



Labor standards for Indonesian migrant workers from an International Law perspective based on juridical analysis

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Abstract

The era of globalization, which is now increasingly developing, has made it easier for all aspects of human life to make it easier to communicate over long distances, even in different countries. This also impacts the labor aspect in which Indonesian migrant workers are increasingly moving to other countries. However, the problems that occur to Indonesian migrant workers are also increasingly being heard. This paper aims to examine how the government's efforts in the context of international relations with other countries are to provide legal protection for all problems of Indonesian migrant workers amid the conditions of the Covid-19 pandemic, which are certainly increasingly tricky in all aspects of life. Based on the literature review, this research concludes that the government needs to accelerate the movement more quickly in coordination with various international law subjects that are related to this issue.

Keywords: Globalization, Indonesian migrant workers, legal protection, International Law

Introduction

Backgrounds

The development of science and technology is not something new in the era of globalization. This has greatly impacted supporting all activities in all sectors of community life, both positive and negative (Setiawan, 2018) [6]. Globalization comes from the word "global," which means world, so the meaning of globalization is the process of entering the world scope where there is a connection or interaction between nations and between people throughout the world with various aspects through trade, investment, culture and other aspects (Musa, 2015) [15]. Globalization unconsciously sharpens the skills and insight of human resources in a country. By following increasingly rapid developments, some changes require citizens to adapt to existing conditions to survive. In the midst of development, globalization also impacts the entry of foreign culture into a country, which needs to be taken into account to maintain culture according to the nation's personality. So, whether globalization has a good impact on life patterns depends on how each person accepts it. Regarding relations between countries, globalization also impacts world trade and finance, where developed countries will find it easier to control the economy while small countries will have difficulty competing. International relations and communication between countries are also becoming easier because, in this era of globalization, countries depend on each other to improve the welfare of their countries. This communication has long been made easier through the media when necessary to replace physical contact so that affairs between countries can be resolved more quickly. So, it can be concluded that if globalization has adapted to society, it is clear that the close relationship between law and globalization binds that society (Soediro, 2017) [10].

This development also influences the development of national law in a country, which also occurs in Indonesia. The law here also follows existing progress to continue regulating people's lives in all fields (Ja'Far. A. Kumedi, 2010). For example, the emergence of various national laws which are the result of harmonization, namely the

emergence of various kinds of Laws on Human Rights (HAM) in Indonesia, which are the result of international human rights instruments (Sulistiyawan. Aditya Yuli, 2019) [12]. In terms of the presence of workers in Indonesia and Indonesian workers working abroad, this is one of the impacts of globalization. This also makes Indonesia often a transit point for cross-border countries from various predetermined entry routes. This is also a flow of individual traffic carrying various interests. In previous research written by Andi Aina Ilmih, it was stated that what causes transnational crime to occur is when the immigrant's country of origin encounters war and economic difficulties, which encourages them to move to another country (Ilmih. A.A., 2017) [9]. However, some immigrants enter Indonesia without official permission through inappropriate routes. These are what are called illegal immigrants or illegal immigrants. This illegal immigration can occur due to various reasons, from failure to fulfill official requirements to conflicts occurring in their country of origin. Illegal immigrants in Indonesia are still difficult to handle because existing law enforcement is still weak, and there is no mechanism for determining the status of illegal immigrants (Nurdiyanto. Aris dan krismiyarsi, 2020). This globalization factor has also given rise to many immigrants' desire to seek greater profits, which they feel cannot be obtained from their country of origin, one of which is the lack of job opportunities in their country. This lack of job opportunities is caused by the rapid population increase and high unemployment levels (Sihombing, Yaakob, & Safarudin, 2011) [7]. Previous research states that an oversupply of immigrants, can result in crime because there are few job opportunities where immigrants can do anything to survive (Alamari. M.F., 2020) [1]. However, the U.N. international body, namely the International Labor Organization (ILO), stated that global labor and workforce problems cannot be resolved through migration.

During the Covid-19 pandemic conditions like this, all forms of activities are hampered and not optimal. Such is the case with migrant workers from Indonesia, as revealed by the results of a survey on the impact of Covid-19 on

Indonesian Migrant Workers (PMI), which stated that Indonesian workers had difficulty getting masks and had to work hard in Hong Kong, experiencing exploitation by increasing working hours, not getting the right to holiday, not being given a proper place to live, not getting a salary. Even starvation befell Indonesian workers in Saudi Arabia (BBC Indonesia-detikNews, 2020) ^[2]. The existence of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers seems to shed light on the problems of immigrants. However, the problems of these immigrants are complex, so problems related to employment, the economy, the law, and their future are still not sufficiently resolved. As stated in the preamble to the 1945 Constitution of the Republic of Indonesia, the Indonesian state protects every citizen at home and abroad. The protection, as intended, begins before the placement, during the placement until after the placement and includes all forms of harm to the person and protection in the event of committing unlawful acts abroad, which is part of human rights in work and on employment. Previous research also stated that the problems of Indonesian immigrants occurred because they did not receive adequate training (Syamsuddin dan Utomo. G.S., 2016) ^[21].

