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## Legal Protection of Indonesian Migrant Workers based on The Job Creation Law

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### Keywords :

*Legal Protection; Indonesian Migrant Workers; Job Creation Law.*

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### ABSTRACT

- The state is obliged to guarantee and protect the human rights of its working citizens, both at home and abroad, based on the principles of equal rights, democracy, social justice. Protection of Indonesian migrant workers is all efforts to protect the interests of prospective Indonesian migrant workers and / or Indonesian migrant workers and their families in realizing the guaranteed fulfillment of their rights in all activities. This study uses normative juridical methods, the results of this study explain the form of protection of Indonesian Migrant Workers is carried out in several aspects, namely legal, social, and economic given from before work, during work, until after work. The nature of the provision of legal protection against PMI is a protection against ensuring a sense of security from all forms of violence, both physical and psychological, such as harassment, rape, torture, persecution, murder, expulsion. The protection aims to avoid acts of arbitrariness on the part of people or groups and the state. The job creation law requires Indonesian migrant workers placement companies to have permits that meet business licenses and are issued by the central government, and deposit money to government banks in the form of deposits of at least Rp1.5 billion rupiah that can be disbursed at any time to meet obligations in the protection of Indonesian migrant workers.

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## **1. Background of the Research/ Introduction**

### **Protection of Indonesian Migrant Workers**

Everyone deserves protection for safety and security. According to WJS. Poerwodarminto, refuge is a place for people to take refuge. Meanwhile, legal protection as stated in Government Regulation No. 2 of 2002 concerning procedures for the protection of victims and witnesses in gross human rights violations is a form of service that must be implemented by law enforcement officers or security forces to provide security, both physical and mental, to victims and witnesses, from threats, interference, terror, and violence from any party, given at the stage of Investigation, investigation, prosecution, and/ or examination in court.

Legal protection as explained by Philipus M. Hadjon can be divided into two (Abdurrahman, Muslan, 2006): preventive legal protection is protection given to the people before the occurrence of disputes in order to raise objections or opinions. Preventive legal protection aims to prevent disputes. And repressive legal protection aimed at resolving disputes.

According to Philipus, the protection of the law is always related to power. There are two powers that are always of concern, namely government power and economic power. First, government power, first, in relation to government power, problems often arise in the issue of legal protection for the people against the government. The people are in the position of the governed subject, while the government is in the position of the governed subject. Second, economic power relations, where legal protection is a question of protection for the weak, the problem of protection for workers against employers," (in terms of legal protection for workers is very necessary given their weak position.

Zainal Askin mentioned that legal protection to workers from the power of the employer can be implemented if the legislation in the field of labor that forces or requires employers to act as stipulated in the legislation to be actually implemented by all

parties because the enforcement of the law can not be measured juridically alone."(Agusmidah. 2010)

According to Suliati Rachmat, the history of labor law is also the history of labor protection, as a weak socio-economic Party against a stronger employer. A protection that began with work safety, and then with social protection, and in its further growth gave birth to the protection of Labor Relations in a broad sense.

Soepomo divided labor protection into three kinds: economic protection, namely labor protection in the form of sufficient income, including when workers are unable to work against his will; social protection, namely labor protection in the form of occupational health insurance, and freedom of association and protection of the right to organize; technical protection, namely labor protection in manan and work safety.

Workers are part of the Indonesian people who need to be protected. According to Philipus, the principle of legal protection for the people of Indonesia is the principle of recognition and protection of dignity for the people of Indonesia derived from Pancasila and the principle of the rule of law based on Pancasila, the principle of legal protection basically includes two things, namely the principle of recognition and protection of human rights, especially for workers today is the conversion of natural human rights into legal rights (positive).(Budiono, et al. 2011)

160 PPMI law contains the definition of protection of Indonesian migrant workers, namely all efforts to protect the interests of prospective Indonesian migrant workers and/or Indonesian migrant workers and their families in realizing the guaranteed fulfillment of their rights in all activities before work, during work, and after work in legal, economic, and social aspects.

Article 2 of the PPMI law, the protection of Indonesian migrant workers has the principles of integration, equal rights, recognition of dignity and human rights, democracy, social justice, gender equality and Justice, nondiscrimination, anti-trafficking, transparency, accountability, and sustainability.

The purpose of the protection of Indonesian migrant workers is to ensure the fulfillment and enforcement of human rights as Indonesian citizens and migrant workers; and ensure the legal, economic, and social protection of Indonesian migrant workers and their families.

