



## Concept of corporate criminal responsibility in Indonesia for violations in the placement of Indonesian workers

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### Abstract

Indonesia has abundant human resources but unfortunately, human resources in Indonesia lack expertise due to low educational qualifications. Due to the abundance of human resources, there is a negative correlation with the employment prospects in Indonesia, resulting in a high number of unemployed people in every city in Indonesia which makes it inversely proportional to the employment opportunities in Indonesia. Unemployment in Indonesia is increasing but there are few jobs and low wages for workers, which makes some people more interested in finding work abroad, namely by becoming Indonesian Migrant Workers (TKI). With the number of people who want to become TKI, there are several criminal acts committed by corporations, namely by committing crimes or violations in various ways ranging from document forgery, human trafficking to exploitation. The method used in this research is normative juridical by using the approach of legislation and case approach. The criminal liability of corporations involved in sending Indonesian Migrant Workers (TKI) is that companies that have committed criminal offenses will be prosecuted based on the form of criminal acts committed and will get sanctions that have been determined in accordance with applicable laws.

**Keywords:** Migrant workers, corporations, criminal liability

### Introduction

Indonesia has abundant human resources. Unfortunately, human resources in Indonesia lack expertise due to low educational qualifications. Due to the abundance of human resources, there is a negative correlation with employment prospects in Indonesia, resulting in a high Number of unemployment in every city in the country. It is widely recognized that the 1945 Constitution of the Republic of Indonesia, namely in Article 27 paragraph (3), affirms that every citizen is entitled to basic rights to work and a dignified livelihood. By applying this law, every individual has the right to employment in order to maintain a satisfactory standard of living in accordance with his or her needs" <sup>[1]</sup>.

Seeing the lack of jobs and low wages for workers in Indonesia, some people are more interested in finding work abroad, namely by becoming TKI. TKI stands for Indonesian Workers, which are Indonesian citizens who meet the necessary qualifications to work abroad based on a work contract for a certain period of time and get compensation. The implementation of migrant worker placement in Indonesia began in 1970 by the Ministry of Manpower, Transmigration and Cooperatives, following government policy. This was done through the issuance of Government Regulation No. 4 of 1970, which established the Interregional Employment Program (AKAD) and the Intercountry Employment Program (AKAN). Based on Pusdatinaker data, there were nearly 9 million migrant worker placements abroad at the end of 2017, with the majority being women.

Migrant workers, most of whom are women, are sent to various placement countries where they mainly work in the informal sector. This sector includes jobs such as domestic helpers, baby sitters, and elderly caregivers. The placement of migrant workers abroad also has adverse impacts, including physical and psychological abuse experienced by migrant workers both before and during employment, as

well as when they return to their home countries. The increasing problems of migrant workers abroad exacerbate the employment challenges in Indonesia. This includes various forms of mistreatment faced by Indonesian employment services known as PPJTKI, such as unfair treatment by companies, non-compliance with salary standards and employment contracts, violence committed by employers, sexual harassment, and illegal employment practices" <sup>[2]</sup>.

Indonesian workers or often referred to as TKI make a significant contribution to the country's foreign exchange earnings. Based on data from the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI), it is estimated that around 9.2 million migrant workers will be employed abroad in 2022, with a special focus on countries in the Middle East and Southeast Asia <sup>[3]</sup>. However, behind the positive contributions made by migrant workers, there are also various problems faced by migrant workers and prospective migrant workers due to violations committed by migrant worker service delivery. The Indonesian government in collaboration with the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) and other related institutions continues to improve supervision and security of Indonesian migrant workers working abroad. However, there are still many obstacles faced in ensuring their safety and welfare.

The Indonesian government has implemented measures to address the challenges faced by Indonesian Migrant Workers (TKI) abroad. The government has implemented Law No. 18/2017 and Government Regulation No. 59/2021 to ensure the protection and rights of Indonesian migrant workers at all stages of their employment. The government is working to improve the training and skills of migrant workers to prepare them before departure, so that they are better prepared to face challenges in the destination country. The government continues to improve the system for

sending migrant workers, including accurate data collection and stricter supervision from the recruitment process to placement. The government also encourages increased access to information for migrant workers, including information on their rights and how to get help if they experience problems abroad. Efforts are also being made to improve the health and safety of migrant workers, including protection from violence and exploitation. The Government of Indonesia works closely with migrant worker destination countries to ensure that migrant workers' rights are protected and that they receive fair treatment. Supervision by BP2MI and the Indonesian Embassy, the Indonesian Migrant Workers Protection Agency (BP2MI) and the Indonesian Embassy (KBRI) play an important role in the supervision and protection of migrant workers abroad. The government actively handles cases involving migrant workers, including the repatriation of migrant workers who experience problems or mistreatment in destination countries.

In Indonesian criminal law, corporations have been recognized as subjects that can be held responsible and punished. According to Law No.1 of 2023 on the Criminal Code (KUHP), corporations can be subject to criminal penalties if they commit criminal acts that violate the law. The regulation covers corporations that include legal entities such as limited liability companies, foundations, cooperatives, state-owned enterprises, regionally-owned enterprises, or similar business entities. In addition, corporate criminal offenses can be committed by individuals who give orders, are in control, or have ownership of the corporation but are not part of its organizational structure<sup>[4]</sup>. Corporations have a large share in the progress of the Indonesian economy. The majority of Indonesia's population belongs to the lower middle class, which is determined by their economic status. The demand for employment opportunities is an important issue, especially considering the high number of unemployed in Indonesia. Lack of job prospects will hinder government initiatives aimed at improving people's welfare. Without work that is profitable and provides a satisfactory salary, individuals will face challenges in meeting their daily needs. Apart from providing employment opportunities, several corporations also function as distributors of labor in society. The company's operations as a job distributor facilitate the employment process for individuals based on their skills and qualifications. However, not all labor distribution organizations carry out their activities in an ethical manner.