Based on the description of this background, the author will discuss how to protect migrant workers amidst the current different conditions, namely the Covid-19 pandemic, as well as policies to improve labor in obtaining their rights as stated in the Indonesian constitution with the title "Judicial Analysis of Improving Standards Labor and Protection of Indonesian Migrant Workers from an International Law Perspective." This research wants to find answers to the following research questions:

1. How is the policy for improving labor standards in Indonesia related to the perspective of international law??
2. What efforts are being made to protect migrant workers amidst the Covid-19 pandemic?

Research Methods

This study uses a normative juridical research approach, namely legal research that relies on library materials or secondary data. In legal research, there are several approach methods; with this approach method, information will be obtained from various aspects related to research (Marzuki, P.M, 2013) ^[19]. The study specifications used were analytical descriptive research specifications. Analytical descriptive is a research method used to describe a problem in a certain area or at a certain time by describing the research results with data that is as complete and detailed as possible (Fajar, Mukti & Achmad, Yulianto 2017) ^[14]. The researcher try to reveal the facts as completely as possible and as they are (Suteki & Taufani, Galang, 2018) ^[20]. The data collection technique in this research was carried out using library research by studying regulations, books, and other research-related literature. The data analysis method is carried out by collecting data through reviewing library materials or secondary data, which includes primary legal materials, secondary legal materials, and tertiary legal materials, both in the form of documents and applicable laws and regulations.

Results and Discussion

1. The policy of improving labor standards in Indonesia is related to the perspective of international law

In state life, the law is an important factor and part of the aim of providing justice for the country's citizens. It

regulates the movement of residents from their country of origin to another country with one aim of working, which is usually referred to as migrant workers. In accordance with Article 27, paragraph (2) of the 1945 Constitution of the Republic of Indonesia, every citizen has the right to work and a decent living. Apart from that, it is also stated in Article 38 paragraph (2) of Law Number 39 of 1999 concerning Human Rights that every citizen has freedom in terms of the work they like. However, as is the case with many Indonesian citizens, problems often occur. For those who move by fulfilling all immigration requirements, they are called legal immigrants. However, those who carry out beautification in a way that violates proper procedures are called illegal immigrants. This illegal immigration can have an impact on the destination country as well as the country of origin, which can disrupt relations between countries that were previously well-established. If you look at international law about illegal immigrants, they still have the right to receive good treatment from their destination country, but there needs to be firm follow-up with their country of origin before something undesirable happens and even harms the destination country (Subijanto, 2011) ^[11].

Regarding the company's treatment of workers, which it feels does not fulfill the elements of workers' rights and protection, this occurs for many reasons and considerations. One of them is to save money to finance human resources (H.R.) (Damiri. D.M., and Alexandri. M.B., 2017) ^[3]. Educational history is also, to some extent, a factor in competitiveness in a career in Indonesia and other countries. For highly educated workers, the career path of workers produces many profitable things for their future. However, on the contrary, many people exclude workers whose educational history is not what the company expects and who are treated inappropriately. This results in the workload of the workers not being as appropriate as it should be without considering the fulfillment of health insurance and other factors, which causes this to become a conflict that Indonesian immigrants often experience. So, here, the Indonesian government plays an important role in protecting the rights of workers both in Indonesia and immigrant workers abroad. Apart from efforts to expand employment opportunities, there is also a need for training to improve Human Resources in the hope of producing workers who can perform optimally.

Regarding the regulation of the protection of cross-border migrant workers, it relies on international conventions issued by the United Nations through the World Labor Organization, namely the International Labor Organization (ILO). Countries that send migrant workers are obliged to respect and have the right to apply the principle of exclusive internal territorial sovereignty and equal external sovereignty (Floera. D., and Gales. N., 2012). Regulations for cross-border migrant workers according to Indonesian national law have been regulated in Law Number 13 of 2003 concerning Employment, Law Number 6 of 2011 concerning Immigration, and Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers and in general. International law is regulated by U.N. conventions with elaboration through ILO conventions with various multilateral, unilateral, and bilateral rules in the field of migrant protection between countries (Khuana. J.R., 2020) ^[5].

Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers is an update of Law Number

39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad. Regarding the improvement of labor standards in the protection mechanism for Indonesian Migrant Workers, as stated in Law Number 18 of 2017, it is much better than the previous regulations, which fulfill the protection aspect from the start of the prospective migrant worker after working until the family left behind, there are arrangements (Widiyahseno). B, Rudianto, and Widaningrum I., 2017). Apart from that, this regulation also emphasizes the government's placement and protection of migrant workers. In terms of implementing the provisions of Article 50 paragraph (2), which states that further provisions regarding procedures for the placement of Indonesian migrant workers by the Agency will be regulated by Government Regulation Number 10 of 2020 concerning Procedures for the Placement of Indonesian Migrant Workers by the Indonesian Migrant Worker Protection Agency.

