



## Juridical Study of Placement and Protection of Indonesian Migrant Workers based on Law Number 18 of 2017

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### **Abstract**

Observing the large number of people who are looking for work abroad, there are many companies that are engaged in the search, distribution and placement of Indonesian workers abroad. Therefore, there is a need for legal protection for Indonesian Migrant Workers (TKI), not only while in Indonesia but also when they work in accordance with Law Number 18 of 2017 concerning the Placement and Protection of Indonesian Migrant Workers Abroad. The purpose of this study is to find out the implementation of the placement and protection of Indonesian workers abroad by Indonesian Labor Services companies and to find out the legal consequences of violations of the pre-placement, placement and post-placement periods by the Indonesian Labor Services companies. This study uses normative juridical research using qualitative methods, namely a study that aims to analyze the placement and protection of Indonesian workers abroad based on Law Number 18 of 2017. The results show that the implementation of the placement and protection of Indonesian workers abroad by Indonesian Labor Services Companies based on the condition that to work abroad, prospective/official Indonesian migrant workers must follow certain procedures, conditions and mechanisms in accordance with applicable regulations. The legal consequences for the occurrence of legal violations committed by Indonesian Labor Services Companies are from pre-placement, placement period, and post-placement. In the informal placement sector, legal consequences arise regarding requirements, and the placement period agreement sometimes does not match the data on the requirements provided and the placement agreement during the period the worker is placed.

**Keywords:** *Migrant Workers Abroad; Placement; Protection*

### **Introduction**

The 1945 Constitution, Article 27 Paragraph (2) explains that "every citizen has the right to work and a decent living for humanity". The large number of people and the narrow employment opportunities cause the high unemployment rate in Indonesia<sup>1</sup>. This causes many Indonesians to try to find work abroad, so it is not surprising that many users of labor supply agencies are looking for workers from Indonesia<sup>2</sup>. Article 1 number (1) of Law number 18 of 2017 explains that "Indonesian Migrant Workers,

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<sup>1</sup> Manulang, Sendjun H, *Pokok-Pokok Hukum Ketenagakerjaan di Indonesia*. Jakarta. Rhineka Cipta, 2001.

<sup>2</sup> Asyhadie, Zaenal, *Dasar-Dasar Hukum Perburuhan*, Jakarta: PT. Raja Grafindo Persada, 1993.

hereinafter referred to as *TKI*, are every Indonesian citizen who meets the requirements to work abroad in an employment relationship for a certain period of time by receiving wages<sup>3</sup>".

In certain cases, Indonesian Migrant Workers who want to go abroad do not fully understand the completeness of the documents required as a condition to be able to work abroad<sup>4</sup>. This can cause problems if the Indonesian Migrant Workers actually work abroad. In some cases, this will even cause Indonesian Migrant Workers to be called illegal, so they have to deal with law enforcement at the location where the Migrant Workers work.<sup>5</sup>

Observing the large number of people who are looking for workers abroad, there are many companies that are engaged in the search, distribution and placement of Indonesian workers abroad<sup>6</sup>. In general, there are several things that Indonesian Migrant Workers candidates need to prepare<sup>7</sup>. The first is the technical ability that is in accordance with the required needs, the second is the mastery of the language in which the Indonesian Migrant Workers will be placed, the third is the Indonesian Migrant Workers' understanding of the customs and habits in which the workers will be placed.<sup>8</sup>

The data for the placement and protection of Indonesian Migrant Workers from 2011 to 2016 based on data from the National Agency of Placement and Protection of Indonesian Workers (*Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia*, BNP2TKI) are as follows :

No	Year	Number of Indonesian Migrant Workers
(1)	(2)	(3)
1	2011	586.802
2	2012	494.609
3	2013	512.168
4	2014	429.872
5	2015	275.736
6	2016	234.451

