



Legal Protection of Indonesian Migrant Workers in Hong Kong Through Employment Agreements

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Abstract

Work is an activity that a person does to earn wages to fulfill his life. Indonesia has an abundant population but the availability of jobs is still limited. Hong Kong is the country with the highest number of Indonesian Migrant Workers in 2021. The purpose of the study was to analyze the legal protection of Indonesian Migrant Workers in Hong Kong through employment agreements. The research method, type of research is normative legal research, with an approach; statute approach, and conceptual approach. In conclusion, the legal protection of Indonesian Migrant Workers in Hong Kong through employment agreements is by the inclusion of the rights of Indonesian Migrant Workers, namely; the right to work according to the schedule and type of work, the right to obtain wages with a minimum standard of 4,630 HKD every month or equivalent to Rp 8,488,936.59, the right to get rest days, official holidays and paid annual leave, and the right to health protection and social security. An employment agreement provides legal protection for migrant workers, there is an obligation for the employer that if the employer is negligent in fulfilling its obligations, it will be subject to sanctions under the provisions of the prevailing legislation in his country.

Keywords: *Legal Protection; Indonesian Migrant Workers; Employment Agreements*

Introduction

Work is an activity carried out by a person to earn wages to meet the needs of his life and Indonesia is a country that provides rights and guarantees for every citizen to work and get a decent life.

This is stipulated in Article 27 Paragraph (2) of the Constitution of the Republic of Indonesia of 1945 (hereinafter written by the 1945 NRI Constitution). The availability of jobs that are still limited is one of the causes of the large number of people who want to work abroad, one of which is Hong Kong. Dual labor market theory is the key to answering how Indonesia is interested in becoming a migration worker in Hong Kong, that international migration occurs from the demands or demands of energy for the modern country (Achsini and Rosanda. 2021).

Based on the Annual Statistics data of the Indonesian Migrant Workers Protection Agency (BP2MI), Hong Kong is the destination country for the most Indonesian Migrant Workers in 2021. Indonesian migrant workers are dominated by female migrant workers working in the informal sector,

reaching 63,855 people in 2021 while men only number 8,769 people (Anwar. 2022). Indonesian Migrant Workers in Hong Kong continue to grow this was revealed by the Chief of Secretaries for Labor and Welfare Bureau Law Chi-Kwong in the discussion of the Hongkong Economic & Trade Office (HKETO) that foreign workers, including those from Indonesia, get salaries starting from 8 (eight) million rupiah. The salary increase system will be implemented according to the needs and needs of the workers. In addition to a decent salary, Indonesian Migrant Workers also get the same rights as locals in Hong Kong, one of which they get a holiday on Sundays. The workers also receive training before departure and when they have arrived in Hong Kong. Since the enactment of Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers (hereinafter written Law No.18 of 2017) which replaces Law No. 39 of 2004 concerning placement and protection of Indonesian workers abroad the term Indonesian Migrant Workers (abbreviated as PMI) shifting the terms Indonesian Labor (abbreviated as TKI) and Women's Labor (abbreviated as TKW) the term for Indonesians who work abroad for a certain period and earn wages, According to Tatang Budie Utama Razak, the name of TKI was changed to PMI in addition to being adjusted to the ILO Migrant Workers Convention, the word "TKI" also seems to be a story of grief attached to cases that befell migrant workers (Anonym. 2021).

What is meant by PMI, according to Law No. 18 of 2017, is:

- a. Indonesian Migrant Workers working for legally incorporated Employers;
- b. Indonesian Migrant Workers working for an individual or domestic employers; and
- c. Sailors of crew and sailors of fisheries.

PMI who will work abroad, must be at least 18 (eighteen) years old, have competence, be physically and spiritually healthy, registered and have a Social Security membership number and have the required complete documents.

Protection of PMI, is an effort to protect the interests of Prospective Indonesian Migrant Workers and/or PMI and their families in realizing the guaranteed fulfillment of their rights in all activities both before work, during work, and after working in legal, economic, and social aspects, this is regulated in Article 1 number 5 of Law No.18 of 2017, while the purpose of protection against PMI is regulated in Article 3 of Law No.18 of 2007, that is:

- a. Ensuring the fulfillment and enforcement of human rights as Indonesian citizens and migrant workers and
- b. Ensure the legal, economic, and social protection of Indonesian migrant workers and their families.

Thus, the purpose of the protection of this article is related to the fulfillment and enforcement of human rights and the legal, economic, and social protection of migrant workers and their families.

