

The Indonesian Government's Efforts to Protect Indonesian Migrant Workers Threatened with the Death Penalty Abroad

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ABSTRACT

This study will look at the protection provided by the law for Indonesian workers who are threatened with the death sentence overseas and the steps taken by the administration to provide such protection. migrant workers from Indonesia or Indonesian Migrant Workers are parties who are very vulnerable to indecent treatment, physical and psychological violence, intimidation, discrimination, and injustice. Collecting data in research using normative study. Sexual violence experienced by female migrant workers or PMI is often the beginning of cases of murder committed by these workers in self-defence. In the end, cases like this in local courts sentence TKI or PMI with the death penalty. This study concludes that the concept of legal protection carried out by the government in recent years can reduce the number of TKI or PMI who are subject to capital punishment because the victims' families forgive them.

KEYWORDS

Government efforts; protect; workforce; death penalty; overseas

INTRODUCTION

Indonesian Migrant Workers (TKI) are a significant resource and one of the moving parts of the economy. This is evident by the fact that Indonesia still has a high unemployment rate and little job prospects available. One way to lower the unemployment rate in the nation is through government policies and initiatives that support sending Indonesian migrant workers abroad, by taking advantage of job opportunities abroad (Hidayat, 2017). Indonesian Migrant Workers have a very good nickname for the Indonesian state, namely foreign exchange heroes. Ironically, this good nickname is inversely proportional to some of the conditions of migrant workers working abroad who are often harmed, tortured, wages are not paid, and not even the least bit involved in legal cases that result in the death penalty.

The story of Ruyati, a legal immigrant from Bekasi, demonstrates this. She was convicted in 2008 and sentenced to death on June 17, 2011, after being charged with the murder of her female employer in Mecca, Saudi Arabia, in 2009. Sumiati, a legitimate TKI from West Nusa Tenggara who has only been employed in Saudi Arabia as a TKI through official means, was subjected to torture on November 18, 2010, by her employer. Ten days after the case was made public, the sentence against her employer was put into effect. The suspect was eventually released because the evidence was weak. There is also the claim that Komalasari, a TKI from Cianjur, was tortured by his employer before he was found dead on November 5, 2010, in Saudi Arabia. Only after a year had passed since his death was the body returned to Indonesia. Darsem, a legitimate TKI from Subang, was also convicted of murdering his boss in 2007, and he was given the death penalty. Darsem was granted a pardon in 2011, however it came with the requirement that he pay compensation

totaling two million riyals, or around 4.7 billion rupiahs. Similar circumstances occurred with Satinah, a registered migrant worker from Semarang who departed for Saudi Arabia after September 2006. She turned herself in to the neighborhood police after accidentally hitting her employer. Then, in 2009, he was found guilty of murdering his employer with intent and given the death penalty. In 2011, the Ministry of Foreign Affairs engaged in discussions and paid 7 million riyals, or roughly 21 billion rupiahs, to get a pardon decision.

Some of these cases of migrant workers can be said to be victims of violence committed by their employers. Due to the urgency of the situation, the migrant worker defended himself against his employer's attack. The Indonesian state must provide legal protection to every citizen, both at home and abroad. This is done through a mandate in the 4th paragraph of the 1945 Constitution, which states "to establish an Indonesian provincial government to protect all Indonesians and all Indonesian bloodshed". Therefore, the Indonesian government's efforts to provide legal protection to Indonesian workers facing the death penalty abroad should be considered. It is also important to see how the efforts made by the Indonesian government when a migrant worker is involved in a legal case where he works.

RESEARCH METHODS

Data collection in studies using prescriptive methods. Normative legal research methods are the process of finding legal principles, rule of law, or jurisprudence to explain how problems should be solved (Jonaedi et al., 2018). Using secondary data, the study explores legal protections for Indonesian workers facing the death penalty abroad and applicable articles where the government seeks to protect Indonesian workers abroad. Focus on finding. For this study, we will collect data from multiple journals and books and seek other references that may be relevant to the research question.

