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## **SUMMARY**

### **A. Background**

*The role of government in the program to overcome the Indonesian labor force yang work abroad. Focusing on the aspects of guidance and protection and providing various facilities to the relevant parties, especially pekerja migran Indonesia and Indonesian Manpower Placement Service Company (hereinafter abbreviated as PJpekerja migran Indonesia). The placement of labor migrants in inter-state work program (AKAN), conducted by utilizing international labor market through improving the quality of labor competence with optimal protection from before departure, while working abroad until arriving back in Indonesia .*

*Inadequate economic conditions in their own country and substantial and seemingly more attractive incomes in destination countries also trigger international labor mobility. Increased revenues in developing countries allow people in developing countries to cross national borders, global information and ease of transportation also play a role in increasing the mobility of the workforce internationally.*

*The presence of Indonesian workers is much needed by other countries now. Tend to offer a job that is often called 3-D work (Dirty, Difficult, and Dangerous) because the population of developed countries tend to be reluctant or expensive to sell the job. On the other hand with the excessive amount of manpower Indonesia has an excess of cheap labor. At the moment there is a fact that Indonesia is experiencing an unskilled labor surplus, with a low wage of inking.*

### **B. Problem Formulation**

- 1. How is the construction of policies handling the return of Indonesian migrant workers Problematic abroad?*



2. *What are the weaknesses of the policy in handling the repatriation of Indonesian migrant workers at present?*
3. *How is the policy reconstruction of the handling of the return of problematic value-based migrant Indonesian workers?*

### **C. Research Objectives**

1. *To analyze and find the policy of handling the return of Indonesian Problematic Workers abroad.*
2. *To analyze and find the weaknesses contained in the current problematic handling policy of Indonesia's Workforce.*
3. *To analyze and find the reconstruction of the policy of handling repatriation of Problematic Indonesian Workers (PMIB) based on the value of dignified justice.*

#### *Benefits of Study*

1. *Theoretical benefits*
  - a. *To increase the legal knowledge about the handling of troubled Indonesian workers such as protection and repatriation if something happens.*
  - b. *It is expected that the results of this research is useful for the development of law science.*
  - c. *It is hoped that the results of this study can be thought-provoking to be the direction of further research in the future.*
  - d. *Expected to be used as a contribution of scientific work in the development of science.*
  - e. *Can be useful in conducting similar research, as well as other research guidelines.*
2. *Practical Benefits*
  - a. *For Students*

*Provides an overview of the problems arising from Indonesian workers who are working abroad and their current repatriation so as to motivate students to be able to further study law.*

*b. For Teachers*

*Giving a picture that a rule is not necessarily perfect let alone in its application, so in its learning need to use more complex approach in order to produce qualified graduates of law science.*

*c. For the Government*

*This research can contribute knowledge to the government that a regulation and policy still have weakness and need a review so that rules and policies can be implemented to citizen to get justice.*

**D. Research methods**

*The research method that ppenulis use in writing this dissertation is qualitative research method. In this study also refers to a comparative method that aims to do precisely, in this research begins with certain events of the interview sutau, records or documents and compares it with other occurrences in the same data set or in with other events in the data set or in the collection other data.*

*In this research using sociological law research method. Examples of legal issues (Legal Issues) that can be raised in sociological research, it can be seen that the scope of the legal issues of society is very broad.*

*This study uses primary legal materials and secondary legal materials, primary legal materials are legal materials that will be obtained from direct interviews with stakeholders*

*associated with the object of research. While secondary law material is a legal material consisting of textbooks written by lawyers who have influence (de herseende leer), juristic journals, jurisprudence, and recent symposium results related to the topic of research.*

## **E. Literature review**

### **1. Justice**

*Justice is generally interpreted as a fair deed or treatment. While fair is not one-sided, impartial and side with the right. Justice according to the study of philosophy is if filled with two principles, namely: first does not harm a person and second, the treatment to each human what is his right.*

*The definition of justice also formulated by Hans Kelsen. In Pure Theory of Law And State, Kelsen's justice is interpreted as legality. Intended with the meaning of justice as legality if a rule is applied to all cases where according to the content it is indeed the rule must be published. It is unfair if a rule is applied to one case but not in the same case.*

### **2. Understanding of Migrant Workers / Indonesia n Workers**

*In the development of Indonesia's workforce, there are terms of Indonesia n workers abroad and migrant workers. Article 1 number 3 of Law no. 13 of 2003 on Manpower identifies the notions of workers and workers as everyone who works by receiving wages or other forms of remuneration. The emphasis of the worker is any person who works, whether qualified or not including child labor, illegal and so on. While migrants themselves come from the word migration which means the move to move elsewhere either within a country or to another country.*

