

THE ROLE OF THE COUNTRY ON THE PROTECTION OF INDONESIAN MIGRANT WORKERS THROUGH THE ORGANIZING AGENCY OF SOCIAL WORKER EMPLOYMENT

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Abstract

This study analyzes with regard to the state in providing protection to Indonesian migrant workers. Social facts suggest that the social and economic conditions of Indonesia indicate that the poverty and hardship of Indonesian society is high enough, resulting in many Indonesians choosing to work abroad, especially some destination countries such as Saudi Arabia and Malaysia. The main problem experienced by Indonesian migrant workers is related to protection in the form of comprehensive insurance and can provide protection to Indonesian migrant workers. Previous regulation on migrant workers insurance through the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia No.Per.07/Men/V/2010, about Indonesian Labor Insurance and amended through the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia No.1 of 2012, Regulation of the Minister of Manpower and Transmigration No. Per.07/Men/V/2010 concerning Indonesian Worker Insurance focuses on private consortiums that organize insurance against migrant workers should be managed by the State directly. Therefore, the idea of the protection of Indonesian migrant workers through the direct role of the Organizing Body of Social Security Employment is a rewarding effort by the government to provide protection against migrant workers in Indonesia in accordance with the 1945 Constitution and Act No. 40 of 2004 on the Social Security System. This study aims to analyze the role of the State especially through the Organizing Body of Social Security Employment in protecting Indonesian migrant workers by using normative legal research.

Keywords: *Role of State, Protection, Migrant Workers*

INTRODUCTION

State citizenship paradigm is based on the basic values of citizens' constitutional rights. Article 27 clause (2) of the 1945 Constitution of the Republic of Indonesia ensures human right to get well-meaning job and finest living for human life. It is also highlighted in the 1945 Constitution of the Republic of Indonesia, article XA which concerns about human rights. It is stated in article 28D clause (2) that “each one has right to work, to receive fair, reasonable remuneration and treatment in an employment agreement. Thus, article 28I clause (4) states that “protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the country, especially the government.” Before second revision of the 1945 Constitution of Republic Indonesia, the government has drafted the Human Rights Act 1999 number 39. It is stated in article 38 clause (2) that “every person shall have the right to freely choose his or her preferred occupation and also have the right to have fair employment requirement.” Meanwhile, it is ruled in article 71 that it is government’s responsibility to respect, protect, uphold and promote human rights of both those stipulated in constitution and international act.

This normative principle has the dual meaning of giving basic rights to the citizen in the form of decent work, livelihood and burdening the obligation to the country to accomplish it responsibly. However, it cannot be denied that government has not been able to attain the basic rights completely because of the complexity of the problems faced in employment.¹ One of them is the problem of labor placement and protection towards Indonesian migrant workers who works abroad. Since government orientates to grow economy as an effort to increase foreign exchange, business economy dominates labor placement policies more than fulfillment of human rights of migrant labors.

¹ Lalu Husni, *PENEMPATAN DAN PERLINDUNGAN HUKUM TERHADAP TENAGA KERJA INDONESIA YANG BEKERJA DI LUAR NEGERI (Kajian Yuridis Terhadap Asas Hukum dalam Undang-undang Nomor 39 Tahun 2004 Guna Mewujudkan Penempatan & Perlindungan TKI yang Bermartabat)*, Jurnal Ilmu Hukum, Vol. 14, No. 1, Maret 2011, p. 1-2. When gauging the desirability of migration for the migrant, a common error is to compare the migrant’s life in the receiving country to either the lives of residing citizens of the receiving country, or to some internationally-recognized benchmark on what constitutes a dignified life. If you want to assess if a Philippine citizen working in Japan made the right decision, then instead of comparing her circumstances to that of a Japanese citizen, the correct comparison is to the next best alternative available to her, which is likely to be staying in the Philippines and working for a much lower wage. In the case of sending countries experiencing brutal civil wars or natural disasters, the alternative to migration is so bad that even terrible conditions in the receiving country are superior to non-migration. See Omar Al-Ubaydli, *The Economics of Migrant Workers in the GCC*, Arab Gulf States Institute, Washington, 2015, p. 3.

This fact is based on Indonesian government data. The data always used as the reference is the data about placement numbers and data about the acquisition of remittances. However, the government can never answer when asked about gender-disaggregated data; migrant labor mortality data and the causes; violence against Indonesian migrant labor data; and the numbers of violence against human rights. These are undocumented. Indonesian migrant labor demographic reality has been discussed in many studies. Most of them are women, living a mediocre economic life and being poorly educated. They are even the lowest level of literal ability to read (it is to describe that they are no illiterate). However, this reality cannot be the argument why they have issues, particularly violence against labor. This condition questionable when, on the other hand, the government claps that it has succeeded in reducing poverty.² This is one reason why Indonesian labor migration is increasing. Social perspective views that working abroad as migrant labors promises a big salary. The numbers of Indonesian migrant workers to abroad are rising. It is because issues of accessing quality jobs and career in Indonesia have not been solved. Unsolved labor crisis boosts the numbers of Indonesian migrant workers. Dita Indah Sari from Ministry of Manpower and Transmigration estimates that the number of Indonesian migrant workers will increase, particularly from villages that are not giving chances to access quality jobs except farming, which has been abandoned since it is considered not to provide sufficient profit.

