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**The Implementation Of The Employment Agreement For Indonesian Migrant Workers In Saudi Arabia**

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**Abstract**

The placement program of Indonesian migrant workers overseas is the Indonesian government's program for the society's welfare. One of the referential laws used in the working relations between the Indonesian migrant workers and the Arabic employers is the employment agreement. The Saudi Arabian employment agreement implements the sharia law which is influenced by the Hambali school of taught. The King's decree No. M/51 year 2005 regulates the labor laws in Saudi Arabia, and this country's government only accepts employment agreements written in Arabic. The solution is that the employment agreements written in two languages are prepared, with Arabic as the authoritative language. Apart from implementing the Kafala system, as a substitute of tax, Saudi Arabia also implements the Nitaqat Policy. The employment agreements in Saudi Arabia have a high risk of being misused by the agencies, as the position of the Indonesian migrant workers is under the responsibility and under the power of the agencies, who have the right to terminate or to send the workers back home if there are some problems. The employment agreements are made because of the employer's complaints on how the migrant workers often run away, which undoubtedly causes them a high loss. The aim of the contract is so that both parties may achieve a win-win solution, and that they are both given protection. Yet, the contract also limits the participation of the host country's delegates, as all affairs are given to the Saudi Arabian Immigration Office. The employment agreement must be owned by both parties. Yet, based on some researches established by the Embassy of the Republic of Indonesia's safe house, it is known that almost none of the migrant workers keep an employment agreement. Another problem is that there are multiple contracts: one before departing for Saudi Arabia, and a different one after having arrived in the country. Another written agreement that is signed by the employer and the agency in Saudi Arabia doesn't involve the domestic worker. The three contracts which are signed in Indonesia, in front of the Immigration Office, and the one-sided contract between the employer and the agency regulates the same thing, though there is a chance that in all three contracts, the wages written are different.

**Keywords:** Agreement; Indonesian migrant workers; Protection

**I. INTRODUCTION**

The 1945 Constitution states that every citizen has the right to work, also to receive wages and to be treated fairly in work relations. This normative regulation confirms the constitutional right to work and the rights in work (Arinanto, 2009). The right to work and the right in work are part of the human rights, the law protection, and the rights fulfillment for the working citizens, and they have a high role in achieving good life standard (King, 2003). The government has the obligation to establish the working rights of the citizens as good as possible. The regulation which states the instructions on how to work overseas is regulated in the Constitution No. 18 year 2017 on the protection of the Indonesian migrant workers. All instructions are written, including the duration of placement, the placement, and the pre-placement, which are stated comprehensively.

Indonesia is a country which is rich in human resources, yet the human resources are mostly not

professionals, as their academic backgrounds are not sufficient. This is contradictory with the employment vacancies offered, which results to a high rate of unemployment in every city. The placement program of the Indonesian migrant workers overseas is a program of the Indonesian government for the prosperity of the citizens. This has the aim to decrease the number of unemployment so that the poverty is minimized, and so that the citizens may obtain experiences and skills while working abroad.

Work is the application of the human existence's mandate. The form of work may be chosen freely, whether it is in the original country or abroad. The state must provide good work for its citizens which gives a positive impact for their existence without discrimination (Izziyana, 2018). Indonesia is a country which provides one of the highest numbers of migrant workers. Formerly, the term 'Indonesian migrant worker' is known as Indonesian labor (*tenaga kerja Indonesia/TKI*), which literally means any Indonesian citizen which fulfills the requirements for working overseas in work relations for a period of time and receives wage, (Payaman, 2003) either based on the country's demand or based on the placement agency of migrant workers overseas.

The Indonesian migrant worker program is one of the sectors which is able to drive the economy of Asian countries. The high number of migrant workers overseas has some positive sides, which are increasing the country's foreign exchange and dealing with unemployment. Yet on the negative side, it has the risk of inhumane treatments happening to the migrant workers (Azmy). In line with the citizens' increasing interest as migrant workers, the cases of which migrant workers are treated inhumanely whilst working abroad has also increased (Agusmidah, 2011). The cases which has to do with the migrant workers' fate have been increasingly variative, and it has even developed into a form of human trafficking which may be categorized as a human rights violation (Rusli, 2011).

The favorite host countries for Indonesian migrant workers include Saudi Arabia, Malaysia, Hong Kong, Singapore, Brunei, Taiwan, and other Asian countries. The placement program of migrant workers, especially in Asia, has the aim to become an alternative of the Indonesian government in an effort to deal with unemployment, which is to make use of the international work market. The placement program of migrant workers in Asia has so far received a positive response from the society and has become a must in fulfilling the life needs (Mahfu, 2016).