*Usually we call the Indonesia n Workers (pekerja migran Indonesia) or for the more specific Women Workers (TKW) because the employment opportunity for women is more likely to be recruited in the informal sector, especially domestic workers. Their existence is often the subject of mass media related to the ill-treatment they receive abroad.*

### **3. *Indonesia n Workforce Troubled***

*In Malaysia, research among women migrant workers indicates that women migrant workers have a higher mental health problem than women migrant workers legal. Women of illegal migrant workers exhibit higher levels of stress, anxiety and depression than women of legal migrant workers. In terms of coping strategy, also illegal women migrant workers are not good compared to women migrant workers are legal. Legal migrant workers also experience problems related to loss and grief because they are forced to leave their family members, lack of social support, social standing, values and norms, their culture and environment.*

*Migrant workers also find it difficult to adapt to new circumstances. They face difficulties in attempting to overcome language and cultural problems during the acculturation process. These factors are interrelated and produce a variety of disorders and social problems. The cultural factors of migrant workers with the culture of the new country they are coming to are very different. As a result, migrant workers will experience serious stress and heavy mental burden.*

### **4. *Government Policy for Indonesia n Migrant Workers***

*The State's attention to its migrant workers is regulated in several regulations, including:*

- 1. The Constitution of 1945, Article 27 paragraph (2) stating that every Indonesia n citizen is entitled to the work and livelihood that is suitable for humanity.*
- 2. Law of the Republic of Indonesia No. 39/1999 on Human Rights, Article 30 stating that Everyone has the right to security and peace and protection against the threat of fear to do or not to do something.*

3. *Law No.18 / 2017 on the Protection of Indonesia n Migrant Workers stating that the State shall guarantee and protect the human rights of its citizens working both at home and abroad based on the principle of equal rights, democracy, social justice , gender equality and justice, anti-discrimination, and anti trafficking.*
4. *Law No. 11 of 2009 on Social Welfare, Article 14 paragraph (1) Article 14 (1) Social protection is intended to prevent and deal with the risks of social shocks, social, family, group and / or community for their survival can be met according to minimum basic needs.*
5. *Presidential Regulation No. 45 of 2013 on the Coordination of the Return of Indonesia n Migrant Workers, Article 17 paragraph (1) stating that in the case of migrant workers who will be repatriated have a family, the repatriation includes the family to the area of origin. And paragraph (2) The family as referred to in paragraph (1), covers the wife / husband and child.*
6. *Regulation of the Minister of Social Affairs No. 86 / HUK / 2010 on the Organization and Working Procedure of the Ministry of Social Affairs of the Republic of Indonesia , Article 281 states that the Sub-Directorate of Social Protection of Migrant Workers has the duty to carry out the preparation of the formulation and implementation of policies, the compilation of norms, standards, procedures and criteria, as well as providing technical guidance and evaluation in the field of social protection of migrant workers.*
7. *Regulation of the Minister of Social Affairs of the Republic of Indonesia Number 22 Year 2013 on the Repatriation of Problematic Migrant Workers and Problematic Indonesia n Workers to the Origin, Article 1 paragraph (7) stating that the Social Protection for PMB and pekerja migran Indonesia B*

*are all efforts directed towards preventing and handling risks of social turmoil and vulnerability that include social assistance, social advocacy, and legal aid in return to home areas.*

## **5. Home Protection Trauma Center**

*Home Protection Trauma Center (RPTC) in the capacity as a crisis center, RPTC serves as a center to overcome the problem of violence, which consists of: (1) information and advocacy services; and (2) shelter housing services. Furthermore, in the capacity of a trauma center, the RPTC also serves as a vehicle for traumatic recovery, which consists of: (1) psychosocial and spiritual rehabilitation services; and (2) resocialization and referral services.*

## **6. Rights and Obligations of Prospective Indonesian Migrant Workers**

*Right of Indonesian migrant candidate:*

*Each prospective worker has the same rights and opportunities to:*

- a. working abroad;*
- b. obtain correct information concerning overseas labor market and migrant placement procedures abroad;*
- c. obtain similar services and treatment in overseas placements;*
- d. gain freedom to adhere to his aama and his beliefs as well as the opportunity to practice worship according to his religion and belief.*
- e. obtain wages in accordance with prevailing wage standards in the destination country.*
- f. obtain the same rights, opportunities and treatment obtained by other foreign workers in accordance with the laws and regulations of the country of destination;*

- g. *obtaining legal protection guarantees in accordance with statutory regulations for acts which may undermine its dignity and dignity as well as violations of the rights established in accordance with laws and regulations during overseas compression;*
- h. *obtain assurance of protection of safety and security of returning migrant Indonesian to place of origin;*
- i. *obtained the original employment agreement.*