According to Indonesian Association for Sovereign Migrant Workers (2013), it is estimated that there are 4.5 million Indonesian migrant workers. Most of them are women (about 70%) and they work in domestic sector (as housemaid) and manufacture. Most of them are at the age of productive (over 18 years to 35 years), but it is suspected that many of them are actually at under-working age. This fact happens because they are much forged the identity of their travel documents. Moreover, about 30% are men, working as plantation laborers, construction, transportation and services.³ The number of Indonesian migrant workers to abroad actually boosts foreign exchange. However, on the other hand, issues and challenges are rising, particularly protection against Indonesian migrant workers during

² Wahyu Susilo, *Pendidikan Sebagai Agenda Perlindungan Buruh Migran Indonesia*, accessed from http://migrantcare.net/wp-content/uploads/2016/09/artikel_JP_migran_dan_pendidikan.pdf. retrieved on 12 August 2017.

³ Nur Hidayati, *Perlindungan Hukum terhadap Buruh Migran Indonesia (BMI)*, Ragam Jurnal Pengembangan Humaniora Vol. 13 No. 3, Desember 2013, hlm. 207.

working period. Government is expected to analyze and evaluate protection against Indonesian migrant workers so they will not be victimized. They are not commodity goods that can be traded. They are human beings who need protection. The problem of migrant workers is a national problem that requires serious control. Control of Indonesian migrant workers not only involve the Ministry of Manpower and Transmigration, The National Agency for Placement and Protection of Workers, Republic of Indonesia Embassy, but also ratification of Law Number 39 Year 2004 on the Placement and Protection of Overseas Workers on 18 October 2004 (State Gazette of the Republic of Indonesia Year 2004 Number 133, Supplement to the State Gazette of the Republic of Indonesia Number 4445).⁴ It is done to protect Indonesian migrant workers. The law is drafted as the implementation of the mandate of article 34 of Act Number 13 Year 2003 concerning Manpower (State Gazette of the Republic of Indonesia Year 2003 Number 39, Supplement to the State Gazette of the Republic of Indonesia Number 4279) stipulates that provisions concerning the placement of Overseas Workers are regulated by law.

The Act Number 39 Year 2004 concerning Placement and Protection of Overseas Workers is drafted to provide legal protection to Indonesian migrant workers who often suffer various issues such as violence, human exploitation, and treatment that contradict human dignity. This is stated explicitly in Act Number 39 Year 2004 as mentioned in considered section "that working is a human right that is upheld, respected, and guaranteed to be enforced".⁵ The Act Number 39 Year 2004 concerning Placement and Protection of Overseas Workers is drafted to provide legal protection to Indonesian migrant workers who often suffer various issues such as violence, human exploitation, and treatment that contradict human dignity. This is stated explicitly in Act Number 39 Year 2004 as mentioned in considered section "that working is a human right that is upheld, respected, and guaranteed to be enforced".

Issues and challenges in employment and manpower, particularly for Indonesian migrant workers are those that related to the implementation of insurance previously implemented by the consortium, where it is oriented to the value of profit alone in providing protection to Indonesian migrant workers who work abroad. Government

⁴ Anggraeni Primawati, *Penempatan Tki Masih Dengan Paradigma Komoditas*, Jurnal INSANI, NO. 12/1/Juni 2012, p. 56.

⁵ Lalu Husni, *Op. Cit.*, p. 4.

Regulation on Manpower and Transmigration No. Per. 07 / Men / V / 2010 governing the insurance for Indonesian workers has led to the management of a profit because it is administered by the state. Therefore, the role of the state in providing protection to Indonesian workers through social insurance system or social security system conducted by the state lacks significant protection. Indeed, social security is the authority of the state and must be managed by the state directly.

In addition, based on Indonesian Supreme Court (6)⁶, it is stated that it declares Cancel Decree of Minister of Manpower and Transmigration of the Republic of Indonesia Number: KEP 104 / MEN / V / 2008, dated May 6, 2008 on the Revocation of the Stipulation of the Indonesian Workers Insurance Consortium. PT. Asuransi Bangun Askrida with PT. Asuransi Himalaya Protector, PT. Pasaraya Life Insurance, PT. Asuransi Binagriya Upakara, PT. Staco Jasapratama and PT. AJB Bumiputera 1912 as the Organizer of Indonesian Labor Insurance Program and PT. Jasa Advisindo Sejahtera Insurance Broker and Consultants as Insurance Brokers Consortium of Indonesian Labor Insurance chairs it.

