



Understanding of Labor Crimes for Indonesian Migrant Workers (PMI)
(Study on the Implementation of Law Number 18 Year 2017 on the Protection of Indonesian Migrant Workers)

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Abstract

Law No. 18/2017 on the Protection of Indonesian Migrant Workers (referred to as *Perlindungan Pekerja Migran Indonesia (PPMI) Law*) is the legal basis for the protection of Indonesian migrant workers. The passing of this law marks the end of a long slow and steep journey of the legislative process for the protection of Indonesian migrant workers who face vulnerability at every turn, ranging from wage evictions, persecution, sexual harassment, rape and even the death penalty. The spirit of Law No. 18/2017 as outlined in its explanation is to protect migrant workers from human trafficking, including slavery and forced labor, victims of violence, arbitrariness, crimes against human dignity, and other treatment that violates human rights. Despite contributing to the country's remittances, many Indonesian migrant workers (*Pekerja Migran Indonesia* or *PMI*) experience various actions that violate their rights while working abroad. that there are PMIs are vulnerable to rights violations or unlawful acts committed by employers or other parties. The method used is normative method or normative juridical approach. Where to sharpen the research analysis, the author uses a case approach and a statutory approach and a sociological approach. The stages carried out in researching patterns of community behavior are combined with literature so that it will be found that things should be done or accepted in balance with their application / practice and the final stage analyzes the Understanding of Employment Crimes for PMI (Indonesian Migrant Workers) (Study on the Application of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers). Based on data from the Crisis Center of the Indonesian Migrant Workers Protection Agency (*Badan Pelindungan Pekerja Migran Inonesia* or *BP2MI*) in 2022, some of the problems faced during 2019-2021 included unpaid salaries, PMI failing to depart, trafficking, work not in accordance with the work agreement, acts of violence from employers, depression / mental illness, fraudulent employment opportunities, and so on.

Keywords: *Crime, Employment, Migrant Workers, Indonesia*

A. Introduction

Law is understood as a coercive order, namely an order that applies sanctions in the form of forced action, then the provisions that explain the law in the law will appear as a statement that under certain conditions, which are also determined by the legal order, certain forced actions that are also determined by the order, should be carried out. The issue of migrant workers also still colors Indonesia's employment conditions, especially related to the organization, placement and protection of migrant workers abroad.

The government's way to reduce the unemployment rate is by placing workers abroad as Indonesian migrant workers. There are several problems that are on the government's agenda that must be resolved, including the lack of jobs, the low economic level of the community, the low competitiveness of Indonesian migrant workers, which are serious problems that must be resolved. To solve the existing problems, sending migrant workers is expected to be an alternative to solving the



problem.¹ Although on the one hand, remittances are an important indicator of the economy of migrant workers' families in the migrant workers' home villages.²

Law No. 18/2017 on the Protection of Indonesian Migrant Workers (referred to as *Perlindungan Pekerja Migran Indonesia (PPMI) Law*) is the legal basis for the protection of Indonesian migrant workers. The passing of this law marks the end of a long, slow and steep journey of the legislative process for the protection of Indonesian migrant workers who face vulnerabilities every time, ranging from wage issues, expulsion, persecution, sexual harassment, rape and even the death penalty. Through this law, there is also a new term to replace Indonesian Migrant Workers (*Tenaga Kerja Indonesia* or *TKI*) with Indonesian Migrant Workers (henceforth referred to as *Pekerja Migran Indonesia* or *PMI*). According to Article 1 Law No. 18/2017 on the Protection of Indonesian Migrant Workers that Indonesian Migrant Workers (*Pekerja Migran Indonesia* or *TKI*) are every Indonesian citizen who will come, is currently or has worked for wages outside the territory of the Republic Indonesia.³

The spirit of Law No. 18 of 2017 as outlined in its explanation is to protect migrant workers from human trafficking, including slavery and forced labor, victims of violence, arbitrariness, crimes against human dignity, and other treatment that violates human rights. In addition, the law emphasizes and gives a greater role to the Government and reduces the role of the private sector in the placement and protection of Indonesian Migrant Workers.

