

The Pattern of Law Protection of Indonesian Workers and the Model for Enhancing Entrepreneurial Spirit of the Post Migrant Workers in West Nusa Tenggara

Gede Tusan Ardika¹, Dewi Yani Wahyuti², Nenet Natasudian Jaya^{2, *}

¹Faculty of Law, Mahasaraswati University of Mataram, West Nusa Tenggara, Indonesia

²Faculty of Economic, Mahasaraswati University of Mataram, West Nusa Tenggara, Indonesia

Abstract

The Every citizen has the right to obtain employment and income that provide welfare. But if it can not be implemented properly by the government, it is partly due to the number of Indonesian population, the absorption of limited economic, educational level and low productivity, as well as the spread of population and workforce is uneven, both regionally and sectoral. Problems in placement of Indonesian Workers (IWs) involves many parties, namely the government (BNP2TKI), recruitment agencies, service users and Iws themselves; especially regarding the protection of the obligations and obtain their rights while working abroad. The population in this study is the workers who came from the city of Mataram and West Lombok. Sampling is by purposive sampling based on a specific purpose, using the sociological juridical approach to qualitative data analysis method follows the pattern of research in the social sciences. Research specification is analytical descriptive that describes the implementation of legal protection for migrant workers and the pattern of increase in the entrepreneurial spirit of the post-migrant workers. The results showed that the legal protection given by the government to workers can not be applied optimally because many of the rights of migrant workers are not included in the contract so it is not clear what form of protection. The persistence of the violations primarily for the migrant workers who work in the non-formal fields, otherwise protection for those in the formal sector has been implemented since it works all the provisions in the agreements related to the protection already accommodated properly. The government of West Nusa Tenggara province has conducted four post-migrant empowerment of migrant workers, namely fostering business development; colloquium and expo activities; guidance in the context of post-migrant problematic or rehabilitation, recovery of the physical, psychological and psychosocial; and banking education in order to manage remittances for productive activities and technical guidance. The programs are in the context of wise use of the results obtained during the work abroad, so hoped finally it will reduce the intensity of their work back abroad.

Keywords

Legal Protection, Indonesian Workers, Entrepreneurship, and Post-Migrant Workers

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1. Introduction

a. Background

Labor is the main capital and the implementation of

community development Pancasila. The most important goal of the community is the development of public welfare including labor. Article 27 paragraph (2) in conjunction with the second amendment of the 1945 Constitution Article 28 states that "Every citizen has the right to work and a decent

* Corresponding author

E-mail address: GEDETUSAN@gmail.com (G. T. Ardika), dewiyaniwahyuti.benuha@gmail.com (D. Y. Wahyuti), nenetaja@gmail.com (N. N. Jaya)

living for humanity". And also in Article 3, paragraph (2) of Law No. 14 of 1969 concerning Basic Provisions stating "Every labor has right to work and a decent income for humanity" in the explanation of Article 3 of the Act states that one of the important objectives of the *Pancasila* community is to provide an opportunity for each labor for jobs and income that provide welfare.

That then in fact this task can not be executed properly by the government due to various factors including the number of Indonesian population, the absorption of limited economic, educational level and low productivity as well as the distribution of the population and labor force unequal both regionally and sectoral. Therefore, policy and program development and employment should be directed to solving these problems [9].

Dozens of Indonesian migrant workers is currently under sentence of death or imprisonment in Malaysia and various migrant workers in some countries. In the near future, about 40 thousand workers who work in Saudi Arabia and around 800 thousand workers who work in Malaysia also faced with the threat of deportation because no official documents or exceeded a residence permit or overstayed. The fact that large numbers of illegal migrant workers without adequate protection of legal documents abroad showed during the time we tend to oversimplify the problem and not serious to make improvements. The recognition of the contribution of migrant workers to the economy could not change the fate of the majority of migrant workers; especially female workers (*TKW*) are not educated and worked as a housekeeper, generally not moved from a bleak picture portrait of modern slavery.