In Indonesia, criminal law has evolved to consider the role of corporations in society and ensure that they can also be held accountable for their actions. This shows that the law does not only aim to uphold justice against individuals but also to maintain the integrity and social security of corporations that have great influence.

The formulation of the problem that will be studied is: what is the criminal responsibility for corporations that commit violations in sending migrant workers?

## Methods

The research method used in this research is Normative Juridical, with field research, namely examining applicable legal provisions and what happens in reality in society, namely applying a statutory approach, by understanding the laws relating to the content and regulations of the problem. Apart from that, it uses a conceptual approach and a case approach.

## Discussion

### Criminal liability

As defined in the Big Indonesian Dictionary (KBBI), responsibility is the obligation to assume full responsibility for all possible consequences, which have the potential to give rise to legal action, criticism or litigation. In the legal lexicon, responsibility is an obligation that is very necessary for someone to carry out their duties<sup>[5]</sup>. Hans Kelsen believes that the meaning of legal responsibility is closely related to the meaning of legal obligations. Legal responsibility is assigned to an individual when he or she potentially faces punishment for a particular action, and not the opposite action. Sanctions are usually imposed on criminals as a direct result of their own actions, for which they are held responsible<sup>[6]</sup>.

Criminal responsibility refers to the legal responsibility imposed on individuals who carry out criminal activities, that is, actions that violate the law and lead to prohibited circumstances. As a consequence, these people are subject to punishment. Criminal responsibility, also known as *theorekenbaardheid*, refers to the process of assessing whether a defendant or suspect is responsible for a criminal act. It involves the criminalization of perpetrators and aims to establish their responsibility for the occurrence of crimes. When assessing prohibited activities, a person will be held responsible if the activity is illegal and there is no legitimate justification or elimination of the unlawful nature of the offense committed<sup>[7]</sup>.

Van Hamel emphasized that criminal responsibility is a distinctive psychological condition characterized by three distinct abilities:<sup>[8]</sup>

1. Able to understand the true meaning and impact of one's own actions;
2. Able to realize that the activity is contrary to community norms;
3. Able to discern the determination to take action.

A person may be subject to criminal liability if he is suspected of being involved in an unlawful act which is deemed to have caused harm to another party due to his actions. An error is considered to occur when an act is carried out intentionally or negligently which causes conditions or consequences that are prohibited by criminal law and is carried out with full responsibility. According to Moeljatno, in the field of criminal law, the assessment of a person's mistakes and carelessness is based on the perpetrator's ability to take responsibility. This capacity is determined by the presence of five specific factors in its activities:

1. Engaging in illegal activities;
2. Individuals who exceed a certain age limit have the ability to assume accountability;
3. Involves intentional wrongdoing (*dolus*) and
4. Involves negligence (*culpa*)
5. Forgiveness should never be justified under any circumstances.

Errors always arise from inappropriate behavior, including performing unacceptable actions or failure to perform required actions. Criminal liability for perpetrators of violations in the delivery of Indonesian Migrant Workers (TKI) services involves several relevant legal aspects. The following are important points regarding criminal liability:

- a. **Laws and requirements:** Those sending TKI must comply with the requirements regulated in Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad (PPTKILN). One of the requirements is to take part in a health and psychological test process before migrant workers are sent
- b. **Violations and sanctions:** If perpetrators violate the provisions, including falsifying documents or abusing delivery procedures, they may be subject to criminal sanctions. Article 103 of the PPTKILN Law regulates that PJTKI (Indonesian Employment Services Company) can be sentenced to up to one year in prison and a fine of up to 5 billion rupiah if they ignore the requirements for sending TKI.
- c. **Protection of the basic rights of TKI:** Apart from criminal liability, there needs to be legal protection efforts for TKI. The PPTKILN Law also regulates the protection of workers' basic rights and workers' social security.
- d. **Cooperation and oversight:** Cooperation between the government and relevant institutions, as well as strict supervision of migrant worker sending agents, is important to ensure compliance and effective protection<sup>[9]</sup>.

#### TKI / Indonesian workers

Indonesian Workers (TKI) are Indonesian citizens who work abroad for a certain period of time and receive compensation. Female migrant workers are called female workers (TKW). Although the term TKI often has the connotation of manual workers, TKI actually covers various types of work and qualifications.

The aim of the TKI sending program is to improve the quality of human resources through training and work experience, as well as exploiting potential job prospects abroad. TKI also play a role as a fairly large contributor to the country's foreign exchange reserves. Transnational Indonesian Workers (TKI) are Indonesian citizens who meet the criteria as job seekers who will work abroad and are officially registered with the government agency responsible for employment<sup>[10]</sup>. TKI must have the skills or abilities needed in the destination country, have no history of chronic or infectious diseases, are not in legal proceedings, and are not registered as members of the TNI or Polri. TKI must also register on the TKI List to obtain protection and work permits from the Indonesian government. In the TKI Register, TKI will receive a Migrant Worker Card (KPM) and an Indonesian Worker Passport (TKI Passport)<sup>[11]</sup>.

#### Private corporations / TKI delivery services

Indonesian Migrant Worker (TKI) delivery services are official corporate companies sanctioned by the Indonesian government to facilitate and supervise the placement of Indonesian workers abroad. Their responsibilities include searching, selecting and preparing migrant workers who will be employed abroad. They ensure that migrant workers meet government standards and provide legal protection for them while working<sup>[12]</sup>. Migrant worker delivery services also play a role in minimizing legal and work safety problems

that can be detrimental to both the company and the migrant workers themselves.