The results of previous research showed that PMI, especially those working in the domestic sector, is considered to have no skills because it does not require a certain level of education to be able to work in the sector, so their chances of obtaining injustice from some parties are very large because of limited knowledge, especially PMI working in Hong Kong is dominated by female workers. Generally, the problems faced by migrant workers in Hong Kong, during the pre-placement period are identity falsification, falsification of departure documents, during placement, persecution, unpaid salaries, working more than working hours, and after-placement, problems faced when in Indonesia fraud, unemployment, family disharmony occurs (Prabowo. 2022).

This paper highlights the legal protection of Indonesian Migrant Workers women working in Hong Kong through employment agreements.

Research Methods

This research uses normative research methods or doctrinal research, where this research is aimed at legislation and other legal instruments (Susanti and Efendi. 2015). The approach used: the statutory approach, and the conceptual approach.

Discussion

Work is a human right that must be upheld, respected, and guaranteed in the 1945 NRI Constitution, consequently every Indonesian citizen must be defended and protected his constitutional right to obtain legal protection and obtain a decent livelihood, including for those Indonesian migrant workers working abroad. Indonesian migrant workers working abroad basically have the same rights as other workers working in Indonesia. The thing that distinguishes them is the location or place where they do the work so that the rules that apply will of course adjust as well. For example, Indonesian Migrant Workers who work in Hong Kong in addition to having to obey the rules that apply in Indonesia must also comply with the rules contained in the employment agreement made between Indonesian Migrant Workers and employers.

According to Satjipto Raharjo, legal protection is an effort to protect a person's interests by allocating a human right power to him to act in the framework of his interests (Raharjo. 2006). Such protection is given to the community so that they can enjoy all the rights granted by law in other words legal protection is various legal efforts that must be given by law enforcement officials to provide a sense of security, both mentally and physically from interference and various threats from any party.

Efforts to protect Indonesian citizens working abroad then issued Law No. 18 of 2017, protection of PMI or PMI candidates include; protection before work, during work, and after work (provided for in Article 7). Protection before work, including; administrative protection, and technical protection (provided for in Article 8). Protection during work, including; data collection and registration by employment attaches or designated foreign service officials, monitoring and evaluation of employers, facilitation of PMI rights fulfillment, and employment settlement (stipulated in Article 21), while protection after work, among others; facilitation of return, facilitation of unfulfilled PMI rights, and facilitation of sick PMI, and death (stipulated in Article 24). Thus, Law No.18 of 2017, provides legal protection to PMI or PMI candidates, both before work, during work, and after work.

Furthermore, the Regulation of the Indonesian Migrant Workers Protection Agency No. 01 of 2020 concerning Standards, Signing, and Verification of Migrant Worker Employment Agreements regulates the standardization of the contents of an employment agreement between employers. This is stipulated in Article 2, of the standard of employment agreements. The work agreement must contain at least:

- a. the name, profile, and full address of the employer;
- b. name, identity number, and full address of Indonesian Migrant Workers;
- c. position or type of work and job description of Indonesian Migrant Workers;
- d. the rights and obligations of the parties;
- e. conditions and conditions of employment that include
 - 1) working hours, rest time, and leave;
 - 2) wages/salaries, how to pay salaries, overtime pay, and bonuses;
 - 3) facilities, accommodation, transportation, and consumption; and
 - 4) Social Security and/or insurance;

- f. period and entry into force of the Employment Agreement;
- g. procedures for the extension of the Employment Agreement;
- h. procedures for termination of employment;
- i. termination of the Employment Agreement;
- j. procedures for dispute resolution;
- k. provisions of repatriation procedures; and
- l. guarantee the safety and security of Indonesian Migrant Workers while working.

The Work Agreement Standard is prepared concerning the written agreement between the government of the country to which the placement destination and the government (stipulated in Article 3 Paragraph (2), then the Work Agreement Standard must be following the Draft Employment Agreement verified by the Authorized Official at the time of the process of submitting a PMI request letter from business partners and/or Employers. (This is stipulated in Article 3 Paragraph (3))

Labor Agreement Standards, must be used as a reference in the preparation of an employment agreement between the employer and migrant workers. The employment agreement aims to protect migrant workers who are always made in the beginning - the moment before a legal act and becomes the basis that has legal force. The employment agreement is a written agreement between Indonesian Migrant Workers and employers that contains the terms of employment, rights, and obligations of each party, as well as guarantees of security and safety while working following the provisions of laws and regulations. The employment agreement is very important as a working guide for PMI in Hong Kong and is one of the requirements in the management of work visas in Hong Kong Immigration. The employment agreement owned between the employer and Indonesian Migrant Workers currently consists of 4 (four) pages, using English and the paper color is blue with the inscription Employment Contract located at the top of the agreement.