RESULTS AND DISCUSSION

Legal Protection for Indonesian Migrant Workers Overseas

Pursuant to Article 1 (1) of Law No. 39 (UU PPTKILN) on the Retention and Protection of Indonesian Migrant Workers Abroad, as amended later became Law No. 18 (2017) on the Protection of Indonesian Migrant Workers. I was. A TKI Indonesian worker refers to an Indonesian citizen who, by receiving wages, meets the requirements to work abroad in an employment relationship for a specified period of time. The Ministry of Manpower and Transmigration also issued Regulations for Indonesian Migrant Workers, Minister of Manpower and Transmigration Decree No. Kep104A/Men/2002 on Sending Indonesian Migrant Workers Overseas. According to this decision, TKIs are both men and women who work abroad for a period of time under an employment contract as part of the TKI placement process.

After several years since the enactment of Law Number 39 of 2004, Efforts to protect migrant workers have proven suboptimal. Problems and incidents involving migrant workers abroad, such as rape, sexual harassment, violence, kidnapping, and murder by employers against migrant workers (especially migrant workers), are still unresolved. Non-payment of salaries due to migrant workers. In fact, this was not purely due to the government's mistake but also the lack of awareness of the TKI who violated the rules or violations committed by the PJTKI (Probosiwi, 2015).

International law views the protection of citizens of other countries by a country in its territory as an obligation. One form of this protection is the provision of official

notifications to diplomatic representatives in the country. This notice is intended to inform the diplomatic representatives of the country concerned that some of its citizens have problems such as: , citizens in accidents, citizens in need of guardianship, citizens who have committed crimes, citizens who have died, etc. The notification given must be done without any delay. The obligation regarding official notification is written in articles 36-37 of the 1963 Vienna Convention (Said, 2016).

In International Law there is an obligation for a state to protect other citizens who are in its territory legally, the state is a party that is obliged to protect, guarantee and fulfil (Sujatmojo, 2015). A country is obliged to protect its citizens and sue other countries if a foreign country treats its citizens against the law. In this case, if a country claims another country, the claim becomes the right of the state on behalf of its citizens (Adolf, 2015)

States are obliged to ensure and protect the human rights of their citizens working at home and abroad, based on the principles of equality, democracy, social justice, gender equality and justice, anti-discrimination, and combating trafficking protection. In this case, the placement of Indonesian migrant workers or migrant workers in the country is an attempt to achieve equal rights and opportunities for all citizens to have decent jobs and incomes, and its implementation is a dignity, human It is done with respect for the dignity of human beings. Rights and Protection Rights, Equal Distribution of Employment Opportunities and Provision of Labor in Accordance with Citizen Needs (Prints, 2000; Wantu et al., 2021).

Seeing the many legal problems that befell TKI/Indonesian Migrant Workers (PMI), one of the functions of Indonesian Representatives abroad is to protect PMI. In this case, one of the functions of the Indonesian Representative abroad is to protect PMI abroad based on the national laws of the accredited country as well as international laws and customs. This protection function is one of the oldest functions carried out by missionary missions around the world. Once the urgency of the protection function carried out by a consul, Oppenheim said that the right of a consul to protect his citizens was "a very important task of consul" (Wardoyo, 2010)

Laws and Regulations The protective functions exercised by agents are contained in Article 19 (b) of Law No. 37 of 1999 on External Relations. Comply with national laws and regulations as well as international laws and practices". Article 31 of Law No. 37 of 1999 on Foreign Relations states: When seeking repatriation to Indonesia." at state expense." In international law, 2 (two) types of protection can be provided by representative missions and countries, namely diplomatic protection and consular protection. There are at least 3 differences between the two types of protection, namely:

1. The limitations contained in consular activities when compared to diplomatic activities based on the 1963 Vienna Convention.
2. The difference in the level of representation between consular assistance and diplomatic protection.
3. The preventive nature of consular protection compared to the remedial nature of diplomatic protection (Wardoyo, 2010)

At least between diplomatic and consular representatives, there are some similarities in terms of the function of implementing tasks. One of them is protecting the interests of the sending country in the receiving country. This function makes diplomatic officials responsible for protecting Indonesian citizens who are involved in legal cases in the accredited country. There is a difference between the protective functions carried out by the two representatives when viewed from the protected object (Kabalmay, 2019).

