CRIMINAL LAW POLICY IN PLACEMENT AND PROTECTION AGAINST INDONESIAN MIGRANT WORKERS ABROAD

Agus Triyanto
PPTKI Semarang, Indonesia

Bambang Joyo Supeno
Master of Law, Universitas 17 Agustus 1945 Semarang, Indonesia

ABSTRACT
One of the criminal law policy that is applied in the country of Indonesia is to improve the placement system and strengthen the protection of Indonesian migrant workers abroad through PPTKILN Act. The formulation of the problem posed in this study is how the implementation of criminal law policy in the placement and protection of Indonesian migrant workers law abroad under Law PPTKILN. The method used is normative. Specifications of research is legal research descriptive analytical research objects form PPTKILN Act. Data were collected through literature study method, then analyzed qualitatively and presented in the form of descriptive terms. The results showed that the implementation of the policy of criminal law in the placement of Indonesian migrant workers abroad under Law PPTKILN includes maintenance license Mobilization (SIP), recruitment and selection, education and training, health checks and psychology, processing of documents, the final Pre Training (PAP) and the last is a departure. Meanwhile, the implementation of criminal law in the legal protection of Indonesian migrant workers abroad under Law PPTKILN include pre-placement protection, protection during placement and after-placement protection. Final debriefing Training (PAP), and the latter is a departure. Meanwhile, the implementation of criminal law in the legal protection of Indonesian migrant workers abroad under Law PPTKILN include pre-placement protection, protection during placement and after-placement protection. Final debriefing Training (PAP), and the latter is a departure. Meanwhile, the implementation of criminal law in the legal protection of Indonesian migrant workers abroad under Law PPTKILN include pre-placement protection, protection during placement and after-placement protection.

Keywords: criminal law policy; placement; protection; Indonesian migrant workers.

A. INTRODUCTION
The word globalization in the last decade is not only a concept of social science and economics, but also has become a political jargon, the ideology of government (regime), and the general public lip service throughout dunia. Teknologi information and electronic media is considered as a symbol of the pioneers that integrates all world system, both in the social, cultural, economic and financial 12, The movement of labor from one country to another country is a dynamic placement of Indonesian workers abroad is one important phenomenon because it is inseparable from the policy of the government to give rights to the people of

Indonesia in order to work. Although sending workers to bring many benefits, both for the workforce and the state employment abroad, but is loaded with a variety of issues, such as the cases of abuse and violence that resulted in migrant workers died. In each year the amount of violence and the death of Labor Women (TKW) abroad is increasing.

Cases of abuse and violence resulting in death PMI overseas is a violation of the law of criminal offenses. Therefore, the need for criminal law policy to resolve the issue. One of the criminal law policy that is applied in the country of Indonesia is the government through the Ministry of Labor to strengthen the protection against PMI abroad through the enactment of Law No. 39 of 2004 regarding the Placement and Protection of Indonesian Workers Abroad (hereinafter referred to as Law PPTKILN).

PPTKILN law has been established and validated on 18 October 2004. However, over time, many people who judge that this PPTKILN law has many weaknesses or deficiencies, so it needs to be corrected. One disadvantage of Law is the Law PPTKILN PPTKILN it does not include family members of migrant workers and undocumented migrant workers. In addition, the guarantee of the rights of migrant workers are not organized in a comprehensive manner. Meanwhile, from the standpoint of Indonesian Regional Representatives Council (DPD), there are four (4) laxness PPTKILN law, namely: (1) the ineffectiveness of the protection system created and run by the government; (2) Lack of coordination among the parties still tend egosektoral; (3) Protection of Indonesian workers abroad has not been the spirit underlying the development and implementation; and (4) The role of private enterprise in the placement of migrant workers and more protection than the regional governments.

The condition causes the death toll of migrant workers because of persecution, violence, trafficking and pain continue. One example, the death rate of the Indonesian Workers (TKI) from East Nusa Tenggara (NTT) working in the country of Malaysia is still very high. In a short span of time since the beginning of 2018, dozens of migrant workers died in Malaysia, namely 19 people died in the last 3 months.

This is evidenced by the news of the death of Adelina Lisao, Indonesian workers (TKI) from East Nusa Tenggara (NTT), who died at the Hospital Bukit Mertajam, Malaysia, on Sunday, February 11, 2018. The day before he died, on Saturday, February 10, 2018, rescuers found Adelina is outside the employer’s home in Penang. When found, the 21-year-old suffered injuries on his body, including in the head, face, and there is pus in the burn scar on the leg. Adelina news of death is from a series of cases of abuse of migrant workers in Malaysia are caused by incorrect placement and lack of legal protection.

---

Given this reality, the author feels the legal gap between das solen is regulation and das Sein that reality in a real field on criminal law policy in the placement and protection of Indonesian migrant workers abroad, due to the fact real is happening in the field show: (1) the ineffectiveness of the protection system created and run by the government; (2) Lack of coordination among the parties still tend egosektoral; (3) Protection of Indonesian workers abroad has not been the spirit underlying the development and implementation; and (4) The role of private enterprise in the placement of migrant workers and more protection than the local government, so there are many migrant workers who died from persecution, violence, trafficking and pain.