To find out whether the applicable employment agreement between Hong Kong employers and Indonesian Migrant Workers has been following the standardization of work agreements that have been regulated by the Regulation of the Indonesian Migrant Workers Protection Agency No. 01 of 2020 concerning Standards, Signing, and Verification of Work Agreements, the following are described as the main points of the employment agreement based on the clauses, including:

a. Identity of the parties

The employment agreement contains the names and addresses of both employers and migrant workers. This clause states that workers may only work for someone whose name is mentioned and in the residence also stated in the employment agreement.

b. Types of jobs and job descriptions of Indonesian Migrant Workers

It said migrant workers were employed by employers as domestic helpers for two years from their arrival in Hong Kong. Types of work include household chores such as cooking, caring for and taking care of the elderly, and caring for and taking care of babies and minors.

c. Rights of Indonesian Migrant Workers, namely;

1. The right to work follows the schedule and type of work contained in the contract.
2. The right to get a salary of 4,630 HKD every month or equivalent to Rp 8,488,936.59 (The year 2021)

3. The right to obtain comfortable accommodation and furniture according to the type of work.
4. The right to get free food and drink or food allowance every month amounting to 1,075 HKD if food is not provided.
5. The right to obtain rest days, official holidays, and paid annual leave following labor regulations.
6. The right to obtain departure accommodation until return to the country of origin during the contract.
7. The right to get free treatment and compensation in case of illness or work accident.

d. Employer obligations, including; the obligation to ensure migrant workers only perform household duties according to the schedule and type of work that has been determined, the obligation to ensure migrant workers do not take jobs other than they should, the obligation to pay wages for migrant workers amounting to 4,630 HKD every month or equivalent to Rp 8,488,936.59 where the wages should not be reduced from the minimum wage of the Special Administrative Region in force on the date of the contract, obligation to provide all accommodation needed for migrant workers, including food and drink or provision of food allowances every month amounting to 1,173 HKD or approximately Rp 2,150,653.51 if not provided with food, and obligation to provide proof of receipt of payment of wages and benefits signed by the migrant worker concerned.

e. Working hours, rest and leave, related to working hours are not found in the employment agreement, it is known that working hours are things that need to be regulated to prevent the occurrence of the arbitrariness of the employer that can cause overworked or excess working hours that will have an impact on the physical and mental health of workers. It is difficult to determine working hours because migrant workers who work in the domestic sector usually have more flexible working hours than migrant workers in the formal sector where erratic working hours also occur in domestic workers (DOMESTIC WORKERS) in Indonesia. Setting a break time leads to a rest day or rest day set out in the Employment Ordinance, Chapter 57 which states "*Subject to the provisions of this Part, every employee who has been employed by the same employer under a continuous contract shall be granted not less than 1 rest day in every period of 7 days.*" which means that a worker is entitled to a break of no less than 1 day within 7 working days.

f. Wages/salaries, overtime pay, bonuses, and how to pay wages

The employment agreement until 2021 refers to the minimum wage set by the Hong Kong government of HK\$ 4,630 per month or equivalent to Rp 8,488,936.59. In general, the wages given to migrant workers consist of basic wages/ salaries, overtime wages, and bonuses if any. However, the unregulated working hours have implications for overtime pay for workers. Generally, overtime pay is given to migrant workers if migrant workers work more than the working time that should be based on international labor organization rules, namely 7 hours of work in 1 day for 6 working days in 1 week but because of erratic working hours, making it difficult to determine the overtime wage. How to pay wages is not mentioned in the employment agreement but through clauses "*the employer shall provide a receipt for payment of wages and food allowance and the helper shall acknowledge receipt of the amount under his/her signature*" it implicitly states that payments are made to migrant workers using the proof of payment they have signed.

g. Facilities, accommodation, transportation, and consumption

The work agreement contains accommodation and facilities for migrant workers ranging from eating, drinking, food allowances every month to basic needs such as facilities bedrooms, toilets, and so on. The employment agreement mentioned that the size of flats or residences in Hong Kong is relatively small so the availability of separate working rooms is considered unusual. Employers are obliged to

provide accommodation with reasonable privacy or in this case referred to as unsuitable accommodation "the helper having to sleep on made-do beds in the corridor with little privacy and sharing a room with an adult/teenager of the opposite sex" so that migrant worker can share a bed with a child of the employer only of the same gender.

h. Social security and insurance

The employment agreement contains the right of migrant workers to obtain social security in the form of medical expenses including medical consultations, and hospital care as compensation for migrant workers who have been injured by work accidents.

i. Procedures for the renewal of employment agreements, termination of employment, and termination of employment agreements

The extension of the employment agreement under the clause in the agreement requires the agreement of both parties and the migrant worker concerned must first return to the country of origin before starting a new employment agreement with the same employer. Termination of employment may be made by either party on the basis specified by Employment Ordinance Chapter 57 with written notice to the Director of Immigration.

j. Dispute resolution procedures

The employment agreement does not mention the clause in case of a dispute between the employer and the migrant worker. This clause is needed as a guideline for the parties regarding what things they can do in the event of a dispute and what risks can arise for the parties. Dispute resolution can generally be done between the two parties and also through mediation with third parties before finally leading to a complaint to the authorities.

k. Provisions of repatriation procedures.