***Obligations of migrant workers:***

*Each prospective Indonesian migrant workers has an obligation to:*

- a. *comply with laws and regulations both at home and in destination country;*
- b. *obey and perform its work in accordance with the employment agreement;*
- c. *to pay the cost of overseas placement service in accordance with the laws and regulations; and*
- d. *notify or report the arrival of the presence and return of Indonesian migrant workers the Representative of the Republic of Indonesia in the destination country.*

***7. Requirements of Indonesian Migrant Workers***

*Based on Law Number 18 Year 2017 concerning the Protection of Indonesian Migrant Workers Abroad.*

*Recruitment of prospective Indonesian Migrant Workers by placement of migrant workers is conducted against prospective Indonesian Migrant Workers who have fulfilled the requirements:*

- a. *shall be at least 18 (eighteen) years old except for prospective Indonesian Migrant Workers who will be hired on individual Users at least 21 (twenty one) years old;*
- b. *physically and mentally healthy;*

- c. *not in a state of pregnancy for prospective female workers; and*
- d. *educated at least graduate of Junior High School or equivalent.*

*In addition to the above requirements, pursuant to Article 51 of Law Number 18 Year 2017 concerning the Protection of Indonesian Migrant Workers Abroad, prospective Indonesian Migrant Workers are also required to possess the following documents:*

- a. *Identity Card, latest education certificate, birth certificate or birth certificate;*
- b. *a marital status certificate for the married person attach a copy of the marriage book;*
- c. *certificate of husband or wife's consent, parental consent, or guardian's permission;*
- d. *work competency certificates;*
- e. *a health certificate based on the results of a medical and psychological examination;*
- f. *passports issued by the local Immigration Office;*
- g. *work visa;*
- h. *employment placement agreements;*
- i. *employment agreement, and*
- j. *KTKLN (Kartu Tenaga Kerja Luar Negeri) is an identity card for Indonesia n migran workers. Which meets the requirements and procedures for working abroad.*

*Once the prospective migrant worker meets the specified requirements, the prospective Indonesia n Migrant Workers must follow a series of procedures before they are placed abroad. In pre-occupation period of prospective migrant workers include:*

- a. *SIP Management;*

*In accordance with the provisions of Law Number 18 Year 2017 concerning the Protection of Indonesia n Migrant Workers, private placement workers who will perform recruitment shall have the SIP from the Minister. To obtain SIP, private migrant placement operators must have:*



- 1) Agreement on placement cooperation;
- 2) Letter of request of *pekerja migran Indonesia* from user;
- 3) draft placement agreement; and
- 4) draft agreement.

*In the process of obtaining the SIP, a letter of request by the Indonesian migrant workers from the User of the placement agreement, and the draft of the employment agreement shall be approved by the competent authority of the representative of the Republic of Indonesia in the destination country. In addition, the Executing of private Indonesian migrant workers placement is prohibited to transfer or transfer SIP to other parties to recruit prospective migrant workers.*

*b. Recruitment and selection;*

*The recruitment process was overtaken by providing information to prospective migrant workers at least on:*

- 1) recruitment procedures;
- 2) necessary documents;
- 3) rights and obligations of prospective *pekerja migran Indonesia* ;
- 4) the situation, conditions and risks in the destination country; and
- 5) safeguard procedures for labor migrants.

*The information is submitted completely and correctly. Information shall be subject to the approval of the responsible agency in the field of manpower and shall be submitted by the private placement employer.*

*c. Education and job training;*

*Prospective *pekerja migran Indonesia* is required to have job competency certificate in accordance with the requirements of the position. In the event that the *pekerja migran Indonesia* does not have the work competency of the placement of*

*private migrant workers is obliged to do the dedication and training in accordance with the work to be done.*

*d. Health and psychological examination;*

*Medical and psychological examination for prospective Indonesian Migrant Workers is intended to know with health and psychic readiness level and personality suit of prospective migrant workers with work to be done in destination country.*

*e. Document handling;*

*To be placed abroad, prospective migrant workers have documents covering:*

- 1) Identity Card, latest education certificate, birth certificate or birth certificate;*
- 2) certificate of marital status for married person attach copy of marriage book;*
- 3) certificate of husband or wife's consent, parental consent, or guardian's permission;*
- 4) job competency certificate;*
- 5) a health certificate based on the results of a medical and psychological examination;*
- 6) passports issued by the local Immigration Office;*
- 7) work visa;*
- 8) employment placement agreement;*
- 9) employment agreement, and*
- 10) KTKLN*