The problems in placement and protection of the Indonesian migrant workers have a very tight relation with the nation's dignity. Therefore, the central government, the regional governments, as well as the private institutions which have to do with this program must insure protection in the forms of commitment, professionalism, and economic support. Support of the central government, the regional governments, and the private institutions may run effectively if the Indonesian migrant workers understand the regulations of the host country. The understanding of their rights and obligations, as well as the rules which are applied in the host country must be understood (Syafrianto, 2004), so that the migrant workers are not easily tricked and exploited, and to minimize the number of problems.

The employment agreements which has been settled by the employers and the Indonesian migrant workers, are as follows: First, the Placement Agreement of the Indonesian migrant workers which has been done between the placement manager of the private Indonesian labor (*TKI Swasta*) and the prospecting migrant workers. Second, the employment agreement between the Indonesian migrant workers and the User (the institution where the migrant workers are placed overseas) which contains the work requirements, as well as the rights and obligations of both parties. Basically, the employment agreements may not be altered, except with the agreement of all parties involved. If there is an alteration in the employment agreement, it must also be approved by the Republic of Indonesia's Delegates in the host country. The aim of this research is to describe the execution of the employment agreements of the Indonesian migrant workers, especially in Saudi Arabia.

## II. METHODS

The method used in this research is the Juridical Sociologic research method, which is a research based on the real facts which are found in the field as a reality which emphasize on the law as a reality or law in action, which is an empirical and a non-doctrinal social science. This type of method is different from and the opposite of the Juridical Normative method, which only observes literature, books, opinions or doctrines of professionals and other secondary resources, thus named the juridical

normative research as a literal law research. The juridical sociologic approach constructs the law as the reflection of the society and the life itself, where in its analysis it emphasizes the search for empirical constancy with the consequences based on the written law and through the observation of behaviors which have factually occurred (Hanitijo, 1988). The juridical sociologic research which will be discussed is focused on the activities, the behaviors, and the judgement towards the law enforcement.

### III. DISCUSSION<sup>7</sup>

The problem of the employment agreement between the migrant workers and the employers in Saudi Arabia is that it is based on the sharia law which is influenced by the Hambali school of thought. Moralities and ethical perceptions are institutionalized by observing the sharia as a part of the Islamic teachings with the main aim to make sure that there is an equality in the negotiation between all parties. Generally, all parties are free to form a contract based on the wish of both parties, so long that it does not contradict with the sharia requirements. Thus, the party of the employer and the Indonesian migrant workers must understand whatever it is regulated in the mentioned contract.

On 2005, the King's Decree No. M/51 which regulates the labor law in Saudi Arabia was issued, in which its main aim was to regulate the foreign labor. The article<sup>2</sup> states as follows:

*"No foreigners shall be brought into the country to work nor may he be permitted to work with companies and private establishments except after the approval of the Minister of Labor and after securing a work permit in accordance with the form, procedures, and rules to be prescribed by the Minister of Labor. Such permit shall not be granted except after fulfillment of the following conditions:*

*S 2cx That the work man shall have entered the country in a legal manner and shall have satisfied the conditions prescribed in the Residence Regulations.*

*That he shall possess the vocational skills and educational qualifications of which the Country is in need, provided that the nationals possessing such qualifications are either working or insufficient in number.*

*That he shall be under contract with and guaranteed by a Saudi employer, or a non-Saudi employer authorized under the Regulations for the Investment of Foreign Capital, or shall be a member of a liberal profession, guaranteed by a Saudi national, or under contract with and guaranteed by a concessionaire company."*

The kingdom of Saudi Arabia only accepts the employment agreements for the migrant workers which are written in the Arabic language. As a solution for the migrant workers, a contract in two languages are prepared, with Arabic as the authoritative language. The employment agreement must include the requirements on the work and the social insurance. There must be three copies of the contract, which are for the worker, the sponsor (the work placement agent or the Saudi person who brought the worker to the country) and the employer. There is no income tax in Saudi Arabia, yet the foreign labor must pay retribution in the form of the social insurance system, except for workers from other Arabic countries (Cordesman, 2003).

Saudi Arabia implements the Kafala System<sup>4</sup> which affects the foreign workers. The agency or the labor agent is the supervisor who is responsible for the migrant workers (Majed, 2014). The agency has the right to give work permits, also the permit to deport workers from Saudi Arabia. They also have the power to prohibit migrant workers with work disputes to leave the country. The agency has a dominant position as it has the right to confiscate the migrant workers' passport, and also their family's passport if they do bring a family (Sherifa, 2011). Many migrant workers are treated well, yet a lot have faced abuse in the work conditions, especially the household assistants. The migrant workers are targets for rape, exploitation, torture, underpayment, or even unpaid coerced work (HumanRightsWatch, 2004).