The repatriation of Indonesian Migrant Workers is divided into repatriation due to the expiration of employment agreements and repatriation not because of the expiration of work agreements that include repatriation because migrant workers have been sick or injured, died, or due to emergencies involving security for migrant workers. The employer is responsible for covering the entire cost of the worker's return

migrants along with additional accommodation costs required until the migrant worker arrives in the country of origin

The employment agreement between Hong Kong and PMI has provided direct legal protection for PMI because the content of the agreement contains rights rather than workers and obligations that require the employer to carry it out, if not implemented will lead to sanctions. Based on the standardization of employment agreements between PMI and employers, several clauses are not listed in the employment agreement, to provide a gap in violations of the rights of migrant workers that result in violations of human rights. Denial of human rights is the same thing as denying the dignity of humanity (Husni. 2021).

Legal protection efforts in addition to through legislation, the government also formed institutions that function to serve people who want to work as PMI, including:

1. Indonesian Migrant Workers Protection Agency (hereinafter written BY BP2MI)

The Indonesian Migrant Workers Protection Agency or bp2mi for short, formerly BNP2TKI or the Indonesian National Labor Placement and Protection Agency, is a Non-Departmental Government agency that is under and responsible to the President through ministers who conduct government affairs

in the field of labor. The use of the term BP2MI is intended to be under Law No. 18 of 2017. Based on Article 4 of Presidential Regulation No. 90 of 2019 concerning BP2MI, it has the task of implementing service policies in the framework of placement and protection of PMI in an integrated manner. Based on the Presidential Regulation, in terms of policy in the field of Placement and Protection of Indonesian Migrant Workers, BP2MI is authorized to draft and establish regulations on the standards of work agreements, signings, and verification, PMI determination costs, and processes required before work.

2. Indonesian Labor Placement and Protection Service Center (hereinafter written by BP3TKI). BP3TKI is an institution located at the Regency / City level which is an extension of BP2MI so that in carrying out its duties and functions must be based on the regulations set by BP2MI then coordinate with the Indonesian Labor Placement and Protection Service Post (P4TKI), reporting every month based on the results of its implementation both from BP3TKI and P4TKI then forwarded to BP2MI.

3. One-Stop Integrated Service (LTSA)

The LTSA Institution was formed by the Government to serve and assist people who want to become Indonesian Migrant Workers. This institution is located at the Regional / Village level which has the duties and authorities stipulated in Article 38 of the Indonesian Migrant Workers Protection Law, including:

1. Indonesian Migrant Worker Placement and Protection Services are carried out by the central government and local governments in a coordinated and integrated manner.
2. In providing placement and protection services as intended in paragraph (1), the local government forms a one-stop integrated service.
3. One-stop integrated service as intended in paragraph (2) aims to:
 - a) Realizing the effectiveness of the implementation of placement and protection services for Indonesian Migrant Workers
 - b) Provide efficiency and transparency in the management of placement documents and protection of Prospective Indonesian Migrant Workers and/or Indonesian Migrant Workers
 - c) Accelerate the improvement of the quality of service of Indonesian Migrant Workers

The establishment of these institutions aims to protect for PMI to prevent cases of fraud, sexual harassment, human trafficking, and human rights violations. Legal protection is an attempt to protect a person's interests so that they can enjoy all the rights granted by law for a sense of security, both mentally and physically from interference and various threats from any party.

Closing

Conclusion

The legal protection of PMI in Hong Kong through employment agreements is by the inclusion of PMI rights, namely; the right to work according to schedule and type of work, the right to obtain wages with a minimum standard of 4,630 HKD every month or equivalent to Rp 8,488,936.59 the right to get rest days, official holidays and paid annual leave, and the right to obtain health protection and social security. The employment agreement provides legal protection for migrant workers, there is an obligation for the employer that if the employer is negligent in fulfilling its obligations, it will be subject to sanctions following the provisions of the prevailing legislation in their country. The existence of the Indonesian Migrant Workers Protection Agency Regulation No. 01 of 2020 concerning Standards, Signing, and Verification of Migrant Workers Employment Agreements has regulated the

standardization of the contents of an employment agreement that must be used as a reference in the preparation of an employment agreement between Hong Kong employers and Indonesian Migrant Workers.

suggestion

Regulation of the Indonesian Migrant Workers Protection Agency, to include clear working hours standards to prevent the occurrence of excess working hours (overworked) that can affect the physical and mental health of PMI working in the domestic sector.

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