B. DISCUSSION

Seen in a broad sense, criminal law policy can cover the scope of the policy in the field of substantive criminal law, in the field of criminal law in the field of formal and criminal law enforcement. Efforts and policies to create a good rule of criminal law in essence can not be separated from the purpose of crime prevention. Thus, policies or politics of criminal law is also part of a political crime (criminal policy), because this criminal law politics Identics with penganggulangan crime.

Thus, the criminal law policy essentially contains policies to manage / allocate and limit the power, good power / authority members of the community in general and the power / authority of the ruler / law enforcement. Viewed from the aspect of criminal law policy that is so, then it can also be said that criminal law enforcement issue lies outside the criminal law itself, but into the scope of constitutional law.

Understanding the placement of migrant workers is stated in Article 1 paragraph (3) of the Act PPTKILN as follows:

"Placement of TKI is a service activity to bring TKI corresponding talents, interests, and abilities with employers abroad covering the entire recruitment process, the board documents, education and training, shelter, preparation of departure, departure to the country of destination, and the repatriation of the country purpose."

The procedure for the placement of workers abroad ranging set of Article 31 of Law PPTKILN which include:

1. The deployment Handling Permit (SIP). The deployment license issued by the Minister of Manpower and Transmigration, or by authorized officials. Mobilization Permit Request filed in writing to the Minister of Manpower and Transmigration, or by authorized

---

10Law No. 39 of 2004, Ps. 1 paragraph (3).
officials, which includes the number of potential workers who will be recruited, recruit areas,

2. Recruitment and selection. Recruitment and selection is preceded by providing information / counseling to the workers.

3. Education and training. Prospective migrant workers to be employed must have a job competence, if not already have such certification prospective workers must be given education and training appropriate to the work done by the placement of migrant workers. In addition, also to prospective workers should be given an understanding of the situation, customs. Culture, religion, the risks of working abroad, provide the ability to communicate language of the destination country, and the knowledge and understanding that is concerned with the rights and obligations of prospective migrants.\(^\text{11}\)

4. Medical and psychological examination. This examination is intended to determine the degree of health and psychological readiness and personality suitability of prospective migrants with work to be done.\(^\text{12}\)

5. Document handling. After fulfilling the procedure above, prospective workers must complete the documents in accordance with the provisions.\(^\text{13}\)

6. Final debriefing Training (PAP). The final Pre-departure hereinafter abbreviated briefing PAP is giving activity or information to prospective workers who will go to work abroad so prospective migrants have mental readiness and knowledge to work abroad, understand their rights and obligations and can overcome the problems to be faced.\(^\text{14}\)

Furthermore, the definition of migrant worker protection stated in Article 1 paragraph (4) of the Act PPTKILN as follows:

"Protection of migrant workers are all efforts to protect the interests of prospective migrants / migrant workers in realizing the assurance of fulfillment of their rights in accordance with the legislation, both before, during, and after work."\(^\text{15}\)

PPTKILN Act determines three types of protection for Indonesian migrant workers abroad, namely:

1. Protection pre-placement. Protection of Indonesian migrant workers abroad during pre-placement is done by the government, the Provincial Department of Labor and / or Department of Labor District / City.

2. Protection during placement. During labor migrants working abroad still get the protection of migrant workers, especially from the implementing private and public.


\(^{12}\) *ibid*

\(^{13}\) *ibid*

\(^{14}\)Peraturan Menteri Tenaga Kerja dan Transmigrasi Nomor PER-17/MEN/VIII/2009, Ps. 1 paragraph (2).

\(^{15}\)Law No. 39 of 2004, Ps. 1 paragraph (4).
3. Protection after placement. According to the Law on protection of migrant workers PPTKILN, after placement includes the maintenance of the return of migrant workers, migrant workers died in destination countries, as well as wars, natural disasters, epidemics, and deportation in countries where migrant workers work.\textsuperscript{16}

The arrangement of the placement of Indonesian migrant workers abroad is stipulated in the Act PPTKILN. However, when it is read and examined critically, it turns out that PPTKILN Law is more concerned with procedural and procedures for the placement of workers abroad, and only slightly regulate the rights and guarantees the protection of the rights of migrant workers and members of their families. In fact, the mandate to provide protection to migrant workers other than mandated by the state constitution (UUD 1945), also reflected the country’s commitment to ratify a number of human rights instruments issued by the ILO and the United Nations.\textsuperscript{17}

