LEGAL STUDY IN THE CONCEPT OF "GOOD-NEIGHBOURLINES" AND THE CONCEPT OF "PEACEFUL CO-EXISTENCE" IN THE PROTECTION OF MIGRANT WORKERS RIGHTS FROM INDONESIA IN MALAYSIA

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Abstract

In the current era of globalization demands for higher needs. Continuous fulfillment of the needs of people increasingly trying to achieve it to the point of high satisfaction. But look at the current conditions, where in meeting the needs of people are required to work to get what they need. While circumstances reversed where many people still do not work. The problem of unemployment is a problem that indeed happens almost in all countries one of our country Indonesia. Unemployment is due to limited job opportunities due to educational factors. Given the current condition, where employment is not possible to accommodate all the people of Indonesia so much, so many Indonesian citizens who choose to become Manpower abroad in the hope of having a job and a larger salary. Counted more than three million people who become overseas migrant workers. The existence of the rule of law brings consequences to society to always obey, because the law is both protective and compelling for every human (the law as a double-edged sword). In relation to domestic workers who have no regulation or legal protection, it is appropriate to get special attention so that there is a right that can protect their interests and also obligations that must be implemented as Domestic Workers (PRT).

Keywords: Migrant Worker, The Concept Of "Good-Neighbourlines" and The "Peaceful Co-Existence"

A. Preliminary

The placement of Indonesian migrant workers abroad is a national policy aimed at improving socio-economic welfare, in particular to the workforce and their families. The ability of the government and the private sector to create employment is limited, while the labor force is so large that the unemployment rate is still high. Thus the government opens opportunities for some Indonesian people to seek opportunities and livelihoods in other countries by becoming migrant labor abroad.

Placement of overseas workers on one side can be seen as a positive thing because it can lead to the emergence of obstacles. Relationship between labor migrants and disputes between migrant workers and employers with unpaid salaries, trial/torture, rape and killing of migrant workers. The issue of abused TKI is sticking back to the public period that befell Sumiati, a migrant worker working in Saudi Arabia. At the same time, there was a murder case of Kikim Komariah, a TKI who was killed in Saudi Arabia. Several years ago it was shown by Nirmala Bonat, Ceriati, Siti Hajar and others.

Indonesia is one country that has a high number of migrant workers, especially female migrant workers. One of the main factors of women migrant workers is, not apart from the pattern of development that increasingly feminization of impoverishment of women. Increasingly

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reduced or even clean-up of information sources of people's lives, especially women migrating in various countries. However, countries from Indonesian migrant workers including female migrant workers can still pursue every stage of migration, from recruitment, holding, placement / departure, to returning. 

In the employment relationship between the worker and the employer, the engagement between the employee and the employer, the employment relationship in the case of doing the work. This type of agreement is legally justified under the "freedom of contract principle", as provided for in Article 1338 Paragraph (1) KUHPerda that "all legally-made agreements shall be valid as the Laws for those who make them, therefore everyone shall have the right to make the agreement provided that it is not contrary to the Law". According to Subekti as quoted by Abdul Khakim that "Labor agreement is an agreement between a worker and an employer, which agreement is marked by the characteristic of a certain wage or salary and the existence of a relationship dientsverhoeding, where the employer is entitled to give orders which must be obeyed by others".

The labor agreement has great benefits to the parties to the treaty. This should be realized because with labor agreements made, if adhered to properly will be able to create a job calm, guarantee the certainty of rights and obligations for the workers / employers and employers or companies. As a result of further productivity will be increased, so that entrepreneurs will be able to develop the company, and more broadly to create new jobs.

In the context of the protection of migrant workers requires the readiness of each country to make arrangements in law and enforcement. While fighting for the rights of migrant workers residing in other countries whereas in the country's own regulation issued it is still open the opportunity for the violation. Regulations in Indonesia for example still imply that migrant workers are commodities. The choice to place migrant workers as a commodity has a negative impact on other countries not to put them in the right position. In the simplified language the demand to treat migrant workers in other countries can not be achieved maximally if in their own country they have not got a protected place.

The United Nations estimates that every year 700,000 to 4 million women and children become victims of trafficking. The most alarming thing is that the vast majority of victims of this trafficking are children and women who end up slumped in prostitution and exploitation of labor, forced labor, debt bondage or slavery. In 2011 an estimated 100,000 women and children from Indonesia are trafficked each year for sexual exploitation, domestic workers, forced marriage and child labor.