*f. Competence test;*

*g. Final Dispatch of Departure (PAP); and Ending Briefing*

*The PAP task is to provide material on local country rules. Working agreements (rights and obligations of labor migrants), as well as mentoring and personality. The existence of this PAP is expected pekerja migran Indonesia is ready to face the possibilities that will arise later. The final deployment of departure (PAP) is intended to provide an in-depth understanding of:*

*1) laws and regulations in the destination country; and*

*2) work agreement material.*

*The final debriefing of departure (PAP) is the responsibility of the Government.*

*h. Departure.*

*The existence of the requirements and procedures that must be met by the prospective migrant workers mentioned above, it can be seen that the manpower planning will facilitate the government and prospective migrant workers in solving the problems concerning manpower including protection to prospective migrant workers both now and in the future.*

**8. The Authorized Institution Against Indonesia**

**1. Social Service of Manpower and Transmigration (Dinsosnakertrans)**

*In the provisions of Article Law Number 18 Year 2017 concerning the Protection of Indonesian Migrant Workers Abroad, the placement of overseas migrant workers consists of Government, Private Placement Officer and Company for the interest of the company itself. Implementation of placement of labor migrants from the government implemented by the Office of Social Workforce and Transmigration (Dinsosnakertrans).*

*Social Services, Manpower and Transmigration have the duty to carry out the affairs of local government based on the principle of autonomy and duty of*

*assistance in the field of social, labor and transmigration as well as other tasks given by the Bupati.*

*Function:*

- 1. the formulation of technical policies in the social, labor and transmigration fields;*
- 2. the administration of public affairs and public services in the social, labor and transmigration fields;*
- 3. development and execution of duties in the social, labor and transmigration fields;*
- 4. fostering the Technical Implementing Unit of the Service; and*
- 5. the implementation of other duties given by the Bupati in accordance with their duties and functions*

## **2. *Implementation Private Indonesian Migran Worker Placement (PIMW)***

*In Article 1 section (5) of Law Number 39 Year 2004 concerning the Placement and Protection of Indonesia n Migrant Workers Abroad, Private Placement Employers (pekerja migran Indonesia Swasta) are legal entities that have written permission from the Government to provide overseas migrant placement services . To be able to obtain SIPPpekerja migran Indonesia the private placement employer must meet the following requirements:*

- a. has paid up capital as stated in the deed of establishment of the company, at least of Rp. 5,000,000,000.00 (Five billion rupiah);*
- b. depositing money to the bank as collateral in the form of a deposit of Rp.1,500,000,000.00 (one billion five hundred million rupiah) at a government bank;*
- c. has a work plan for the placement and protection of overseas migrant workers for at least 3 (three) years;*

d. *have facilities and infrastructure of placement service for pekerja migran Indonesia .*

**3. *Cooperation Relations of Social Service of Manpower and Transmigration (Dinsosnakertrans) and Implementation of Private Indonesian Migrant Workers Placement (PIMW)***

*Social Service of Manpower and Transmigration (Dinsosnakertrans) in its position as ex placement worker of Indonesian migrant workers outside doing cooperative relationship with Private Employment Placement Executor Indonesia (PEPEI) According to Law Number 18 Year 2017 concerning Protection of Indonesian Workers Abroad, Indonesian Migrant Worker as executor the placement of private migrant workers has the duties such as supervisors, supervisors, patrons and are responsible for pre-placement, placement and post-placement periods.*

**9. *Indonesian Migrant Workers Agreement / Indonesian Labor***

*Based on Article 1 number 14 of Law no. 13 of 2003 concerning Manpower, Employment Agreement is an agreement between a worker and an employer or an employer that contains the terms of employment, rights and obligations of the parties ."*

*While the work agreement according to Law no. 18 of 2017 Article 1 point 12 on the Protection of Indonesian Migrant Workers Abroad, "Working Agreement is a written agreement between Indonesian Workers and users which contains the terms of employment, rights and obligations of each party". According to Section 1601a of the Civil Code, the meaning of the employment agreement is the labor agreement, "The labor agreement is an agreement whereby the one party binds itself under the command of the other, for a certain period of time, performs the work of receiving wages."*

*The work agreements set forth in Chapter 7A Book III of the Civil Code, are primarily private law, but in its development many of the provisions are no longer in force and are replaced by new, public rules. The employment agreement in Chapter 7A Book III of the Civil Code recognizes the general nature, meaning that it does not distinguish the company's field nor those who enter into a labor agreement. However, this general system exists except that the employment agreement is no longer valid for public servants.*

#### **10. Protection of Indonesian Labor Law**

*Article 1 Paragraph (5,6,7,8) of Law no. 18 of 2017 explains that the Protection of Indonesian Workers is all efforts to protect the interests of prospective Indonesian and Indonesian Migrant Workers in realizing the fulfillment of rights in accordance with legislation, before, during, or after work.*

