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“Implementation of the Job Creation Law on Legal Protection for Indonesian Migrant Workers”

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Abstrak:

The risks of becoming a migrant worker are certainly not small, so they often need protection from the government. Many Indonesian migrant workers often receive poor treatment. The presence of the Job Creation Law does not reflect justice for workers and is considered pro-employer. Policies regarding workers' wages, permits and land control will result in the loss of the right to a living wage, the right to housing and a decent life. This research is normative legal research. Normative Legal Research is a process of finding legal rules, legal principles and legal doctrines to answer the legal issues faced.

Keywords: *Implementasi;UUCK;Pekerja;Migran;Indonesia.*

I. Introduction

A. Latar Belakang

Humans in their daily lives are inseparable from civil relations which cannot be separated from the bonds that exist between legal subjects. This civil relationship arises from agreements and can also result from related laws and regulations, just as humans need work for daily life which is regulated in the Indonesian constitution.

Every human being in their life definitely needs work to fulfill their daily needs. Human needs can be fulfilled by doing a job which will later produce wages to meet the needs of life, both for oneself and for one's family. The state itself has accommodated the employment rights of its citizens based on Article 27 D paragraph (2) of the 1945 Constitution which states that:

“Every citizen has the right to work and a life worthy of humanity.”¹

Even though the constitution regulates income rights, the problem of limited employment opportunities means that the unemployment rate in Indonesia can be said to be quite high. The large number of unemployed people in Indonesia causes job seekers to migrate, either migrating from one area to another, or migrating abroad, hereinafter referred to as Indonesian migrant workers or better known as TKI (Indonesian 3rd Worker).

According to Article 1 number (2) of Law no. 18 of 2017 concerning Protection of Indonesian Migrant Workers:

“Indonesian Migrant Workers are every Indonesian citizen who will, is, or has done work and received wages outside

¹ 1945 Constitution.

the territory of the Republic of Indonesia."²

The aim of developing the employment sector is to empower workers in an optimal and humane manner, to realize equal employment opportunities, to provide labor in accordance with national and regional development needs and to provide protection to workers in realizing the welfare of workers and their families.³ Employment law is the law that regulates labor. Employment law was originally known as labor law.⁴

The risk of becoming a migrant worker is certainly not small, so they often need protection from the government. Protection for Indonesian migrant workers still requires more attention, many Indonesian migrant workers often receive poor treatment and some of them are involved in several cases and are threatened with the death penalty and some have even been sentenced.⁵ This is the government's job to be able to guarantee safety at work and provide protection or legal assistance for Indonesian workers both at home and abroad, because basically every country should provide guarantees for the rights, opportunities and protection for every citizens without discrimination in any way, there are no obstacles for every Indonesian citizen to receive protection by their government.

More attention is still needed from the government to protect its citizens, especially workers who work abroad. Workers who work abroad are called migrant workers, which means someone who works in a country where they are not citizens of the country where they work for a relatively long time.⁶

² Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers.

³ Article 4 of Law Number 13 of 2003 concerning Employment

⁴ Andi Walli, Abdullah Sulaiman, *Employment/Labour Law*, (Jakarta: Foundation for Education and Human Resources Development, 2019), pp.3-4.

⁵ Arpangi, A, *Legal Protection for Indonesian Workers Abroad*. (Journal of Legal Reform, Vol. 3 No. 1, 2016), p. 149-156.

⁶ Anggriani, R, *Perlindungan Hukum bagi Irregular Migrant Workers Indonesia di Kawasan Asia Tenggara (dalam Perspektif Hukum HAM*

The presence of the Job Creation Law does not reflect justice for workers and is considered pro-employer. The ratification of the Job Creation Law has an impact on every level of society, including the impact on Indonesian migrant workers, whose protection has not been optimal. Policies regarding workers' wages, permits and land control will result in the loss of the right to a living wage, the right to housing and a decent life.

B. Identifikasi Masalah

Based on the background above, the problem formulation in this research is as follows:

1. How are Migrant Workers protected based on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers)?
2. How is the Job Creation Law implemented towards the legal protection of Indonesian migrant workers?

