

Legal Protection of the Rights of Indonesian Migrant Workers Based on Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers

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Abstract. Ship Crew, and/or Migrant Workers, specifically referring to the ILO Convention on migrant workers of 1949 (no. 97) in article 11 are people who migrate from one country to another to work. In terminology, Indonesian Migrant Workers are individuals who move to other places, both within and outside the country, either legally or illegally to work for a certain period. Aside from that, it is directed by Regulation Number 39 of 2004 concerning the Position and Security of Indonesian Laborers Abroad vide Article 1 section (1) which expresses that the meaning of Indonesian Specialists (TKI) is each Indonesian occupant who fulfills the necessities to working abroad in a business relationship for a particular period and getting pay rates. Officially, the legitimate security game plans for Indonesian residents who work in different nations are called Indonesian Transient Specialists (PMI), as managed in Articles 4 and 5 of Regulation Number 18 of 2017 concerning the Security of Indonesian Traveler Laborers.

Keywords: Legal protection, Rights of Indonesian Migrant Workers, Law No. 18 of 2017.

1 Introduction

The Republic of Indonesia is a state of law (*rechtsstaat*), namely a state in which all attitudes, behavior, and actions, whether carried out by the authorities or by its residents, should be founded on regulation.[1] The Indonesian law and order is a state in light of Pancasila and the 1945 Constitution of the Republic of Indonesia, a consent to frame a state government, safeguard the whole country and all slaughter, advance the overall government assistance, and make the existence of the country shrewd. The Indonesian law and order is a cutting edge law and order, regarding which the public authority's primary errand is to work on the government assistance of its kin. That is why the modern Law State is also called the Welfare State.

The era of reform was expected to bring echoes of real change in the prosperity of the nation and state. At first, it turns out that up to now we have not been able to show a real change in building a legal, social, political, economic, and cultural condition that is more transparent and democratic, especially the benefits that have not yet reached the same level. once among workers or laborers. The biggest obstacle is the weakness in the employment law system which is more structural, cultural, and substantial.

Lawful insurance for Indonesian Transient Laborers (PMI) is the objective and acknowledgment of satisfying fundamental privileges by Article 27 area (2) of the 1945 Constitution of the Republic of Indonesia "Each resident has the option to work and a living that deserve mankind", and Article 33 passage (1) which expresses that "The economy is organized as a joint exertion in view of the guideline of connection". Infringement of fundamental freedoms safeguarded by the constitution is an infringement of common liberties. Consequently, inability to satisfy the privileges of laborers or workers is a substantial infringement of humankind. The freedoms being referred to incorporate privileges, for example, the right to life, the right not to be tormented, the right to religion, and the right to correspondence under the watchful eye of the law, which are all directed in legal guidelines.[2]

Migrant workers in Indonesia are known as Indonesian Workers (TKI). Sending migrant workers abroad has been going on since the 20th century.[3] The sending of migrant workers has increased quite significantly since Pelita II (1979) and is directed to countries in the Middle East with jobs generally as domestic servants, namely 83% of all migrant workers.

Migrant workers, specifically referring to the ILO Convention on migrant workers of 1949 (no. 97) in article 11, are people who migrate from one country to another to work. In terms of terminology, Indonesian Migrant Workers are people who move to other areas, both within and outside the country, either legally or illegally to work for a certain period. Aside from that, it is likewise controlled in Regulation Number 39 of 2004 concerning the Situation and Security of Indonesian Laborers Abroad vide Article 1 section (1) which expresses that the meaning of Indonesian Specialists (TKI) is every Indonesian occupant who meets the necessities to working abroad in a business relationship for a particular period and getting pay.

Changes (reforms) must be implemented over time to ensure the welfare of crew members who work on merchant ships, commercial ships, and cruise ships so that they are no longer only considered migrant workers, but can also be changed and treated as ship crew members entirely by the maritime paradigm or nautical insight. Reform of laws and regulations is an effort to realize the protection of human rights.[4]

Fundamentally, law and order points essentially to give legitimate assurance to individuals. As indicated by Philipus M Hadjon [5] that legitimate insurance for individuals against government activities depends on two standards, in particular the Standards of Common freedoms and the Standards of Law and order. Recognition and protection of human rights have a primary place and can be said to be the goal of the rule of law. As a consequence of the rule of law, there must be guarantees for state institutions as a means of state government to be able to run the government and citizens have the rights and obligations to receive guaranteed legal protection.

Adroitly, lawful security for individuals for government activities incorporates preventive legitimate assurance and oppressive lawful insurance. In preventive lawful security, individuals are permitted to submit protests (inspraak) or sentiments before an administration choice takes conclusive structure.