The responsibilities of Indonesian Migrant Worker (TKI) delivery agents include:

1. **Obtain a permit:** Agents must have official permission from the government through the Ministry of Manpower (Kemnaker) to carry out labor placement activities abroad.
2. **Selection and recruitment:** Carry out selection of prospective migrant workers, including health tests, foreign language skills and work skills.
3. **Training:** Holding training for TKI who pass the selection to prepare them before going abroad.
4. **Document processing:** Manage migrant workers' travel documents and visas and ensure that all administrative requirements have been met.
5. **Placement:** Looking for clients or workplaces for migrant workers and ensuring that the workplace is safe and in accordance with established standards.
6. **Protection of TKI:** Responsible for the protection of TKI during their employment, including if workers' rights are not fulfilled.
7. **Monitoring:** Monitoring the conditions of migrant workers while working abroad and ensuring they follow the rules and regulations applicable in the destination country.
8. **Help and support:** Providing assistance and support to migrant workers if they face legal problems or conflicts in the destination country.
9. **Repatriation:** Arranging for the return of migrant workers after the work contract is completed or if a situation arises that requires early repatriation<sup>[13]</sup>.

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### Various Crimes for Sending Migrant Workers

The perpetrator did not commit a crime/violation without any reason; there are always factors that contribute to their actions. Nugroho and Roesli, in the *Bina Mulia Hukum Journal*, identified three factors that contribute to human trafficking: poverty, limited education, and coercion through violence.

#### 1. Poverty

Poverty is a social condition that persists for a long time and has not been resolved. Various factors contribute to poverty, such as limited career prospects, lack of understanding of the job market and business sector, and internal gaps between expenditure and income.

There is a strong correlation between human trafficking and poverty. Criminals are of course driven by economic considerations so as not to experience poverty. Meanwhile, the victims are tempted by several factors to get out of poverty. For example, opportunities to work abroad with attractive income, proposals for forced marriages to improve economic conditions, and various other examples.

#### 2. Low level of education

Education has an important meaning. In this particular context, the term "education" goes beyond the boundaries of a mere diploma, including a broader scope of intellectual understanding and wisdom. Having knowledge and insight allows someone to be more alert in observing and evaluating information.

Nugroho and Roesli stated that having adequate knowledge and wisdom does not provide absolute guarantees, but makes it difficult for someone to be misled or manipulated. The capacity to read and analyze documents efficiently can help reduce the occurrence of fraud, especially for individuals with no administrative experience.

### 3. Forced by violence

This third aspect can be classified as belonging to the anarchist category. According to Nugroho and Roesli, victims will also experience prolonged psychological burdens. Usually, the victims who are forced to commit violence are mostly women who are forced to carry out activities such as sex slavery and prostitution.

Forms of violations/criminal acts committed by individual perpetrators or groups where these actions are declared to violate the law established by the Government against TKI are:

#### a. Perpetrators of violations/criminal acts of document falsification

There are cases where migrant workers are sent abroad without the necessary official documents. In some cases, official documents were even forged under the pretext of legal activities, such as cultural missions. Sending Indonesian Migrant Workers (TKI) without official documents is a form of serious violation that can lead to a criminal offense. This violates Law no. 18 of 2017 concerning Protection of Indonesian Migrant Workers. The aim of this law is to improve security mechanisms for Indonesian foreign workers and their families, realize the principles of humanity and national honor and dignity, and guarantee the realization of the rights of foreign workers at all stages of their work, including pre-employment, during work, and after work.

The act of falsifying documents for Indonesian Migrant Workers (TKI) is included in the category of criminal acts of falsifying documents as regulated in Articles 263 to 276 of the previous Criminal Code. Article 263 of the Criminal Code specifically prohibits the creation or alteration of documents that can determine rights, obligations or repayment of debts, or as evidence, with the intention of using them or ordering other people to use them as genuine goods. Violation of this provision is punishable by a maximum imprisonment of six years if the use of the document could cause harm. Apart from that, there is Law no. 1 of 2023 concerning the implementation of the new Criminal Code in 2026. This law specifically deals with the crime of document forgery which includes Articles 391 to Article 400 <sup>[14]</sup>.

Several important points relate to sending migrant workers without official documents, which is a violation of national and international laws that regulate the placement and protection of migrant workers. Migrant workers who are sent without official documents are at high risk of experiencing exploitation, fraud and inhumane working conditions because they do not have adequate legal protection.

#### b. Perpetrators of violations/criminal acts of human trafficking

Human trafficking is a serious violation that still occurs in Indonesia. Based on reports from the Witness and Victim Protection Agency (LPSK), there were 210 people who were victims of criminal acts of human trafficking (TPPO) in 2021. Of this number, 210 people were women, while the remaining 75 people were men. Human trafficking is generally considered the practice of selling individuals to others. However, this definition does not only cover the concept of "sales". It is important to understand that in the legal field, human trafficking is referred to as human

trafficking. Human trafficking cases often involve the transportation of undocumented migrant workers. In East Nusa Tenggara (NTT), 15 people were found guilty and sentenced to prison for participating in a human trafficking incident that resulted in the death of a migrant worker in Malaysia<sup>[15]</sup>.

Human trafficking of Indonesian Migrant Workers (TKI) is regulated in Law Number 21 of 2007 concerning Eradication of the Criminal Act of Human Trafficking. Articles that specifically deal with human trafficking are:

1. **Article 2:** Regulates the recruitment, transportation, harboring, delivery, transfer or reception of someone for the purpose of exploitation.
2. **Article 4:** Mentions every person who takes an Indonesian citizen outside the territory of the Republic of Indonesia with the intention of exploiting him outside the territory of the Republic of Indonesia.