The importance of strengthening the protection of human rights of Indonesian migrant workers is carried out because the number of *Pekerja Migran Indonesia/PMI* continues to increase every year. According to Indonesian Migrant Workers Protection Agency (*Badan Pelindungan Pekerja Migran Indonesia* or *BP2MI*), in 2020 there were 9 million Indonesian migrant workers abroad.⁴ In 2005, the number of migrant workers was only 3 million.⁵ Of this number, there are several main occupations of migrant workers in destination countries, namely 32% as domestic workers/childcare workers,

¹ F. W. Pangestu and A. J Pitoyo, "Pemanfaatan Remitan Tenaga Kerja Wanita Untuk Pendidikan Anak Di Desa Jangkaran, Kecamatan Temon, Kabupaten Kulon Progo," *Jurnal Bumi Indonesia* 4, no. No. 3 (2015)

² Bothy Dewandaru, Afif Nur Rahmadi, and Evi Husniati Sya'idah, "Pemanfaatan Remitansi Pekerja Migran Indonesia Serta Peran Usaha Pekerja Migran Indonesia Purna Untuk Pembangunan Desa Asal," *Warmadewa Economic Development Journal* 2, no. 2(2019): 44–50

³ See Article 1 Law No. 18/2017 on the Protection of Indonesian Migrant Workers.

⁴ BP2MI Akan Buat Modernisasi Sistem Data PMI," [Bp2mi.go.id](https://bp2mi.go.id), 7 Agustus 2020; <https://bp2mi.go.id/berita-detail/bp2mi-akan-buat-modernisasi-sistem-data-pmi>, accessed 03 April 2024

⁵ World Bank, 2017, *Pekerja Global Indonesia: Antara Peluang & Risiko*, (Jakarta: World Bank.), hlm.11.



19% agricultural workers, 18% construction workers, 8% factory workers, and other occupations.⁶ The large number of Pekerja Migran Indonesia/ PMI also has an impact on the high national remittances from Pekerja Migran Indonesia/ PMI, which reached Indonesia Rupiah/ IDR 33.4 trillion in the second quarter of 2020.⁷ Indonesian Migrant Workers Protection Agency (Badan Pelindungan Pekerja Migran Indonesia or BP2MI) is a non-ministerial government agency tasked with implementing policies in the service and protection of Indonesian Migrant Workers (Pekerja Migran Indonesia or PMI). BP2MI is responsible to the President through the minister who handles government affairs in the field of employment.⁸

Despite contributing to the country's remittances, many migrant workers experience various actions that violate their rights while working abroad. This is according to the findings of the last 2 years National Human Right Commission (Komisi Nasional Hak Asasi Manusia or Komnas HAM) received 257 complaints from migrant workers. The data shows that migrant workers are vulnerable to rights violations or unlawful acts committed by employers or other parties.

Komnas Hak Asasi Manusia is an independent institution whose position is at the same level as other state institutions whose function is to carry out human rights studies, research, counseling, monitoring and mediation. This is stated in Article 1 of Law Number 39 of 1999 concerning Human Rights.⁹

Based on the facts that occur regarding Indonesian Migrant Workers (Pekerja Migran Indonesia/ PMI), they are vulnerable to violations of rights or unlawful acts committed by employers or other parties and the need for criminalization of Pekerja Migran Indonesia worker protection Based on the above, the author wants to study this, the researcher wants to formulate in the form of: Understanding of Labor Crimes for PMI (Indonesian Migrant Workers) (Study on the Application of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers). This article examines:

1. How does Indonesian Law protect the crime of illegal Migrant Worker placement?
2. What is the responsibility of the state in an effort to provide legal protection to Indonesian Migrant Workers who are experiencing problems abroad?