Pancasila as the way of thinking of life of the Indonesian public in its fifth guideline states "Civil rights for Every single Indonesian Individual ". This means that justice for the people is more important than justice for certain groups.[6] To develop a prosperous, fair, prosperous, and equitable society both materially and spiritually, justice must be upheld while sustaining the values of justice.[7] This justice must be felt by all Indonesian people, including justice for workers and workers, whether they work domestically or abroad.

A traveler laborer generally called a transient specialist is "an individual who is to be locked in, is locked in or has been participated in a compensated action in a Condition of

which the person is definitely not a public.[8] Traveler laborers assume a significant part in monetary development both in their nation of beginning (home state) and in the nation where they work (have state).

Anticipating the development of a workforce that is greater than the number of job opportunities available in the country, the government has implemented various policies to increase job opportunities and policies to improve the quality of the workforce. This policy can be implemented by overcoming several employment problems in Indonesia.

2 Problems

The issue in this paper is the manner by which the legitimate assurance for the freedoms of Indonesian traveler laborers depends on Regulation Number 18 of 2017 concerning the Security of Indonesian Transient Specialists.

3 Methods and Approaches

3.1 Method

The method used in writing this applied paper is a descriptive-analytical method, namely by using data that clearly describes problems directly in the field, then analysis is carried out and then conclusions are drawn to solve a problem. The data collection method is through observation and literature study to obtain solutions to problems in preparing this paper. In line with the research objectives to be achieved, the domain of this research is included in the realm of qualitative research, thus a qualitative approach method will be used. According to Petrus Soerjowinoto et al., qualitative methods are methods that emphasize the process of researchers' understanding of problem formulation to construct a complex and holistic legal phenomenon[9]

3.2 Approach

The normative juridical approach, namely the juridical approach method used to examine problems in law and statutory regulations, with the statute approach, specifically analyzing the issues to be examined involving legitimate guidelines as optional information as essential, auxiliary, and tertiary lawful materials.[10]

The regularizing juridical methodology is completed on specific legal guidelines or composed regulations, which connect with the legitimate security of the privileges of Indonesian traveler laborers in light of Regulation Number 18 of 2017 concerning the Assurance of Indonesian Transient Specialists.[11] This examination depicts what is happening of the item under study, in particular zeroing in on the Legitimate Security of the Freedoms of Indonesian Traveler Laborers In view of Regulation Number 18 of 2017 concerning the Assurance of Indonesian Transient Specialists by and by.

4 Discussion

4.1 Legal Protection of the Rights of Indonesian Migrant Workers Based on Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers.

The number of migrant workers throughout the world will continue to increase rapidly as long as their countries of origin cannot provide jobs with decent wages. Meanwhile, in other countries (receiving countries) various jobs are available with higher salaries than in the sending country or the country of origin of migrant workers.[12]

Not only is the problem of the unavailability of employment opportunities with decent wages in the nation of beginning causing the rising number of traveler laborers, yet the delayed interior outfitted struggle in the nation of beginning is likewise one of the elements causing the rising number of transient specialists. Continuous armed conflicts in Afghanistan, Myanmar, Iraq, Iran, Somalia, and others force their citizens to migrate in search of a better life so that they can survive. Furthermore, it cannot be denied that there is a cozy connection between financial globalization and worldwide relocation. The way that there is a profound hole among rich and poor countries and the very lack of job opportunities in poor countries makes rich countries like magnets for citizens from impoverished countries, and migrants to get jobs with higher salary standards than in their home countries. However, compared to the circulation of goods and services, market access for migrant workers is relatively tighter.

Many countries as well as regional economic organizations severely restrict the cross-border flow of migrant workers. The North American Free Trade Agreement (NAFTA), for example, carries out very strict supervision over the migration of migrant workers from Mexico to the United States.[13] In its commitment to trade in services, Indonesia only opens market access for migrant workers who have skills that Indonesia does not yet have (experts).

Migrant workers in Indonesia are known as Indonesian Workers (TKI). Sending migrant workers abroad has been going on since the 20th century.[3] The sending of migrant workers has increased quite significantly since Pelita II (1979) and is directed to countries in the Middle East with jobs generally as domestic servants, namely 83% of all migrant workers.