*Scope of protection of workers or laborers according to Law no. 13 of 2003 as follows.*

- 1. Protection of workers 'or workers' basic rights to negotiate with employers*
- 2. Protection of occupational safety and health*
- 3. Special protection for workers or workers of women, children and persons with disabilities.*

#### **F. The Policy on Handling the Return of Indonesian Migrant Workers Problems Abroad**

*Based on Presidential Regulation No.45 / 2013, a Coordinating Team for the Repatriation of Indonesian Migrant Workers (pekerja migran Indonesia) by the Social Service of Manpower and Transmigration and BP3 pekerja migran Indonesia was established. In special cases such as those based on the working period, age, health condition, troubled Indonesian migrant workers and placement countries do not guarantee the safety of migrant workers, and some of the workers do not have work permits or legal documents to work or work that are not in accordance with work permits and legitimate documents.*

*The Coordinating Team in completing its duty is to do the planning, compilation, and implementation of the return of migrant workers from the point of debarkation to the area of origin to work together in accordance with Article 11 of the Regulation of the President of the Republic of Indonesia No. 45 of 2013 ie the Coordination Team in performing the duty can work together with the Governor, Regent / Mayor and / or other related parties.*

*Preparation of the Indonesia n Migrant Worker repatriation plan based on Presidential Regulation No.45 / 2013 which establishes Coordination Team for Return of Indonesia Migrant Worker between the Social Service of Transmigration Workers with BP3Indonesia n Migrant Worker. Repatriation based on the working time, age, health condition, migrant workers who have problems, the relevant workers do not have a work permit or legal documents to work. Listing at the port is the Duty of BP3Indonesia n Migran Worker Office, DINSOSNAKERTRANS, IMIGRATION, KP3 and Port Health in the repatriation to the origin ofIndonesia Migrant Power.*

#### ***G. Weakness of the Policy on Handling the Return of Indonesia n Migrant Worker Problems***

*The return plan is divided into 2 (two) stages. The first stage is the repatriation of the embarkation (overseas) to the debarkation (in Indonesia ) The repatriation of Indonesia n Migrant Workers from the embarkation to debarkation is done or funded by the government of the country where the Indonesia n Troubled Workers are abroad and some are done or financed by the Indonesia n government.*

*Empowering Indonesia n Migrant Workers Problems other than those undertaken by BNP2TKI and Ministry of Social Affairs still have opportunities to increase community empowerment in rural areas by involving relevant ministries / technical institutions, in accordance with the potential of human resources and natural resources available.*

*Implementation of empowerment should be carried out in a coordinated manner from the central government to the origin region. In addition, it is necessary to enhance the role of employers and communities through corporate social responsibility (CSR).*

*Results of Indonesian Migrant Worker Troubled Data Collection reported by the Ministry of Foreign Affairs to the Mentari Coordinator of Human Development and Culture. To further the Coordinating Minister held a coordination meeting with the relevant minister to formulate a plan for the return and empowerment of Indonesian Migrant Worker Troubled and its budgeting.*

*Other factors such as the performance of the relevant actors are very influential on the protection of Indonesian Workers. So with the weakness of protection it is necessary to re-examine Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad. In addition, coordination between stakeholders and the Government needs to be improved in order to facilitate the smooth administration and handling of unlawful acts committed by stakeholders against the Indonesian Workers abroad.*

#### ***H. Reconstruction of the Troubled Rescue of Indonesia Migrant Workers Problems (IMWP) Based on the Value of Dignity of Justice***

*Existing laws are currently recognized as being comprehensive, but further improvements are needed, especially with regard to the rights of migrants and their families in Indonesia and abroad. The central government needs to improve the internal cooperation between government agencies as well as between the central, regional and local governments as well as the stakeholders involved in managing labor migration. The report finds that the level of involvement of the authorities with migrants is very small. There should be better consultation with migrant workers and their families at every level and during the migration process.*



*The moratorium to the Middle East country will not be effective if it is not matched by a good solution. During the absence of employment, decent wages, and clear rules for Indonesian migrant workers and their families who are concerned with the protection of human rights and justice in their own country. The great task of the Government of Indonesia is to ratify and revise Law No.18 of 2017 on Indonesian Migrant Workers, which has so far benefited Private Indonesian Migrant Worker but is far from legal protection and human rights enforcement for Indonesian migrant workers and members of their families.*