In protecting migrant workers, three requirements must be met, namely International Wrong, that is, if someone commits a violation, they must be given protection from their country of origin; Exhaustion of Local Remedies, that is, the state provides legal assistance to its citizens who are abroad regarding prosecution another country if the citizen of the country concerned takes local legal action in the receiving country. The last one is Link of Nationality, namely diplomatic protection given to citizens of that country if there is a violation of international law of another country (Manurung, S.A and Sa'adah, N. 2020) ^[13]. Apart from that, there is also a need to increase the human resources of migrant workers to improve the bargaining position of Indonesian migrant workers in destination countries. It is hoped that the regulations made by the government will create acceptable justice between workers and employers. The ILO will always focus on increasing public awareness of human rights violations, especially workers' rights. Concerning legal protection for its citizens who immigrate abroad, the country of origin of the migrant continues to develop legal protection responsibilities for its citizens to the extent permitted by international law by applying the principle of extraterritorial jurisdiction to the state party affected by violations committed by migrants from the country of origin.

2. Efforts to Protect Migrant Workers During the Covid-19 Pandemic

With developments occurring in the current era of globalization, problems between workers and entrepreneurs can be known to the entire community and accessed through print and electronic media. This can give rise to many pros and cons in assessments in a society with an imbalance of power between the two parties. It is known that many Indonesian citizens have been exposed to the Covid-19 virus abroad because this outbreak has gone global, so anyone has the opportunity to be exposed. It can be observed that before this outbreak spread, the problem of workers' rights not being fulfilled, from termination of employment to not getting a decent living, often occurred; with the outbreak of this virus, the problems that occurred Indonesian migrant workers have increased. In terms of efforts to prevent the spread of the Covid-19 virus, at the beginning of 2020, the government stopped placing Indonesian migrant workers abroad, as stated in Minister of Manpower Decree No. 151 of 2020 concerning Temporary Suspension of Placement of

Indonesian Migrant Workers. However, as time goes by, to help increase the rate of acceleration of the national economy, the government is opening up again to Indonesian Migrant Workers who wish to work abroad by prioritizing the protection of workers' rights and complying with health protocols as stated in Minister of Manpower Decree No. 294 of 2020 concerning Implementation of the Placement of Indonesian Migrant Workers During the Adaptation Period to New Habits.

Placing Indonesian migrant workers abroad means that there is an international cooperative relationship between Indonesia and the destination country. These international relations are carried out not only to regulate employment relations but also to advance the country. This international cooperation takes various forms, namely through international agreements in the form of diplomatic relations, or it can also be carried out with internal organizations, which are important factors in international relations other than countries. This international organization has three elements, namely the participation of countries that collaborate, large-scale meetings, and workers who work as international civil servants (Nursiam. S.F., 2017) ^[17]. The International Labor Organization (ILO), the organization responsible for monitoring international labor standards, is participating in cooperation to protect workers amidst this global epidemic.

Regarding international labor standards during the Covid-19 virus outbreak as stated in ILO Convention No. 155 concerning Occupational Safety and Health states that employers are responsible for ensuring all preventive and protective measures to avoid work risks if necessary and can be carried out appropriately regarding clothing and personal protective equipment at no cost to workers (Departemen Standar Ketenagakerjaan Internasional ILO, 2020). Workers are also encouraged to comply with safety and health measures in this case. However, in practice, there are still several employers who do not pay attention to the existing appeals, thereby eliminating workers' safety and protection rights, as experienced by Indonesian migrant workers. So, there is a need for action from the government to ensure the fulfillment of the main needs of Indonesian citizens through their representatives abroad. For example, the Embassy of the Republic of Indonesia (KBRI), which is a representative abroad, needs to speed up data collection to find out how many Indonesian citizens are affected by this outbreak because migrant workers who work in the catering or hotel sector will be affected because every country is now limiting the number of visits. So that the fulfillment of social security for affected migrant workers can be resolved immediately.

Conclusions

Based on the contents of the study above, it can be concluded that improvements regarding the regulation of Indonesian migrant workers have been frequently updated and refined. However, news about the problems of Indonesian migrant workers abroad continues to be heard, accompanied by technological advances that will always develop. With the conditions of the COVID-19 pandemic like this, all factors of life are increasingly experiencing difficulties and decline, as well as increasing problems for Indonesian migrants. Therefore, in addition to improving the implementation of existing regulations, it is necessary to accelerate the movement of the Government to protect

Indonesian migrants so that a sense of justice, prosperity, and a decent living can be realized.

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