

INDONESIAN MIGRANTS WORKERS LEGALITY TOWARD THE PROGRESSIVE LAW

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Abstract

The law not only works procedurally, but also substantive law idea for giving the guarantee of protection right for migrant workers. All this time, the law works in aspect before and after the workers in Indonesia. The law does not give the workers the protection from the progressive law perspective, if there is a law cases. The discussion is used Sociologist Juridis Perspective. Can law give the protection for migrant workers? The progressive law is needed to achieve the justice.

Key words : law, protection, migrant workers, progressive

INTRODUCTION

Based on the rules of fasal 28D article (1) UUD 1945 states: everyone has a right for recognition, of citizen, protection, and the justice law and the same treatment of law. Next, in article (2) UUD 1945, states everyone has a right to get a job and get the salary and also get a fair treatment and worthy between the college. The right of job can be gotten from the work giving individually and institutionally, including the business in state and overseas. During getting the job, it must pay attention to the expertise and skill to keep the profession standardization and the productivity, besides giving the aspiration in salary or proper salary of workers.

The profession quality is needed for the workers whose wants to get a job in overseas. Besides getting the experience, also changing the status of social and economic for family. That is why the expertise is important, besides the credibility of overseas country. It will bring the Indonesian name in the word, especially in the country destination.

The country must not keep silent toward the citizen whose want to get a job overseas. The country is obliged to give the legal protection as the form of citizen's protection, while the regulation as the base, namely law no 39, 2004 about the replacement and protection is not suitable with the needed of protection and management of labor. So, based on this case, the regulation about the protection and management of labor is needed, namely the law no 18 in 2017 about the Indonesian Migrant Labor Protection article 33b, Jo. article 34 law No. 13 in 2003 about Labor, the law no. 6 in 2012 about International Conventional about the right protection for all labor and the family.

Indonesia, as law country must pay attention to take the law as society service, especially for migrant workers from human trafficking, slavery, forced labor, the victims of violence, and arbitrariness. The law must be placed as the migrant workers' protection in the law certainty, justice and expediency

The law process is influenced many factors, namely rule of law, law enforcer, and relicenses and society obedience of the law. The rules of law is the way of vehicle order in building

dynamic society building, making the humanity truth, making the balance between the right and obligation and giving benefit in society building and renewal.

During the process of establishment and society renewal, the human must think comprehensively, namely the understanding toward the feedback among the law, economy, and social. Based on this case, the law can be used as the function, namely law as the means of establishment and society renewal which must be obey as law supreme. Soetandyo Wignjosoebroto states that law supreme is the way to place the law as the highest position to protect all society without any intervention, including by the host country.¹

The existence of labor law, especially the law no. 18 in 2017, in manage the condition and protection Indonesian labor in abroad which managed by the law no 39 in 2004. The cancelation and statement of this agreement, so all the management of migrant worker system and the family will manage in the law of no 18 in 2017, because the old regulation is not suitable with the needed of Indonesian migrant workers.

Problem Formulation

Can the law give the protection for migrant workers during them works with the memorandum?

The objective

Understanding the purpose of the law and law enforcement in giving migrant workers's protection during get a job in others country.

Method

This research used juridical and sociologist as the focus to think, analyze, and understand the law effectively or ineffectively in giving protection toward the migrant workers by suing qualitative method.

Result and Discussion

Based on the rules of pasal 33b, Jo. Pasal 34 Law No. 13 Tahun 2003, Jo. pasal 7 Law No.18 in 2017, stated that the Indonesian migrant's workers protection including before departure, as the document consists of legal place, job qualifications, it stated the protection of the Indonesian migrant workers including the departure, such as the document which consists of legality of job replacement, job requirements, social guarantee, the college supervision, social guarantee, departure, the supervising of collage and prospective employers.² which has potential to break the rules and administrative, did not meet the substantial of job agreement which has potential to break the administrative treatment, namely out of job memorandum, such as the migrant workers finished their job based on the memorandum, and the workers went back home (Indonesia). It has potential to break the law.

Based on the issue about migrant workers problem because of migrant disturbance of job giver, inaccurate report from the company of Indonesian workers got a job.

During this time, the Indonesia law works in the normative positive circle to get the justify and the certainty, and it tends to play in *procedural justice system*, namely the motion of

¹ Nurul Qomar, dkk. *Sosiologi Hukum* (Sociology of Law), Mitra Wacana Media, Jakarta, 2016, hal. 82.

² Pasal 1 angka (11) Undang-Undang No. 18 Tahun 2017, mendefinisikan pemberi kerja, yaitu badan hukum pemerintah, instansi pemerintah, badan hukum swasta, dan/ atau perseorangan di negara tujuan penempatan yang mempekerjakan pekerja migran Indonesia.

justice by process written justice without knowing the fast society moving. Especially migrant workers in overseas, such as Malaysia, Taiwan, Hongkong, Singapura, and Brunai) they get a job with job contract. The Indonesian law only can be done for the migrants before they got departure and after they came back to his country. Here, the facilities is given the country such as mediation, avocation, and facilities from the advocate from Central Government and or Indonesian Government candidate, based on the law.

The step of the country in giving law protection for Indonesian migrant worker still cannot give pressure. It is not only in conventional law standard, but also considered another aspect (non-law). It is important to be considered if the law got the dead-end such as politic borrowing, social and economics approach. Here, the law must be able to serve dynamic society needed when it's applied in empiric world.³

Law progressive in giving law protection for migrant workers needs the other science participation such as politic, social, economics, and several negotiate technique and moralist to realize college and job giver to be consistence in obeying job agreement during the migrant works in authority of job givers.

Here, when the law cannot help the migrant workers, so the politic by diplomatic ways has a big roles to solve the work agreement, especially about the right of workers whose unfinished based on the work agreement. The coordination between PPTKI agency, job workers and diplomatic candidate as the solution must be established. But, there is another case who's become the disturbance and become the main problem for government as individual worker independent management, illegal workers, and on the job training workers.

Conclusion

The law still works in procedural *justice system and the agreement of placement and job replacement and job mutual did not give the significant job protection, so there is a problem toward* the problem of Indonesian migrant workers. The additional article in replacement agreement and mutual cooperation can give the right solution as the law protection guarantee for the Indonesian migrant workers.

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³ Kasus Pilkada di Jatim (khususnya wilayah Madura). MK., melakukan terobosan dengan keputusan (putusan) memerintahkan penyelenggaraan pemilu ulang yang sebenarnya pemilu ulang harus ada permohonan dari KPU, bukan tanpa permintaan atau permohonan dari KPU. Kasus lain, terobosan dengan diperbolehkan penggunaan KTP dan Paspor untuk kepentingan Pilres tahun 2009 (Mahfud MD, Hukum Progresif Indonesia (Dekonstruksi dan Gerakan Pemikiran Hukum Progresif), Tafa Media Yogyakarta, 2013, hal. 3-6.

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