⁶ Ibid

⁷ BP2MI Akan Buat Modernisasi Sistem Data PMI,” Bp2mi.go.id, 7 Agustus 2020; <https://bp2mi.go.id/berita-detail/bp2mi-akan-buat-modernisasi-sistem-data-pmi>, accessed 03 April 2024

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⁹ Komnas HAM, *Tentang Komnas HAM* <https://www.komnasham.go.id/index.php/about/1/tentang-komnas-ham.html>, accessed on November, 13, 2024



B. Research Method

This research is an empirical juridical research. Where to sharpen the research analysis, the author uses a case approach and statute approach.¹⁰ Then in obtaining information and research data, library law research is used, which uses secondary data in the form of books, literature, research results, journals, articles, and laws and regulations with the object of research.¹¹ Furthermore, with these data and approaches, processing is carried out through qualitative analysis, namely by classifying, comparing and connecting.¹² Then it is presented deductively in its discussion, as a normative juridical analysis.¹³

C. Results and Discussion

1. Crime of Placement of Indonesian Migrant Workers

The act of sending migrant workers abroad illegally is now regulated by law. In accordance with the Law on the Protection of Indonesian Migrant Workers (Perlindungan Pekerja Migran Indonesia or PPMI), which was passed by the House of Representatives at the end of October, perpetrators involved in sending migrant workers or Indonesian Migrant Workers (Tenaga Kerja Indonesia or TKI) abroad illegally, can be punished with a maximum of 10 years in prison and a maximum fine of Rp. 15,000,000,000,- (fifteen billion rupiah). Article 82 of the PPMI Law states that a maximum imprisonment of 10 years and a maximum fine of Rp. 15,000,000,000,- (fifteen billion rupiah) will be imposed on any person who intentionally places migrant workers in positions and places of work that are not in accordance with the employment agreement, to the detriment of migrant workers. Or, placing migrant workers in jobs that are contrary to human values, norms of decency, or laws and regulations. This should be a serious concern for stakeholders in the placement of migrant workers.

Penalties and fines are applied together. There should be no maladministration of the placement of migrant workers, according to the Director of Placement and Protection of Overseas Workers (Penempatan dan

¹⁰ Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, (Jakarta: Kencana Prenada Media Group), hlm. 93

¹¹ Soerjono Soekanto dan Sri Mamudji, 2007, *Penelitian hukum normatif: suatu tinjauan singkat*, (Jakarta: Rajawali Pers), hlm. 23.

¹² Jujun S Suriasumantri, 1986, *Ilmu dalam Perspektif Moral, Sosial, dan Politik: Sebuah Dialog Tentang Dunia Keilmuan Dewasa Ini*, (Jakarta: Gramedia), hlm. 61

¹³ Amiruddin & Zaenal Asikin, 2004, *Pengantar Metode Penelitian Hukum*, (Jakarta: PT. Raja Grafindo Persada), hlm. 6



Perlindungan Tenaga Kerja Luar Negeri or PPTKLN) of the Ministry of Manpower. The enforcement of the law is mainly aimed at state civil apparatus, both at the central and regional levels down to the village. Because, in the PPMI Law, the problem of recruitment, preparation and improvement of migrant workers' skills is the responsibility of the government, while the Indonesian Migrant Worker Placement Executive (Pelaksana Penempatan Tenaga Kerja Swasta or PPTKIS) function is only as placement marketing.¹⁴

Indonesian Migrant Worker Placement Executive (Pelaksana Penempatan Tenaga Kerja Swasta or PPTKIS) are legal entities that have obtained written permission from the government to provide Tenaga Kerja Indonesia placement services abroad. PPTKIS (Pelaksana Penempatan Tenaga Kerja Swasta) is known as the month Indonesian Employment Service Provider (Penyedia Jasa Tenaga Kerja Indonesia or PJTKI).

Limited employment opportunities in the country have led Indonesian workers to seek employment abroad. From year to year, this number is increasing for various reasons, including domestic unemployment, insufficient domestic employment, disparities in global/regional economic growth, advances in transportation and information technology, the right to work abroad The pull factor that exists abroad in the form of higher wages makes workers interested in working abroad, but the most influential factor is the push factor that exists in the country, namely the non-fulfillment of one of the most important basic rights of citizens, namely: work as mandated in Article 27 D paragraph (2) of the 1945 Constitution and its amendments that, "Every citizen has the right to work and a livelihood worthy of humanity".