The protection provided by the state to its citizens is a right for citizens guaranteed by legislation. In this case, the protection of Indonesian migrant workers starts from before work, during work, and after work. Overseas protection of Indonesian migrant workers is carried out by representatives of the government of the Republic of Indonesia based on laws and regulations.

Based on the above background, the focus of this study is the protection of Indonesian migrant workers based on the job creation law.

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## 2. Research Method

This study uses normative juridical methods, analyzes the rules and policies of legal protection of Indonesian migrant workers, and examines the legal principles, principles of labor law based on the job creation law.

## 3. Research Results

The form of protection of Indonesian Migrant Workers is in legal, social, and economic aspects given from before work, during work, until after work. (Saeful. 2011)

Before work Protection before work for prospective Indonesian migrant workers according to Article 8 of the PPMI law includes:

- a. Administrative protection, this protection includes the completeness and validity of placement documents, and the determination of working conditions and terms;
- b. Technical protection, this protection includes the provision of socialization and dissemination of information, improving the quality of prospective Indonesian migrant workers through

education and job training, Social Security, facilities for fulfilling the rights of prospective Indonesian migrant workers, strengthening the role of functional introductory work employees, placement services in One-Stop Integrated Services placement and protection of Indonesian migrant workers, and guidance and supervision.

During work Protection during work provided to prospective Indonesian migrant workers according to Article 21 paragraph (1) of the PPMI law includes:

- a. data collection and registration by Labor Attache or appointed Foreign Service officer;
- b. monitoring and evaluation of employers, jobs, and working conditions;
- c. facilities for fulfilling the rights of Indonesian migrant workers;
- d. employment case settlement facility;
- e. consular service delivery;
- f. assistance, mediation, advocacy, and provision of legal assistance in the form of Advocate Service facilities by the central government and / or representatives of the Republic of Indonesia and guardianship in accordance with local state law;
- g. development of Indonesian migrant workers; and
- h. repatriation facilities.

The protection of Indonesian migrant workers during work is carried out by not taking over the criminal and/or civil liability of Indonesian migrant workers and is carried out in accordance with the provisions of laws and regulations, laws of the country of destination placement, laws, and International Customs. Protection after work for Indonesian migrant workers according to Article 24 paragraph (1) of the PPMI law includes:

- a. return facility to the area of origin;
- b. settlement of unfulfilled rights of Indonesian migrant workers;

- c. facilities for the care of sick and deceased Indonesian migrant workers;
- d. social rehabilitation and social reintegration; and
- e. empowerment of Indonesian migrant workers and their families.

Meanwhile, the protection provided to Indonesian migrant workers in legal, social, and economic aspects from before work, during work, and after work includes the following.(Abdul Rachmad. 2009)

Legal protection according to the provisions of Article 31 of the PPMI law, Indonesian migrant workers can only work to the country of placement that:

- a. have legislation that protects foreign workers;
- b. have a written agreement between the government of the placement destination country and the Government of the Republic of Indonesia: and/or erden. pdap peral Lon aspire
- c. have a social security system and / or insurance that protects foreign workers.

Social protection according to Article 34 of the PPMI law, the central government and local governments in accordance with their authority are obliged to carry out social protection for prospective Indonesian migrant workers and / or Indonesian migrant workers through:

- a. improving the quality of education and job training through standardization of job training competencies;
- b. increased role of accreditation and certification bodies;
- c. provision of a competent workforce of educators and trainers;
- d. social integration through skill improvement services, both for Indonesian migrant workers and their families;

- e. protection policies for women and children; and
- f. provision of Indonesian Migrant Workers Protection Center in the destination country of placement.

Economic protection in the provisions of Article 35 of the PPMI law, the central government and local governments in accordance with their authority are obliged to carry out economic protection for prospective Indonesian migrant workers and / or Indonesian migrant workers through:

- a. management of remittances by involving banking institutions or non-bank financial institutions in the country and the country of placement;
- b. financial education so that Indonesian migrant workers and their families can manage the results of their remittances; and
- c. entrepreneurship education.