Observing the fact of the movement of prospective Indonesian workers abroad, according to Article 6 Paragraph (1) of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers Abroad, states that "every Indonesian Migrant Worker candidate has the right to obtain protection in accordance with statutory regulations". In certain cases, the ignorance of Indonesian Migrant Workers regarding their rights and obligations causes them to be vulnerable to violations of the law by employers and labor suppliers who are abroad<sup>9</sup>. Examples of cases that have occurred, for example, were Indonesian Migrant Workers who were accused of theft or the existence of criminal acts of rape committed by employers<sup>10</sup>. Based on this, it appears that there is a need for legal protection for Indonesian Migrant Workers not only while in Indonesia but also during their working period. Based on the description above, the author wants to take the title **JURIDICAL STUDY OF THE PLACEMENT AND PROTECTION OF INDONESIAN MIGRANT WORKERS BASED ON LAW NUMBER 18 OF 2017**.

<sup>3</sup> Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia*, Pusat Bahasa (Edisi Keempat), Jakarta: PT. Gramedia Pustaka Utama, 2012.

<sup>4</sup> Aris, Ananta, *Liberalisasi ekspor dan Impor Tenaga Kerja Suatu Pemikiran Awal*, FE UI: Pusat Penelitian Lembaga Demografi, 1996.

<sup>5</sup> Djumadi, *Hukum Perburuhan Perjanjian Kerja*, Review Edition, PT. Radja Grafindo Persada, Jakarta, 2005, page. 217.

<sup>6</sup> Yudhosuwasono, *Metode Perencanaan Kerja Tingkat Nasional, Regional Dan Perusahaan*, Yogyakarta: Libraries, 1998.

<sup>7</sup> Majalah Tenaga Kerja, *Sistem Penempatan Tenaga Kerja Indonesia ke Luar Negeri*, Vol 37, 1999.

<sup>8</sup> *Ibid*, hlm. 224

<sup>9</sup> *Ibid*, page. 224

<sup>10</sup> Husni, Lalu, *Pengantar Hukum Ketenagakerjaan Indonesia*, Jakarta: Raja Grafindo Persada, 2003.

<sup>10</sup> Soepomo, Iman, *Hukum Perburuhan*, Jakarta: Djambatan, 1987.

## Research Methods

This research is a normative juridical research using qualitative methods<sup>11</sup>; a study that only examines secondary materials<sup>12</sup>. The analysis in this study uses a qualitative method where a normative juridical study is presented descriptively to analyze the placement and protection of Indonesian Migrant Workers abroad based on Law Number 18 of 2017<sup>13</sup>.

## Discussion

### 1. Implementation of the Placement and Protection of Indonesian Workers Abroad by Indonesian Labor Services Companies

The protection of the rights of Indonesian Migrant Workers is based on Article 27 paragraph (2), Article 28 D paragraph (1), Article 28 D paragraph (2) of the 1945 Constitution which explains that in Indonesia the right to work has priority and is protected by the constitution. Employment is closely related to the right to work which is one of the human rights that should receive legal guarantees from the state, so that all workers have the right to obtain normative rights from employers or employers, as well as obtain legal certainty and normative justice.<sup>14</sup>

The Indonesian Labor Provider Company (*PJTKI*) which is now called the Private Indonesian Migrant Worker Placement Company / Indonesian Labor Services Company (*PPTKIS*) in carrying out activities for the placement and protection of Indonesian Migrant Workers abroad must refer to Law Number 18 of 2017<sup>15</sup>. The state's obligation to guarantee and protect the rights human rights of citizens who work at home and abroad and the policy of placing workers abroad is one of the efforts of the government to fulfill its constitutional obligations in providing employment and decent income for humanity.<sup>16</sup>

The philosophical basis for the formation of Law No. 18 of 2017 is basically based on the concept of work as a human right that must be respected and guaranteed to be enforced, but empirical conditions show concern that Indonesian Migrant Workers are often used as objects of human trafficking, slavery, forced labor, victims of violence, acts of arbitrariness, crimes against human dignity, and other treatments that violate human rights<sup>17</sup>.

