Protection Of The Constitutional Rights Of Indonesian Women Workers In Malaysia

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Abstract

The purpose of this research is to determine the protection and constitutional rights of Indonesian workers, namely female workers abroad. The research method uses a qualitative approach to describe actual phenomena in the field. Data collection techniques using primary legal materials, secondary legal materials, and tertiary legal materials. Conclusion: TKI can generate foreign exchange of more than 20 (twenty) trillion rupiah. It is very clear that Indonesian migrant workers, especially Indonesian migrant workers, have contributed quite a bit of foreign exchange to the country. The Government’s implementation of the protection of the constitutional rights of Indonesian migrant workers abroad is very weak and seems half-hearted. The concept of protection and implementation of protection for migrant workers abroad is made in the form of applicable laws and international agreements. The implementation of laws and regulations regarding the protection of Indonesian migrant workers and international agreements that aim to protect human rights and constitutional rights as citizens of Indonesian migrant workers who work abroad actually shows the weakness of the state in the eyes of the world in protecting their dignity and dignity.

Keywords: Protection, Constitutional Rights, Workers

A. Introduction

Legal protection for workers is a basic right protected by the constitution which is regulated in
Article 27 paragraph (2) of the 1945 Constitution. Every citizen has the right to work and a decent living. In Article 33 paragraph (1) the economy is structured as a joint family business. Violation of constitutionally protected rights is a violation of human rights. State sovereignty is in the constitution which regulates state principles and guarantees the rights and obligations of citizens.

National consensus, which is a political product as a reference in state administration. In the amendment to the 1945 Constitution of the Republic of Indonesia. It becomes more explicit in the definition of state administration. Constitutional in-state administration based on laws for the entire national consensus by the 1945 State Constitution.

Protection for citizens as migrant workers, as domestic workers working in Malaysia. It is the State's obligation to guarantee and provide protection for the rights of citizens who work abroad. This is very important because there are many problems with legal violations that harm migrant workers in Malaysia.

B. Research Methods

This research was carried out using the library research method, namely a method of collecting data based on library materials.

As a legal research, the secondary data used consists of:

a. Primary legal materials, in the form of legal provisions and statutory regulations that are binding and related to this study;

b. Secondary legal materials, in the form of written literature related to the subject matter in this study, in the form of books, papers, research reports, and newspaper articles;

c. Tertiary legal materials, in the form of explanatory materials from primary and secondary legal materials, such as dictionaries, encyclopedias, and so on.

C. Results and Discussion

1. Government Efforts to Protect Indonesian TKW

The Ministry of Manpower is responsible for migrant workers as government administrators, who technically handle matters as listed, including the following:

a. Organizing a migrant worker training center; preparing and providing supplies to migrant workers through training and skills

b. Organizing Inter-State Work Centers and Inter-Regional Work Centers, as institutions tasked with channeling migrant workers to work abroad in the formal and informal sectors

c. Providing mediation for resolving labor disputes to resolve disputes and labor disputes that occur between workers and employers as well as institutions that issue permits for termination of employment relations.

2. Legal Protection for Workers

Workers’ Rights and Obligations Regarding the rights and obligations of workers, they are as follows:

a. The right to receive wages/salary (Article 1602 of the Civil Code, Articles 88 to 97)

b. Law no. 13 of 2003; Government Regulation no. 8 of 1981 concerning Wage Protection;
The right to work and income that is adequate for humanity (Article 4 of Law No. 13 of 2003);

c. The right to vocational skills development to obtain and add more expertise and skills (Articles 9 – 30) Law no. 13 of 2003)

d. The right to receive protection for safety, health, and treatment by human dignity and religious morals (Article 3 of Law No. 3 of 1992 concerning Social Security)

e. The right to establish and become a member of a Labor Union (Article 104 of Law No. 13 of 2003 in conjunction with Law No. 21 of 2000 concerning Trade Unions)
f. The right to full wages during annual rest (Articles 88 – 98 Law No. 13 of 2003)

3. Rights and Obligations of Entrepreneurs

a. Represent and act for and on behalf of the foreign company that appointed him abroad (Article 7 of the Minister of Manpower and Transmigration Regulation No. Per.01/Men/1983).

b. Can submit an objection to the Minister of Manpower regarding the revocation of his business permit no later than 30 (thirty) days after the business permit decision is issued (Article 10 paragraph (2) Regulation of the Minister of Manpower and Transmigration No.01/Men/1983).

c. Determine the schedule for annual leave by taking into account the interests of workers

d. Suspend annual leave for 6 (six) months starting from when the employee is entitled to annual leave due to official company requirements.