Perpetrators of criminal acts of human trafficking can be charged under these articles and threatened with severe penalties in accordance with the applicable provisions of the Law. Article 1 number 1 of Law 21/2007 provides a clear definition of human trafficking. This refers to the act of recruiting, transporting, harboring, sending, transferring, or receiving individuals using methods such as violence, threats, kidnapping, confinement, forgery, fraud, abuse of power, or taking advantage of their vulnerable position. This also includes the use of bondage, the provision of payments or benefits, in order to obtain the consent of a person who has control over another person. These actions can occur within a country or between countries and are carried out with the aim of exploitation or lead to the exploitation of individuals.

#### c. Perpetrators of violations/criminals who exploit TKI

Exploitative work placement involves placing TKI (Temporary Knowledgeable Individuals) in local or international settings, where they are subjected to sexual exploitation or other forms of exploitation. According to Article 1 point 1 of Law 21/2007, human trafficking is defined as the act of coercing, transporting, harboring, sending, moving or receiving someone through the use or threat of violence, kidnapping, confinement, fraud, abuse of power, or taking advantage of their vulnerable position. This includes situations where a person is controlled by another person and involves both domestic and international activities. The ultimate goal of human trafficking is to exploit individuals or subject them to exploitation.

Regulations regarding the exploitation of Indonesian workers (TKI) are regulated in Article 4 of Law Number 21 of 2007 which specifically regulates the eradication of criminal acts of human trafficking. Based on this article, anyone who takes an Indonesian citizen outside Indonesia with the aim of exploiting them can be punished with a maximum prison sentence of six years. Exploitation in this context includes various forms, such as prostitution, forced labor or services, slavery, oppression, extortion, and physical or sexual exploitation. Exploitation of Indonesian Workers (TKI) is a serious and unlawful form of rights violation. The following are several things related to exploitation of TKI:

1. **Falsification of documents:** Sometimes, employers or parties involved in sending migrant workers falsify documents so that migrant workers can be exploited abroad. This violates the Indonesian Migrant Worker Protection Law (PPMI) and various related regulations.
2. **Excessive working hours:** TKI often face working hours that exceed reasonable limits, without being given work holidays. This is a form of exploitation that violates workers' rights.
3. **Low salaries:** Some migrant workers receive salaries that are far below the salary they were promised. This is a form of exploitation and a violation of the right to decent wages.
4. **Inappropriate working conditions:** Migrant workers often experience inhumane working conditions, such as poor housing, inadequate facilities, and harsh treatment from employers.
5. **Physical threats:** Some migrant workers are physically threatened by employers if they try to run away or report poor working conditions. This is a form of exploitation and violation of human rights.

#### d. Perpetrators who violate the Law on the Placement and Protection of TKI

Violation of the provisions of the Law on Placement and Protection of Indonesian Migrant Workers: In one case, an Egyptian citizen was punished for violating Law no. 39 of 2004 concerning Placement and Protection of Indonesian Migrant Workers Abroad and Law no. 9 of 1992 concerning Immigration. He was involved in sending a TKI to Yemen without a valid work contract and without an agreement to send TKI between the Indonesian and Yemeni governments<sup>[16]</sup>.

Law no. 39 of 2004 concerning the Placement and Protection of Indonesian Workers (TKI) Abroad and Law no. 9 of 1992 concerning Immigration are two very important regulations in the context of sending and protecting migrant workers.

1. **UU no. 39 of 2004 regulates:**
  - a. Placement and protection of TKI abroad.
  - b. Rights and obligations of TKI and employers.
  - c. The role of government and society in the placement and protection of migrant workers.
  - d. Sanctions for violations of the provisions of this Law.
2. **UU no. 9 of 1992 regulates:**
  - a. Immigration regulations which include the movement of people entering or leaving the territory of Indonesia.
  - b. Supervision of foreigners in Indonesian territory.
  - c. Visas and residence permits for foreigners.
  - d. Sanctions for violations of the provisions of this Law.

Perpetrators who violate the Law on the Placement and Protection of Indonesian Migrant Workers (TKI) can come from various parties involved in the process of placing and protecting Indonesian Migrant Workers, both at home and abroad. Some examples of perpetrators who can violate the law:

1. Agents who do not have an official license or who carry out illegal placement of TKI, including falsifying documents and exploiting TKI.
2. Individuals or groups involved in human trafficking or exploitation of migrant workers.
3. Employers who do not comply with employment contracts, exploit or mistreat migrant workers.
4. Officials who are responsible for the placement and protection of TKI but fail to carry out their duties or are involved in corruption related to the placement of TKI.

These violations not only harm migrant workers, but are also unlawful and can result in prison sentences and significant fines for the perpetrators. It is important for migrant worker sending agents to comply with all applicable regulations to protect the rights of these migrant workers.

### **Elements of accountability for corporate violators of sending TKI**

An individual or a group/corporation is declared to have committed a violation and will receive sanctions in accordance with applicable law if they fulfill several elements. Criminal responsibility refers to a person's responsibility for certain criminal acts they have committed. In essence, it is related to the responsibility that a person bears for the criminal act he committed<sup>[17]</sup>. That criminal responsibility is an assessment of whether someone can be legally responsible for their actions or not<sup>[18]</sup>. Although the Indonesian Criminal Code does not explicitly regulate the idea of criminal responsibility, this is covered in the country's criminal law. It is not surprising that discussions of criminal liability are conducted primarily at a theoretical rather than practical level. Van Hamel argued that criminal responsibility depends on conditions of normality and psychological maturity, which are characterized by intelligence. This state includes three main abilities:

1. Able to understand the importance of the impact of one's own actions.
2. Able to admit that his activities are not approved by society.
3. Able to differentiate his will in relation to his actions"<sup>[19]</sup>.