*Better management for returning migrant workers or repatriation programs should be developed in a safe and easy direction for returning Indonesian migrant workers. On the other hand, reintegration programs should maximize the positive outcomes of migration for individual migrant workers, local communities and national builders. This can be done by creating conditions that allow migrant workers to invest in productive decent work and potentially build local communities. Associated with the practice of governance in Indonesia the problem of protection of migrant workers abroad, concerning also the relationship between countries, it is reasonable if the authority of placement and protection of migrant workers abroad is the authority of the Government. But the Government can not act alone, because it needs to involve Provincial Government as well as District / City and private institutions. On the other hand, because the problem of placement and protection of Indonesian workers is directly related to the issue of life and honor that is very human for human, then the related private institutions must be those who can, both from the aspect of commitment, professionalism and economically, can guarantee the rights the nature of citizens working abroad to remain protected.*

## **1. Conclusion**

### **1. Construction of the Policy for Handling the Return of Troubled Indonesian Migrant Workers Abroad.**

*In reality, the policy for handling the repatriation of Indonesian migrant workers caused difficulties in budget allocation through the regional budget and the PIMB return system was not yet stable even though the contributions provided by migrant workers or Indonesian workers were enormous. The volume of remittances of Indonesian migrant workers in 2017 amounted to US \$ 5.8 billion and remittances in 2016 reached a figure of USD 10.6 Billion so that in 2017 there was a decrease in remittances of Rp3,604 Trillion. However, there are still many views (including the government) that underestimate Indonesian migrant workers or workers. The government calls it work in the informal, unskilled and low paid sectors. Legally, at the national level, there is Law No. 18/2017 which regulates the Protection of Indonesian Workers Abroad.*

*Government efforts with the issuance of Law No. 18 of 2017 article 28, Renewal in this PPMI Law which does not exist in Law 39/2004 concerning the regulation of the establishment of integrated one-stop / door services at the regional level (article 38) so that local governments have a mandate to establish a One-Stop Integrated Service (LTSA).*

*By law, the existence of the LTSA at that time was not a regional mandate so that the formation of the LTSA needed a large effort in its founding, even though in practice, the existence of LTSP / LTSA already existed. All agencies tasked with providing services to PMI documents in one-roof containers. LTSP involves instant elements at the regional level, such as the Tanjung Pinang Manpower and Transmigration Office, BP3TKI, Tanjung Pinang Immigration, health facilities, program participant banks (BRI), insurance consortium, BFLN tax services and airlines, the Shahah Sea.*

## **2. Weaknesses in the Policy on Handling the Return of Troubled Indonesian Migrant Workers at the Present Time.**

*The weakness of Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers Abroad can be seen from several aspects as follows:*

- 1. KTKLN that has not functioned overseas;*
- 2. Failure of the Role of Indonesian Private Migrant Workers in the protection of Indonesian migrant workers;*
- 3. Indications of Irregularities Article 1 paragraph (9) of Law Number 18 Year 2017 concerning Protection of Indonesian Migrant Workers Abroad.*

*Clearer arrangements in the PPMI Law are driven by various problems that occur as a result of the implementation of Law 39 of 2004. In Law 39/2004, the duties and roles of the government are unclear. This can be seen from the 5 th paragraphs 1 and 2 of which the role and duty of the government is to regulate, foster, implement and assist the organizers of the placement and protection of migrant workers abroad. Besides that, the implementation of the government can delegate part of the authority and / or task of assistance to the regional government. The implications of article 5 paragraph 1 and 2 lead to the first, centralized work migration services ranging from document services, education and training to the handling of cases carried out in Jakarta or other major cities. As a result, the role of regional governments is not clear in protecting Indonesian migrant workers.*

*Second, with the task of the government starting from arranging, fostering, implementing and supervising the causes of the government, it cannot objectively carry out its role. As an executor and at the same time acting objectively to administer activities carried out alone, it can cause conflict or conflict within him. Although this oversight can be interpreted positively as an internal control within the government itself, when the government conducts external oversight of the PPTKIS or migrant workers, who will assess the performance of external oversight carried out by the*

government? Because of this, these two roles should be carried out by two parties who are different from one another or there must be a clear role for who is the regulator (making regulation and supervision) and the operator (implementing the policy).

Third, the derivative of Law 39/2004, namely Presidential Decree No. 81 of 2006 concerning BNP2TKI created a conflict between BNP2TKI and the Ministry of Manpower stipulated in Article 41 because it does not explain the relationship between BNP2TKI and the Ministry of Manpower, whether each individual stands alone or is separated or both must cooperate.