The protective functions exercised by diplomatic representatives are more general, as outlined in Article 3(1)b of the 1961 Vienna Convention. "To protect the interests of the

nationals of the sending and receiving countries, within the limits of international law." The consular representative's protective function is specific to a natural or legal person of an accredited country. It was included in the Vienna Convention of 1963 and later ratified by the Republic of Indonesia in Law No. 2 of 1982. Article 5(a) of the Convention reads, "To the extent permitted by international law, the protection of the natural and lawful interests of the sending State and its nationals."

The Indonesian Government's Efforts to Protect Indonesian Migrant Workers Threatened with the Death Penalty Abroad

According to Indonesian Ministry of Foreign Affairs data, between 2008 and 2021, 583 Indonesian migrant workers were at risk of death in seven host countries. A total of 392 cases were exempted from the death penalty, 188 cases were still pending trial, and 6 cases were executed. Malaysia and Saudi Arabia are her two host countries with the highest number of death penalty cases facing Indonesian migrant workers. 72% of migrant workers facing the death penalty in Malaysia and Saudi Arabia are women, according to Migrant Care findings, with a composition of 66% of cases related to murder charges, 14% related to drug courier charges and 14% related to witchcraft charges (Mawarti, 2017)

The large number of TKI or PMI who have been executed or are facing the death penalty, of course, demands the government's efforts to free or protect these TKI or PMI. In Article 21 paragraph (1) of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, it is stated that the implementation of protection for PMI while working includes:

1. Data collection or registration by the labour attaché or appointed foreign service official.
2. Monitoring and evaluation of employers, jobs and working conditions.

Protection as defined by Minister of Foreign Affairs No. 05/2018 is based on the following principles:

First, prioritize the involvement of responsible and/or empowered parties through legal and regulatory provisions. Second, not to bear criminal and/or civil liability of Indonesian citizens. Third, by statutory provisions, local state laws, and international law and practice (Dana et al., 2022). Efforts to protect Indonesian citizens abroad by representatives of the Republic of Indonesia are put forward using approaches including:

1. Legal approach in the form of mediation and conciliation, legal consultations, and lawyers.
2. A humanitarian approach in the form of routine visits for consultations, provision of initial assistance, spiritual assistance, health care, shelter, repatriation of Indonesian citizens to Indonesia (Repatriation) and assistance with repatriation funds.
3. Diplomatic approaches such as inter-governmental, person-to-person diplomacy as was done between the perpetrator and the victim's family, diplomacy between the government and non-governmental organizations, government cooperation with international organizations and so on (BPKKLN, 2015)

The legal steps taken by the Government of Indonesia in the release of these migrant workers are in the form:

1. Appointment of several lawyers to provide legal assistance to the person concerned and provide assistance in every trial.
2. Attended trials before sentencing four times and after sentencing 16 times.

3. Conducted direct investigations and follow-up of cases to other relevant law enforcement agencies, such as the police, prosecutors, and the local mayor's office 16 times.
4. Submission of Judicial Review to the Court of Appeal 3 times (Dana, et al., 2022)

Under international law, both sending and receiving countries are obliged to provide consular assistance. Access to consular assistance is an important protection that should be afforded to those facing the death penalty abroad. Pursuant to Article 36 of the Vienna Convention on Consular Relations and Article 16(7) of the United Nations International Convention for the Protection of the Rights of All Migrant Workers and Their Families (the "Migrant Workers Convention"), the receiving State: Inform all foreign detainees of their rights, inform consulates of their detention, and take prompt action to contact consular representatives (Syafrizal et al., 2022).

The International Court of Justice shall be entitled to notice and consular assistance as soon as the person is found to be a foreigner or there are indications that the person may be a foreigner. said. In addition, the right to consular assistance as provided for in the Vienna Convention is part of the right to a fair trial. Therefore, the failure of a host State to promptly notify an alien in custody of his right to consular assistance in a death penalty case violates the right to a fair trial and right to life, and is a violation of Article 6 and Article 6 of the Constitution. It is a violation of Article 14. ICCPR.