When discussing criminal responsibility, that there are two important factors that must be present for someone to be considered responsible:

1. The ability to differentiate between morally acceptable activities and morally unacceptable activities, by distinguishing lawful activities from activities that violate the law.
2. The capacity to make decisions based on evaluating the moral implications of an action<sup>[20]</sup>.

Based on this explanation, it can be concluded and explained that the ability to be accountable to criminal law consists of two fundamental components and is intrinsically owned by individuals who commit criminal acts. This component is knowledge or rationality, which allows the distinction between morally acceptable (legally permissible) actions. First, the act is legally prohibited due to its bad nature. Second, the defendant had the intention and awareness to carry out his actions.

According to Article 27 of the 1982-1983 Draft Criminal Code, criminal error is the result of blaming a criminal act objectively based on applicable laws and regulations, subjectively on the perpetrator who meets the legal requirements to be responsible for his actions<sup>[21]</sup>. In the latest version of the Draft Criminal Code, the provisions This remains unchanged, but has been moved to article 37 of the Criminal Code Bill (2 February 2018 Edition). Nonetheless, the fundamental articulation of the concept of accountability remains unchanged in current settings. Based on this thinking, a new question arises: what is the actual definition of objective criticism and subjective criticism as intended in article 37 of the Criminal Code Bill? Objective criticism refers to an activity or action carried out by someone (the perpetrator) which is expressly prohibited<sup>[22]</sup>. Simply put, an action carried out by someone who is suspected of being the perpetrator is indeed an action that violates legal provisions or is in direct conflict with statutory regulations.

Subjective censure refers to a reprimand directed at an individual who commits a prohibited act. In other words, the act of blaming someone for doing something unlawful or illegal. If the act committed is considered reprehensible or prohibited, and if the individual lacks personal accountability due to internal factors, then criminal culpability essentially does not exist. The concept of criminal responsibility emphasizes that a criminal act alone is not meaningful and does not necessarily result in punishment or criminal sanctions for the perpetrator. On the other hand, a criminal act only becomes meaningful and significant if there is also criminal responsibility. In addition, criminal liability arises if both the objective punishment an act which is considered a legitimate criminal act, as well as the subjective fault of the perpetrator, fulfills the criteria for being responsible for a criminal act because of his actions. action, determined<sup>[23]</sup>. The basis for justifying the occurrence of a criminal act lies in the principle of legality, as regulated in Article 1 of the Criminal Code. In addition, individuals who commit illegal acts may be subject to punishment based on their guilt<sup>[24]</sup>. This shows that someone who commits a criminal act will only be held legally responsible if the act is morally wrong and violates the law. Criminal wrongdoing is essentially a process designed to respond to the violation of certain agreed-upon actions.

Indeed, there are various theoretical points of view when discussing the concept of criminal responsibility. Some criminal experts argue that criminal occurrence and criminal responsibility are closely related, while other experts argue that there should be a clear distinction between the two. Each established ideology has its own impact. There are usually two main perspectives that examine the theory of the relationship between criminal guilt and criminal acts: the monistic school and the dualistic school.

In the monistic school of thought, a violation is seen as a cohesive whole. Straafbaarfeit refers to actions that are illegal and have criminal penalties. This is closely related or directly related to the wrongdoing of the perpetrator, who can be held legally responsible for his actions. From a theoretical point of view, this flow of monism is closely related to the final handlungslehre doctrine, which gained popularity through the work of Hans Welzel in 1931. The core principle of the final doctrine is to explain that

intentionality is an inseparable component of criminal acts stage <sup>[25]</sup>.

1. Facing potential prosecution under criminal law
2. Violates the law
3. Carried out by a person who is responsible and guilty
4. Individuals are considered responsible for their behavior.

On the other hand, the dualistic school of thought argues that an act that is prohibited by law and can be punished with a crime (actus reus) must be distinguished from criminal responsibility. This school of thought differentiates between criminal acts and criminal mistakes. <sup>[27]</sup> A criminal act, which is also called staffbare handlung, has three conditions, namely: the existence of an act, adhering to the legal formulation, and the absence of a justifying reason. Likewise, a perpetrator of a criminal act must fulfill two conditions, namely the existence of a mistake and the absence of any excuse for the perpetrator <sup>[28]</sup>. In essence, this dualistic school of thought emphasizes that a person cannot be held responsible for a criminal act if he did not actually commit it. criminal act. However, even though someone has committed a criminal act, it does not mean that he will always be punished for it <sup>[29]</sup>.

Discussions regarding the position and implementation of criminal responsibility, which are closely related to the meaning of guilt and criminal acts, do not only occur in Indonesia. These discussions are also taking place in other countries and are being explored by renowned criminal law scholars around the world. Several countries around the world also apply the concept of criminal imposition, which not only considers harmful behavior and the resulting loss or suffering, but also considers the mental aspects of the perpetrator <sup>[30]</sup>. The principle of 'actus non facit reum nisi mens sit rea' mandates that criminal law enforcers consider two important elements in a criminal act: criminal act and criminal responsibility. This principle establishes that criminal responsibility is an important component in the punishment of criminals <sup>[31]</sup>. It is not surprising that legal professionals, including lawyers, judges and scholars in various countries, consider the difference between actus reus and mens rea to be important and very important. useful for understanding and analyzing criminal responsibility <sup>[32]</sup>. View which holds that a perpetrator of a criminal act, who meets all the criteria necessary to commit a crime, cannot be immediately punished unless he does not fulfill certain conditions. Mens rea originates from the concept of personal autonomy, because it represents a deliberate decision (criminal behavior) <sup>[33]</sup>.