Furthermore, according to Article 1 section (11) of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers Abroad, Indonesian Labor Services Company is a legal entity that has had written permission from the Government to provide services for the placement of Indonesian Migrant Workers abroad. Indonesian Labor Services Company (*PPTKIS*) according to the supervision manual for the Indonesian Labor Service Company is a business entity in the form of a Limited Liability Company that has an Indonesian Workers Placement Operator Permit (*SIPPTKI*) to carry out employment service activities at home and abroad. The operational activities carried out by *PPTKIS* are as follows:

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<sup>11</sup> Suharsini A, Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktik*, Jakarta: PT. Bina Aksara, 1989.

<sup>12</sup> Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Jakarta: Rajawali Pers, 2001.

<sup>13</sup> Mestika Zed, *Metode Penelitian Kepustakaan*, Jakarta: Yayasan Obor Indonesia, 2000.

<sup>14</sup> Niru Anita Sinaga, "Analisa Perlindungan Hukum Tenaga Kerja Dalam Pelaksanaan PHK", *Jurnal Ilmiah Hukum Dirgantara – Faculty of Law, University of Suryadarma*, Volume 5 Number 1, 2014. [INDONESIAN].

<sup>15</sup> Depnaker, *Pedoman Penempatan Kerja Ke Luar Negeri*, Jakarta: Dirjen Pembinaan Penempatan Tenaga Kerja, 1994.

<sup>16</sup> Article 27 paragraph 2 of the 1945 Constitution

<sup>17</sup> M. Marwan dan Jimmy P, *Kamus Hukum*, Surabaya: Reality Publisher, Surabaya, 2009.

## 1) Pre-Placement:

Indonesian Labor Services Company before carrying out pre-placement activities, firstly conducts promotions and marketing abroad to find jobs needed by job seekers, both in the informal/formal sector<sup>18</sup>. After receiving a job order from the overseas service user, which was legalized by the Indonesian Embassy, then the Indonesian Labor Services Company took care of a recruitment permit referring to Law Number 18 of 2017.

Article 53 paragraphs (5) explain the procedure for obtaining a Practice License (SIP) from the Minister, because SIP is one of the requirements for the Indonesian Labor Services Company to carry out pre-placement recruitment activities. Then the company distributes it to branch offices in the recruitment area for prospective Indonesian workers. To administer a Practice License in the new provincial/city/district Labor and Transmigration Office area, the Indonesian Labor Services Company carries out the recruitment and selection of prospective Indonesian workers who will be placed abroad.

The pre-placement preparation of Indonesian workers carried out by the Indonesian Labor Services Company are as follows<sup>19</sup>:

- a. Vacancies, types and descriptions of available jobs and job requirements
- b. Location and work environment
- c. Requirements for prospective Indonesian migrant workers
- d. Conditions of conditions which include salary, work time, rest/leave, overtime protection guarantees and other facilities
- e. Socio-cultural laws and regulations, the situation and condition of the destination country
- f. Procedure for recruitment
- g. Complete documents for placement of Indonesian migrant workers
- h. The costs charged to prospective Indonesian migrant workers in this case are not borne by the company or service users and the payment mechanism
- i. The rights and obligations of prospective Indonesian migrant workers, procedures for protection for Indonesian migrant workers and the risks that may be faced
- j. Time, place and registration terms.

Later, the Indonesian Labor Services Company will conducts<sup>20</sup>:

1. Gathering the requirements for prospective Indonesian migrant workers in the form of Family Cards, Identity Cards, Birth Certificates, Graduation Certificates and parental/guardian permission letters.
2. Psychological examination of prospective Indonesian migrant workers
3. Medical check-up.