Based on the provisions of the PPMI law, then each government, namely the central government, provincial government, and Regency/city government has an obligation to provide protection to Indonesian migrant workers. Article 38 Paragraph (1) of the PPMI law states that the placement and protection services of Indonesian migrant workers are carried out by the central government and local governments in a coordinated and integrated manner.(El Muhtaj, et al. 2009. )

In protecting Indonesian migrant workers before work, during work, and after work, the central government has the following responsibilities:

- 1) ensure the protection of prospective Indonesian migrant workers and / or Indonesian migrant workers and their families;
- 2) organize, foster, implement, and supervise the implementation of the

- placement of Indonesian migrant workers;
- 3) ensure the fulfillment of the rights of prospective Indonesian migrant workers and / or Indonesian migrant workers and their families;
  - 4) Establish and develop an integrated information system in the implementation of the placement and protection of Indonesian migrant workers;
  - 5) coordinating cooperation between relevant agencies in responding to complaints and handling cases of prospective Indonesian migrant workers and / or Indonesian migrant workers;
  - 6) Take care of the return of Indonesian migrant workers in the event of war, natural disasters, disease outbreaks, deportation, and troubled Indonesian migrant workers;
  - 7) make efforts to ensure the fulfillment of the rights and protection of Indonesian migrant workers optimally in the country of placement;
  - 8) Develop policies on the protection of Indonesian migrant workers and their families;
  - 9) Stop or prohibit the placement of Indonesian migrant workers to certain countries or in certain positions abroad;
  - 10) Opening certain countries or positions that are closed to the placement of Indonesian migrant workers;
  - 11) Issuing and revoking SIP3MI;
  - 12) Coordinating inter-agency related policies on the protection of Indonesian migrant workers;
  - 13) Appointing officials as labor attache stationed at the representative office of the Republic of Indonesia on the proposal of the minister; and
  - 14) Provide and facilitate the training of prospective Indonesian migrant workers through vocational training whose budget comes from the education function .(Harahap, et al. 2005)
- In protecting Indonesian Migrant Workers, Local Governments are divided into provincial governments, district/city governments, village governments. Based on the provisions of Article 40 of the PPMI law, the provincial government has the duty and responsibility to protect Indonesian migrant workers before work, during work, and after work .(Garner, Bryan A. 2004) :
- 1) conducting education and job training by accredited government and/or private educational institutions and job training institutions;
  - 2) take care of the return of Indonesian migrant workers in the event of war, natural disasters, epidemics, deportation, and troubled Indonesian migrant workers in accordance with its authority;
  - 3) issuing permits for Indonesian migrant workers placement company branch offices;
  - 4) report the results of the evaluation of the company placement of Indonesian migrant workers in stages and periodically to the minister;
  - 5) provide protection for Indonesian migrant workers before work and after work;
  - 6) provide assistance posts and services at the place of departure and repatriation of Indonesian migrant

workers who meet the requirements and health standards;

- 7) provide and facilitate the training of prospective Indonesian migrant workers through vocational training whose budget comes from the education function;
- 8) organize, foster, implement, and supervise the implementation of the placement of Indonesian migrant workers; and
- 9) can establish a one-stop integrated service for the placement of protection of Indonesian migrant workers at the provincial level.

In protecting Indonesian migrant workers since before work, during work, and after work the Regency/city government has duties and responsibilities that have been regulated in Article 41 of the PPMI law:

- 1) Disseminating information and requests of Indonesian migrant workers to the public;
- 2) Creating a database of Indonesian migrant workers;
- 3) Report the results of the evaluation of the company placement of Indonesian migrant workers periodically to the provincial government;
- 4) Take care of the return of Indonesian migrant workers in the event of war, natural disasters, epidemics, deportation, and troubled Indonesian migrant workers in accordance with its authority;
- 5) Provide protection of Indonesian migrant workers before work and after work in the district / city that is the duty and authority;
- 6) Conducting education and job training to prospective Indonesian migrant workers who can cooperate with accredited government and/or private educational institutions and job training institutions;

- 7) Coaching and supervision of educational institutions and job training institutions in the district/city;
- 8) Conducting social and economic reintegration for Indonesian migrant workers and their families;
- 9) Provide and facilitate the training of prospective Indonesian migrant workers through vocational training whose budget comes from the education function;
- 10) Organize, foster, implement, and supervise the implementation of the placement of Indonesian migrant workers; and
- 11) To establish a one-stop integrated service for the placement and protection of Indonesian migrant workers at the district/city level.

In the provisions of the PPMI law, the village government also has an obligation to provide protection for migrant workers. This is certainly a new thing, because so far the village government has never been regulated in the previous provisions. However, if we examine, PMI problems that occur in many placement countries start from the village. It is hoped that the active role of the village government in providing protection efforts will be able to prevent and minimize the problems of migrant workers. (Fitryantica, et al. 2019)

Meanwhile, the responsibility of protection for village governments is regulated in Article 42 of the PPMI law which consists of the following:

- 1) Receive and provide information and job requests from agencies that conduct government affairs in the field of employment;
- 2) Verifying data and recording of prospective Indonesian migrant workers;
- 3) Facilitating the fulfillment of administrative requirements for the population of prospective Indonesian migrant workers;

- 4) Monitoring the departure and return of Indonesian migrant workers;
- 5) To empower prospective Indonesian migrant workers, Indonesian migrant workers and their family members.