By having the principle, it is significantly important to protect Indonesian Migrant Workers. It can be through a social security system organized by a State which is not only limited to Indonesian migrant workers but also to Indonesian labors. This study analyzes two focuses: (1) how is state's orientation against Indonesian migrant workers protection? (2) How is the urgency of Indonesian migrant workers protection through the national guarantee system? The study utilizes doctrinal approach with normative method.

RESULT AND DISCUSSION

Protection State Orientation against Indonesian Migrant Workers

One of the national goals of the Indonesian nation, as embodied in the Preamble to the Constitution of the Republic of Indonesia 1945, is to promote welfare state. This shows that since independence, the Republic of Indonesia has firmly established the concept of the Welfare State. The welfare state is the responsibility and obligation of the State in providing welfare to its people that includes the fulfillment of the basic needs of the citizens, social service and market economic intervention. In other words, that the welfare state is the responsibility of the state in terms of fulfillment of basic needs that is citizens right. If the

⁶ Lihat Direktori Putusan MA No. 98/G/2008/PTUN-JKT

government cannot perform it, citizens can demand in accordance with legal rules.⁷ One of the rights is the rights for citizens to access quality jobs to achieve prosperity. In this labor issue, the relation between employer and labor, in terms of sociological labor, the labor does not have autonomy to determine the boundaries. As under-qualified workers, Indonesian migrant workers have the only choice, working as migrant labors. Therefore, the employer rules the boundaries.

The labor that is primarily the interest of the employer is something that is so-attached to his or her responsibility. The labor should follow the employer and be ready when the employer needs him or her. However, viewed from juridical perspective, position of the labor is free. Therefore, the principle of our country is that no one shall be enslaved, stalled or subjected to slavery. Slavery, slave trade, and serfdom and any proclamation of any kind subjected to those behaviors are forbidden. Based on this principle, employer shall respect the rights and freedoms of labor in during his or her work period. As long as the agreement between employer and labor is determined by those two parties who is directly concerned, it is still difficult to reach a fair deal. This, more or less, influences a sense of social justice that is also the main purpose of employment. Hence, the employers whether or not with the help of labor organizations, establishing regulations and actions subjected to protecting the labors (placing in a socially acceptable position for humanity). This regulation aims to perform social justice in employment and the implementation is administered by protecting the labors against the unlimited power of the employer. Nevertheless, both employer and labour are entitled to rule particular agreement (according to their arrangement) but it shall not be contrary to the constitution.⁸

This is to protect the labor. One of government's efforts to empower Indonesian workers is by Indonesian migrant workers policy. Since the economic crisis, the number of Indonesian migrant workers is increasing. Most of them are women who work in informal sector. They are uneducated, inexperienced, and unskilled. Most of them are recruited by brokers from PJTKI (The Indonesian Manpower Service Provider), who promises jobs to

⁷Ramesh Mishra, *Welfare State in Crisis, Social Thought and social Change*, Wheatsheaf Books Ltd, Harvester Press, London, 1984, p. 11, dalam Urip Santoso, *Rekonstruksi Sistem Jaminan Sosial Nasional Bidang Kesehatan Berbasis Nilai Kesejahteraan*, Jurnal Pembaharuan Hukum Volume I No. 3 September – Desember 2014, p. 361.

⁸Widowati, *Perlindungan Jaminan Sosial Terhadap Tenaga Kerja Serta Penyimpangan Jam Kerja*, Jurnal Fakultas Hukum Universitas Tulungagung, p. 58, accessed from <https://fakultashukumunita.files.wordpress.com/2015/11/widowati1.pdf>. retrivied on 12 August 2017.

them with fast and cheaper procedures. This is what triggered trends and issues experienced by the Indonesian migrant workers before leaving, during work period, and returning home.⁹ Therefore, the government's active role in promoting an arrangement to Indonesian migrant workers is significantly important to avoid human trafficking.

Migrant workers issues are increasing by years along with the development of technology and population growth. High population growth in accordance with weak economic performance raises limited quality jobs and careers and it leads to increased unemployment issues. If government, in particular, and society, in general, does not prioritize this issue, it causes impacts that will aggravate the image of the Indonesian nation.¹⁰ A lot of efforts has been through by unemployed to access opportunities being Indonesian migrant workers. Some of them take unofficial intermediaries widely known as brokers. High salary and promising opportunities often lead those unemployed to work as Indonesian migrant workers. However, there are many workers join official manpower-company provided by the government, through an officially appointed recruitment agency called the Indonesian Manpower Service Company (PJTKI). It is private institutions monopolized by the Government of Indonesia to recruit and process Indonesian migrant workers to other countries, and to ensure employment.¹¹

Human trafficking is increasingly widespread because the benefits of the perpetrators are enormous. According to the United Nations, human trafficking is a third-largest criminal company on a world level that generates about 9.5 million USD in annual taxes. Moreover, human trafficking is also one of the most lucrative criminal companies and strongly associated with money laundering of drug trafficking, forgery of documents and human smuggling. According to International Labor Organization's study results, the profits derived from trafficked women, men and children are estimated at 32 billion US dollars each year. The profits from the forced labor trafficked amounted to approximately US \$ 13 for

⁹Erwan Baharudin, *Perlindungan Hukum Terhadap Tki Di Luar Negeri Pra Pemberangkatan, Penempatan, Dan Purna Penempatan*, Lex Jurnalica Vol.4 No.3, Agustus 2007, p. 169.