Once all of these requirements have been met, the Indonesian Labor Services Company will proceed to :

- a. Passport Management
- b. Providing education and training
- c. Management of work visas in the destination country of placement

The handling of authority for the placement and protection of Indonesian migrant workers services must be guided by Law Number 23 of 2014. This means that the government functions to formulate standards, guidelines, norms, and criteria that are embodied in the form of Minimum Service

<sup>18</sup> Wijayanti, Astri, *Hukum Ketenagakerjaan Pasca Reformasi*, Jakarta: Penerbit Sinar Grafika, 2009.

<sup>19</sup> Rusli, Hardijan, *Hukum Ketenagakerjaan*. Jakarta: Ghalia Indonesia, 2003.

<sup>20</sup> Rusli, Hardijan, *Hukum Ketenagakerjaan Berdasarkan Undang-Undang No.13 Tahun 2003 tentang Ketenagakerjaan dan Peraturan Terkait Lainnya, Edisi Kedua*, Bogor: Ghalia Indonesia, 2004.

Standards and discuss them with the Minister of Home Affairs and other stakeholders, including the National Agency of Placement and Protection of Indonesian Workers<sup>21</sup>. Article 59 paragraph (4) of Law Number 18 of 2017 requires Labor Services Companies to make and sign placement agreements with job seekers who have been declared to meet administrative requirements in the recruitment process<sup>22</sup>. In this case, the role of the Regency/City Government, through the agency responsible for the labor services sector, is to<sup>23</sup>:

- a) Knowing the work placement agreement;
- b) Receive a placement agreement report from Labor Services Companies;
- c) Witness the signing of the work agreement;

Provisions regarding employment agreements are very necessary because many prospective Indonesian migrant workers do not have a work agreement which they must study before pre-placement<sup>24</sup>.

Any party, whether individual or institution, will not be trapped in the problem of authority if the two laws and implementing rules are correctly understood<sup>25</sup>. Because whoever is the authority holder is not the main measure, but who takes the biggest role in guaranteeing the rights of Indonesian migrant workers<sup>26</sup>.

## 2) During the Placement Period

Indonesian Labor Services Companies provide protection during the placement of Indonesian migrant workers by making Overseas Employment Cards, with the following conditions<sup>27</sup>:

- a. placement agreement
- b. work agreement
- c. work visa
- d. labor insurance
- e. debriefing at the end of departure
- f. pay a coaching fund of 15\$

The government and Indonesian Labor Services Companies must synergize with each other in protecting Indonesian migrant workers who are placed abroad. This is because the government is a supervisor in the implementation of the placement and protection program for workers carried out by Indonesian Labor Services Companies that are licensed by the minister. According to Article 59 of Law Number 18 of 2017 that companies that will be implementing the placement of Indonesian Workers as referred to must obtain written permission in the form of an Indonesian Workers Placement Operator Permit from the Minister. The obligation to carry out legal protection during the period of placement abroad is manifested in the form of:

- a. Providing legal assistance in accordance with the provisions of the laws and regulations in the destination country as well as international laws and customs.
- b. Defending the fulfillment of rights in accordance with work agreements and or offers of legislation in the country Indonesian migrant workers are placed<sup>28</sup>.

<sup>21</sup> Khakim, Abdul, *Pengantar Hukum Ketenagakerjaan Indonesia Berdasarkan Undang-Undang Nomor 13 Tahun 2003*, Bandung : PT. Citra Aditya Bakti, 2003.

<sup>22</sup> Subekti, *Aneka Perjanjian*, Bandung: Penerbit Alumni, 1977

<sup>23</sup> Arief, Surayin, *Hukum Perburuhan Indonesia*, Jakarta : Raja Graffindo Perkasa, 2004.

<sup>24</sup> Soedjono, Wiwoho, *Hukum Perjanjian Kerja*, Jakarta: Rineka Cipta, 1991.

<sup>25</sup> Ridwan, Halim dan Gultom, Sri Subiandini, *Sari Hukum Tenaga Kerja (buruh) Aktual*, Jakarta: Pradnya Paramita, 2001.