Advocacy government against migrant workers, especially those who face problems abroad could be said to be very minimal. This is partly because there is no permanent representation in all destination countries of migrant workers and the absence of a specific budget for care and protection of migrant workers. BNP2TKI as an institution directly under the president, with the authority and responsibility is so great and his teeth have not demonstrated effectiveness. One example is the weak response, anticipation, and advocacy in the case of a raid against about 40 thousand illegal workers in Saudi Arabia recently. Also unclear role of staffing Ministry in each Embassy in the country of destination.

b. Problems

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The problems of the study are as follows:

- a. How do the parties involved in the placement of workers abroad (the government, recruitment agencies, service users, and IW) in carrying out measures to protect the migrant workers?
- b. How does the pattern of legal arrangements to protect the migrant workers abroad?
- c. How to overcome obstacles in the implementation of legal protection for the migrant workers abroad?

2. Literature

a. IWs Placement

In the sending of IWs abroad, there are three parties either directly or indirectly have to work together, the Indonesian Manpower Services, Service User IW and IW itself. Indonesian Manpower Services is a business entity or a limited liability cooperative, which seeks in the field of placement services workers abroad. IW service user is a government agency, or business entity that is a legal entity or individual abroad who employ migrant workers. IW is a citizen of Indonesia both men and women who work abroad within a certain time based on labor agreement [9].

Execution of migrant worker placement arranged in Kepmenakertrans No. KEP-104A / MEN / 2002 is divided into several parts, one pre-placement period, the second part of the placement period and the third period after the placement.

In pre placement workers set about prospective workers, among others, data collection, setting the registration requirements of the placement, the signing of the agreement as well as the placement of departure prospective migrants. In pre placement, the government still faces problems as one instance of how coordination between the government (in this case by the Central Employment Service Indonesian Manpower) and PJTKI regarding competency test workers who will be sent abroad. Allegedly there has been a misuse of the test results workers who did not pass but still be sent so that it will reduce the quality of the workers who will be sent abroad [7].

At the time of placement of IW arranged one about liability or recruitment agency to solve the problems and disputes

between migrant workers and users. There is one example of a news published print media *Compass* that contain a statement of the Forum Organization of Indonesian Migrant Workers (FOBMI) and the Association of Indonesian untuh Migrant Workers Sovereign (Migrant Care) which launched three migrant workers in Saudi Arabia and Malaysia are facing a death sentence for allegedly killing employers and also five migrant workers facing the death penalty in Singapore is also accused of a crime [8].

In the period after the placement of migrant workers recruitment agency regulates the obligation to take care of the return of migrant workers to the area of origin and also the extension of the employment agreement. The number of cases of robbery crimes against workers who will return to the area of origin is evidence that the issue of security guarantees on the return of migrant workers still has not done well.

IWs placement in the implementation of these irregularities and violations in the mechanism and procedure of placement of migrant workers still occur, and not only done by government apparatus but also conducted by the recruitment agency. Deviations difficult to avoid because of the perception and realization and handling in the placement process tends to be different. Irregularities occurred because in practice there is still a double standard for the obligations fulfillment of the requirements in the IW placement process [8].

b. IWs Protection

Based on data from the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI), total Indonesian migrant workers working abroad was 354 548 people and the number of women migrant workers was 280 183 (nearly 80% of the total). Limited access for the poor Indonesian economy became the main thing that drives them to speculate in other countries. Central Bureau of Statistics (BPS) estimates that in 2006, 17.5% of Indonesia's population is 222 192 000 poor people. In that year, the number of unemployed is open until February 2006 reached 11,104,693 people (10.45%), 5,296,462 people are women [11].

Concern recruitment agency for the protection of migrant workers is also considered low, seen from the indication of the number of workers who are placed into the Asia Pacific region are excluded from the insurance coverage is still very little that is new about five percent of the total number of workers who are sent [7].

According to the Minister of Manpower and Transmigration (2004) Jacob NuwaWea, from about 350,000 migrant workers stationed overseas during 2003, as many as 38,000 of them problematic and generally they go back to their

homeland to take the matter without waiting for the completion of cases abroad [14].

c. Entrepreneurial Spirit

Entrepreneurship consists of word meaning entrepreneurial courage and business means the business activities of commercial or non-commercial, so that entrepreneurship can be defined as someone the courage to carry out a business activity. Leibenstein Harvey (1979), argues, entrepreneurial-kegiatan includes activities required to create or implement the company when all the market yet or have not been clearly identified, or the components of the production function is unknown sepenuhnya. Penrose (1963): entrepreneurial activities include identifying opportunities in the economic system. Managerial capacity or ability is different from the entrepreneurial capacity. Frank Knight (1921): Entrepreneurs try to predict and respond to market changes. This definition emphasizes the role of entrepreneurs in the face of uncertainty on the market dynamics. An entrepreneur is required to carry out the basic managerial functions such as guidance and supervision.