The basic premise or assumption of personal autonomy states that every individual must face punishment and accept responsibility for the actions and actions they choose. This idea stems from the recognition that, as a general rule, people have the ability to make important decisions for themselves, relying on sufficient cognitive abilities and autonomy. This includes the decision to engage in or not to engage in criminal activity. It is not surprising that within the framework of participation, those who are forced to commit criminal acts cannot be punished. However, individuals who actively participate or are instigated to commit criminal acts can still be held responsible, because there is a common intention.

Another example that illustrates this principle is when a cashier, being robbed and held at gunpoint, takes his employer's money. In situations like this case, the cashier

cannot be legally responsible for his actions. Cognitive theory argues that the extent to which individuals exercise personal freedom depends primarily on their conscious recognition of the available choices and the associated outcomes that will result from those choices <sup>[34]</sup>. Therefore, it can be concluded that criminal justice procedures must be based on the principle that every person must be solely responsible for his intentional or willful actions <sup>[35]</sup>. Therefore, a person can only be held responsible for matters that fall under his jurisdiction. Moreover, it is clear that those who do not have any ability or influence over a particular event (the unlawful act in question) cannot be subject to criminal sanctions <sup>[36]</sup>. Therefore, the regulations that regulate and impose criminal penalties on someone who has no influence to a problem is illogical and can be considered created by irrational regulators, because even the most cruel dictators would not have sufficient justification to implement such laws <sup>[37]</sup>

It is important to know that the concept of criminal liability is primarily based on the principle of author's guilt. However, there are several cases where this principle can be ignored, and it is also recognized that the existence of a criminal liability mechanism does not necessarily require the creator to be guilty. These concepts are similar to the concepts of vicarious liability and strict liability. Furthermore, Article 46 of the Draft Criminal Code in the RKUHP itself regulates that an error related to an event or situation which is an element of a criminal act is excluded from punishment. The full meaning of the provisions outlined in article 46 of the Draft Criminal Code Bill is as follows:

*"Every person who does not know or is misled regarding events or circumstances that constitute elements of a criminal act or belief that The act does not constitute a criminal act and is not punishable."*

This concept of thought is a significant advance in criminal law which is expected to be implemented based on the findings and theories put forward by Prof. Barda Nawawi Arief. He firmly emphasized that mistakes, whether related to circumstances (error facti) or the law itself, can be the basis for forgiveness, thus preventing the perpetrator from being punished, unless the mistake was caused by his own negligence <sup>[38]</sup> However, it should be noted that criminal liability for corporations is still a complex issue and not yet uniform from a law enforcement perspective.

The elements that must be fulfilled in order for a person or group/corporation to be considered the perpetrator of a violation or criminal act against Indonesian Migrant Workers (TKI) include:

1. **Existence of a subject:** There must be an individual or group carrying out the action.
2. **There is an element of error:** The perpetrator most likely made a mistake and must be responsible for his actions.
3. **Unlawful acts:** The perpetrator's activities must be illegal, meaning prohibited or required by law, and individuals who violate the law may face criminal consequences.
4. **Loss or threat of loss:** There must be a loss or threat of loss, whether physical, psychological or economic, to the migrant workers as victims.

**5. Links to exploitation or human trafficking:** In the context of migrant workers, criminal acts are often related to exploitation or human trafficking, which includes forced labor, prostitution, or other forms of exploitation.

Individuals who are proven to meet these criteria may be subject to criminal sanctions in accordance with the laws and regulations in force in Indonesia. It is important for law enforcement agencies to ensure that all elements are met before determining someone as the perpetrator of a criminal offense against TKI.

The discussion of the elements of criminal liability against corporations in the context of violations of sending Indonesian Migrant Workers (TKI) can be described as follows:

### 1. Corporations as Subjects of Criminal Law

Corporations, even though they do not have physical form like humans, can act as subjects of criminal law. Corporate criminal liability involves management and employees acting on behalf of the corporation.

### 2. Elements of Corporate Criminal Liability

Corporations must have the ability to distinguish between actions that comply with the law and those that violate the law. There is awareness from the management or corporate actors regarding these actions <sup>[38]</sup>.

### 3. Corporate Criminal Liability Model

- a. **Model 1: Management Responsibility:** Management is responsible for corporate actions, either with or without knowledge of these actions.
- b. **Model 2: Corporate Accountability:** Corporations are directly subject to criminal sanctions for actions committed by management or employees <sup>[40]</sup>.
- c. **Model 3: Combined Liability:** Combination of liability between the corporation and management/employees involved in unlawful acts.

### Criminal responsibility for corporate violators of sending TKI

In Indonesia, perpetrators of violations or criminal acts in the service of sending Indonesian Migrant Workers (TKI) abroad can face severe penalties. Based on the Indonesian Migrant Worker Protection Law (PPMI), perpetrators involved in sending migrant workers illegally can be threatened with a maximum prison sentence of 10 years and a maximum fine of IDR 15 billion.

This criminal act does not only include violations in the process of sending migrant workers, but can also include the crime of human trafficking, which is a serious crime with significant legal consequences <sup>[41]</sup>

Criminal liability for perpetrators or corporations that commit violations in sending Indonesian Migrant Workers (TKI) has been regulated in several laws and regulations in Indonesia. These include:

1. Law Number 21 of 2007 concerning the Crime of Human Trafficking, which regulates the criminal liability of corporations as perpetrators of criminal acts of human trafficking in the process of placing Indonesian migrant workers.

2. Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers, which also includes aspects of corporate criminal liability.
3. Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Acts by Corporations.