<sup>26</sup> Kasidin, Koko, *Perjanjian Kerja*, Jakarta: Penerbit Bumi Aksara, 1999.

<sup>27</sup> Prodjodikoro, Wirjono, *Pokok-Pokok Hukum Perjanjian Beserta Perkembangannya*, Liberty, Yogyakarta, 2000.

<sup>28</sup> Muhammad, Abdulkadir, *Hukum Perikatan*, Bandung: Penerbit Alumni, 1982.

Every prospective Indonesian migrant worker who works abroad, either individually or who is placed by the Indonesian Labor Services Company as the placement executor, must participate in the development and protection program for Indonesian migrant workers.

### 3) Post-Placement

After placement, the forms of protection for Indonesian migrant workers that can be provided by Labor Services Companies include solving problems, defending the fulfillment of the rights of Indonesian migrant workers, restoring the dignity (physical and psychological) of workers and managing the return of workers. Labor Services Companies must provide protection because after post placement, labor rights such as insurance rights for a 30-day post-return period still exist. So that if there is a problem, they still get the right of coverage for the events experienced by the Indonesian migrant workers.

## 2. Legal Consequences for Violations of Pre-placement, Placement, and Post-Placement Period Conducted by Indonesian Labor Services Companies.

Law Number **18** of **2017** only contains **8** articles that do not fully regulate protection, but only regulates protection at the time of placement, while pre-placement and post-placement protection are not clearly regulated. Indeed, Article 7 letter e has explained that it is the government's obligation to provide protection to Indonesian migrant workers starting from pre-placement, placement, and post-placement period. But in reality what happened, Indonesian migrant workers abroad experienced various problems, such as being the object of human trafficking, slavery and forced labor, victims of violence, crimes against human dignity and other treatments including human rights violations.

In addition, there are legal consequences experienced by Indonesian Labor Services Companies, namely at the time of recruitment there are always conflicts with law enforcement. The legal consequences include the problem of requirements for prospective workers because they sometimes conflict with Law Number 18 of 2017 Article 18 paragraph (1) letter a, which is at least 18 (eighteen) years except for prospective Indonesian migrant workers who will be placed for individual users aged 21 (twenty one) years. The age barrier that sometimes causes violations of the law can be overcome with applicable regulations and coordination between Indonesian Labor Services Companies and law enforcement officials. The legal consequences that arise during the placement period are problems between Indonesian Labor Companies and service users or employers against formal or informal workers which are always violated by informal and formal service users in work agreements.

Administrative sanctions in Law Number **18** of **2017** concerning the Placement and Protection of Indonesian Migrant Workers abroad, in Article **37** states that the provisions regarding administrative sanctions in the form of written warnings, temporary suspension of part or all of the business activities of placing Indonesian migrant workers, revocation of permits, cancellation of prospective departures Indonesian migrant workers, and/or repatriation of Indonesian migrant workers from abroad at their own expense, are regulated in a Ministerial Regulation. Because the Ministerial Regulation has not yet been made, in the Decree of the Minister of Manpower and Transmigration No. Kep-104A/MEN/2002 Regarding the Placement of Indonesian Workers Abroad, Chapter VIII concerning Sanctions is an administrative sanction to a Private Employment Placement Company in the form of a written warning, temporary suspension of activities, and cancellation/revocation of the Business License of Indonesian Labor Services Company. Administrative sanctions to prospective/official Indonesian migrant workers in the form of cancellation of departure of prospective Indonesian migrant workers, repatriation of Indonesian migrant workers from abroad at their own expense, prohibition of working abroad or a black list, and refund of costs incurred by the executor of the placement in accordance with applicable regulations.