The high interest of workers to work abroad has a positive side, which is to overcome some of the unemployment problems in the country. However, on the other hand, it has a negative side in the form of the risk of possible inhumane treatment of Indonesian workers. According to Ali Mahrus, a criminal act refers to both active and passive actions, while whether the perpetrator when committing a criminal act is blameworthy or has a fault, is not an area of criminal

¹⁴ Sumber Kementerian Ketenagakerjaan Penempatan dan Perlindungan Tenaga Kerja Luar Legeri (PPTKLN) Kementerian Ketenagakerjaan. Tahun 2017



acts, but has entered into criminal liability.¹⁵ Criminal acts are acts prohibited by a rule of law, which prohibitions are accompanied by threats (sanctions) in the form of certain punishments, for those who violate these prohibitions.

It can also be said that a criminal act is an act by a rule of law prohibited and punishable, provided that in that case it is remembered that the prohibition is addressed to the act (ie a situation or event caused by the behavior of people), while the threat of punishment is addressed to the person who caused the event.¹⁶

There is a close relationship between prohibition and criminal punishment, because there is also a close relationship between events and one cannot be separated from the other. The event cannot be prohibited if it is not the person who caused it and the person cannot be punished if it is not because of the event caused by him and precisely to express this close relationship, the word act is used, which is an abstract notion that points to two concrete conditions: first, the existence of a certain event and second, the existence of a person who acts to cause the event.¹⁷

Law of the Republic of Indonesia Number 18 Year 2017 on the Protection of Indonesian Migrant Workers. Article 82. Shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp15,000,000,000.- (fifteen billion rupiah), every person who intentionally places prospective Indonesian Migrant Workers on:

- a. Position and type of work that is not in accordance with the employment agreement to the detriment of the prospective Indonesian Migrant Worker as referred to in Article 67 letter a
- b. work that is contrary to laws and regulations as referred to in Article 67 letter

Every Work Placement Agreement should ideally be supervised by the local District / City Manpower Office so that the contents of the agreement do not conflict with the law, public order, and decency. Although the birth of the agreement is based on the agreement of the parties, the bargaining process for the contents of the Work Placement Agreement is not balanced, the contents of the agreement are determined by the party whose socio-economic status is higher.

¹⁵ Ali Mahrus, 2011, *Dasar-Dasar Hukum Pidana*, Cetakan Pertama, Sinar Grafika, Jakarta, hal 97

¹⁶ Ibid, hlm. 25

¹⁷ Ibid, hlm 59-60



The position of prospective Pekerja Migran Indonesia / Tenaga Kerja Indonesia is lower social status compared to the Indonesian Migrant Worker Placement Executive (PPTKIS/ Pelaksana Penempatan Tenaga Kerja Swasta), does not rule out the possibility of unbalanced rights and obligations of the parties. To avoid such imbalance, every unsigned Work Placement Agreement format must first be corrected by the local District / City Employment Departement (Dinas Ketenagakerjaan or DISNAKER). Then every Job Placement Agreement that has been signed by the parties must be registered at the local District / City DISNAKER office no later than 3 (three) working days after it is signed. The Supervision Section or the designated section of the District / City Employment Departement (Dinas Ketenagakerjaan or DISNAKER) can re-correct the contents of the Work Placement Agreement within a certain period of a maximum of 4 working days after it is registered.

The Employment Departement (Dinas Ketenagakerjaan or DINASKER) is a government agency tasked with carrying out government affairs in the field of employment. Service is the scope of work in the government sector certain areas of work. That means that the Department of Manpower is the scope of government work in the field of Employment is under the Department headed by the Minister of Manpower and Transmigration. In carrying out its functions, this department aims to: providing services to job seekers, and services to givers Work. So basically the employment service functions as a facilitator for workers and employers.

Sanctions are a means of coercion, forcing to enforce the law is forcing to heed legal norms. Enforcement of criminal law requires legal sanctions, namely sanctions consisting of special suffering imposed on the guilty. The pain of losing his life (death penalty), the pain of losing his freedom (imprisonment and confinement), the pain of losing some of his wealth (fines and forfeiture) and the pain of losing his honor (announcement of the judge's decision). Civil law enforcement requires sanctions as well which consist of the pain of being brought before the court and the pain of losing part of their wealth in order to recover or compensate for the loss due to the offense committed. Sanctions as a law enforcement tool can also consist of the nullification of acts that constitute violations of the law. Both null and void (*van rechtswege*) and void after this is



declared by the judge. Violations of procedural law often have the sanction of nullification as well, for example; nullification of accusations that do not mention the elements of place and/or time.