II. Legal Materials and Methods

This research is normative legal research. Normative Legal Research is a process for discovering legal rules, legal principles, and legal doctrines to answer the legal issues faced. The approach used in this research is a statutory approach (statue approach) which is used to examine laws and regulations related to Indonesian Migrant Workers (PMI), and a conceptual approach (conceptual approach) to study viewpoints and doctrines in legal science. which can be used as a basis for thinking and arguing. This research uses secondary data with primary legal materials and secondary legal materials. The data collection technique was carried out using a library study technique, namely a data collection technique carried out on legal materials, both primary legal materials,

Internasional). (Yuridika, Vol. 32, No. 2, 2017), hlm. 310-335

secondary legal materials, and/or non-legal materials.⁷

III. Result and Discussion

A. Protection of Migrant Workers based on the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers).

ASEAN has committed to resolving the problem of Migrant Workers through signing a declaration on the protection and rights of migrant workers. The declaration provides a mandate for each member to promote migrant workers in the aspects of paying decent wages, job protection and the right to adequate housing for migrant workers. To be precise, on January 13 2007, the 12th ASEAN summit in the Philippines, ASEAN leaders signed the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. Based on the declaration, countries sending migrant workers are required to:

1. Increase measures related to the promotion and protection of migrant workers' rights;
2. Ensure access to employment and livelihood opportunities for their citizens as a sustainable alternative to labor migration;
3. Arrange policies and procedures to facilitate aspects of worker migration, including recruitment, preparation for overseas deployment and protection of migrant workers abroad as well as repatriation and reintegration to countries of origin, and;
4. Establish and promote legal practices to regulate the recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through valid and valid contracts, regulations and accreditation of

recruitment agents and employers, and blacklisting of negligent/violating institutions.⁸

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, of which Indonesia is a member country, has guaranteed each member country to develop and promote legal practices to regulate the recruitment of migrant workers and adopt mechanisms to eliminate recruitment malpractices through valid and still valid contracts, , regulation and accreditation of recruitment agencies and employers, and blacklisting of negligent/unlawful institutions. The data is analyzed by conducting a processing study of the legal materials that have been collected and with the theories that have been obtained previously.

B. Implementation of the Job Creation Law for the Legal Protection of Indonesian Migrant Workers.

Indonesian people often take advantage of the opportunity to work abroad due to the imbalance between human resources and employment opportunities in Indonesia. The departure of Indonesian Migrant Workers has various reasons and goals, such as improving economic levels to the desire to earn a higher income. Placement of Indonesian Migrant Workers has been carried out in several countries. From 2020 to 2022, Malaysia will become one of the popular choices for Indonesians to work abroad.⁹

UUCK changes a total of 82 laws, including changing several articles in

⁷ Mukti Fajar and Yulianto Achmad, *Normative and Empirical Legal Research Mechanisms* (Yogyakarta: Student Library, 2010), p. 7

⁸ Alysa, *Polemic on the Job Creation Law on the Protection of Indonesian Migrant Workers*, (Human Rights Working Group (HRWG), 2019), p. 2.

⁹ Aswindo, Hanita, and Josias Simon, *The Vulnerability and Resilience of Indonesian Migrant Workers At Malaysia in the Midst of the COVID-19 Pandemic*. *Journal of the Study of the National Resilience Institute of the Republic of Indonesia*, 9(1) 2021, p. 444-446.

UUK.¹⁰ On October 5 2020, the DPR passed the UUCK. The law was signed by the President on November 2 2020 as Law Number 11 of 2020 concerning UUCK. This law originates from a government initiative bill submitted to the DPR on February 13 2020.

There are 4 amended articles and 1 additional article in the PPMI Law which is included in the Job Creation Law. However, what is of common concern is the amendment to Article 51 regarding the P3MI business permit and Article 57 regarding the extension of the P3MI business permit. The following are the changes in the PPMI Law and the Job Creation Law:

Tabel. 1

	UU no. 18 of 2017 concerning Protection of Indonesian Migrant Workers	UU Job Creation Law
Article 51	<p>1. Companies that will become Indonesian Migrant Worker Placement Companies as intended in Article 49 letter b must obtain written permission in the form of SIP3MI from the Minister.</p> <p>2. SIP3MI as intended in paragraph (1)</p>	<p>1. Companies for the Placement of Indonesian Migrant Workers as referred to in Article 49 letter b are required to have permits that comply with Business Licensing and are issued by the Central Government.</p>

¹⁰ Otti Ilham Khair, *Analysis of the Job Creation Law on Labor Protection in Indonesia*, Widya Pranata Hukum: *Journal of Legal Studies and Research* 3, Number 2, (2021), p. 48.