1. Written warnings were dropped on Indonesian Labor Companies when:

- a. Not carrying out placements by implementing an online information system; or
  - b. Not putting up the company nameplate; or
  - c. Not reporting a change in office address, or a change in the Board of Commissioners and or the Board of Directors; or
  - d. Not conducting placement activities for 6 (six) months; or
  - e. Not reporting the existence of the Indonesian Labor Services Companies abroad (PERWALU); or
  - f. Not registering Business Partners and or Users at the RI Representative in the local country; or
  - g. Does not report the area of the destination country chosen for the placement of Indonesian migrant workers who are affected by the Allocation Control of Indonesian migrant workers; or
  - h. Not reporting the cooperation agreement with the Job Training Center or other Training Institutions; or
  - i. Not notifying the departure of Indonesian migrant workers to Users, Business Partners, Representatives of the Republic of Indonesia and Indonesian Labor Services Companies abroad; or
  - j. Not reporting Indonesian migrant workers who are sick, have an accident or die during placement; or
  - k. Not reporting the return of Indonesian migrant workers; or
- l. Indonesian Labor Services Companies that violate the above may be subject to administrative sanctions in the form of a first written warning. If within 7 (seven) working days after the first written warning is imposed, the company has not yet resolved the problem or made a mistake again, it is subject to a second written warning. If within 7 (seven) working days after the second written warning is imposed, the labor services company has not yet resolved the problem or made a mistake again, it is subject to a third written warning. If a written warning has been imposed for 3 (three) times within a period of 1 (one) year and made a mistake again, it will be subject to a temporary suspension of activities.

2. Temporary suspension is imposed on Indonesian Labor Services Companies if:

- a. does not fulfill the obligation to re-deposit the disbursed deposits; or
- b. give authority based on its possession to other parties to carry out activities for placing Indonesian migrant workers;
- c. Branch Office recruits through institutions or individuals who do not have the authority or permit as recruiters or placement of workers; or
- d. Branch Offices conduct activities directly with Business Partners and or Users; or
- e. Placing Indonesian migrant workers outside the area of the chosen placement destination country; or
- f. Not legalizing the placement cooperation agreement; or
- g. Not legalizing the request letter for Indonesian migrant workers (job order) to the Indonesian Representative in the local country; or
- h. Placing Indonesian Migrant Workers not in accordance with the work agreement or not legalizing the work agreement; or
- i. Not entering into a placement agreement with prospective workers as referred to in Article 33 paragraph (1); or
- j. Recruit, register and gather prospective workers without having a deployment permit; or
- k. Do not arrange for additional medical tests for prospective workers if the destination country requires it; or
- l. Does not have a Job Training Center; or
- m. Placing Indonesian Migrant Workers in Control of Manpower allocation for Labor Services Companies that do not yet have Job Training Centers; or
- n. Providing dormitories/accommodations that do not meet the requirements; or
- o. Not providing Indonesian Migrant Workers with an insurance program; or

- p. Not carrying out the Final Departure Briefing; or
- q. Does not report the realization of the placement of Indonesian Migrant Workers every month to the Regency/City Agencies and the Agency of Placement and Protection of Indonesian Workers in the area of origin of the workers and the Director General by using a form; or
- r. Charges placement fee installments exceeding 25% of the salary received by Indonesian Migrant Workers every month; or
- s. Withholding the wages of Indonesian Migrant Workers other than for the installment payment of placement fees; or
- t. Not resolving disputes or problems experienced by Indonesian Migrant Workers; or
- u. Not taking care of Indonesian Migrant Workers who are sick, have an accident or die abroad; or
- v. Not completing the return of Indonesian Migrant Workers; or
- w. Not managing and signing the extension of the work agreement.;

Sanctions for temporary suspension of activities are imposed on Indonesian Labor Services Companies for a period of at least 1 (one) month and a maximum of 3 (three) months. In the decision letter for the temporary suspension of activities. The Director General determines the obligations that must be fulfilled by Indonesian Labor Services Companies in the event that the suspension period has ended and the company has not yet carried out its obligations properly. The Minister may revoke the Business License of Indonesian Labor Services Company which is subject to a temporary suspension, must be responsible for the departure of prospective Indonesian Migrant Workers who already have complete documents and work visas. During the suspension of activities, Indonesian Labor Services Companies are prohibited from recruiting/placing Indonesian Migrant Workers.