This condition, which is known as a system of slavery, is rooted from the Saudi Arabian views of patriarchy, also the extreme views of the Hambali school of thought which wrongly perceives household assistants as slaves. The migrant workers are reluctant to report the problems they had to face at work to the employers or to the agencies as they are afraid to lose work.

As a substitute of tax, the Saudi Arabian government implements the nitaqat policy system which to

some point affects the migrant workers. This policy prohibits foreigners to have their own companies or enterprises, so all companies and activities are under the name of a local partner, who is a Saudi Arabian citizen. The Nitaqat policy obligates companies or individuals who employ ten foreign workers to employ a quota with the same formation of Saudi Arabian citizens. Many companies choose to decrease the wages of migrant workers to fulfill this policy. The local citizens have a higher rate of minimum wage compared to that of the migrant workers.

The Nitaqat policy results to excess, which are “the ghost workers”. Saudi Arabian workers are reluctant to undergo risky manual work such as construction, public service, and of course it is impossible for the nitaqat policy to be implemented, remembering that it is difficult to find Saudi Arabians who are willing to do such work. Companies or individuals which are worried by the need of labor human resources for the construction, retail, and service sectors choose to employ “ghosts” instead of not obtaining the permit to employ migrant workers. These “ghosts” are local Saudi whose names and identities are borrowed to be registered in the nitaqat policy registration with the reward of genuine monthly wage as a requirement to employ foreign workers. These Saudi citizens do not really work in those companies, and the wages they received are taken from some of the migrant workers’ wage (bel-Air, 2015).

Successful Indonesian migrant workers who raised classes to become a business owner like owning restaurants, shops, etc., also chooses to employ the mentioned “ghosts” in registering their businesses, as if their businesses are owned by Saudi citizens who employ other Saudis. The effort to trick this nitaqat policy results in victims who are the migrant workers whose wages are cut to fulfill the requirements of this policy.

*“In one of his six points summarizing the reasons for the GCC countries’ dependency on migrant workers, Abbas mentions the Gulf native population’s attitude toward work, with nationals unwilling to perform manual work or to engage in the private sector, however very attracted to jobs in the public sector (Abbas, 1986). This is a key point in understanding labor migration in the Gulf as a concrete instrument to balance the bulk of nationals knocking at the governments’ doors for jobs with the private sector and its growing demand for work force. In this light, foreign workers are therefore essential for meeting the growth needs of these countries. They are mostly employed in the construction sector, retail and wholesale, with a relative minority in households’ domestic services. In 2013, in Saudi Arabia, they were respectively split”.*

The Saudi Arabian law is actually not applicative enough in giving protection for the Indonesian migrant workers. When the Indonesian migrant workers are faced with a mound of legal requirements or lawsuits, whereas they don’t have sufficient Arabic language capabilities needed to support oneself lawfully, the Saudi government does not provide a translator (the translator must be prepared by the suspect him or herself). This policy brings a negative impact towards the large number of migrant workers who must face the law complications, and they experience a one-sided court (as they are unable to understand the legal regulations and they do not understand the Arabic language comprehensively), thus the judge will also not be able to understand the problematic migrant workers’ defense.

Another policy is that when the Indonesian migrant workers face a legal case, between the ongoing cases which is still in the process of solving, there are accusations of theft, murder, witchcraft. This results to the high number of migrant workers who are executed, meanwhile the sending government of the migrant workers were not notified. When they do get notified, it is difficult for the sending government to react as the punishments have been decided and they have been executed (Chamberlain, 2013).

A real case is of the Indonesian government’s late response to save Ruyati, an Indonesian migrant worker who was given a death penalty for an alleged murder after years of torture. The Indonesian government faced difficulties in trying to save her as the time given was limited and Ruyati’s family keeps asking for diyyat money, or blood money with the sum of trillions of rupiah as the Indonesian government wasn’t notified since the beginning of the case (“Indon<sup>4</sup>a ‘feels cheated’ by Saudi government”. . 21 June 2011., 2012). Since 2013, there have been quite a number of Indonesian migrant workers who were given a death row in Saudi (MaxSijabat, 2012).

The employment agreement in Saudi Arabia also have the risk of being misused by the agencies. This is because the Kafala system which is applied makes the migrant workers under the responsibility and under the power of the agencies, which have the right to stop or to deport the migrant worker unilaterally if a problem occurs. Factually, low-skilled migrant workers or household assistants have the tendency to become targets of crime compared to high-skilled workers, according to Kapiszewski's research (Kapiszewski, 2001).