Anticipating the development of a workforce that is greater than the number of job opportunities available in the country, the government has implemented various policies to increase job opportunities and policies to improve the quality of the workforce. This policy can be implemented by addressing several employment problems in Indonesia, which include:[14]

- a. The problem of unemployment and underemployment. The government has made efforts to increase employment opportunities by creating as many formal employment opportunities as possible.[15] This effort is intended so that those who have no education and/or those who only have a junior high school education can get this opportunity. However, in reality, these efforts have not been optimal to fill formal job opportunities that have certain competency requirements.
- b. The problem of placing workers abroad. The government must ensure that the placement of TKI is by job orders. However, problems arise from the pre-placement stage to the post-placement stage. These problems arise due to weak or insufficiently supervised domestic preparation processes, including falsifying the identities of migrant workers. The largest proportion of Indonesian workers sent abroad is

directed at the informal sector, especially domestic helpers (PRT) with minimal skills. This position shows that the quality of these migrant workers has limited competence and are very vulnerable to inhumane treatment in the country where they work. This means that the government is obliged to improve the welfare of workers who work in informal employment.

- c. Job training issues. The government's efforts to improve the welfare of its people are by encouraging workers from jobs with low productivity to jobs with high productivity. These efforts are made by improving the quality and competence of workers. The government needs to support it by providing institutions that can facilitate improving the quality and competence of these workers.
- d. Legislative issues. Indonesia has approximately 41 laws and regulations relating to aspects of protecting migrant workers. Inflation of laws and regulations results in a commitment deficit in their implementation, such as disharmony, overlaps, and contradictions between instruments, and creates opportunities for abuse of regulations against migrant workers.
- e. Apparatus Problems. The limited understanding of the apparatus and leadership in helping citizens to create worker welfare is caused by the low commitment and competence of the human resources of the apparatus. This results in the apparatus not being aware of the employment problems being faced. Domestic employment problems have an impact on sending migrant workers abroad. The government prioritizes the implementation of economic programs, which results in two things, first, there is no protection for those who want to look for work abroad. Second, the workforce is not of good quality, causing the country's bargaining power to be low compared to other countries. The low bargaining power of Indonesian workers affects poor working relations and low welfare such as migrant workers' positions, wages earned, and protection while they are migrant workers. Domestic employment problems have an impact on sending migrant workers abroad. The government prioritizes the implementation of economic programs, which results in two things, first, there is no protection for those who want to look for work abroad. Second, the workforce is not of good quality, causing the country's bargaining power to be low compared to other countries. The low bargaining power of Indonesian workers affects poor working relations and low welfare such as migrant workers' positions, wages earned, and protection while they are migrant workers.[16]

Formally, Indonesian citizens who work in other countries are called Indonesian Migrant Workers (PMI), as is the name of Regulation Number 18 of 2017 concerning the Insurance of Indonesian Transient Specialists.

Besides, Article 4 of Regulation Number 18 of 2017 concerning the Security of Indonesian Traveler Laborers makes sense of that Indonesian Transient Specialists incorporate:

- a. Indonesian Migrant Workers who work for legal entity users;
- b. Indonesian Migrant Workers who work for individual or household users;
- c. Ship crew sailors and fisheries sailors.

Article 5 of Regulation Number 18 of 2017 concerning the Insurance of Indonesian Transient Laborers likewise expresses the prerequisites for turning into a PMI as follows:

1. Minimum age 18 (eighteen) years;
2. Have competence;
3. Physically and spiritually healthy;
4. Registered and have a Social Security membership number;

5. Have completed the required documents.

From the definition with respect to Transport Group above, which alludes to Republic of Indonesia Guideline No. 17 of 2008 concerning Conveyance, with Guideline Number 18 of 2017 concerning the Protection of Indonesian Transient Laborers, there is no significant difference, which changes the actual meaning of "who" and "what" the duties of the Ship Crew are. However, the fundamental difference is in Article 4 and Article 5 of Regulation Number 18 of 2017 concerning the Insurance of Indonesian Transient Laborers, which still includes Ship Crews as part of Indonesian Migrant Workers. This will be a fundamental difference from the treatment of the law, both those that will be issued by the Ministry of Transportation and the Ministry of Manpower, because basically, even though a ship's crew member is a migrant worker, not all migrant workers can become ship crew members, due to factors such as factors that differentiate between ship crew and ordinary migrant workers, as previously explained.

A concrete example that is currently occurring, due to the "dualism" in regulations regarding Ship Crews, both by the Ministry of Transportation and the Ministry of Manpower, is related to the "Dualism of Permits for Implementing PMI Placement and Ship Crews." On the one hand, the Ministry of Transportation feels that it has a full interest because it is based on Minister of Transportation Regulation No. 84 of 2013 concerning the Placement of Ship Crews, while on the other hand, the Ministry of Manpower still feels entitled to regulate it further by continuing to issue policies, which is because there is still the phrase "Boat Crew" which is an integral part of "Indonesian Migrant Workers". This is further exacerbated by the lack of coordination between the 2 (two) Ministries in formulating sensitive policies regarding Ship Crews.