Fourth, in terms of coordination and supervision between ministries and agencies to eliminate the ego of the government in Law 39/2004, it is unclear and results in weak supervision. Law 39/2004 does not mandate mechanisms between government institutions in terms of guidance and supervision. For example, the article on guidance is in article 86 and article 95. In this article, the management of duties is regulated by two agencies, namely BNP2TKI and the Ministry of Manpower and Transmigration. The same is true in the supervision section where BNP2TKI is also authorized to conduct supervision (article 95 paragraph 2b) and the Ministry of Manpower and Transmigration and the Ministry of Foreign Affairs are also mandated to carry out supervision (Articles 5.7 and 92). It is also clear that the supervisory duties are according to the derivative regulation of Law 39/2004 concerning PP No. 4 of 2015 concerning the Implementation of Supervision of the Implementation of Tenaga Work and Protection of Indonesian Work carried out by the ministry which is responsible for employment urea and ministers who organize government affairs in the field of foreign relations and foreign policy.

The PP regulation has been regulated on what should be monitored, the authority and mechanism of labor inspection in supervising and the supervision

*coordination mechanism at the district, provincial, national and foreign levels. In the PP, it is not regulated regarding the supervision of supervisors carried out from the regional to the foreign level and is not mandated regarding the existing oversight of the supervision mechanism to the public so that the public knows about the monitoring reports carried out by the public government.*

**3. *Reconstruction of the Policy for Handling the Return of Troubled Indonesian Migrant Workers (PMI-B) Based on the Value of Dignified Justice.***

*Associated with the practice of administering Indonesia in the matter of the placement and protection of Indonesian Migrant Workers abroad, as well as relations between countries, it is only natural that the authority for the placement and protection of Indonesian Migrant Workers abroad is the authority of the Government. Because it needs to involve the Provincial and District / City Governments and private institutions. On the other hand because the problem of the placement and protection of Indonesian migrant workers is directly related to the issue of life and honor that is very basic for humans, then the private institutions that are related must certainly be those who are able, both from the aspect of commitment, professionalism and economically, to guarantee rights the principle of citizens working abroad to remain protected.*

*Moreover, every workforce who works outside the territory of his country is a migrant or foreigner in the country where he works. Therefore, the best protection must emerge (beginning) from the workforce itself, essentially the obligation to comply with the applicable legal provisions at home and abroad. Because, if it is the opposite, then what happens is actually violating the law, where the defense or protection efforts will experience many obstacles.*

*Taking into account the existing conditions and laws and regulations, the reconstruction that needs to be carried out is as follows:*

**Table Reconstruction of the Troubled Rescue of Indonesian Migrant Workers**

**Problem Based on the Value of Degraded Justice**

<b>No</b>	<b>Handling of the Return of Indonesian Workers Problems</b>	<b>Weakness</b>	<b>Reconstruction of the Troubled Handling of Troubled Indonesian Migrant Workers (TIMW) Based on the Value of Dignity of Justice</b>
1.	<p><i>Presidential Regulation no. 45 Year 2013 on Coordination of Return of Indonesian Workers</i></p> <p><i>Article 2</i>  <i>Specific circumstances for the return of Indonesian Manpower include:</i>  <i>a. natural disasters, epidemics, war;</i>  <i>b. mass deportation; and / or</i>  <i>c. placement countries no longer guarantee the safety of migrant workers.</i></p>	<p><i>Repatriation of Indonesian Laborers refers to specific circumstances / particular and less attention to the reasons for the personal needs of labor migrants.</i></p> <p><i>Specific situations include:</i>  <i>a. natural disasters, epidemics, war;</i>  <i>b. mass deportation; and / or</i>  <i>c. placement country no longer guarantees safety pekerja migran Indonesia</i></p>	<p><i>Repatriation of Indonesian Laborers refers to special circumstances</i></p> <p><i>Specific situations include:</i>  <i>a. natural disasters, epidemics, war;</i>  <i>b. mass deportation; and / or</i>  <i>c. placement country no longer guarantees safety pekerja migran Indonesia</i>  <i>d. Personal Reasons from pekerja migran Indonesia</i></p>
2.	<p><i>Presidential Regulation no. 45 Year 2013 on Coordination of Return of Indonesian Workers</i></p> <p><i>Article 17</i>  <i>(1) In the case of migrant workers who will be discharged to have a family, the repatriation includes the family to the area of origin.</i>  <i>(2) The family referred to in paragraph (1) shall include the wife / husband and child.</i></p>	<p><i>The Government of Indonesia does not have a standing position in the placement country, but the Government of Indonesia has the ability to better accommodate the wishes of migrant workers who wish to return to work abroad and do not want to return to their home village can be trained in deportation entry points and then distributed legally</i></p>	<p><i>Presidential Regulation no. 45 Year 2013 on Coordination of Return of Indonesian Workers</i></p> <p><i>Article 17</i>  <i>(1) In the case of migrant workers who will be discharged to have a family, the repatriation includes the family to the area of origin.</i>  <i>(2) The family referred to in paragraph (1) shall include the wife / husband and child.</i>  <i>(3) In the case of pekerja migran Indonesia who wishes to return to work abroad and does not wish to return home can</i></p>