The application of sanctions in a criminal legislation is not just a matter of technical legislation, but an inseparable part of the substance or material of the legislation itself. that is, in matters concerning the issue of penalization, criminalization and decriminalization must be comprehensively understood both all aspects of the substance or material issues of legislation at the legislative policy stage. penalization, criminalization and decriminalization must be comprehensively understood both all aspects of the substance or material issues of legislation at the legislative policy stage.¹⁸

The existence of action sanctions is urgent because the aim is to re-educate the perpetrator to be able to adjust to his environment. This action sanction emphasizes the value of humanity in the reform and re-education of criminals. This re-education is very important because only in this way. The perpetrator can realize that what he has done is contrary to human values. Sanctions in criminal law are reactions to violations of the law that have been determined by law, starting from detention, prosecution to sentencing by the judge. Simon stated that the most important part of every law is to determine the legal system it adopts. The policy issue of determining the type of sanction in criminal law is inseparable from the problem of determining the objectives to be achieved in punishment.¹⁹

1. Terms and Conditions for Placement of Indonesian Migrant Workers

The conditions for the placement of Indonesian migrant workers are listed in Article 5 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers and in Article 8 of Government Regulation of the Republic of Indonesia Number 10 of 2020 concerning Procedures for the Placement of Indonesian Migrant Workers by the Indonesian Migrant Worker Protection Agency. Every Indonesian migrant worker who will work abroad must fulfill the requirements:

- 1) Be at least 18 (eighteen) years old.

¹⁸ Mahmud Mulyadi dan Feri Antoni Surbakti, 2010, *Politik Hukum Pidana Terhadap Kejahatan Korporasi*, Cetakan Pertama, PT. Sofmedia, Jakarta. hlm. 91

¹⁹ Ibid, hlm 91



- 2) Have competence.
- 3) Physically and mentally healthy.
- 4) Registered and have a Social Security membership number and.
- 5) Have complete documents required

There are also document requirements that must be owned by prospective migrant workers which include:

- 1) Certificate of marital status for those who are married attach a photocopy of the marriage book.
- 2) Certificate of permission from husband or wife, parents, guardian permission known by the village head or lurah.
- 3) Certificate of work competence.
- 4) Health certificate based on the results of medical and psychological examinations.
- 5) Passport issued by the local immigration office.
- 6) Work visa.
- 7) Indonesian migrant worker placement agreement.
- 8) Work agreement

The requirements are not only intended for prospective migrant workers but also apply to the bodies that implement the placement of migrant workers. The agency implementing the placement of workers according to Slamet consists of:

- 1) An agency established by several companies and assigned to a company seeking companies.
- 2) Agencies established specifically to find workers and companies in need of workers, these agencies register workers with various qualities in their activities to be provided to companies in need of workers because these agencies have a commercial purpose and therefore need to charge worker registration fees and management fees.
- 3) Agencies that are officially established by the government and whose task is to provide the same services as the second type of worker placement.²⁰

The first and second part of the migrant worker placement agency must

²⁰ Slamet Saksono, 2011, *Administrasi Kepegawaian*, Kanisius, Yogyakarta, hlm. 59.



obtain a license from the government (in this case the Ministry of Manpower) and even to send workers from one region to another in the territory of Indonesia or from Indonesia to abroad must meet the required conditions. One of the requirements that must be met is to sign a written work agreement with workers who will be channeled to other regions or countries. The agreement is made with the local manpower office where the worker comes from and the purpose is to provide protection.

The first and second parts of the migrant worker placement agency must obtain a license from the government (in this case the Ministry of Manpower) and even to send workers from one region to another in the territory of Indonesia or from Indonesia to abroad must meet the required conditions. One of the requirements that must be met is to sign a written work agreement with workers who will be distributed to other regions or countries. The agreement is made with the local manpower office where the worker comes from and the purpose is to provide legal protection for the workers. The work agreement contains, among others, the identity of the parties, the rights and obligations of each party, the terms and procedures for placement, the mechanism for protecting Indonesian migrant workers, monitoring and evaluation, dispute resolution, changes to the written agreement, and the term and termination of the written agreement in accordance with the provisions of laws and regulations.

