

Health Rights for Indonesian Migrant Workers in Malaysia: A Legal Perspective

¹Rizka Rizka, ²Heru Santoso Wahito Nugroho, ³Arief Budiono, ⁴Wafda Vivid Izziyana, ⁵Ayesha Hendriana Ngestiningrum

¹Lecturer, Faculty of Law Universitas Muhammadiyah Surakarta, ²Associate Professor, Health Polytechnic of Surabaya, ³Lecturer, Universitas Muhammadiyah Surakarta, ⁴Lecturer, Universitas Muhammadiyah Ponorogo, ⁵Lecturer, Health Polytechnic Of Surabaya,

Abstract

Work is an application of the human beings' responsibility in existing. The type of work may be chosen freely whether it is within the country or abroad. This is a normative law research which is supported by empirical study. The normative law study is used to analyze the constitutional regulations regarding the health rights of the Indonesian migrant workers. Meanwhile, the empiric law study is used to analyze the implementation of the regulations. The health right implementation of the Indonesian migrant workers in Malaysia is applies through health insurances based on the sosco regulations. The payment of the health rights for the Indonesian migrant workers is the responsibility of the employer. The research results show that in the aspect of health, the work agreements do not go according to the contract. The health security of the Indonesian migrant workers in Malaysia is still not effective as it only covers accidents within the working hours.

Keywords: Health Rights, Indonesian Migrant Workers, Law

Introduction

Every person has the right to work and to obtain wages. They also have the right to be treated fairly in working relations as written in the Republic of Indonesia's 1945 Constitution. The legal protection for the guarantee of adequate living through working opportunities for the citizens have a grand sense in achieving a state's success. Thus, as mentioned by Izziyana ⁽¹⁾ it is an obligation for the government to achieve that right.

Work is an application of the human being's responsibility in existence. Work may be chosen freely, whether it is in the country or overseas. The state has the obligation to provide work for their citizens well. According to Arinanto ⁽²⁾, it must also bring positive influence for life survival of the citizens without discrimination. Indonesia is one of the countries with

the highest rate of exported migrant workers, as said by Payaman ⁽³⁾ It may be from the demand of the hosting country or the initiative of the migrant worker outsourcing company overseas, according to the Center of Research and Information Development, the National Body for Indonesian Migrant Worker Placement and Protection. ⁽⁴⁾

One of the sectors which has the power to dynamize the economy of Asian countries is the sending of migrant workers, as said by Azmy. ⁽⁵⁾ The guarantee on legal protection for migrant workers is crucial. According to Agusmidah ⁽⁶⁾ in line with the increasing interests for becoming Indonesian migrant workers, the rate of inhumane treatments towards the migrant workers has also increased. Cases which are related to the life of the migrant workers become more variative. Worse yet, said Rusli ⁽⁷⁾ it is now developing towards human trafficking which is a category of violation of the human rights.

Corresponding Author:

Rizka Rizka,
Universitas Muhammadiyah Surakarta, A. Yani Street,
Pabelan, Surakarta, email: riz123@ums.ac.id

The protection of health rights for the migrant workers is a crucial problem. This is because if the Indonesian migrant workers experience health

problems, it will automatically inhibit their abilities in working. It will create a negative impact towards their working relations, which will also impact their wages. The problems faced by the migrant workers are also global problems of humanity. This is because in it, there are various potentials of problems which must be acted upon by the world, starting from human trafficking, black market, fake documents, crime, and also economic problems, according to Calderon. ⁽⁸⁾ The economic problems are the cause of the international migration of workforces, said Birca. ⁽⁹⁾

Nowadays, the sending of migrant workers is also a motive of crime perpetrators in trafficking people, which will lead to the unfulfillment of the health guarantees in the hosting country, as opined by Nuraeny. ⁽¹⁰⁾ The cases which happened at that time pushed the government to issue a policy which stops the sending of migrant workers and some certain jobs to Middle Eastern countries on 2015. This is because, said Flambonita, ⁽¹¹⁾ the government considers the aspects of safety, human rights, equal distribution of working opportunities, the fulfilment of workforces according to the demand, and also legal protection.