David McClelland suggested that, if a country wants to become prosperous, a minimum amount of 2% of prosetase total population of the country to become entrepreneurs. Indonesia itself until now, according to a study population into new entrepreneurs about 0.18%, according to information I read on the internet today on March 5, 2012 the number had jumped sharply to it is not surprising that at this time, the condition of Indonesia lags far preekonomian of negeara neighboring Singapore, which has a percentage of entrepreneurs by 7%, Malaysia 5%, China 10%, particularly when compared with the US superpower that almost 13% of the population to become entrepreneurs.

Therefore, with grown kembangkannya entrepreneurial knowledge, will evoke the spirit of the Indonesian people to participate in creating jobs with entrepreneurship, not only the job seekers (job seeking), and will increase the GNP which will further strengthen the national economy at the macro, and accelerate the development wheel national, because of the availability of the budget increase.

From some of the positive impact of entrepreneurship, it can be concluded that entrepreneurship aims to improve the local economy and generally improve the dignity of private entrepreneurs and the nation [1].

3. Research Objectives and Benefits

The purpose of this study is to have ideal setting produces the

pattern of legal protection prosperity of the Indonesian migrant workers; to have data on the role and efforts of the parties involved in the departure of migrant workers, namely the recruitment agency, BNP2TKI, IW service users and the IWsthemselves; eo increase entrepreneurial spirit of the post-migrant workers.

This research would be inputs for the local government of West Nusa Tenggara Province to take measures in order to guarantee legal protection for Indonesian people who work abroad; inputfor the pattern of legal protection of migrant workers as well as legal knowledge information for prospective migrant workers given the risk faced in working abroad is very large; inputfor training programs on entrepreneurship increase post-migrant workers, as a result of effective use of migrant workers, so that later can be tried in their own country and are not interested in returning to work abroad.

4. Methods

This study is included descriptive analytical research is research that provide a picture of the moral and legal protection for workers and increase the entrepreneurial spirit of the post-migrant workers. The method used in this research is a sociological juridical approach is an approach to the application of the social sciences to understand and analyze the law as a symptom.

The population in this study was all workers who come from the city of Mataram and West Lombok as the center of Indonesian workers of West Nusa Tenggara Province. To represent the population sample taken in a non-probability sampling, especially non-random sampling purposive sampling was done by taking the subject based on a specific goal. Samples taken are 30 workers who have worked abroad.

The collection of primary data uses the survey technique through observation and interviews using questionnaires, and secondary data from reference books, journals, newspapers, etc. After the data collected then analyzed qualitatively, which analyzed data based on a theory or concept that is expected to obtain a picture of the problems faced both by the recruitment agency, migrant workers service users, and the local government of West Nusa Tenggara Province in implementing the protection of workers who work abroad.

5. Results and Discussion

a. Overview of Respondents

Table 1. Respondents Demography.

Asked Aspects	Answer	Number of Respondent	%
Age (Year)	16 - 21	9	30
	22 - 27	6	20
	28 - 33	8	26,67
	34 -39	5	16,67
	40 - 45	2	6,67
Sex	Male	17	56,67
	Female	13	43,33
Level of Education	ElementerayGraduate	4	13,33
	Junior High School Graduate	14	46,67
	High School Graduate	12	40

Source: Processed data

Based on the research known that most workers in West Lombok aged between 16-21 years (30%) and 28-33 years (27%). Whilst age is the oldest workers are between 40-45 years (7%). This means that all respondents belong to the productive age.

Most of the low-educated respondents, including elementary schoolas many as 4 people (13.33%), as many as 14 respondents (46.67%) educated junior school / equivalent, and the rest of high school / equivalent as many as 12 people (40%).

b. Entrepreneurship Attitude of Migrant Workers

Table 2. Summary of Respondent’s Entrepreneurship Mental Attitude.