Regulation of migrant workers in the job creation law there are several provisions in the article that change the provisions of the PPMI law. This is related to the Indonesian migrant worker placement company (P3MI) and the P3MI permit (SIP3MI). in the Omnibus Law, the provisions of Article 1 point 9 states that the Indonesian migrant workers placement company is a limited liability company incorporated business entity that has been written from the central government to provide services to obtain permits for the placement of Indonesian migrant workers.

Article 1 Number 16 states that the Indonesian migrant worker placement company permit, hereinafter referred to as SIP3MI, is a written permit granted by the central government to Indonesian legal entities that will become Indonesian migrant worker placement companies. Both provisions change the authority to grant permits that were originally granted to the minister then transferred to the central government.

the provisions of Article 51 Paragraph (1) of the job creation law, Indonesian migrant workers placement companies as referred to in Article 49 letter b are required to have a permit that meets the business license and is issued by the central government. Furthermore, regarding the license of p3mi branch office in the provisions of Article 53 which in Paragraphs (1) and (2) does not change. It is just that Article 53 paragraph (3) states that the branch office as referred to in Paragraph (1) is obliged to fulfill the business license issued by the provincial government. The concern that arises from the changes in the provisions of Article 51 Paragraph (1) and 53 paragraph (3) is that the establishment permit of migrant workers placement company is regulated in the provisions governing in general for the company's business license. Whereas the permit referred to in the provisions of the PPMI law is a

special permit because it regulates the placement of migrant workers who are human beings. Meanwhile, the business license in the provisions of the job creation law is a business license like a company in general.

In the provisions of the P3MI law, a special obligation is given in its establishment, namely the obligation to deposit funds mentioned in the deed of establishment of the company amounting to Rp5 billion and deposit money to government banks in the form of deposits of at least Rp1.5 billion rupiah which can be disbursed at any time to meet obligations in the protection of Indonesian migrant workers. Business related to humans in which it requires the responsibility of protection is certainly different from business in general.

Migrant workers have been vulnerable parties to become victims of trafficking so that the hope of the existence of regulations can prevent the risk of PMI as a victim.

Article 57 of the PPMI law regulates the validity period of the P3MI license and the terms of the SP3MI extension, but in the provisions of Article 57 of the job creation law, this is the case. Article 57 regulates that P3MI must submit data updates no later than 30 working days. In the event that P3MI does not submit data renewal, P3MI is permitted to renew the permit no later than 30 working days by paying a late penalty.

There is an addition article, namely Article 89A which reads at the time of the enactment of the law on job creation understanding or meaning of SIP3MI in law No. 18 of 2017 on the protection of Indonesian Migrant Workers in accordance with the provisions on Business Licensing.

Work is a form of human rights. This is in accordance with the provisions of Article 23 of the Universal Declaration of Human Rights (UNDR) of 1948 which generally states that everyone has the right to get a job.

According to Article 13 (1), "Every-one has the right to freedom of movement and residence within the borders of each state." "The guarantees regarding these fundamental rights are given by the United Nations, are universal and international. Cross-border mobility of workers is a form of

the right to work and freedom of movement guaranteed by the state.

The cross-border context for workers remains the responsibility of the state. State responsibility in international law refers to liability, that is, one state against another for its non-fulfillment of obligations prescribed by the international legal system.

The nature of the provision of legal protection against PMI is a protection against ensuring a sense of security from all forms of violence, both physical and psychological, such as harassment, rape, torture, persecution, murder, expulsion.

The protection aims to avoid acts of arbitrariness on the part of people or groups and the state. Legal protection means identifying two related parties: those who must be protected from arbitrary action and those who must provide protection.

Legal protection is the protection of the dignity and recognition of human rights owned by everyone in a country to avoid arbitrariness.

In fact, those who work as PNLRT PMI are at risk of physical and psychological violence, victims of economic and sexual exploitation, and often experience discrimination in the workplace because of the status of the type of work that is identical to work that does not require special skills (unskilled labor). In addition, the location of the workplace in the household and family (hidden view) causes the difficulty of supervision.

This triggers the risk of violence. This is exacerbated by the fact that labor laws in some countries where they work do not adequately guarantee the rights of domestic sector workers.

This further makes the bargaining position of PMI low in fighting for their rights. The existence of Law No. 18 of 20017 on the protection of Indonesian migrant workers abroad (PPMI law) is intended to create an effective PMI placement mechanism with the dimension of Human Rights Protection in order to prevent various problems in the future.