3. The Minister may impose administrative sanctions in the form of revocation of the Business License of Indonesian Labor Services Companies if: :
  - a. Proven to have documents that do not meet the requirements/legal defects; or
  - b. Disbursement of guarantee fund deposits in violation of the provisions; or
  - c. Conducting placement activities for Indonesian Migrant Workers prior to the re-fulfillment of the disbursed deposit value; or
  - d. Placing Indonesian Migrant Workers without documents; or
  - e. Replace or amend the signed work agreement; or
  - f. Placing Indonesian Migrant Workers in jobs and places that violate decency or endanger the safety and health of the workers; or
  - g. Not dispatching prospective Indonesian Migrant Workers within the time limit specified in the placement agreement; or
  - h. Does not provide hostel/accommodation; or
  - i. Memberangkatkan Indonesian Migrant Workers abroad without Overseas Employment Cards; or
  - j. Burdening the placement costs of Indonesian Migrant Workers in excess of the provisions; or
  - k. Charging company fees to Indonesian Migrant Workers in excess of 1 (one) month's salary; or
- l. Does not provide protection and defense of the rights and interests of Indonesian Migrant Workers abroad.

In addition to the above violations, Indonesian Labor Services Companies that are proven to be involved in and or commit acts of falsifying Indonesian Migrant Workers documents or other documents related to the placement of Indonesian Migrant Workers. The Minister may impose sanctions on the revocation of the Business License. In the event that the Business License of Indonesian Labor Services Company is revoked, the company is obliged to :

- a. Return all fees received from prospective Indonesian Migrant Workers who have not been placed in accordance with the placement agreement;

- b. Departing prospective Indonesian Migrant Workers who have met the requirements and have complete documents and work visas; and
- c. Resolving problems experienced by Indonesian Migrant Workers in the destination country of placement until the expiration of the last Indonesian Migrant Workers work agreement departs for a period of 2 (two) years.

4. Prospective Indonesian Migrant Workers may have their departure abroad canceled if:

- a. Do falsification of documents;
- b. Make trouble in the dormitory and
- c. Committing other crimes.

Beside that Indonesian Migrant Workers are repatriated at their own expense if:

- a. Violating labor regulations in the country of placement destination;
- b. Violating the provisions in the work agreement;
- c. Violating the provisions in the placement agreement; and
- d. Committing an act that is punishable by a criminal penalty in the destination country of placement.

Indonesian Migrant Workers are prohibited from working abroad again / blacklisted if they are sent home for committing the acts mentioned above. Criminal provisions for Indonesian Labor Services Companies are regulated in Chapter XIII Articles 79 to 85 of Law Number 18 of 2017.

Article 79:

- (1) Sentenced to imprisonment for a minimum of 2 (two) years and a maximum of 10 (ten) years and/or a fine of at least Rp. 2,000,000,000.00 (two billion rupiahs) and a maximum of Rp. 15,000,000,000.00 (fifteen billion rupiahs), every person who:
  - a. Placing Indonesian citizens to work abroad as referred to in Article 4;
  - b. Placing Indonesian Migrant Workers without a permit as referred to in Article 12; or
  - c. Placing prospective Indonesian Migrant Workers in positions or places of work that are contrary to human values and moral norms as referred to in Article 30.
- (2) The crime as referred to in paragraph (1) is a criminal offense.