Entrepreneurship Mental Attitude	SA	A	N	D	SD	Ttl
Strong desire to be self-supporting	12	14	4	0	0	30
Willingness to risk	3	7	20	0	0	30
Ability to learn from experience	4	19	7	0	0	30
Self-motivating	2	25	3	0	0	30
Spirit to compete	0	24	6	0	0	30
Orienting at hard work	0	13	17	0	0	30
Self confidence	2	21	7	0	0	30
Having motivation to have achievement	2	22	6	0	0	30
Having confidence at ability of ownself	1	27	2	0	0	30
Not like aid from other party including from government	2	3	7	18	0	30
Never give up and not depending the nature	1	5	4	20	0	30

Source: Processed data

Based on the results of a questionnaire on criteria recapitulation mental attitude entrepreneurship data showed that the attitude of the respondents towards a strong desire to stand alone, the majority of which 46.67% had agreed to self-effort after nurtured by BNP2TKI. Respondents' attitudes toward risk-taking, the majority of respondents (66.67%) expressed hesitation in taking the risk to entrepreneurship. Respondents' attitudes to learning from experience, (63.33%) stated that they agreed to entrepreneurship so what is gained from coaching will be practiced, and they hope to not go back into migrant workers abroad.

The respondents' attitudes toward self-motivation is 83.33%, stated that they agreed to motivate themselves to be entrepreneurs. Their attitude to compete is 80.00%, the respondents stated that they agreed to compete to become entrepreneurs. While the attitude of orientation to work hard is 56.67%. The respondents' attitude of self-belief is 70%. Their attitude of the drive to achieve is 73.33%, the respondents agreed the urge to excel. Most respondents have a strong belief in self-ability (90%). The respondents' attitudes of dislike the outstretched hand of the other parties, including the government; most of the respondents (60%) like the aids of the government. The respondents' attitude of never giving up and not rely on nature, showed 66.67% of respondents stated depending on the nature or circumstances that exist. This means that a migrant worker would soon return abroad if they fail in the entrepreneurship efforts.

c. Model Entrepreneurship of Post-Migrant Workers Empowerment in West Lombok

The BNP2TKI has made four full programs to empower migrant workers after 2011. The four programs are, first, business development coaching workers who had occupied after the combine efforts of entrepreneurs who focused on strengthening association after TKI. Secondly, activities and expo colloquium workers in West Lombok. Third, the guidance for the rehabilitation activities after the troubled migrant workers, which is intended to provide guidance for the rehabilitation and recovery of physical, psychological, and psychosocial problems after the workers, both of which were brought from overseas and are experienced after being in the area of origin. Fourth, banking education in the management of remittances for productive activities and technical guidance.

Empowerment of the post workers directed at the appropriate educational skills with the ability to explore the potential in their own area of origin, such as agriculture, plantation, farming, grocery and other business enterprises.

6. Conclusion

The legal protection that has been given by the government to workers who are outside the country can not be applied optimally because a lot of migrant workers' rights as contained in Law No. 39 of 2004 specifically listed in Article 8 is not included in the contract so it is not clear how these rights will be upheld.

Still the violations of several provisions in the legislation mentioned above, especially for the placement of workers who work in the field of non-formal (work on individual / household sector) is as Housemaid, babysitter, nanny toddlers, and nurse the elderly. The provisions that have not

been implemented is related to the provision of overtime wages, excessive work hours and rest periods are less, position and type of work double, deductions from wages that exceed the provisions of the legislation (over 25%) and the safety, health and security of migrant workers which is not yet assured. All that should be included in the cooperation agreement the placement, placement agreements and employment agreements.

Still manipulation personal data especially regarding age, so the mental readiness of workers to work abroad was not optimal.

Implementation of protection for workers who work in companies has been carried out properly due to the agreement works all the provisions related to the protection of workers regarding wages (wages and overtime pay), work and rest periods, insurance, leave, rights and obligations each party has been accommodated properly.

BNP2TKI of West Nusa Tenggara government has made four post-migrant empowerment of migrant workers, namely the first, fostering business development directed at strengthening the association of post-migrant labor migrants; The second colloquium activities and expo post migrant labor migrants; Third, the guidance for the rehabilitation activities after the troubled migrant labor migrants, restoration of the physical, psychological, and psychosocial; and fourth, banking education in the management of remittances for productive activities and technical guidance.

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