Indonesia is a good example of how good consular assistance can affect a sending country. The 2011 decapitation law against Saudi Arabia's Ruyati Binti Sapbi was carried out without notifying Indonesian authorities, and the Indonesian Ministry of Foreign Affairs issued legal aid to Indonesia after a lawsuit that did not give the accused access to a lawyer. I was urged to establish protection. Unit Overseas to protect Indonesian citizens prosecuted abroad (Hariyadi, 2023; Purba, et al., 2019). The unit finds and funds detainees' attorneys and interpreters and works to obtain amnesty at the highest level. After the unit visited key destination countries in the Middle East, Indonesia sent several lawyers to Indonesian embassies in several countries to assist migrant workers facing serious legal problems abroad. was dispatched.

Efforts to protect Indonesian migrant workers were initiated by the Coordinating Body for Indonesian Migrant Workers' Housing on 16 April 1999 through Presidential Decree No. 29 of 1999, but the Government Enacted Law No. 39 of 2004 on Housing and Protection of Indonesians. overseas migrant workers. On the other hand, the oversight of her TKI deployment and protection implementation abroad is done by the department responsible for government, provincial and county/city officials. Authorize the Social Work and Migration Board (Dinsosnakertrans) under the provisions of Articles 10 and 26 (1) of Law No. 39 of 2004 on the Housing and Protection of Indonesian Migrants to protect migrant workers in Indonesia. Overseas Workers Under Established Agencies Overseas TKI consists of governments, implementing private TKI placements, and corporations for corporate interests.

The problem experienced by migrant workers abroad basically lies in the problem of protection by this country for its citizens abroad. TKI protection which includes protection from pre-placement, during placement and after placement, has not been implemented optimally. The Pre-Placement Period includes the socialization function of recruiting prospective Indonesian Migrant Workers which is not implemented optimally, resulting in low readiness of Indonesian Migrant Workers. Generally, prospective TKIs with low education are unable to receive training materials and Final Departure Briefing (PAP), as a result, they do not understand their rights and obligations while being TKIs.

Based on the above arguments, the government must make improvements related to sending migrant workers or PMI abroad. The first improvement is to educate future TKIs or PMIs about their rights and responsibilities. This is because TKI or PMI is often the biggest problem faced. Cases of unpaid wages for years, always recur, but so far no solution has been found. The second improvement is related to PJTKI who are not responsible when the TKI or PMI is abroad. This means that the government needs to monitor the performance of PJTKI, which often ignores the TKI or PMI they have sent. The third improvement is the need for the government to intervene to see the track record of prospective TKI or PMI employers for workers as household assistants, especially placements in the Middle East. It is undeniable that cases of rape of migrant workers or female migrant workers occur in Middle Eastern countries. This is because there are still many Middle Eastern people's perceptions that female household assistants are the same as slaves during the old jahiliyyah era so that they can be treated unfairly and outside the scope of work of the TKI or PMI. In this regard, potential employers and local governments need assurance that migrant workers and PMIs will not be enslaved.

These various improvements certainly require a joint agreement between governments, so that a common perception is formed regarding the placement of Indonesian Migrant Workers or PMI working abroad. The government, as the protector of its citizens, is not only the recipient of foreign exchange from the placement of TKI or PMI but also must provide maximum protection for the TKI or PMI. Cases of TKIs and PMIs being sentenced to death or being sentenced to death in host countries are often driven by sexual crimes and combating torture. Of course, with this alibi, TKI or PMI who are dealing with the law must be accompanied and protected by representatives of both diplomats and consular officers in the receiving country.

CONCLUSION

The research concludes that cases of many TKI or PMI who are sentenced to death or threatened with the death penalty abroad indicate that there is something that is not optimal in the handling and placement of these TKI or PMI. The government should be more active in protecting and providing maximum assistance to TKI or PMI working abroad. Another factor of concern is the number of cases facing the death penalty for TKI or PMI due to the low potential TKI or PMI formation, leading to the risk of being easily duped into the will of the other party. That's it. Another problem is the lack of understanding of the rules and requirements for working abroad.

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