			<i>be trained at the deportation entry point and then distributed legally.</i>
3.	<p><i>Indication of Deviation Article 1 paragraph (9) of Law Number 18 Year 2017 on the Protection of Indonesia n Migrant Workers.</i></p> <p><i>"The protection of Indonesia n migrant workers shall be all efforts to protect the interests of prospective Indonesia n migrant workers and / or Indonesia n migrant workers and their families in ensuring the fulfillment of their rights in all activities before work, during work, and after work in legal, economic and social aspects".</i></p>	<p><i>This article indicates that this Law has an indication of the deviation of the Constitution which reads "to protect the whole Indonesia n nation and the whole of Indonesia's blood."</i></p>	<p><i>Indication of Deviation Article 1 paragraph (9) of Law Number 18 Year 2017 on the Protection of Indonesia n Migrant Workers.</i></p> <p><i>"The protection of Indonesia n migrant workers shall be all efforts to protect the interests of prospective Indonesia n migrant workers and / or Indonesia n migrant workers and their families in ensuring the fulfillment of their rights in all activities before work, during work, and after work in legal, economic and social aspects, education with dignity through the approach of mental revolution "..</i></p>





## GLOSARIUM

Badan Penyelenggara Jaminan Sosial : Badan Hukum yang menyelenggarakan program jaminan sosial pekerja migran Indonesia .

Calon Pekerja Migran Indonesia : Setiap tenaga kerja Indonesia yang memenuhi syarat sebagai pencari kerja yang akan bekerja di luar negeri dan terdaftar di instansi pemerintah kabupaten/kota yang bertanggungjawab di bidang ketenagakerjaan.

Hukum Perdata : Ketentuan yang mengatur hak-hak dan kepentingan antara individu-individu dalam masyarakat. Dalam tradisi hukum di daratan Eropa (civil law) dikenal pembagian hukum menjadi dua yakni hukum publik dan hukum privat atau hukum perdata.

Hukum : Peraturan yang berupa norma dan sanksi yang dibuat dengan tujuan untuk mengatur tingkah laku manusia, menjaga ketertiban, keadilan, mencegah terjadinya kekacauan.

Jaminan Sosial : Salah satu bentuk perlindungan sosial untuk menjamin seluruh rakyat agar dapat memenuhi kebutuhan dasar hidupnya yang layak.

Keadilan : Apa yang ditetapkan dan tidak boleh dilanggar,

Kebijakan : Rangkaian konsep dan asas yang menjadi pedoman dan dasar rencana dalam pelaksanaan suatu pekerjaan, kepemimpinan, dan cara bertindak.

Keluarga Pekerja Migran Indonesia : Suami, Istri, Anak atau orang Tua termasuk hubungan karena putusan dan/atau penetapan pengadilan, baik yang berada di Indonesia maupun yang tinggal bersama pekerja migran Indonesia di Luar Negeri.

PAP : Pembekalan akhir pemberangkatan

PMB : Pekerja Migran Bermasalah

Perjanjian Kerja : Perjanjian tertulis antara pekerja migran Indonesia dan pemberi kerja yang memenuhi syarat kerja, hak, dan kewajiban setiap pihak serta jaminan keamanan dan keselamatan selama bekerja sesuai dengan ketentuan peraturan perundang-undangan

Perlindungan Hukum : Suatu perlindungan yang diberikan kepadasubyek hukum sesuai dengan aturan hukum, baik itu yang bersifat preventifmaupun dalam bentuk yang bersifat represif, baik yang secara tertulis maupuntidak tertulis dalam rangka menegakkan peraturan hukum.

Pekerja Migran Indonesia : Setiap warga Negara Indonesia yang akan, sedang atau telah melakukan pekerjaan dengan menerima upah di Luar wilayah Indonesia .

PMIB : Pekerja Migran Indonesia Bermasalah.

PMIS : Pekerja Migran Indonesia Swasta.

Rekontruksi : Pengembalian seperti semula, penggambaran kembali, atau pengulangan perbuatan/peristiwa seperti semula.

SDM : Salah satu faktor yang sangat penting bahkan tidak dapat dilepaskan dari sebuah organisasi, baik institusi maupun

perusahaan. **SDM** juga merupakan kunci yang menentukan perkembangan perusahaan.

Tenaga Kerja : Setiap orang yang mampu melakukan pekerjaan guna menghasilkan barang atau jasa baik untuk memenuhi kebutuhan sendiri maupun untuk masyarakat.

TKIB : Tenaga Kerja Indonesia Bermasalah

TKIS : Tenaga Kerja Indonesia Swasta