Crimes against impure migrant workers can only be carried out by corporations. Individual perpetrators can also have the potential to commit these crimes. There are differences in individual and corporate liability in criminal law. In Indonesian criminal law, individuals can be recognized as subjects of criminal law who have the awareness and ability to act morally and legally. Corporations, meanwhile, do not have this awareness but can be recognized as subjects of criminal law because of their role in society and ability to commit criminal acts.

Corporate criminal liability is often related to the roles and responsibilities of corporate management or control holders. This means that although corporations may be subject to criminal penalties, such liability usually relates to the people who control or lead the corporation. In addition, the concept of criminal individualization which is designed to meet individual needs does not always suit the conditions of corporations, which are abstract entities. Therefore, corporate criminal liability must be designed taking into account the characteristics of the corporation. Changes in Law No.1 of 2023 concerning the Criminal Code (KUHP) show that Indonesian criminal law has undergone an evolution to consider the role of corporations in society and ensure that they can also be held accountable for their actions. This is an important step in upholding justice and protecting individual rights from unlawful corporate actions. Normative legal research shows that although corporate criminal liability has been regulated, its implementation is still often focused on individual perpetrators. There is a need to clarify and strengthen the application of criminal law against corporations, especially in cases involving human trafficking and violations of migrant workers' rights. In the context of violations of consumer rights by corporations, criminal liability can include imprisonment or fines for corporate managers, as well as fines for the corporation itself. If the violation results in serious injury or death, more severe criminal provisions may apply <sup>[42]</sup> In general, corporate criminal liability in Indonesia is still an area that continues to develop and requires special attention from all relevant parties to ensure that corporations that commit violations can be prosecuted and punished in accordance with applicable regulations.

As we discussed in the previous chapter regarding forms of violations/criminal acts committed by individual perpetrators or groups where these actions are declared to violate the law that has been established by the Government against TKI, these violations will be tried and given sanctions in accordance with the Law. - applicable laws based on the crime committed.

### a. Document Forgery

The Criminal Code (KUHP) in Indonesia regulates penalties for perpetrators of criminal acts of falsifying documents, especially those related to Indonesian Migrant Workers (TKI). Article 263 of the Criminal Code states that an individual makes fake documents or changes documents which have the potential to give rise to a right, obligation or

repayment of a debt, or are used as evidence, with the intention of using or ordering another person to use the document as if original, can be subject to a maximum prison sentence of six years if the use of the document could cause harm<sup>[43]</sup>

Falsification of documents sending migrant workers is still a serious and widespread problem. This shows the need for stricter supervision and evaluation of TKI protection policies by the government. To overcome this problem, a revision of Law No. 39 of 2004 concerning the Placement and Protection of TKI Abroad has also been proposed to be included in the 2015-2019 National Legislation Program. Sanctions for criminal acts of falsifying documents, including those relating to Indonesian Migrant Workers (TKI), are regulated in the Criminal Code (KUHP). Article 263 of the Criminal Code states that a person who makes fake documents or changes documents that can create a right, obligation or repayment of a debt according to law, or is used as evidence, with the intention of using or ordering another person to use the document as a original, can be threatened with imprisonment for a maximum of six years if the use of the document causes harm.

Article 263 of the Criminal Code (KUHP) regulates the crime of forgery of documents. The following is the sound of Article 263 of the Criminal Code:

*"Any person who makes a fake document or falsifies a letter which can give rise to a right, obligation or discharge of debt, or which is intended as proof of something with the intention of using or ordering another person to use the document as if its contents were true and not falsified, is threatened with "if such use can result in loss, due to falsification of documents, with a maximum prison sentence of six years."*

This article regulates criminal sanctions for perpetrators of document forgery. There are two situations that are punishable by the same crime:

1. **Making a fake letter or falsifying a letter:** If someone makes a fake letter or falsifies a letter which has the potential to give rise to rights, obligations or repayment of a debt, with the intention of using it himself or ordering someone else to use it as if the contents were genuine and unaltered, then he can be subject to a maximum prison sentence of six years.
2. **Using fake or forged documents:** If someone deliberately uses a fake or forged document with the intention of showing its authenticity, and if the use of the document can result in loss, then the perpetrator of the mistake can also be subject to sanctions for the same violation.

The following is some information regarding sanctions for document falsification:

1. **Article 263 of the criminal code:** Every person who deliberately makes a fake document or falsifies a letter with the intention of using or ordering another person to use the document as if it were genuine and not falsified can be punished by imprisonment for a maximum of six years.
2. **Article 246 of the criminal code:** Perpetrators who falsify documents such as authentic deeds, debt certificates, holding letters, dividend receipts and

letters of credit can be subject to a maximum prison sentence of 8 years.

3. **Personal data protection law:** Corporations that violate personal data protection rules can be fined up to 10 times the amount threatened. Apart from that, corporations can also face sanctions in the form of confiscation of profits, freezing of assets, permanent prohibition from carrying out certain actions, and payment of compensation.

The elements of the crime of document forgery in Article 263 of the Criminal Code include:

*"Anyone who makes a fake document or falsifies a letter that can give rise to a right, obligation or discharge of debt, or which is intended as proof of something with the intention of using or ordering another person to use the document as if the contents were true and not fake using a fake document or something that faked as if it were genuine, if the use of the letter could cause harm."*

Forgery of documents is a serious act that can result in significant legal consequences. For perpetrators of document falsification, this is a criminal sanction aims to prevent and punish actions that harm other people and violate legal provisions. Therefore, it is very important for anyone involved in the process of sending TKI or other documents to comply with regulations and avoid falsifying documents.