Article 85:

- (1) Sentenced to imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and/or a fine of at least Rp. 1,000,000,000.00 (one billion rupiahs) and a maximum of Rp. 5,000,000,000.00 (five billion rupiahs), every person who:
  - a. Transferring or distracting the Indonesian Workers Placement Operator Permit as referred to in Article 19;
  - b. Transferring or distracting the Business License to another party as referred to in Article 33;
  - c. Recruit prospective Indonesian Migrant Workers who do not meet the requirements as referred to in Article 35;
  - d. Placing Indonesian Migrant Workers who do not pass the work competency test as referred to in Article 45;
  - e. Placing Indonesian Migrant Workers not meeting the health and psychological requirements as referred to in Article 50;
  - f. Placing prospective/official Indonesian Migrant Workers who do not have the documents as referred to in Article 51;

- g. Placing Indonesian Migrant Workers abroad without the protection of the insurance program as referred to in Article 68; or
- h. Treating prospective Indonesian Migrant Workers unfairly and inhumanely during the period in the shelter as referred to in Article 70 paragraph (3).

(2) The crime as referred to in paragraph (1) is a criminal offense.

#### Article 84:

- (1) Sentenced to imprisonment for a minimum of 1 (one) month and a maximum of 1 (one) year and/or a fine of at least Rp. 100,000,000.00 (one hundred million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah), every person who:
  - a. placing Indonesian Migrant Workers not through Business Partners as required in Article 24;
  - b. placing Indonesian Migrant Workers abroad for the benefit of their own company without written permission from the Minister as referred to in
  - c. employ prospective Indonesian Migrant Workers who are currently attending education and training;
  - d. placing Indonesian Migrant Workers abroad who do not have Overseas Employment Cards; or
  - e. not sending Indonesian Migrant Workers abroad who have met the requirements for completeness of documents
- (2) The crime as referred to in paragraph (1) is a criminal offense.

Based on the above provisions, it can be seen that the criminal acts as mentioned above are in the form of crimes and violations. Crimes as referred to in Articles Violations in Law Number 18 of 2017 are directed against any person, especially against Indonesian Labor Services Companies as the placement executors of Indonesian Migrant Workers abroad.

With the form of special nominal criminal sanctions in accordance with the provisions, (a) imprisonment for a minimum of 2 years, and a maximum special maximum of 10 years and a fine of at least 2 billion rupiahs and a maximum of 15 billion rupiahs (Article 79), (b) Imprisonment a minimum of 1 year, a maximum of 5 years and a minimum fine of 1 billion rupiahs and a maximum of 5 billion rupiahs (Article 85), and (c) a minimum of 1 month imprisonment and a maximum of 1 year and a minimum fine of 100 million rupiahs and a maximum of 1 billion rupiahs (Article 84), it is hoped that it will be able to prevent the occurrence of criminal acts in the context of protecting Indonesian Migrant Workers abroad.

In the pre-placement process, there may be defaults either by Indonesian Labor Services Companies or by prospective Indonesian Migrant Workers, including<sup>29</sup>:

- 1. Default regarding cost, time, type of work, and place of work or country of placement destination;
- 2. Default regarding placement/management of placement documents;
- 3. Adverse treatment in the pre-placement process;

During placement period:

- a. Default regarding placement fee reimbursement;
- b. Default regarding the implementation period of the work agreement;

During placement period:

<sup>29</sup> Prints, Darwan, *Hukum Ketenagakerjaan Indonesia*, Bandung: PT. Citra Aditya Bakti, 2000.

1. Default regarding the management of insurance benefits;
2. Default regarding repatriation services;
3. Default regarding placement fee reimbursement;
4. Default regarding the return of documents for placement.

## Conclusion

implementation of the placement and protection of Indonesian workers abroad by Indonesian labor services companies (former *PJTKI*, now called *PPTKIS*) to work abroad, prospective / official Indonesian Migrant Workers must follow certain procedures and conditions and mechanisms in accordance with the applicable provisions in Law Number 18 of 2017.

The legal consequences for the occurrence of legal violations committed by Indonesian Labor Services Companies are from pre-placement, placement period, and until post-placement period. In the informal placement sector, legal consequences arise regarding requirements, and the placement period agreement sometimes does not match the data on the requirements provided and the placement agreement when the worker is placed. Administrative sanctions apply in accordance with Law Number 18 of 2017.

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