The case above will be different if we look at it from the perspective of Law no. 39 of 2004 concerning the Position and Assurance of Indonesian Laborers, which does not regulate Ship Crew or ABK (Sea Based) so that the duties of BNP2TKI (BP2MI) do not include the placement and protection of ABK, but in Law Number 18 of 2017 concerning the Protection of Migrant Workers Indonesia, in one of its articles (Article 4) regulates the definition of PMI, one of which includes Ship Crew Seafarers and Fisheries Seafarers. So it becomes clear that regulations regarding the status of Ship Crew should be handled and regulated by one Ministry so that there is no overlapping of policies that have an impact on the unclear fate of Ship Crew.

The author thinks that it is best to hand over the authority and policy functions regarding the status of Ship Crew to the Ministry of Manpower, excluding Ship Crew, not as part of PMI due to the factors that differentiate between Ship Crew and PMI, as regulated by the Ministry of Manpower, which include: 1) Factors Work Skills or Abilities, 2) Risk Factors, and; 3) Special Competency Training and Certification Factors for Ship Crew.

Discussions regarding legal protection for Indonesian Migrant Workers also require clarity regarding what is meant by the protection of Indonesian workers. The articles in the 1945 Constitution which state that there is a guarantee of protection for workers/laborers are:

- 1) Article 28 D section (1) of the 1945 Constitution, in particular that each individual has the option to acknowledgment, ensures, security, and fair legitimate sureness as well as equivalent treatment under the watchful eye of the law.

- 2) Article 28 D section (2) of the 1945 Constitution "Everybody has the privilege to work and get fair and suitable remuneration and treatment in business connections."

Legal protection for workers is also stated in Article 4 letter c of the Employment Law which states that "employment development aims to protect workers in realizing prosperity". Furthermore, the articles in the Labor Law that regulate protection, wages, and welfare are contained in Chapter X in Article 67-101.

Aristotle said that humans are "zoon politicon"[17] social creatures or social creatures, because each member of society has a relationship with one another. As social creatures, consciously or unconsciously, humans always carry out legal actions (rechtshandeling) and legal relationships (rechtsbetrekkingen).

Legal acts (rechtshandeling) are defined as every human act carried out intentionally/on his will to give rise to rights and obligations whose consequences are regulated by law. Legal acts consist of unilateral legal acts such as making a will or gift, and two-party legal acts such as buying and selling, work agreements, and so on. Legal relations (rechtsbetrekkingen) are defined as relations between two or more legal subjects, in which relations consist of ties between individuals and individuals, between individuals and society, or between one society and another society. In this legitimate relationship, the freedoms and commitments of one party are stood up to with the privileges and commitments of the other party."

The sending and arrangement of Indonesian Transient Specialists abroad as controlled in Regulation 39 of 2004 concerning the Position and Security of Indonesian Traveler Laborers Abroad (PPTKILN) places private entertainers at the core of conveying Indonesian laborers in different areas abroad. Not unique in relation to these guidelines, Regulation Number 18 of 2017 concerning the Security of Indonesian Traveler Laborers actually puts the confidential area as the fundamental entertainer. The most recent Regulation Number 18 of 2017 concerning the Security of Indonesian Traveler Laborers no longer obliges the autonomous flight of transient specialists abroad.

The presence of PPTKIS can't be isolated from the pertinent authorizing system. Regulation 39 of 2004 concerning the Situation and Security of Indonesian Laborers Abroad directs the procedural prerequisites as a Grant to Execute the Position of Indonesian Transient Specialists (SIPPTKI) gave by the Pastor as legitimacy for PPTKIS to complete the enrollment and position of Indonesian Traveler Laborers.

Plans for the position and insurance of traveler laborers abroad are managed by regulation in light of the fact that:[18]

1. Work is a common liberty that should be maintained, regarded, and destined to be upheld;
2. the right of every citizen to obtain work and a decent living both at home and abroad by their expertise, skills, talents, interests, and abilities;
3. In all actuality, up until this point traveler laborers who work abroad have frequently been exposed to illegal exploitation, constrained work, survivors of viciousness, misuse, wrongdoings against human pride and respect, as well as other treatment that is in opposition to common liberties;
4. The state is obliged to guarantee and shield the normal opportunities of occupants work both at home and abroad in view of the standards of equivalent privileges, a majority rules system, civil rights, orientation equity and hostile to separation;

5. The position of transient laborers abroad should be done in a coordinated way between government organizations, both focal and territorial, and local area support in a satisfactory legitimate item to give most extreme security.