¹⁰Rifa Agustini, *Karakteristik Tenaga Kerja Wanita (Tkw) Yang Pernah Bekerja Ke Luar Negeri Dan Dampak Remitensi Terhadap Keluarga Tkw Di Kecamatan Sepulu*, accessed from <http://jurnal-online.um.ac.id/data/artikel/artikel42A9D8AC833B270C3E0696036BCB26EC.pdf>. retrieved on 15 August 2017.

¹¹Darwin, Muhadjir, dkk (Editor). *Bagai Telur di Ujung Tanduk, Mobilitas Lintas Batas dan Eksploitasi Seksual di Kawasan Asia Tenggara dan Sekitarnya*, Yogyakarta, Pusat Studi Kependudukan dan Kebijakan, 2005, p. 254, dalam Irwan Pasetia, *Pengiriman Tenaga Kerja Indonesia (Tki) Ke Malaysia Melalui Kota Semarang*, accessed from <https://ojs.unud.ac.id/index.php/piramida/article/view/2976/2134>. retrieved on 12 August 2017.

each. It can be figured that in one year the profits earned can reach 32 billion US dollars. Labor exploitation occurs not only in informal sector but also in other sectors, such as farming, construction, brick making, factories and manufacturing. Forced labor is likely to occur in inadequate labor control areas, such as unprofessional and illegal labor agencies and subcontracting systems.¹²

International labor migration has attracted international attention in the past two decades. This is due to the willingness of countries affected by this international migration to improve the welfare of the workforce and to provide better management on the flow of labor migration. The field of migration comes with the challenges considering the respect to the destination country. In this case, the migration should be able to make domestic needs balance with the labor market based on the views and needs of the people in the country. In addition, they should also pay attention to the rights and protection of the workers working abroad. These are aspects that should be considered in making migration policy. The sending country must consider the interest of the government, the labor and the local communities when organizing the labor to work abroad in balance. Actually, there are many concerns encountered by labor-sending countries concerning the rights of their workers and the best way they can provide to protect them.¹³

Migration, in Indonesia particularly, has been occurring for hundreds of years, but since 1960s and 1970s, it has increased significantly due to the current modernization. Workers from Indonesia working abroad; broadly known as Indonesian Migrant Workers (*TKI/ Tenaga Kerja Indonesia*) leave their homeland for several reasons. Some of the reasons are lack of job opportunities, poverty, and salary differences between Indonesia and the destination countries. The administration for the placement of Indonesian migrant workers by the government is officially conducted in 1969, in which at that time, it was handled by the Department of Manpower and Transmigration. As the government issued the Government Regulation No. 4 year 1970, the placement programs for the migrant workers is introduced. The mentioned programs refer to Inter-regional Labor Migration or AKAD

¹²Agusmidah, *Tenaga Kerja Indonesia, Perdagangan Manusia (Human Trafficking) Dan Upaya Penanggulangannya (Sudut Pandang Hukum Ketenagakerjaan)*, Makalah disampaikan dalam acara Dialog Interaktif tentang "Tekad Memberantas Perdagangan Perempuan dan Anak Dengan Memberi Advokasi Penegakan Hukum Melalui UU No. 21 Tahun 2007. Diselenggarakan oleh IKA FH USU Medan, 30 Agustus 2007 di FH USU Medan, p. 2.

¹³ Organisasi Internasional untuk Migrasi (IOM), *MIGRASI TENAGA KERJA DARI INDONESIA, Gambaran Umum Migrasi Tenaga Kerja Indonesia di Beberapa Negara Tujuan di Asia dan Timur Tengah*, IOM International Organization for Migration, 2010, p. 3.