The juridical relationship between labor and employers is free, one is not enslaved, knees, or slaves. All forms of slavery, and servitude, are prohibited because it is not in accordance with the Constitution of the Republic of Indonesia (hereinafter abbreviated as the Constitution of the Republic of Indonesia) and Pancasila.

B. ISSUES

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9 Usulan & Rekomendasi Solidaritas Perempuan Atas Revisi Undang-Undang Nomor 39 Tahun 2004, Ketua Badan Eksekutif Nasional Solidaritas Perempuan, Jakarta, 2014, p. i
10 Salim, Hukum Kontrak, Sinar Grafika, Jakarta, 2003, p. 11.
Based on the above background description, the legal issues raised in this research is how the normative idea of the concept of "Good-Neighbourlines" and the concept of "Peaceful Co-Existence" in realizing the protection of Indonesian migrant workers in Malaysia?

C. RESEARCH METHODS

In harmony with the scope and problems, this type of research is a normative legal research that is exploratory (exploratory) so as not to intend to test the hypothesis. Regarding the data source used is secondary data is research literature (study document) with mangkaji materials primary law and secondary legal materials.

D. RESULTS OF DISCUSSION

The development of labor from Indonesia working abroad in the last three periods shows that those who work tend to be migrant workers in the informal sector. It is estimated that by 2014 their number is close to 6.3 million people spread across 28 destination countries working in three continents of the world, Asia pacific (61.78%), Middle East and Africa (37.08%), Europe and America (1.14%). They are recorded from almost all the major islands in Indonesia, such as Java-Madura-Bali, NTB and NTT, Sumatra, Kalimantan and Sulawesi. In fact, the border areas that were originally just a transit place or transit those who will work abroad, has now developed into the sending areas of labor from Indonesia to abroad.16

The labor process from Indonesia to other countries is noted to have benefited. Bank Indonesia mentions the amount of money flow as remittance from those who work abroad in the period 2010 to 2015 on average per year to reach 7.217 million USD. Not only economic benefits, in some countries like Hong Kong, Taiwan and Singapore, the process can be a source of diaspora cultural symptoms. It is estimated that as long as there is demand for labor from Indonesia from destination countries working then this process will continue. But behind it all, the flow of labor from Indonesia working overseas is followed by various problems. From various records until 2014, it is known that 16.86% of the number of foreigners are affected by problems ranging from sickness, unilateral dismissal, troubled employers, unpaid salaries, sexual harassment, unlawful employment, workplace accidents, pregnancy, ill-treatment, repatriation forcibly by the destination country to work, facing immigration problems (incomplete documents, over-stay), to death and death penalty.17

It indicates that those who work abroad tend not to protect their human dignity as a result of being protected from national and international legal norms. Although, some of those who have problems should be protected in order to work and live worthily, both at home and abroad. Until now, Indonesian laborers working abroad, especially those who become the most vulnerable women migrant workers face problems. Those affected by the problem then become state dependents. The unpreparedness of the Indonesian government in the face of repatriation of workers from abroad often has an impact on the human rights of repatriated workers.

Migrant workers18, referring to the International Labor Organization (ILO) Convention on Migrant Workers of 1949, (No.97) in Article 11, are persons who migrate from country to country for the purpose of work. The definition of Indonesian migrant workers is people who migrate to

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17 Ibid., p. iii-iv.
other areas, both within and outside the country (legal or illegal), to work within a certain period of time. It further said that migrant workers have an important position because migrant workers have contributed to the national interest in the form of foreign exchange donations or commonly called remittances.¹⁹

Problems relating to migrant workers are: violence, abuse (misuse), falsification of documents, misinformation. Speaking of Indonesian migrant workers, the problems that often arise in between are:²⁰

a. Lack of protection;
b. Violence and torture of migrant workers;
c. The threat of imprisonment to death;
d. Relatively high number of migrant workers killed.
e. The system of placement and protection of the sending country of migrant workers has not been subject to international agreements;
f. Abroad, the employer has absolute power. Employers generally keep documents to pressure migrant workers. When migrant workers run away from employers, they are illegal and illegal;
g. The large number of migrant workers makes recipient countries have more options to employ cheap migrant workers who do not demand too much of their rights;
h. Indonesia has difficulties in influencing other countries to protect migrant workers;
i. The government is less concerned with human rights abuses affecting Indonesian migrant workers;

Indonesian labor rights in Law Number 39 Year 2004 regarding the PPTKILN are, among others, the right to obtain opportunities, and equal treatment obtained by other foreign workers in accordance with the laws of the destination country, the right to obtain a legal guarantee in accordance with legislation on acts which may undermine its dignity and dignity as well as violations of the rights established in accordance with the laws of the law during the placement abroad and the right to obtain safeguards for the protection of safety and security upon return home and the right to obtain the draft of the pledge the original work.