Specifically, guidelines overseeing the arrangement of Indonesian Traveler Laborers (PMI) will be additionally directed in Regulation 39 of 2004 concerning the Position and Assurance of Indonesian Transient Specialists Abroad. Be that as it may, until Regulation Number 18 of 2017 concerning the Security of Indonesian Traveler Laborers was given by the Service of Labor supply, the position arrangements for PMI had not been determined or discussed at all. What happened next was a regulatory vacuum, which resulted in BNP2TKI and the Ministry of Transportation issuing mutual policies which had an impact on the unclear status of Indonesian Migrant Workers.

UU no. 18 of 2017 concerning the Insurance of Indonesian Transient Specialists is a type of progress when contrasted with Regulation no. 39 of 2004 concerning the Situation and Insurance of Indonesian Specialists Abroad. This progress should be visible from the presence of explicit sections and articles with respect to the Insurance of Transient Laborers, the Freedoms of Traveler Laborers, Federal retirement aide, Obligations and Obligations of the Focal Government and Local Legislatures, as well as One-Stop Coordinated Administrations for the Position and Security of Indonesian Transient Specialists.[19]

As per Regulation No. 18 of 2017 about the Assurance of Indonesian Traveler Laborers, Article 29 Section 1, "To safeguard Indonesian Transient Specialists, the Focal Government gives Federal retirement aide to Indonesian Transient Specialists and their families." Because of this clause, BPJS Employment is now used by Indonesian Migrant Workers instead of private insurance. This legislation lessens the involvement of the private sector in the placement and protection of Indonesian migrant workers and increases the emphasis and function of the government..

Any potential Indonesian migrant worker has the same rights and duties under Article 6 paragraph (1) of Law of the Republic of Indonesia Number 18 of 2017 concerning the Security of Indonesian Traveler Laborers.:

1. Get a job abroad and choose a job according to your competencies;
2. Gain access to increased personal capacity through education and job training.
3. Obtain correct information regarding the job market, placement procedures, and working conditions abroad.
4. Receive professional and human services as well as treatment without discrimination before work, during work, and after work.
5. Receive professional and humane service and treatment without practicing worship by the religion and beliefs held.
6. Receive wages by the prevailing wage standards in the destination country of placement and/or an agreement between the two countries and/or a work agreement.
7. Get legitimate assurance and help for activities that could sabotage honor and respect by the arrangements of 37 regulations and guidelines in Indonesia and in the objective nation of situation.
8. Obtain an explanation of the rights and obligations as stated in the employment agreement.
9. Gain access to communicate.
10. Master travel documents while working.

11. Associate and assemble in the destination country of placement by the provisions of the applicable laws and regulations.
12. Obtain guaranteed safety and security protection for the return of Indonesian Migrant Workers to their area of origin; and/above
13. Obtain documents and work agreements for prospective Indonesian Migrant Workers and/or Indonesian Migrant Workers

5 Conclusion

In view of the arrangements of Article 1 Number 5 of Regulation Number 18 of 2017 concerning the Security of Indonesian Transient Specialists. Security of Indonesian Transient Laborers implies all endeavors to safeguard the interests of Forthcoming Indonesian Traveler Laborers as well as Indonesian Transient Specialists and their families in guaranteeing the satisfaction of their freedoms in movements of every kind before work, during work, and after work in lawful, monetary and social perspectives.

Every citizen of the state has the right to obtain work and a living that is worthy of humanity. In this context, providing rights to citizens is not just a written responsibility in the name of law, but is carried out in the name of humanity. Basic freedoms are inborn in people naturally as a gift from God All-powerful, these privileges can't be denied.

Contrasting Regulation No. 39 of 2004 about the Situation and Insurance of Indonesian Laborers Abroad with UU No. 18 of 2017 for the Security of Indonesian Transient Specialists, the last option is a step in the right direction. The presence of specific parts and articles regarding the matters of federal retirement aide, privileges of transient specialists, security of traveler laborers, commitments of the focal and territorial states, and One-Stop Coordinated Administrations for the Arrangement and Assurance of Indonesian Traveler Laborers is demonstrative of this advancement. Article 6 section (1) of Law of the Republic of Indonesia Number 18 of 2017 concerning the Insurance of Indonesian Transient Specialists directs the assurance of traveler laborers' freedoms.

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