The executor of worker placement according to Article 49 of Law Number 18 Year 2017 consists of:

1. Agency, carried out on the basis of a written agreement between the government and the government of the country of employment of Indonesian migrant workers or incorporated employers in the destination country of placement.
2. The Indonesian Migrant Worker Placement Company has the duty and responsibility to seek employment opportunities, place Indonesian migrant workers and resolve the problems of Indonesian migrant workers it places and in this case it is required to obtain a written permit, namely the license of the Indonesian migrant worker placement company hereinafter referred to as (Surat Izin Perusahaan Penempatan Pekerja Migran Indonesia or SIP3MI) and the license for recruitment of Indonesian migrant workers



hereinafter referred to as (Surat Izin Perekrutan Pekerja Migran Indonesia or SIP2MI) from the Minister which cannot be transferred and transferred to other parties given for a period of five years can be extended every five years after obtaining a recommendation from the Agency. Indonesian Migrant Worker Placement Company Permit, namely a written permit given by the Minister to a business entity that will become an Indonesian Migrant Worker Placement Company (P3MI/ Perusahaan Penempatan Pekerja Migran Indonesia).

3. Surat Izin Perekrutan Pekerja Migran Indonesia or SIP2MI is a permit given to the Indonesian Migrant Worker Placement Company (P3MI/ Perusahaan Penempatan Pekerja Migran Indonesia) to place prospective Indonesian migrant workers.
4. The Indonesian Migrant Worker Placement Company has the duty and responsibility to seek employment opportunities, place Indonesian migrant workers and resolve the problems of Indonesian migrant workers it places and in this case it is required to obtain a written permit, namely the license of the Indonesian migrant worker placement company hereinafter referred to as (SIP3MI) and the license for recruitment of Indonesian migrant workers hereinafter referred to as (SIP2MI) from the Minister which cannot be transferred and transferred to other parties given for a period of five years can be extended every five years after obtaining a recommendation from the Agency.
5. Companies that place Indonesian migrant workers for the benefit of their own company shall be responsible for the protection of workers placed abroad for the benefit of their own company.

In order for an Indonesian migrant worker placement company to obtain an Indonesian migrant worker placement company license, hereinafter referred to as (SIP3MI), it must meet the following requirements:

1. Have capital stated in the company's deed of establishment of at least five billion rupiah paid up.
2. Deposit through a state bank with a minimum deposit of one billion five hundred million rupiah which can be withdrawn at any time as a guarantee to fulfill the obligation to protect Indonesian migrant workers.



3. Have a work plan for the placement and protection of Indonesian migrant workers for at least 3 years.
4. Have facilities and infrastructure to serve the placement of Indonesian migrant workers.

For the extension of the license of the Indonesian Migrant Worker Placement Company, hereinafter referred to as (SIP3MI), it can be granted if the Migrant Worker Placement Company meets the requirements, among others:

- 1) The obligation to provide periodic reports to the Minister has been implemented.
- 2) Placement of at least 75% of the placement plan at the time of obtaining the next Indonesian migrant worker placement company license (SIP3MI) has been implemented.
- 3) Still have facilities and infrastructure in accordance with the specified standards.
- 4) Have a balance sheet for the last two years that has not suffered losses audited by a public accountant.
- 5) Not in a suspended condition
- 6) Reports as specified have been reported and submitted.

In addition to the zin letter of the Indonesian worker placement company hereinafter referred to as (SIP3MI), the Indonesian migrant worker placement company must also have a SIP2MI by stating the country of placement with the condition that it must have documents, among others:

- 1) Placement cooperation agreement
- 2) Letter of request for Indonesian migrant workers from the employer
- 3) Draft placement agreement
- 4) Draft employment agreement.