(*Angkatan Kerja Antar Daerah*) and Inter-State Labor Migration or AKAN (*Angkatan Kerja Antar Negara*). The programs were conducted to provide a save way for private sector to be involved in the field of workers recruitment and placement in the industry. The number of Indonesian migrant workers is considered fluctuated during 1996 and 2007, but in the other hand, the number of the workers are significantly increased from 517,169 to 696,746 (see Table 2) by 21 percent of increase between 2004 and 2007. Approximately, about 60 percent of the migrant workers are in placed in the Middle Eastern countries such as Saudi Arabia, Kuwait, United Arab Emirates, Jordan and Qatar. The rest of them are placed in Southeast Asia and East Asia countries such as Malaysia, Singapore, Hong Kong, South Korea, Taiwan (China) and America.¹⁴ As one of the countries with high population growth and unemployment rates, providing international migration for the workers to work abroad is said as one of best ways to solve the problem in Indonesia. International migration is a process of migration from one country to another country. Generally, people migrate overseas to obtain better economic prosperity for themselves and their families. Fact showed that high rate of unemployment, low wages, less promising career prospects for highly educated people, and high risk of domestic infestation are the factors that influence a person to migrate abroad.¹⁵ Indonesian migrant workers are mostly dominated by women migrant workers, in which the employment is generally placed in the informal sector. In this case, most of the migrant workers are placed in two major areas, Asia Pacific and Middle East, while a few others are placed in Europe. In the area of Asia Pacific region, the countries that mostly use the Indonesian migrant workers are Malaysia, Taiwan and Singapore, while in the domain of Middle East; Indonesian migrant workers are mostly placed in Saudi Arabia, United Arab Emirates and Kuwait. The system of International worker migration from

¹⁴ Suparno, E, "*Policies and Strategies in the Deployment of Indonesian Migrant Labour Overseas*", Minister of Labour and Transmigration, 2008, dilihat dari <http://www.setneg.go.id> ("*Kebijakan dan Strategi Penempatan kerja TKI di Luar negeri.*" Menteri Tenaga Kerja dan Transmigrasi"), dalam Organisasi Internasional untuk Migrasi (IOM), *Ibid.*, p.9.

¹⁵ Solimano, A, *International Migration and the Global Economic Order*. Policy Research Working Paper. World Bank Development Research Group, Washington D.C, 2001, dalam Reni, et.al. *Analisis Keputusan Bermigrasi Tenaga Kerja Asal Kabupaten Ogan Ilir Ke Malaysia*, I-Economic Vol. 2. No.2 Desember 2016, hlm. 74. Besides the contribution to overall GDP growth, the economic benefits immigrants bring are particularly prominent in sectors and industries with labour-intensive production. Immigration also rectifies market failures that result from the uncertainty of output production, which itself is the result of incomplete information in the labour market. At the firm level, employing migrants helps to stabilize the labour supply in these sectors and to prevent uncertainties arising from production and unfilled vacancies. See Piriya Pholphirul, *Labour Migration and the Economic Sustainability in Thailand*, Journal of Current Southeast Asian Affairs, 3/2012, p. 62.

Indonesia is remaining the same and almost unchanged for years.¹⁶ Basically, the protection of Indonesian migrant workers is the responsibility of the government. Then, the management of the migrant workers is managed by the Ministry of Manpower and Transmigration in cooperation with the Ministry of Foreign Affairs. In fact, however, there are several concerns raised due to the many requirements related to the migrant workers management. Thus, the government is trying to assist the the protection towards the Indonesian migrant workers under the Act No. 39 of 2004. Therefore, the National Agency for Placement and Protection of Indonesian Migrant Workers or *Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia (BNP2TKI)* is regulated under Presidential Regulation No. 81 of 2006. In accordance with this matter, there are at least three state institutions that are linked and directly correlated with the protection of the migrant workers, namely; the Ministry of Foreign Affairs, the Ministry of Manpower and Transmigration and National Agency for Placement and Protection of Indonesian Migrant Workers, BNP2TKI. At first attempt, the task concerning the Indonesian migrant workers was conducted by one of the bureaus at the Ministry of Manpower and Transmigration. However, since the National Agency for Placement and Protection of Indonesian Migrant Workers is legally regulated, the duties of the Ministry of Manpower concerning the matter of migrant workers are fully transferred under the responsibility of this National Agency for Placement and Protection of Indonesian Migrant Workers.¹⁷ Having the states institutions specifically manage the matter of Indonesian migrant workers working abroad, good synergies and partnership among all those institutions are highly required in order to work in accordance with their powers and functions. By doing so, it is expected that they can provide services and protection to the prospective migrant workers who are planning on working abroad.

Protection of Indonesian Workers through the National Social Security System

Social security is one of social protections that are provided by the government to ensure that all people are able to adequately fulfill their basic needs. Social security is a system that is provided to realize people's prosperity and provide a sense of long life security. In this case, the word welfare is defined as a condition in which a person has stable

¹⁶ Reni, NurlinaTarmizi, Maryadi, *Ibid.*, p.74.