#### b. Human Trafficking

Human trafficking is a serious crime regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. Several important points regarding human trafficking sanctions in the context of sending Indonesian Migrant Workers (TKI) can be found in:

1. **Article 2:** Every person who commits the crime of trafficking in persons is threatened with imprisonment for a minimum of 3 years and a maximum of 15 years and a fine of at least IDR 120,000,000 and a maximum of IDR 600,000,000.
2. **Article 4:** If the criminal act of trafficking in persons results in the victim experiencing physical and/or mental health damage or problems, the perpetrator is threatened with imprisonment for a minimum of 5 years and a maximum of 20 years and a fine of at least Rp. 240,000,000 and a maximum of Rp. 1,200,000,000.
3. **Article 10:** In the event that the criminal act of trafficking in persons is committed by a corporation, the criminal offense shall be imposed on the corporation and/or its management.

Individuals who commit offenses or are involved in criminal acts of human trafficking in Indonesia may face severe criminal penalties as determined by relevant laws. The following are some of the criminal sanctions applied:

1. **Imprisonment:** The perpetrator can be sentenced to imprisonment for a minimum of 3 years and a maximum of 15 years.

2. **Fine:** The perpetrator can also be subject to a fine of up to IDR 600,000,000.00.
3. **Asset Confiscation:** Assets used in human trafficking practices can be confiscated.

Sending Indonesian Migrant Workers (TKI) abroad is a complex issue, especially in the context of human trafficking. This sanction aims to provide a deterrent effect to perpetrators and protect the rights of human trafficking victims. This sanction shows the government's seriousness in handling human trafficking cases, including in the context of sending migrant workers. Strict law enforcement is needed to protect the rights and welfare of migrant workers working abroad. It is important for the government and related institutions to strictly monitor and take action against all forms of human trafficking.

### c. Exploitation

Exploitation of Indonesian Workers (TKI) is a serious violation that must be given legal sanctions. TKI who work abroad often experience problems, including exploitation. Perpetrators of violations or criminal acts that exploit Indonesian Migrant Workers (TKI) can be subject to criminal sanctions in accordance with the applicable law. Several articles that can be applied to perpetrators of violations:

1. Article 2 of Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, which regulates the recruitment, transportation, harboring, delivery, transfer or receipt of a person with the aim of exploiting that person in the territory of the Republic of Indonesia. The criminal threat is imprisonment for a minimum of 3 years and a maximum of 15 years and if the crime of trafficking in persons results in the victim experiencing physical or mental damage, the perpetrator can be punished with imprisonment for a minimum of 5 years and a maximum of 20 years and a fine of up to IDR 600,000,000,00.
2. Article 81 in conjunction with Article 69 and/or Article 83 in conjunction with Article 68 of Republic of Indonesia Law no. 18 of 2017 concerning Migrant Worker Protection, which can also be applied to cases of exploitation of TKI.
3. **Article 4 of law no. 21 of 2007:** Corporations (through corporate control personnel) involved in human trafficking can be subject to sanctions in the form of weights up to 3 times the fine.
4. **Article 33 of law no. 18 of 2017:** Corporations involved in sending illegal migrant workers can also be subject to criminal sanctions and fines in accordance with the provisions of the PPMI Law.

### d. Violates the law on the placement and protection of TKI

Violations of this law can result in severe legal sanctions. Sanctions imposed for violations in Law no. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad (UU PPTKILN) includes administrative

sanctions and criminal sanctions. Some examples of sanctions that can be given are:

#### 1. Administrative Sanctions

- a. Written warning.
- b. Temporary suspension of part or all of the TKI placement business activities (suspension).
- c. Revocation of permit.
- d. Cancellation of departure of prospective migrant workers.
- e. Repatriation of migrant workers from abroad at their own expense

#### 2. Criminal Sanctions

The criminal sanctions stated in Article 79, every person who deliberately provides incorrect data and information when filling out documents related to migrant workers can be punished with imprisonment for a maximum of two years and/or a fine of a maximum of 200 million rupiah.

The Indonesian Migrant Worker Protection Law (PPMI) regulates criminal sanctions for perpetrators of sending migrant workers illegally. The perpetrator can be threatened with a maximum sentence of 10 years in prison and a maximum fine of IDR 15 billion.

Article 35 Letter d of the PPTKI Law: Before it was repealed, this article limited the minimum education of prospective TKI. The Constitutional Court stated that these restrictions were contrary to the rights to work and life. This criminal sanction aims to provide a deterrent effect to perpetrators and protect the rights of migrant workers from various forms of violations/criminal acts. It is important for the government and related institutions to strictly monitor and take action against all forms of exploitation of migrant workers.

#### d. Closing Conclusion

Criminal Liability Against Corporations that commit Violations of sending Indonesian Migrant Workers (TKI) in the context of criminal liability against perpetrators or corporations involved in sending Indonesian Migrant Workers (TKI), there are articles and sanctions that have been determined, namely in Falsification of Documents Article 263 and 264 of the Criminal Law, criminal acts of trafficking in persons and exploitation are subject to sanctions in Article 2, 4 and Article 10 of the Law on Eradication of Criminal Acts of Trafficking in Persons, Violating the Law on Placement and Protection of Migrant Workers gets Administrative Sanctions and Criminal Sanctions in Article 79.

#### Recommendation

The government needs to strengthen supervision of migrant worker delivery service companies. And must carry out regular audits and field inspections to ensure compliance with regulations and protection of migrant workers. The government must be active in providing socialization of regulations regarding the sending of migrant workers to the public, including corporations and prospective migrant workers. Good knowledge of rights and obligations will help reduce violations. The government must be more observant and more selective in providing operational permits for PJTKI and require PJTKI to update their Licensing Numbers in accordance with existing Regional Regulations.

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