2. State Responsibility in Efforts to Provide Legal Protection for Indonesian Migrant Workwrs who are Experiencing Problems Abroad

The importance of the meaning of a job for everyone can be illustrated that this has been reflected in the 1945 Constitution of the Republic of Indonesia as well as a suitable and suitable job is a choice and everyone has the right to get it. Jobs that are deemed more appropriate and qualified out there have taken over the position of domestic or domestic jobs which are fairly limited employment



opportunities so that not a few people choose to work outside Indonesia. Indonesia also has representatives abroad to protect PMI as mandated in the 1945 Constitution and other regulations. The protection in question includes helping in any case that makes it difficult for PMI there, legal counseling, and consular services.

The legal foundation for the protection of PMI/ Pekerja Migran Indonesia is organized with the aim of serving as a forum for PMI regulations and policies as a whole.²¹ The legal basis for the protection of PMI is among others:

1. Law (Undang-Undang)
 - a. Law Number 13 Year 2003 on Manpower;
 - b. Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers;
 - c. Law Number 6 of 2012 concerning the Ratification of the International Convention Concerning the Protection of the Rights of All Migrant Workers and Members of Their Families;
 - d. Law No. 39 of 2004 on the Placement and Protection of Indonesian Workers Abroad; and
 - e. Law No. 39 of 1999 on Human Rights
2. Government Regulation (Peraturan Pemerintah or PP)
 - a. Government Regulation No. 3 of 2013 on the Protection of Indonesian Workers Abroad;
 - b. Government Regulation No. 4 of 2013 on the Procedures for Implementing the Placement of Indonesian Workers Abroad by the Government;
 - c. Government Regulation No. 10 of 2020 on Procedures for Placement of Indonesian Migrant Workers by the Indonesian Migrant Workers Protection Agency; and
 - d. Government Regulation No. 59 of 2021 on the Implementation of the Protection of Indonesian Migrant Workers.
3. Ministerial Regulations, which in this case is the Labor section, namely:
 - a. Minister of Manpower and Transmigration Regulation No. 22/2014 on the

²¹ Wijayanti, Asri. 2010, *Hukum Ketenagakerjaan Pasca Reformasi*, Cetakan Kedua, (Jakarta, Sinar Grafika), hlm. 14



- Implementation of Placement and Protection of Overseas Workers;
- b. Minister of Manpower and Transmigration Regulation Number 45 of 2015 concerning Financing the Placement of Indonesian Workers Abroad;
- c. Minister of Manpower and Transmigration Regulation Number 18 of 2018 concerning Social Security for Indonesian Migrant Workers; and
- d. Minister of Manpower and Transmigration Regulation Number 9 of 2019 concerning Procedures for Placement of Indonesian Migrant Workers

The PMI Law emphasizes the meaning of Protection in the context of PMI itself, namely all efforts made to provide protection of the interests of PMI and their families or also prospective PMI/ Pekerja Migran Indonesia who will depart and work later. The goal is that before and after doing work, the fulfillment of their rights in social, economic, and legal aspects can be guaranteed.²²

This policy also contains the objectives of PMI protection, namely to realize the fulfillment and enforcement of human rights as PMI and also citizens in general by not forgetting protection in social, economic, and legal aspects.²³ The Embassy of the Republic of Indonesia (Kedutaan Besar Republik Indonesia or KBRI) as a representative of the state is the one that implements the protection of migrant workers based on international law and customs and laws and regulations. The purpose of this protection is to create peace for migrant workers and their families by guaranteeing their basic rights and avoiding discriminatory treatment.

In working, every worker has the right to obtain protection for their safety for a more productive national improvement.²⁴ Internationally, the protection of migrant workers has indeed been implemented, but the implementation of protection of migrant workers based on laws and other regulations is deemed necessary to be implemented on a large scale as the role and responsibility of the government. The Indonesian government provides protection to migrant workers which consists of two types, namely:

- 1) Preventively/educatively, namely by making legal instruments through policies such as laws and also rules related to how to implement these policies, making agreements between countries related to the placement and

²² Pasal 1 angka 5 UU PMI.

²³ Pasal 3 UU PMI.

²⁴ Koesparmono Irsan dan Armansyah, 2016, *Hukum Tenaga Kerja*, (Jakarta, Erlangga), hlm. 178



protection of PMI, especially between sending and receiving countries.²⁵

- 2) Repressively/curatively, i.e. establishing a Crisis Center to deal with future legal, labor, and socio-cultural issues in the country.