4. Rights and Obligations of Workers and Entrepreneurs Abroad

Every worker has the same rights and opportunities to choose, obtain, or change jobs and earn a decent income at home and abroad by Article 31 of Law No. 13 of 2003. Concerning the placement and protection of prospective migrant workers which is carried out by the principles of justice and equal rights, social justice and equality, anti-discrimination, and anti-human trafficking. The aims of placing and protecting prospective workers abroad are as follows:

a. Empower and utilize the workforce optimally and humanely

b. Guarantee and protect prospective TKI/TKI from within the country, in the destination country, until returning to their place of origin in Indonesia,

c. Improving the welfare of migrant workers and their families. To protect TKI/TKI, individuals are prohibited from placing Indonesian citizens to work abroad. Considered an act of placing. Any act of deliberately facilitating work for Users abroad, whether by charging fees or not, from the person concerned (Article 2 to Article 4 of Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad/UUPTKILN).

5. Protection Guarantee

The government is tasked with regulating, implementing, and supervising to protect migrant workers abroad. Provide and carry out duties and responsibilities to protect migrant workers. The Government's obligations are as follows:

a. Provide guarantees for the fulfillment of the rights of Indonesian workers. Through the implementation of placing departing Indonesian workers in privacy.

b. Supervise the implementation of the placement of prospective migrant workers

c. Developing an information system network for the placement of prospective workers abroad

d. Carrying out diplomatic advocacy to guarantee the rights and protection of workers abroad for optimal placement.

e. Provide guidance and protection to workers before placement and after placement by Articles 5 to 7 of Law no. 39 of 2004 concerning Placement and Protection of Indonesian Workers Abroad.

6. Rights and Obligations of TKI

Every prospective Indonesian migrant worker has the same rights, protection, and opportunities to obtain them as follows:

a. Get a job and work abroad

b. Obtain correct information regarding job vacancies abroad and the correct placement of migrant workers abroad.
c. Providing the same service and treatment to workers when placing employees abroad
d. Obtain the freedom to adhere to their religion and beliefs and to carry out worship according
to their respective religions and beliefs

7. Implementation of the Placement of TKI Abroad

According to (Articles 27 to 30 of Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad), The placement of TKI abroad can be carried out by:

a. Government; 2) PPTKIS
b. Company for its benefit
c. Prospective TKI themselves (Article 10, 26 Paragraph (1), and 83 UUPPTKILN).

8. Protection of domestic migrant workers

During the independence period, regulations regarding the provision of protection during worker placement, before and after placement, and upon departure, were regulated through government policy through a Ministerial Decree, as stated in Minister of Manpower Regulation Number 11 of 1959.

Minister of Manpower Regulation No: PER02/ MEN/1994 concerning Placement of Workers Domestically and Abroad. In the form of a law on September 29, 2004, the DPR RI passed Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad (UUPPTKILN), which also touched on the protection of TKI starting from pre-placement, placement period, until with post-placement

9. Protection of Indonesian migrant workers in destination countries

The issue of protection for migrant workers after arriving in their desired destination country. How can migrant workers continue to get appropriate work placements that suit their talents and desires? Therefore, to obtain a work placement, upon departure, the worker must have the documents required according to the work and placement agreement. Worker application letters such as job order letters, demand letters, which are in the name of the worker concerned, the work agreement letter, and worker placement letters. approval, and requirements as required. required by the destination country

If you cannot complete the work agreement. So in the next process, the company that distributes migrant workers is obliged to notify the representative of the Indonesian state about the worker's return. At the Directorate General of the Ministry of Manpower and Transmigration, no later than 7 (seven) days before the date of return. In arranging the workers' return, the officers help with the problems of Indonesian workers and take care of the equipment and costs for medical treatment for workers who are sick or die.