As mentioned in the consideration section of the PPMI law, PMI abroad are often used as

objects of human trafficking, including slavery and forced labor, victims of violence, arbitrariness, crimes against human dignity, and other treatment that violates human rights. Konsiderans considering letter D PPMI law states 61 that the state is obliged to guarantee and protect the human rights of citizens who work, both at home and abroad, based on the principles of equal rights, democracy, social justice, gender equality and justice, anti-discrimination and anti-trafficking.

PMI delivery procedures include pre-placement, while working/in the destination country and post-placement. During the three stages, the state has the responsibility to provide legal protection to PMI. The problem is, when PMI is abroad, the jurisdiction of another country applies so that what applies is the legal provisions of the country where PMI works. We can see this from several cases that afflict our PMI in facing legal problems, such as cases of unpaid salaries, mistreatment, or being victims of violence.

In addition, some PMIs are also suspects or have even been sentenced to death or beheading in Arab countries. In order to ask for release, our PMI must ask for an apology from the family or by paying diyat money. There are currently around 23 cases of PMI in Saudi Arabia awaiting pardons from families and six people are awaiting the verdict of a PMI appeal that is punishable by death in Malaysia. The responsibility of the state in providing legal protection for PMI is very crucial to do.

Not only waiting for PMI to be victimized and blown up by the media, the role of the new state appears, but overall in the process of sending PMI the responsibility of the state must appear as a form of protection for citizens.

In this regard, research on the responsibility of the state in legal protection for Indonesian PMI is important to do: whether the state has been carrying out its responsibilities in protecting its citizens or is it negligent and does not provide legal protection for its citizens who work abroad

These attractant factors in the destination countries led to a shift in the sex of migrants, from men in the 1980s to women in the 1990s,



and up to now 70-80% of migrants are female. The problems faced by PMIW mostly occur in connection with their feminine positions that occur from the time of the recruitment process until departure and when returning home. The existing job opportunities are mostly as domestic helpers, making it difficult to monitor law enforcement.

Problems that occur at the time of recruitment until departure, among others, falsification of identity, education, and training are not appropriate, confinement, sexual harassment, to rape. When returning home, it is usually the fraud of money or property belonging to female migrant workers while on a trip or when exchanging money.

At the time of employment in the recipient country violation of the agreement in terms of wages withheld or smaller than promised, working hours, sexual harassment to rape, and mistreatment. The question of state responsibility is crucial to be studied, especially in recent years there have been several cases that have befallen the Prime Minister in Saudi Arabia and related to the issue of diyat payments.

The latest payment of diyat money reached Rp21 billion. The debate about the extent of the state's responsibility in providing legal protection for PMI is still problematic: is it enough to provide assistance during the legal process or is it up to the payment of diyat money? It is necessary to study, both theoretically and by norms, the relevant responsibilities of the state in the protection of its citizens. It is also necessary to study the efforts that have been made by the state in providing legal protection for its citizens.

The condition of the sending area which is a bag of migrant workers is usually a poor area whose soil conditions are not how good for agriculture and the level of education of the population is very low. When analyzed, there are pull factors and push factors that cause a person to decide to work outside his area.

The Pull factors are very poor economic conditions, low education, no wealth assets, and no expertise so that the choice of work is only in the domestic sector.

Meanwhile, the push factors are the

occurrence of development gaps between cities and villages; ease of migration; multiple salaries and the demonstration effect carried out by former migrant workers on their work in their home regions.

This is the reason why villagers remain eager to work outside their area, even though they know the risk that many migrant workers reported by the mass media become victims of torture, rape, and fraud.

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#### 4. Conclusion

The form of protection of Indonesian Migrant Workers is carried out in several aspects, namely legal, social, and economic given from before work, during work, until after work. Regulation of migrant workers in the job creation law in the Omnibus Law the provisions of Article 1 point 9 states that the Indonesian migrant worker placement company is a legal entity that has been written from the central government to provide services to obtain permits for the placement of Indonesian migrant workers. The job creation law requires Indonesian migrant workers placement companies to have permits that meet business licenses and are issued by the central government, and deposit money to government banks in the form of deposits of at least Rp1.5 billion rupiah that can be disbursed at any time to meet obligations in the protection of Indonesian migrant workers. The nature of the provision of legal protection against PMI is a protection against ensuring a sense of security from all forms of violence, both physical and psychological, such as harassment, rape, torture, persecution, murder, expulsion. The protection aims to avoid acts of arbitrariness on the part of people or groups and the state.

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