	<p>cannot be transferred or transferred to other parties.</p> <p>3. Further provisions regarding written permits in the form of SIP3MI as intended in paragraph (1) are regulated by Ministerial Regulations.</p>	<p>2. The permit as intended in paragraph (1) cannot be transferred or transferred to another party</p> <p>3. Business Licensing as intended in paragraph (1) must meet the norms, standards, procedures and criteria set by the Central Government.</p>
Article 51	<p>1. SIP3MI is given for a period of 5 (five) years and can be extended every 5 (five) years after receiving a recommendation from the Agency.</p> <p>2. Apart from having to fulfill the requirements as intended in Article 54 paragraph (1), the SIP3MI extension as intended in paragraph (1) can be given to Indonesian Migrant Worker Placement Companies by fulfilling the requirements of at least:</p> <p>a. has carried</p>	<p>1. Indonesian Migrant Worker Placement Companies must submit updated data no later than 30 (thirty) working days.</p> <p>2. In the event that the Indonesian Migrant Worker Placement Company does not submit updated data as intended in paragraph (1), the Indonesian Migrant Worker Placement Company is permitted to renew the permit no later than 30</p>

	<p>out its obligation to provide periodic reports to the Minister;</p> <p>b. as carried out placement of at least 75% (seventy five percent) of the planned placement at the time of obtaining SIP3MI;</p> <p>c. still have facilities and infrastructure that comply with established standards;</p> <p>d. has a financial balance sheet for the last 2 (two) years that has not experienced any losses audited by a public accountant ;</p> <p>e. not under suspension ; And</p> <p>f. has reported and</p>	<p>(thirty) working days by paying a late fine.</p> <p>3. Provisions regarding late fines as referred to in paragraph (2) are implemented in accordance with the provisions of statutory regulations.</p>		<p>submitted the requirements as intended in Article 54 paragraph (1) for revalidation.</p> <p>3. Indonesian Migrant Worker Placement Companies must submit updated data and complete the requirements as intended in paragraph (2) no later than 30 (thirty) working days.</p> <p>4. In the event that the Indonesian Migrant Worker Placement Company does not submit updated data as intended in paragraph (3), the Indonesian Migrant Worker Placement Company is permitted to update the SIP3MI no later than 30 (thirty) working days by paying a late fine.</p> <p>5. Further provisions regarding late</p>	
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	<p>finances as referred to in paragraph (4) are regulated by a Ministerial Regulation.</p>	
<p>Additional Article 89a</p>		<p>At the time the Law on Job Creation came into force, the definition or meaning of SIP3MI in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers adjusted to the provisions regarding Business Licensing.</p>

Based on the two articles above, in general, the government designed these changes with the aim of facilitating permits

IV. Conclusion and Sugegestion

The ratification of the Job Creation Law is considered too hasty, especially since the Job Creation Law includes changes to articles in the PPMI Law which are considered very new and have not even had time to be implemented in its derivative regulations. The amendment to the article regarding migrant workers in the Job Creation Law is considered to only consider the interests of investors and entrepreneurs but is negligent in protecting migrant workers. This can be immediately seen from the trimming of several articles in the licensing of Indonesian Migrant Worker Placement Companies (P3MI) and company extensions. In fact, the government's strict control and evaluation of P3MI is the most crucial factor in preventing migrant worker

for the establishment of Indonesian Migrant Worker Placement Companies (P3MI), even though P3MI has a very crucial position in preventing migrant workers from leaving illegally or non-procedurally. Lack of education in the community and pressure from economic factors makes people blind and easily tempted by offers made by placement companies. In fact, currently there are many placement companies that carry out recruitment on a large scale but only prioritize economic goals without paying attention to the procedures and interests of migrant workers and even do so illegally.

In fact, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, of which Indonesia is a member country, has guaranteed each member country to develop and promote legal practices to regulate the recruitment of migrant workers and adopt mechanisms to eliminate the occurrence of recruitment malpractices through valid and ongoing contracts, applicable regulations and accreditation of recruiting agencies and employers, and blacklisting of negligent/violating agencies.

problems and maintaining the protection of migrant workers, which until now has been deemed far from adequate.

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C. Undang-Undang

1945 Constitution.

Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers.

Law Number 13 of 2003 concerning Employment.

Law Number 11 of 2020, Job Creation Perppu and Law Number 6 of 2023 and the Constitutional Court's decisions regarding the review of UUK in the list of Legislative Regulations which serve as legal guidelines and references regarding employment.