Likewise in the rights of Indonesian workers in the ILO Convention 189 to gain respect and protection of fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining, the abolition of all forms of forced or compulsory labor, the elimination of child labor, the elimination of discrimination in respect of employment and occupation (Articles 3, 4, 11). TKI should be informed of their terms and conditions of employment in an easy to understand manner, preferably through written contracts. (Article 7).²¹

The legal review of the protection of the rights of migrant workers by the state in its position as the main subject of international law covers two aspects:²²

1) the role of the state through its government in the formation of international law which regulates the protection of the right of migrant workers which consist of individuals; and
2) enforcement of international law enforcement is carried out while maintaining the same objectives of the realization of the concept of "good-neighbourlines" and the concept of "peaceful co-existence".

²⁰Ibid.
²¹https://buruhmigran.or.id/hak-dan-kewajiban-tki/#Hak_TKI_dalam_UU_No39_tahun_2004_tentang_PPTKILN, diakses tanggal 25 Maret 2018
²²Marlina, “Perlindungan Hak Buruh Migran Oleh Negara Dalam Kedudukannya Sebagai Subyek Hukum Internasional”, Pandecta, Volume 8. Nomor 2, Juli 2013, p. 188.
Despite the lack and strength in its application by States, there are good reasons to apply customary international law that recognizes the principle of good neighborliness as the general basis of international obligations. As a consequence of this principle is that the state has the duty to regulate such relationships in such a way that it does not harm other countries. Also related to the concept of "Peaceful Co-Existence" is a concept developed and applied in the context of foreign policy and adopted by a socialist country with the aim that they can coexist peacefully. Clearly this principle has important implications with regard to the state's obligation to protect Indonesian migrant workers in Malaysia. The main decision that applies the principles of "Good Neighborliness" and the concept of "Peaceful Co-Existence" in customary international law can be seen in the good relationship between Indonesia and Malaysia.

Marlina added that the role of the state through its administration in the formation of international law that regulates the protection of the rights of migrant workers is indispensable because with the will of the states then make individuals in certain matters as the subject of international law. The will is formulated by States in the provisions of the Convention so as to make individuals of a particular interest category the subject of international law. International law still regulates the relations between countries and other legal subjects, while the individual is in certain respects. And in certain cases the state that plays a crucial role creates the conditions of the individual as subjects in international law. In the context of the role of the state through its government, the establishment of international law regulating the protection of the rights of migrant workers may be elaborated and harmonized with the provisions of Article 38 (1) of the Statute of the International Court of Justice stipulating that the source of international law used by the International Court of Justice in cases is: 1) international treaties, both general and specific; 2) international customs; 3) general legal principles recognized by civilized states; and 4) court decisions and (the opinions of experts as a source of tambahan international law).

E. CONCLUSION

The concept of "Good-Neighborliness" and the concept of "Peaceful Co-Existence" have important implications in relation to the state's obligation to protect Indonesian migrant workers in Malaysia. The main decision that applies the principle of "Good Neighborliness" and the concept of "Peaceful Co-Existence" in customary international law can be seen in the good relationship between Indonesia and Malaysia. In the context of the role of the state through its government, the establishment of international law regulating the protection of the rights of migrant workers can be described and harmonized with the provisions of Article 38 (1) of the Statute of the International Court of Justice stipulating that the source of international law used by the International Court of Justice in adjudicating cases are: 1) international agreements, both general and special, 2) international custom, 3) general legal principles recognized by civilized countries, and 4) court decisions and (the opinions of experts as a source of tambahan international law).

RECOMMENDATIONS

The authors expect the concepts applied to give a positive impact as one form of state protection against Indonesian migrant workers in Malaysia.
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