Indonesian migrant workers are prone to harassment and exploitation. Such fragility causes the migrant workers' rights to be easily ignored by some parties, such as the outsourcing agent, the employers, and the hosting countries, according to Krustiati. ⁽¹²⁾ Indonesian migrant workers mostly have low education. Thus, their knowledge and skills are limited, including their knowledge on their rights for health. Migrant workers may bring negative impacts socially, culturally, politically, and economically, thus the government needs to take some actions for anticipation, as said by Kassim in Johari. ⁽¹³⁾

The Constitution No. 18 of 2017 regulates the protection on the Indonesian migrant workers comprehensively. The said regulation only places the migrant workers in their hosting countries. It also applies the regulations on foreign workforces, where in it also applies the social security system or the insurance which protects the foreign workers, with the regulation on a written agreement between the hosting country and the government of the Republic of Indonesia as the sending country, said Toruan. ⁽¹⁴⁾ Social security is a

form of social protection as the rights for the employees regarding the job they have, as opined by Manea. ⁽¹⁵⁾ These requirements have the aim to reach legal protection for the Indonesian migrant workers. The focus of this research is to describe the protection of the health rights guarantee for the Indonesian migrant workers in Malaysia through the legal perspective.

Research Method

This research is a legal normative study which is supported by empiric research. The method of research is the legal normative method which is used to analyze some constitutional regulations which are applied regarding the health rights of the Indonesian migrant workers. Meanwhile, according to Fajar and Ahmad⁽¹⁶⁾, the legal empiric research method is used to analyze the application of that regulation, whether or not it is applied well, and to describe the problems which arise due to the issuing of that regulation.

Results and Discussion

The hosting and the protection of workers overseas is actually related to the relations between countries. Thus, it is clear that the government have the power to manage the placement and the protection of the migrant workers overseas. The government cannot act by themselves. Thus, it must include the roles of the provincial government, the city/regency government, and the private institution.

The sending of the migrant workers overseas have contributions in the social and in the developmental aspects. It may increase the state's foreign currency. It will open up new working opportunities. It will ease the pressure of problems. The society may experience obtaining high wages, and it may decrease unemployment. If we try to see the sense and the aim of sending Indonesian migrant workers overseas in a wider context, it will not only solve the employment problems in Indonesia, but it is also a form of economic improvement.

Employment Act and the Workman Compensation's Act regulates the guarantee for working and living appropriateness of the Indonesian migrant workers, under the surveillance of the Department of Workforces. Starting from 2019, the both domestic and non-domestic migrant workers in Malaysia will obtain guarantees from

the Social Security Organization/Sosco. So far, the Sosco social security was only meant for the local workers, as mentioned in a conversation with Ahmad Dahlan (Staff of the Republic of Indonesia's Workforce Penang, Division of Immigration, on February 26th, 2018). This policy has the aim to fulfil the standardization so that it is according to the ILO convention, which stated that the constitution on workforces must be universal and uniform.

The Indonesian migrant workers in Malaysia are regulated in the Workmen's Compensation Act 1952 and the insurance policies paid by the employers. The Workmen's Compensation Act 1952 will soon be revoked, and it will be changed with the Sosco regulation which has a higher beneficial impact. The discourse proclaimed the obligation to pay RM14 to RM15 a month to Sosco to protect the health security aspect of the workers. The workers will obtain much benefit as they are protected by an insurance and they may obtain a life-long compensation. The employers have the responsibility to pay for the Sosco. Sosco owns one of the best hospitals in Southeast Asia in Melaka. If there are migrant workers who experienced an accident, they may obtain full treatment until healed, as said by Neni Kurniaty (Staff of the Republic of Indonesia's Workforce Penang, Executor of Counsellor Function II, on February 26th, 2018).

The health aspect of the migrant workers is not really given attention in the work contract. In reality, sick leave may only be obtained after a written permit from the employer, and that will only happen if they are granted permission, as said by Khazinah, an Indonesian migrant worker in Malaysia, in a conversation (February 24th, 2018). Just like in the case of Nirmala Bonet, the attorney said that there is a point in the work contract regarding health security. Yet, that is no different from social security given from compensations. To obtain compensation from the case of torture, it took ten years, in a conversation with Anis Hidayah (Head of the Center for Migrant Study and Research, April 9th, 2018).