In this case, the protection system adopted by the Law PPTKILN proved very weak control various matters relating to the placement and protection of migrant workers. With regard to the placement of migrant workers, Article 10 of Law PPTKILN, authorizes the company private placement workers (PPTKIS) for placing workers abroad. This raises the question of its own, considering the competence PPTKIS inadequate in placing workers abroad and weak oversight by the government against PPTKIS. The combination of these problems cause other problems in efforts to protect migrant workers abroad. Another thing What to watch out for is the inability of the state apparatus in minimizing other violations around the placement of migrant workers, for example, is a matter of collective agreement lacks clarity.\textsuperscript{18}

Seeing these conditions, the existence of the Act PPTKILN in providing a guarantee of protection for workers should be supported by the efforts of TKI itself to prepare them as well as possible before actually working abroad. It is none other than, the preventive measures (prevention) to minimize the occurrence of torture either mild, moderate, or severe against them. In addition, all parties concerned are migrant workers themselves, the executor of migrant workers, business partners, and government must put our shoulders together and mutually aware of the obligations of each order of legal protection for workers since the process of preparation for the placement, during placement, to return back, workers abroad can be guaranteed and protected.\textsuperscript{19}

In various implementation, placement and legal protection of Indonesian migrant workers abroad is constrained by several fundamentals that are difficult to overcome, namely the placement system that is not yet stable, the bureaucracy and paperwork, miskordinasi

\textsuperscript{16}Law No. 39 of 2004, Ps. 73 and 75.

\textsuperscript{17}Hadi Subhan, et.al., Perlindungan TKI pada Masa Pra Penempatan, Selama Penempatan dan Purna Penempatan, Jakarta: Kementerian Hukum dan Hak Asasi Manusia, 2012, p. 2.


institutions, weak human resources TKI, PPTKIS illegal, extortion, TKI charged insurance liabilities, as well as the criminalization of administrative violations by certain parties. Miskoordinasi between agencies involved in dealing with migrant workers is also a problem on its own. The number of institutions or organizations involved resulted in many interests that must be met so that there is a tendency to forget the interests of migrant workers as objects to be protected.\(^{20}\)

Implementation of the protection of the rights of migrant workers is already guaranteed by the legislation, although foreigners working in Indonesia has not received protection in the national legislation. Protection for Indonesian citizens who work abroad only be given legal protection in the Act PPTKILN, but in practice there are many migrant workers with problems cannot be dealt with as a whole, this is due to lack of human resources placed at the consulate or embassy outside country.\(^{21}\)

In addition to the above constraints, other obstacles are encountered when the placement and protection of Indonesian migrant workers law abroad is the lack of legal awareness level of potential migrant workers, lack of supervision by labor inspectors, weak law enforcement.\(^{22}\) Meanwhile, on the side of the Republic of Indonesia Diplomatic found the constraints on the number of cases of trafficking that occur with the motive of personal data falsification prospective migrants. This will have an impact on the difficulty of the Republic of Indonesia Diplomatic efforts to provide protection.\(^{23}\)

C. CONCLUSIONS AND RECOMMENDATIONS

Based on the results of research and analysis of data on the previous chapter on the placement and protection of Indonesian migrant workers abroad, then this article draws the conclusion that the implementation of the policy of criminal law in the placement of Indonesian migrant workers abroad under Law PPTKILN includes maintenance license Mobilization (SIP), recruitment and selection, education and training, health and psychological examinations, processing of documents, the final Pre training (PAP), and the latter is a departure. Implementation of the policy of criminal law in the legal protection of Indonesian migrant workers abroad under Law PPTKILN include pre-placement protection, protection during placement and after-placement protection. Obstacles or barriers faced by the government in the implementation and application of the Law PPTKILN related to the placement and the legal protection of Indonesian migrant workers abroad include placement system that is not yet stable, the bureaucracy and paperwork, miskoordinasi institutions, weak


\(^{21}\) Naek Siregar dan Ahmad Syofyan, “Perlindungan Hak Pekerja Migran dalam Hukum Internasional dan Implementasinya di Indonesia, Monograf: Dimensi Hukum Internasional”, 2014, p. 163.


human resources TKI, PPTKIS illegal, extortion, TKI charged insurance liabilities, as well as the criminalization of administrative violations by certain parties. In addition, the obstacles often encountered is the lack of legal awareness level of prospective migrants and supervision by labor inspectors, as well as weak law enforcement. Meanwhile, on the side of the Republic of Indonesia Diplomatic found the constraints on the number of cases of trafficking that occur with the motive of personal data falsification prospective migrants.

From the results of the above conclusion, then there is some suggestion, that the contents of the Act PPTKILN just focus on implementation issues, so that aspect of legal protection for migrant workers are often overlooked. Therefore, the need to take action to revise and update our PPTKILN Act, so that aspect of protection can be maximized and not give rise to overlapping policies. Repair and renewal PPTKILN new laws need to be socialized properly to all communities and parties on issues related to the placement and protection of Indonesian migrant workers, which in its implementation needs to be followed by strict law enforcement.

REFERENCES


Law Number 39 Year 2004 regarding the Placement and Protection of Indonesian Workers Abroad (Law PPTKILN).