¹⁷ Aprina Chintya, *Kajian Yuridis Perlindungan Hak Tenaga Kerja Indonesia (TKI) di Luar Negeri*, Jurnal Fikri, Vol. 2, No. 1, Juni 2017, p. 105-106.

income to fulfill their necessities when he is in a risky situation of having financial impact, such as losing a job, having an accident, entering old age, experiencing illness, and even passing away. All of those conditions may bring have influential effect on the financial condition, or even, it may cause someone lose his regular, stable income. That is why the social security system is presented to the country and national life in order to avoid such risks. It means that social security was initiated by the government to purposively provide prosperity for its people.¹⁸ Thus, the substance of the social security system that is created by the government is considered as the effort to create good prosperity for the people. One of the protections for human rights is the principle of liberty in the field of employment relations in Indonesia that is ruled under the 1945 Constitution of the Republic of Indonesia Article 28 D Clause 2. The article states that, "Every person is entitled to an occupation as well as to get income and a fair and proper treatment in labor relations". This provision implies that every citizen is rightfully entitled to obtain the work and receive fairly payment or income regardless the physical personal differences. So does with the existence of migrant workers. As a human being, they also have the same rights as other human beings in terms of getting and doing the work as well as receiving the income fairly. The migrant workers are the main actors in the development and an economic field, either it is individually or in groups. Thus in this case, they have a very significant role in maintaining national economic activity by increasing the productivity and welfare of the community.¹⁹ Those two things are the most basic ideals contained in the 1945 Constitution of the Republic of Indonesia. The benefits of the National Social Security Program are significantly comprehensive. According to Article 18 of Act Number 40 Year 2004, the type of social security program includes health insurance, accident insurance, pension plan, pension guarantee and life insurance. The Act of National Social Security System is expected to be a broad legal protection for the organization of social security in Indonesia since the process of formation and discussion of

¹⁸Tim Koordinasi Komunikasi Publik Terintegrasi Jaminan Sosial Bidang Ketenagakerjaan, *Buku Tanya-Jawab Seputar SISTEM JAMINAN SOSIAL NASIONAL BIDANG KETENAGAKERJAAN (SJSN-TK)*, TNP2K, p. 2. Social protection is generally defined as a set of formal or informal mechanisms which enable households either to reduce vulnerability and risk or to cope with economic shocks. The evidence that households in developing countries are exposed to high risk, with important welfare consequences, is plenty (Morduch 1995, Townsend 1995, Dercon 2002, Fafchamps 2003), dalam Mariapia Mendola, *International Migration and Informal Social Protection in Rural Mozambique*, [Research in Economics, Volume 71, Issue 2](#), June 2017, p. 282-290.

¹⁹ Rimluk S. Buhoy, *PELAKSANAAN PEMENUHAN JAMINAN SOSIAL TENAGA KERJA SEBAGAI WUJUD PERLINDUNGAN HUKUM BAGI PEKERA (Hambatan dan Upaya Sistem Perjanjian Kerja Waktu Tertentu (PKWT) Di Kabupaten Murung Raya)*, accessed from <https://media.neliti.com/media/publications/41442-ID-pelaksanaan-pemenuhan-jaminan-sosial-tenaga-kerja-sebagai-wujud-perlindungan-huk.pdf>. retrieved on 16 August 2017.

this law involves various elements of society. The National Social Security System Act Article 1 clause 2 Number 40 of 2004 states that:²⁰

National Social Security System is a mechanism of social security program administration by some social security administrative bodies.

The Act of National Social Security System (NSSS, hereafter) not only focuses on health services with universal compulsory membership, but it also provides access for all workers to join the Pension Plan under the National Social Security System to prevent elderly poverty. The implementation of NSSS is the part of the Millennium Development Goals (MDGs) that enable Indonesians to be free of poverty, in both short and long term that will be started in 2020. Poverty reduction in the short term is conducted by having compulsory membership in working guarantee of National Social Security System, while the long-term poverty reduction is conducted by doing mandatory participation in pension guarantee of National Social Security System. By the enactment of The Act No 24 of 2011 concerning the (*Badan Penyelenggara Jaminan Sosial or BPJS*) as a follow up of Law No. 40 of 2004 Article 5 of on National Social Security System, an independent and credible Social Security Agent that directly responsible to the President is required in order to organize the National Social Security System.²¹ Concerning this matter, the Social Security Agent should be able to provide protection for Indonesian migrant workers. Therefore, social security is fairly given for the migrant workers and of course, it should not be a profit oriented.

Social security system organized by the government is indispensable for Indonesian workers.²² Thus, the protection of Indonesian migrant workers can be guaranteed by the government by providing of such social security. For all this time, the social security system for Indonesian migrant workers is based on several ministerial regulations. One of them is the Regulation of the Ministry of Manpower and Transmigration Number

²⁰ WIDODO SURYANDONO, et.al. *Laporan Akhir Tim Analisis Dan Evaluasi Undang-Undang Nomor 40 Tahun 2004 Tentang Sistem Jaminan Sosial Nasional*, Pusat Perencanaan Pembangunan Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Hak Asasi Manusia RI 2011, p. 4.

²¹ H. Bambang Purwoko, *Penyelenggaraan Sistem Jaminan Sosial (SJS) Di Indonesia Dalam Perspektif Internasional*, E-Journal WIDYA Ekonomika, Volume 1 Nomor 1 April 2016, p. 76.