Fringe benefits may also be forfeited if the worker takes sick leave, as mentioned in a conversation with Rubiatun (an Indonesian migrant worker in Malaysia, February 24th, 2018). This shows that there is no difference between sick leave and annual leave. Health

security is deemed as not effective enough as it only covers the physical health of the migrant workers who experienced accidents in the working hours. In the view of legal protection theory, the Malaysian policies has not shown enough care for the health of the migrant workers.

Conclusion

In the aspect of health security, the migrant workers will obtain much benefits as they are protected by the insurance. They may also obtain life-long compensation based on the Sosco regulation. The payment to sosco becomes the responsibility of the employers. The health aspect of the migrant workers is not really taken care of in the work agreements. Sick leave may only be obtained after a permission from the employee. Fringe benefits may also be forfeiter if the worker still takes this sick leave. This shows that there is no difference between sick leave and annual leave. Health security is deemed as not effective enough as it only covers the physical health of the migrant workers who experienced accidents in the working hours.

Ethical Clearence: Yes

Conflict of Interest: No

Source of Funding: Universitas Muhammadiyah Surakarta

References

1. Izziyana WV. The law of workforce (Hukum ketenagakerjaan). Ponorogo: Unmuh Ponorogo Press; 2018.
2. Arinanto S. The dimensions of human rights in dispersing the economic, social, and cultural rights (Dimensi-dimensi HAM mengurai hak ekonomi, sosial, dan budaya). Jakarta: Rajawali Pers; 2009.
3. Payaman S. The management of industrial relations (Manajemen hubungan industrial). Jakarta: Pustaka Sinar Harapan; 2003.
4. Center of Research and Information Development, the National Body for Indonesian Migrant Worker Placement and Protection. Data on the placement and protection of Indonesian migrant workers; 2016.
5. Azmy AS. The state and female migrant labor: Analysis of protective policies in the governance of Susilo Bambang Yudoyono (Negara dan

- buruh migran perempuan: menelaah kebijakan perlindungan masa pemerintahan Susilo Bambang Yudoyono). Jakarta: Yayasan Pustaka Obor Indonesia; 2004-2010.
6. Agusmidah. The dilemma of the workforce law in the analysis of political law (Dilematika hukum ketenagakerjaan tinjauan politik hukum). Jakarta: Sinar Grafika; 2011.
 7. Rusli H. The law of workforce (Hukum ketenagakerjaan). Bogor: Ghalia Indonesia; 2011.
 8. Calderon J. Asian labour migrants and health: exploring policy routes. IOM Issue In Brief International Organization for Migration. 2012 Jun;2.
 9. Birca A. The international migration flow of labor during the process of integration of the Republic of Moldova with the European Union. J CES working papers. 7(4):813.
 10. Nuraeny H. The crime of human trafficking in the perspective of the human rights (Tindak pidana perdagangan orang dalam perspektif hak asasi manusia). Jakarta: Rajawali Pers; 2016.
 11. Flambonita S. The form of Indonesian migrant worker protection overseas (Wujud perlindungan TKI di luar negeri). The Second Proceeding Conference of Teachers and Workforce Law Practitioners Indonesia. Surabaya: P3HKI; 2017.
 12. Krustiati A. The optimization of migrant worker protection and legal help through migrant worker convention promotion on 2000 (Optimalisasi perlindungan dan bantuan hukum pekerja migran melalui promosi konvensi pekerja migran tahun 2000). J Dinamika Hukum. 2013;1(1): 142-143.
 13. Johari MY (ed). Reinventing Sabah: Global challenges and policy responses. Sabah: Sabah Institute for Development Studies; 2003.
 14. Toruan. The prevention of human trafficking in Indonesian borders to protect Indonesians (Pencegahan tindak pidana perdagangan orang (TPPO) di perbatasan Indonesia dalam kerangka perlindungan WNI). Ministry of Defense Proceeding International Conference What My Lead Behind the Oromotion of People Migration Protection. Faculty of Law, Universitas Brawijaya Malang. 2017 Oct 18-19.
 15. Manea ACL. Manea social security for migrant workers in the European Union. Social Sciences Law. 2017;10.959(2): 161.
 16. Fajar M, Achmad Y. The dualism of normative and empirical legal researches (Dualisme penelitian hukum normatif dan empiris). Yogyakarta: Pustaka Pelajar; 2010.