10. Protection with a Political Approach

Indeed, if it is related to international relations and the political policies of the Indonesian government, the issue of placement and protection of migrant workers abroad also concerns relations between countries, so it has become an obligation to provide integrated and maximum services because the issue of placement and protection of migrant workers is directly related to the issue of lives. and a very basic honor for humans. Every worker who works outside the territory of his country is an immigrant or foreigner in the country where he works.

They can be employed in any region in the country, with conditions that may be beyond expectations or expectations when they are still in their homeland, so the Government must take various forms of approaches to increase guaranteed protection of migrant workers, one of which is a political approach.

Government-to-government cooperation from countries receiving migrant workers is sought to be carried out in the form of a Memorandum of Understanding (MoU), arrangement, or bilateral
agreement. This is pursued because if the government-to-government cooperation relationship with the recipient country is not based on an MoU, it is limited to the 1963 Vienna Convention, which requires every representative of a foreign country to continue to respect the sovereignty of the host country's authorities. This can certainly hinder the implementation of protection carried out by Indonesia in the country receiving the TKI in question.

11. Establishment of a National Agency and Placement of Indonesian Workers

A non-departmental government agency domiciled in the National Capital, namely the National Agency for the Placement and Protection of TKI, whose function is to implement policies for the placement and protection of TKI abroad in a coordinated and integrated manner, with several tasks as follows:

a. Carry out the placement of TKI based on a written agreement between the Government of the Republic of Indonesia and the Government of the user country, or the user is a legal entity in the destination country.

b. Providing services, coordinating and supervising documents, provision at the end of departure, solving problems, sources of financing, departure to repatriation, improving the quality of TKI, information, improving the quality of those implementing TKI placements, and improving the welfare of TKI and their families.

For the smooth implementation of TKI placement services, BNP2TKI has established TKI Placement and Protection Service Centers in provincial capitals and/or TKI departure places as deemed necessary.

12. Providing Humanitarian Assistance

As a form of protection for migrant workers who are in trouble and are undergoing a judicial process in that country. Because he was accused of committing a violent crime. When the Malaysian government made a policy to repatriate undocumented Indonesian migrant workers, the Indonesian government allocated a budget of Rp. 26,800,000,000,- (Twenty-six billion billion rupiah), to provide services to migrant workers with problems, especially for migrant workers who will receive amnesty to return home to Indonesia.

Those migrant workers who are unable or have problems receiving amnesty will receive assistance according to their problems, such as health services, transportation, shelter, burial, and police escort if necessary. The Indonesian government has assisted with repatriation costs from the point of entry to the worker's home city, both in the capital, province, and district. It is the responsibility of the mayor and regent as the government is concerned.

D. Conclusion

Based on the results of the research and discussion, several conclusions can be drawn, including the following:

a. In the concept of protection policies for Indonesian female workers. It has been regulated by Law Number 39 of 2004, and regulations regarding the Placement and Providing Protection of Indonesian Workers. Based on regulations, it protects migrant workers. The protection and regulations regarding the Placement and Protection of Migrant Workers consist of 8 (eight) articles, which have been formulated in complete and detailed articles.

b. Indonesian female workers, who are part of the country's citizens, who work abroad. Have rights as citizens as regulated in the constitution. Working abroad in the hope of getting a better life than at home. The rights of migrant workers, especially Indonesian female workers, are to receive legal protection and social protection during the departure process until returning to Indonesia.
c. By the regulations in the 1945 Constitution concerning Human Rights which are listed in the rights that every citizen has. In Article 28 I paragraph (2) that everyone has the right to receive equal treatment on any basis and is entitled to protection. The government is responsible for providing protection, guidance, and services and fulfilling workers' human rights.

**Suggestion**

Based on the results of the discussion and conclusions above, there are several recommendations in the form of suggestions, namely as follows:

a. The government wants to provide overall legal protection through changes to regulations regarding the protection of migrant workers that are better, and right on target.

b. Immigrant workers should understand the regulations of the destination government and also improve their skills according to their type of work, as well as master the local language, especially female workers, should speak politely both with Muslim speech and clothing to cover their intimate parts.

c. For companies and development companies that distribute migrant workers, they should complete legal documents. Create cooperation between institutions related to the Ministry of Manpower and Transmigration, and foreign ministers and embassies of destination countries.

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