²² Migrants and ethnic minority groups may be more liable to certain health problems than the majority population. There are very few generalisations that can be made about this, and these groups may also have some significant health advantages. However, the fact remains that they are often exposed to serious health risks (WHO, 2010). I will not attempt to give a summary of these, but it is worth mentioning that the emphasis of epidemiological research has shifted from the study of contagious "import diseases" to the effects on these groups of the conditions in which they live. Many health risks are related to poverty, discrimination, and social exclusion. See David Ingleby, *Acquiring health literacy as a moral task*, INTERNATIONAL JOURNAL OF MIGRATION, HEALTH AND SOCIAL CARE, VOL. 8 NO. 1. 2012, p. 24.

PER.07/MEN/V/2010 on Indonesian Labor Insurance. However, in the preamble, it is mentioned that the Regulation of the Ministry of Manpower and Transmigration Number PER.23/MEN/XII/2008 on Indonesian Labor Insurance is the implementation of the Act Number 39 of 2004 Article 68 on Placement and Protection of Indonesian Migrant Workers Abroad. However, in fact, this regulation is no longer appropriate with current developments available in the field of workers insurance and insurance system.

Based on the newest regulation, the Regulation of the Ministry of Manpower and Transmigration Number PER.07/MEN/V/2010 on Indonesian Labor Insurance, there are some provisions that are elaborated in several articles as follows:

- Article 2 states that the National Agency for Placement and Protection of Indonesian Migrant Workers shall involve the migrant workers or migrant workers to-be who are going to work abroad in the insurance program for Indonesian migrant workers as what is regulated in this Ministerial Regulation.
- Article 3 states that the insurance program for Indonesian migrant workers as referred to in Article 2 shall be organized by an insurance consortium of migrant workers that has been appointed by the Minister.
- Article 4 states that an Insurance Company that tends to join as a part of insurance consortium of migrant workers as referred to in Article 3 shall obtain the legal approval from the Minister.

Besides, the Article 7 of current act is elaborated into several paragraphs as the followings:

1. To organize an insurance program for Indonesian migrant workers, an insurance company that has obtained the approval from the Minister is required to join in 1 (one) insurance consortium of migrant workers that is set forth in the consortium agreement that is made before a notary public that is set forth in notarial deed.
2. The consortium as referred to in paragraph (1) shall consist of at least 10 (ten) insurance companies consisting of insurance companies and life insurance companies.
3. Insurance companies that have joined in 1 (one) consortium shall not to join in another consortium of insurance workers.

Referring to the regulation of the Ministry of Manpower and Transmigration, it can be said that the management of insurance for Indonesian migrant workers can be managed by private parties or companies. In 2012, the Regulation of the Ministry of Manpower and

Transmigration No. 1 of 2012 on Amendment of the Regulation of the Minister of Manpower and Transmigration No. Per.07/Men/V/2010 on Indonesian Labor Insurance is issued²³, that substantially, it changes the article 13 to be as follows:

1. In case of there is membership change in 1 (one) consortium prior to the expiration of stipulation period, the insurance company of the migrant workers shall be responsible for the settlement of the claim until the end of the period of the insurance coverage of the concerned migrant workers.
2. The Chairman of the insurance consortium for migrant workers must apply for a change of membership to the Minister no later than 30 (thirty) working days prior to any change of membership in accordance with the requirements as referred to in Article 5 and Article 10.
3. Changes in membership as referred to in paragraph (1) and paragraph (2) are stipulated by a Ministerial Decree.

