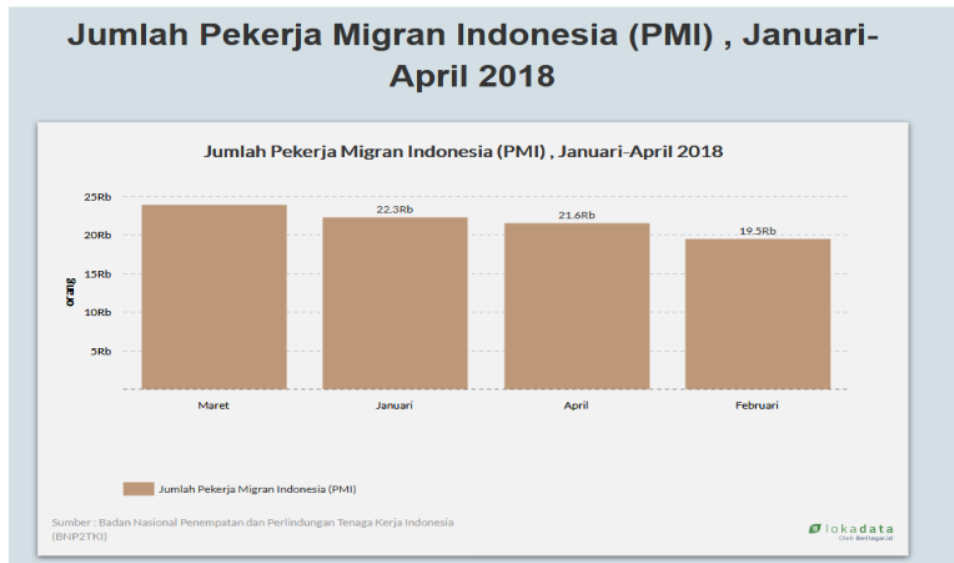


The 10 main destination countries can be seen as follows:<sup>1</sup>



<sup>1</sup> <https://www.kompasiana.com/agilshabib/5d0ad5a4097f36696c1fb0a2/pekerja-migran-di-negeri-k-pop?page=all>

<sup>2</sup> <https://lokadata.beritagar.id/chart/preview/jumlah-pekerja-migran-indonesia-pmi-januari-april-2018-1528393039>



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According to the data above, the increasing number of Indonesian Migrant Workers (PMI) in their development requires attention from the Government to provide legal protection and legal certainty for Indonesian Migrant Workers who in fact do not get decent jobs in Indonesia to fulfill their life needs to get jobs and get a decent wage in order to meet the needs of life of workers and their families for a better future.

## B. PROBLEM FORMULATION

1. What factors are causing the increase in Indonesian Migrant Workers (PMI) working abroad?
2. What is the legal protection of Indonesian Migrant Workers?

## C. RESEARCH METHODOLOGY

The research methodology used is the empirical normative legal research method which is a legal research that seeks to examine the application of positive law used in society related to migrant workers. Empirical juridical research is a combination using secondary data and primary data. Secondary data is data derived from literature materials, while primary data is data obtained directly from



research subjects. Data obtained from the study were reviewed and analyzed descriptively.

## D. DISCUSSION

### 1. Factors That Cause Increased Indonesian Migrant Workers Working Abroad.

Some things to consider are the factors causing Indonesian Migrant Workers (PMI) to look for work abroad including:

#### a. Limited Job Vacancies in Indonesia;

Limited and narrow employment opportunities are the reasons for prospective Migrant Workers and / or Migrant Workers choosing to work Abroad in the hope of improving the economy of themselves and their families and not becoming unemployed.

In practice, the relationship between workers and employers is a dependency relationship, but the dependency relationship is always one-sided. This is because industrial relations are power relations. In power relations, there are those who rule and are controlled, there are those who rule and are governed. Due to labor conditions which place supply and demand for labor unbalanced, the gap is sharper. The subordination has made workers vulnerable to exploitation actions with all their modifications. Minor conditions are further strengthened by external factors such as political, economic and social conditions.

#### b. Higher wages in other countries

Ideal and good wage law must be applied in employment relations, must be based on Pancasila noble values so that the hope for the achievement of justice and legal certainty for the parties, especially for workers and employers / employers. Industrial Pancasila (HIP).

Wages are a crucial issue in the field of labor and even if they are not professional in handling wages, it is not uncommon to become potential disputes and encourage strike action and or demonstrations. Wages are a fundamental issue in the field of labor and Industrial relations. Because of wages, wages are the top demand in various strikes and / or workers' demonstrations. In the General Explanation of Government Regulation No. 78 of 2015 concerning Wages that wages are one of the most sensitive issues in the implementation of employment relations. Various related parties see wages from different sides. At the practical empirical level, the handling of wages is not only related to technical aspects and economic aspects, but also the legal aspects that underlie and underlie how matters relating to wages are carried out safely and right. Based on the applicable laws and regulations. In connection with that, to handle wages in a

professional manner absolutely requires comprehensive understanding of all three aspects.