The form of PMI protection that is the responsibility of the government is divided into 3 (three) stages based on the PMI Law, namely:

1. Pre-Placement

- a. Administrative, namely all matters relating to the completeness of PMI documents and their validity.
- b. Technical, namely all matters relating to efforts to improve the quality of prospective PMI. Methods include socialization and job training as well as coaching.

2. Placement

- a. Data collection conducted by labor department officials.
- b. Evaluation of existing jobs including working conditions working conditions.
- c. Facilities to resolve problems related to labor.
- d. Guidance to PMI.
- e. Consular services.
- f. Facility for the fulfillment of rights and repatriation of PMI

3. Post-Placement

- a. Having the means to return to their homes.
- b. Processing of rights from PMI that have not yet reached the goal point.
- c. Obtaining control related to PMI who have passed away or are in an unhealthy condition.
- d. Rehabilitation and Empowerment for PMI

As a form of protection for PMI, the government should be able to protect PMI at the beginning and end of their work. Article 6 paragraph (1) also regulates the rights of prospective migrant workers, namely:²⁶

1. Decent work that is in line with their potential.
2. Education and training to increase self-potential.

²⁵ Husni, Lalu. "Perindungan Hukum Terhadap Tenaga Kerja Indonesia Di Luar Negeri." *Mimbar Hukum* Volume 23, no. 11 (2011), 162.

²⁶ Pasal 6 ayat (1) UU PMI



3. News or information about the ins and outs of work such as conditions and the market.
4. No discriminatory treatment during the working period.
5. Worship according to their respective beliefs.
6. Receive a salary that is commensurate with what has been done.
7. Protection and help in the legal field if something happens to PMI.
8. Further explanation of rights and obligations.
9. Communication.
10. Mastery of work documents.

Based on the rights of prospective migrant workers above, there are still many who think that migrant workers in general are a group of people who can be victimized and are a source of cheap and weak labor. The consequence of this situation is the neglect of the basic rights of migrant workers so that it is very easy to be harassed.²⁷ In accordance with the problems mentioned in the first discussion, migrant workers are still vulnerable to exploitation because of the ineffective legal protection they receive from the destination country. This is crucial because destination countries are still unable to properly implement protection for migrant workers.

The release of policies and laws and regulations are two aspects that we can review if we want to illustrate the extent of the state's role in providing solutions to the reaction to the needs of PMI.²⁸ The PMI Law has divided the responsibilities that must be carried out by the central government, provinces, districts/cities and even villages. The PMI Law continues to emphasize the important role of the government, which is responsible for implementing and fostering the implementation of PMI protection. Various agencies have collaborated to implement protection for PMI, such as the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) and PPTKIS, as well as the Ministry of Manpower (Kementerian Ketenagakerjaan or Kemnaker).

D. Conclusion

²⁷ Krustiyati, Atik. "Optimalisasi Perlindungan Dan Bantuan Hukum Pekerja Migran Melalui Promosi Konvensi Pekerja Migran Tahun 2000." *Jurnal Dinamika Hukum* Vol. 13 no. 1, (2013), 141

²⁸ Sumardiani, Fenny. "Peran Serikat Buruh Migran Dalam Melindungi Hak Tenaga Kerja Indonesia Di Luar Negeri." *Jurnal Pandecta* Volume 9 no. 2 (2014), 256



1. Migrant workers are still often hit by problems that take away their human rights while working abroad. The suffering experienced by migrant workers includes mistreatment, acts of violence, human trafficking, rape, and many more. There are many causes of these problems, such as weak law enforcement from the government in the pre-placement, placement, and post-placement stages.
2. The government's efforts and responsibilities in protecting migrant workers to reduce the occurrence of human rights violations that befall migrant workers have been divided into these three stages, each of which has formed certain regulations to ensure the intended protection. This has been contained in the existing regulations, namely the PMI Law. However, the implementation of existing policies related to the protection of migrant workers is still relatively weak, as evidenced by the rampant problems and legal cases involving human rights that befall migrant workers abroad.

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