²³ MA membatalkan pemberlakuan Peraturan Menteri Tenaga Kerja dan Transmigrasi (Permenakertrans) Nomor PER.07/MEN/V/2010 tentang Asuransi Tenaga Kerja Indonesia (TKI). Aturan yang berlaku sejak 31 Mei 2010 itu dinilai bertentangan dengan aturan yang lebih tinggi. Dengan putusan ini, operasional 10 perusahaan asuransi yang tergabung dalam Konsorsium Asuransi Proteksi Tenaga Kerja Indonesia dengan satu pialang asuransi akan dibekukan mulai 1 Agustus 2013. Pencabutan Permenakertrans tentang asuransi TKI itu seiring dengan dikabulkannya gugatan yang teregistrasi Nomor 2 P/HUM/2013. Selaku pemohon atas nama Indasah dkk yang didaftarkan sejak 2 Januari 2013 dengan termohon Menakertrans, Muhaimin Iskandar. Putusan yang dimusyawarahkan pada 16 Juli 2013, diputus oleh majelis yang terdiri atas Supandi, Hary Djatmiko, dan Yulius menyatakan mengabulkan permohonan. "Iya mencabut Permenakertrans Nomor PER.07/MEN/V/2010," kata Kasubag Humas MA, Rudy Sudiyanto, saat dikonfirmasi, Rabu (31/7). Pertimbangannya, seperti dituturkan Rudi, Permenakertrans itu dinyatakan bertentangan dengan UU No. 2 Tahun 1992 tentang Perasuransian dan bertentangan dengan PP No. 73 Tahun 1992 tentang Penyelenggaraan Usaha Perasuransian. Permenakertrans itu merupakan aturan baru sebagai pengganti dari Permenakertrans No. PER.23/MEN/XII/2008 tentang Asuransi TKI. Dalam pasal 1 ayat (7) dinyatakan Penanggung adalah perusahaan asuransi kerugian dan asuransi jiwa yang telah mendapatkan surat penunjukan dari Menakertrans untuk memberikan perlindungan terhadap TKI dengan membentuk satu konsorsium. Pasal 7 ayat (2) dinyatakan Konsorsium sebagaimana dimaksud beranggotakan sekurang-kurangnya 10 perusahaan asuransi yang terdiri dari perusahaan asuransi kerugian dan perusahaan asuransi jiwa. Konsorsium itu akhirnya bernama PT Asuransi Central Asia Raya dengan anggota ; PT Asuransi Umum Mega, PT Asuransi Harta Aman Pratama, PT Asuransi Tugu Kresna Pratama, PT Asuransi LIG, PT Asuransi Raya, PT Asuransi Ramayana, PT Asuransi Purna Artanugraha, PT Asuransi Takaful Keluarga, dan PT Asuransi Relife. Untuk kepentingan tertanggung sesuai amanat Pasal 19 ayat (1), maka jasa keperantaraan dalam penutupan dan penanganan penyelesaian klaim asuransi TKI dilakukan oleh pialang asuransi TKI. Pialangnya bernama PT Paladin International. Besaran premi seperti tertuang dalam pasal 15 ditetapkan sebesar Rp 400 ribu yang terdiri dari: Premi asuransi TKI prapenempatan sebesar Rp50 ribu, premi asuransi TKI masa penempatan sebesar Rp300 ribu, dan Premi asuransi TKI purna penempatan sebesar Rp50 ribu. "MA Batalkan Permenakertrans Asuransi TKI", accessed from <http://www.hukumonline.com/berita/baca/lt51f9fc5c98e20/ma-batalkan-permenakertrans-asuransi-tki>. retrieved on 15 June 2017.

Basically, the insurance for Indonesian migrant workers should be incorporated into the social security system made by the government through the management of Employees Social Security System as one of the government's responsibilities towards its workers. It is, of course, in accordance with the provision as what is stated in Article 1 clause 1, 2, and 3. In detail, the paragraphs are elaborated as follows:

1. Social security is one of social protections to ensure that all people can fulfill the basic needs for decent lives.
2. National Social Security System is a procedure to implement the social security programs that is conducted by several social security agents.
3. Social insurance is a mandatory fund-raising mechanism derived from contributions of its members to provide protection for socio-economic risks that afflict participants and/or members of their families.

The implementation of social security system for Indonesian migrant workers that is directly managed by the government is expected the protection provided can be more comprehensive. In addition, it will also ease the government to supervise the system and facilitate the Indonesian migrant workers to process the claims since the single system used is directly managed by the government, not a profit-oriented company or consortium. This is in accordance with the principles are there in Article 4 on the social security system, in which it is stated that the National Social Security System is organized based on the principles: a. mutual cooperation; b. non-profit; c. openness; d. caution; e. accountability; f. portability; g. mandatory membership; h. trusted fund; and i. using the results of the management of the Social Security Fund entirely for the development of the program and for the greatest interest of the participants.

The social security system for Indonesian migrant workers can be implemented as based on the provisions Regulation of the Government of The Republic of Indonesia Number 85 of 2013 Article 2 on Inter-Institutional Relationship Procedure of The Social Security Agency, in which it is stated that : (1) In order to improve the quality of Social Security program, *BPJS* shall cooperate with government institutions. (2) Government institutions as referred to in paragraph (1) shall include Government institutions and local government institutions. (3) Government institutions as referred to in paragraph (2) shall consist of: a. state ministries; b. non-ministry government institutions; c. government institutions chaired by an official equal to a minister; d. state institution secretariats; and e. non-structural

institutional secretariats. By making a good cooperation among institutions, the protection for Indonesian migrant workers can be provided well as it is conducted by an integrated agency providing services for both domestic workers and migrant workers.

CONCLUSION

A country is a large entity that has a formal legal obligation to carry out its obligations including protecting all the citizens. Indonesian migrant workers are still part of citizens who are constitutionally entitled to choose a job and get a job. With the rights they hold, the State is obliged to participate in providing protection to all citizens, including the migrant workers. In addition, with the enactment of the Act No. 24 of 2011 on Social Security Agents (BPJS) as a follow up of the Act No. 40 of 2004 Article 5 on National Social Security System, independent and credible Social Security Agent is needed in order to organize the national security system. Thus, the social security system for Indonesian workers should be done earlier as the obligation of the Employees Social Security System is legally issued. Therefore, the State should be able to play an active role in providing protection by implementing the social insurance / social security system.

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