With regard to Indonesian Migrant Workers, doing and looking for work outside Indonesia is the main reason for getting a large salary or income so that they can fulfill their living needs and aspirations that they themselves and their families expect. The wages received by Indonesian Migrant Workers are in fact greater than in Indonesia.

The remuneration system received by Indonesian Migrant Workers is adjusted to the Work Agreement with the Company which provides employment and consideration with employers or employers in the destination country.

c Limited human resource skills for Indonesian Migrant Workers;

The word wealth is used by Smith in his book <sup>14</sup> *An Inquiry Into The Nature and Causes of The Wealth of Nation (1776)* which is popular with the Judge of The Welth of Nation. The book which is almost 3 centuries old is still used as a reference for economics, political economy, economic sociology and social welfare science. In explaining the source of prosperity / welfare, Smith views labor and division of labor as sources of prosperity. Smith paid great attention to the problem of division of labor and investigated the meaning of division of labor in economic life. In this book Smith for the first time explains the theory of division of labor as the basis for mass production. The division of labor and the pursuit of interests individually encourage exchange and exchange encourage the division of labor, the division of labor intensively will be able to increase work productivity. Finally, work productivity increases the prosperity of the nation. An increase in the quantity of work that is large as a consequence of the division of labor that allows three things, namely:

- 1) Improving the Skills of Workers;
- 2) The time savings that are usually wasted due to displacement one type of work to another;
- 3) The discovery of a large number of machines which simplify and shorten the work, and that allows a worker doing the work of many people.

In connection with the expertise capabilities of each different HR Workers in doing a job needs to be done training and coaching of workers so that they are able to compete nationally and internationally. Ability and expertise of reliable HR Workers will have an impact on wages or salaries that are very high in accordance with the expectations of Indonesian Workers so they can compete with other countries internationally.



d. Influence of Modernization, technology, ideology, politics, social, culture, and economy.

Human needs are increasingly changing with the times. Environmental and lifestyle factors as well as ideological, economic and political factors will greatly influence the desires of human needs that continue to increase. Indonesian migrant workers who leave their homeland to work abroad in reality are indeed the main considerations to get a decent wage and can meet the needs of themselves and their families to obtain welfare.

## 2. Legal Protection of Indonesian Migrant Workers.

The concept of legal protection is one of the important things needed by humans to get protection of their rights and obligations in order to achieve legal certainty of human dignity and dignity.

Legal protection is the protection of dignity and the recognition of human rights possessed by legal subjects in a country based on legal protection from arbitrariness.

Legal protection is carried out as an embodiment of the creation of justice and legal certainty in the implementation of fulfilling rights and obligations in accordance with the agreements of agreements and justice can be fulfilled.

When humans agree on the existence of justice, then inevitably justice must color human behavior and life in relationship with God, with fellow individuals, with society, with government, with nature, and with God's other creatures. Justice must be realized in all lines of life, and every human product must contain the values of justice, because in reality unjust behavior and products will give birth to imbalances, disobedience that results in damage, both to oneself, humans themselves and the universe.

Thus, it can be assessed that provide legal protection for Indonesian Migrant Workers as contained in the Law of the Republic of Indonesia Number 18 Year 2017 concerning the Protection of Indonesian Migrant Workers.

The Protection of Indonesian Migrant Workers that must be considered is:

1. Protection against the fulfillment of rights and obligations before, being and after conducting work relations;
2. Protection against the provision of insurance;
3. Protection of prospective workers and / or Indonesian Migrant workers themselves and their families;
4. Fulfillment of rights and obligations in Human Rights;
5. Legal certainty and legal and economic protection for Indonesian migrant workers and their families;

6. Protection of job placement for companies that channel it to take full responsibility;
7. Legal protection and legal certainty of administration in accordance with statutory provisions;
8. And other legal protections for the benefit of prospective Migrant Workers and / or Indonesian Migrant Workers.

## E. CONCLUSION

The conclusions of the study are as follows:

1. Some of the factors causing Indonesian Migrant Workers (PMI) to find work abroad include:
  - a. Limited Job Vacancies in Indonesia because the Government has not been able to provide jobs according to expectations as the provisions of the legislation that have not been maximally fulfilled;
  - b. Income or salary received is very small in Indonesia and each region is different and working abroad has higher wages;
  - c. The limited ability of expertise possessed by HR for different Indonesian Migrant workers;
  - d. environmental and lifestyle factors as well as ideology, politics, economics, social and culture as well as technological developments affect the improvement of lifestyles and the needs and desires of a decent and prosperous and better life are very high.
2. Legal Protection of Indonesian Migrant Workers, namely:
  - a. Legal Protection of Indonesian Migrant Workers is to achieve the expected goals as stipulated in the legislation and agreements that have been seen in the work agreement for the implementation of work relations before work, at work and after work;
  - b. Legal protection of Prospective Migrant Workers and / or Indonesian Migrant Workers to provide legal guarantees of the fulfillment and enforcement and fulfillment of rights and obligations for workers themselves and their families;
  - c. Protection of Human Rights;
  - d. Legal protection for the economic, health, social problems of migrant workers and their families.
  - e. Protection of Other Workers in accordance with applicable laws and regulations.

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