Normative of that legal requirement, it must be understood by the Indonesian migrant workers that to work in Saudi Arabia, they must fulfill the requirements according to the law. Affairs of the migrant workers who are employed in the informal sector must be located in the immigration office, under the Ministry of Internal Affairs, not the Ministry of Labor. The laws which bind its existence are limited to the immigration regulations. The only legal reference used in the work relations is the contract, which has been applied since 2007. The employment agreements are made as there are complaints from the employer on how the migrant workers run away before the trial period of three months are complete, and this condition causes a high loss. The aim of the contract is so that both parties (the employer and the migrant workers) are both given protection. Yet, this contract also limits the participation of the host country's delegates, as all affairs are given to the Immigration Office of Saudi Arabia. This participation may be interpreted as resolving cases and providing a safe house for them. Though in reality, there are so many cases which the Saudi Arabian Immigration Office cannot handle without assistance. Thus, sending country's delegate offices are always packed with tens and even hundreds of informal migrant workers who ran away from their employers' houses with different reasons. There are many conflicts and disputes in work relations which urgently need the participation of the sending country's delegate office. One of them is a serious dispute which has to do with the local court.

The effectivity of the signed contract must be questioned, as it is written in English and in Arabic. Do the household workers understand its contents? And do they keep it themselves? In the contract, it is mentioned that both parties (the employer and the employee) must keep their own employment agreements. Yet, some researches held by the Republic of Indonesia's Embassy says otherwise. It is known that almost none of those household assistants keep their own contracts. Worse, they cannot even keep the most prized proof of self-identity, which is the passport. This shows that they do not have access to a legal identity, which is one requirement to reach a legal access. This void of legal identity has the risk of making them categorized as an illegal citizen or even a criminal.

An important problem to be understood is that there are multiple contracts, which results to an uncertainty of law. Before they depart for Saudi Arabia, there is a contract which must be signed. There is another one to be signed as soon as their arrival in that country. Apart from that, there is another written agreement to be signed by the employer and the agency in Saudi Arabia, which do not involve the domestic worker at all. Strangely, these three contracts (the one signed in Indonesia, another in front of the Immigration Office, and lastly the unilateral contract between the employer and the agency) agrees upon the same thing. There is a strong chance that the wages written in all three contracts are different. Normatively, the migrant workers' agreements while working in Saudi Arabia include as follows: the employer's name, the Indonesian migrant worker's name, the wage payment, the person who picks up and who is responsible, the place and date, the work leave, the relations of communication, the worker's security protection, the substitution of employer, health, death and burial, deportation before the end of the work contract, deportation at the end of the work contract, deportation by request, the obedience towards the constitution, defaults, period and contract extension, the position and the legal power of the work contract, and signing instructions.

The Indonesian and the Saudi Arabian governments decides to create a new agreement for Indonesian migrant workers who have the interest in working in Saudi Arabia. This new agreement does not revoke the Indonesian government's moratorium on sending Indonesian migrant workers in the informal sector. This new system includes a one-door mechanism in issuing employment visas, the determination of position in eradicating informal workers, the 24-hour mechanism of protection, etc.

#### **IV. CONCLUSION**

Saudi Arabia only accepts employment agreements written in the Arabic language. As a solution for migrant workers, an employment agreement in two languages are prepared, with Arabic as the

authoritative language. The Kafala System is implemented in Saudi Arabia, which means that the agency or the workforce distributor is the supervisor and the one responsible for the Indonesian migrant works. Employment agreements in Saudi Arabia have the risk to be misused by the agency, as the Kafala System makes the position of the migrant workers under the responsibility of the agency which may unilaterally terminate or deport the workers if a problem occurs. Apart from that, as a substitute of tax, Saudi Arabia implements the *Nitaqat* policy. If an Indonesian migrant worker is faced with a legal issue, most of them do not have skills of the Arabic language, meanwhile the Saudi Arabian government to not provide a translator, yet this necessity is prepared by the sending country of the migrant workers. As a result, the migrant workers cannot describe their defenses and they cannot understand the legal terms in that country.

Both parties must keep the employment agreement. Yet, in some researches done by the safe house of the Republic of Indonesia's Embassy, it is known that almost none of the workers keep their own contracts. Moreover, they do not keep their own passports. Another thing which must be understood by the prospecting Indonesian migrant workers is that there are multiple contracts. Before departing, they must sign a contract with the Indonesian workforce distributor. When they arrive, they must sign a contract with the foreign agency and the employer which is legalized by the Republic of Indonesia's Embassy. Apart from that, there is another written agreement signed by the employer and the agency in Saudi Arabia, which do not involve the domestic worker at all. All three contracts (the one signed in Indonesia, another in front of the Immigration Office, and lastly the unilateral contract between the employer and the agency) agrees upon the same thing, which risks the chance of having different contents.

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