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The Synchronization of Legislation Regulations in Placement and Protection of the Indonesian Labor Who Working Abroad

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Abstract
Unprotected Indonesian Labor (TKI) who work abroad because of legislation regulation in placements and protection of Indonesian Labor by Number 39 of 2004 unsynchronized legislation vertically or horizontally. Vertically that legislation does not reflect the substance of Article purpose 28 D (2). Article 28 I (4) RI State legislation of 1945. Act No. 39 of 2004 is also out of sync with the implementation regulations Presidential Decree (Decree) No. 81 Year 2006 on National Agency for the Placement and Protection of Migrant Workers (BNP2TKI), especially in terms of monitoring the protection of migrant workers. Act No. 39 of 2004 is also out of sync with the implementation regulations Presidential Decree No. 81 Year 2006 on National Agency for Placement and Protection of Migrant Workers (BNP2TKI), especially in terms monitoring of migrant workers protection. Consequently there are overlaps and inconsistencies in monitoring the migrant workers protection. Similarly, between Presidential Decree No. 81 of 2006 With decision of The Minister of Manpower and Transmigration Number 18/MEN/IX/2007 on the Placement and Protection Implementation of Migrant Workers Abroad. The national institution placement and protection of Indonesian labor (BNP2TKI) authority in the institution placement and protection for migrant workers are set out in the regulation partially pulled back to the Ministry of Manpower and Transmigration through the Ministry Decree of Manpower and Transmigration No.. 22/MEN/XXI/2008, resulting in "a conflict of authority" between the Ministry of Manpower and Transmigration as a regulator with The national institution placement and protection of Indonesian labor (BNP2TKI) as implementing policies on the placement and protection of migrant workers. Horizontally, Law no. 39 In 2004 the substance is not in sync with the Law No. 39 Year 1999 on Human Rights, especially regarding the elaboration the working concept as part of human rights and state responsibility in the protection, compliance and enforcement. The same thing happened to Law No. 32 Year 2004 on Regional Government relating to the protection of migrant workers between the authority of Central Government and Local Government.
Keywords: legislation regulations, the Indonesian labor

1. Introduction

Article 27 paragraph (2) of the 1945 Constitution guarantees the right of every citizen to obtain a job and a decent living for humanity. This was reaffirmed in the 1945 Constitution RI State Chapter XA of Human Rights (hereinafter referred to as HAM), Article 28D (2) states that "every person has the right to work and to receive benefits and fair treatment and decent working relationships". Furthermore, Article 28 paragraph (4) states that "the protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state especially the government ".

Normative foundation above the double meaning which gives basic rights to citizens of job forms and a decent living and burdensome obligations on states to comply. However, it is undeniable that the current labor is still a lot that has not been able to obtain a job (unemployed).

Based on the survey results of the Central Statistics Agency (BPS) are 10.55 million people openly unemployed (open unemployment) consequently does not have a source of income at all. This number will continue to increase according Biological according to BAPPENAS assumption that (1) every year there are at least 2.5 million new workforces, (2) if economic growth reached 5.5% a year, then the new jobs available reaches 1, 5 million. Thus, every year there will still be 1 million new unemployed people.[1]

Various attempts have been made by the government to reduce the amount of unemployment, one of which is to fill employment opportunities abroad. Placement policy for Indonesian overseas until now still considered relevant, given the Indonesian people still face many employment issues such as the number of labor are still high, unemployment is increasing, the low quality of labor, and the wage rates are still low when compared to other countries in Southeast Asia. With this condition, the employment opportunities overseas so getting the response from the public especially as wages / salary offered is quite high as well as the motivation to want to fix / change the fate of a better direction.

Indonesia is the second largest sending countries of migrant workers in Southeast Asia after the Philippines.[2] According to the Ministry of Manpower and Transmigration (hereinafter referred to Ministry of

[1] Hidayati, "*Calculating Unemployment and hope that disappeared*", Kompas, Tanggal, 12 Pebruari, 2005, Jakarta, p. 27
[2] Naovalita, Tita, dkk, *Social Protection of Migrant Workers, Proceeding Seminar, The World Bank in collaboration with the*

Labor), up to June 2006 the number of Indonesian migrant workers reached 4,488,741 people. Most of these migrants come from rural areas. At the macro level, as recorded at the Ministry, remittances (remittance) by Indonesian migrant workers in 2006 amounted to U.S. $ 6.5 billion, or approximately Rp. 58 trillion. The number of Indonesian Workers (hereinafter abbreviated TKI) are working abroad continued to increase, until the end of 2008 the number of workers who work abroad increased to six million people with remittances reached USD. 130 trillion.[1]

Although many bring in foreign exchange for the country and the region and participate solve employment problems in the country, obtained the protection of migrant workers is still very limited. This condition is evident from the number of migrant workers' rights violations that occur each year either at the stage of pre-placement, during placement, and after placement (post placement).

To protect workers who work abroad (work in overseas), the government set a date of October 18, 2004 Law No. 39 Year 2004 on the Placement and Protection of Migrant Workers Abroad (State Gazette of the Republic of Indonesia (LNRI) 2004 No. 133, Supplementary State Gazette of the Republic of Indonesia (TLNRI) No. 4445).

To further implement the Act No. 39 of 2004, the government has issued regulations implementing, among other Presidential Decree (Decree) No. 81 Year 2006 on National Agency for Placement and Protection of Indonesian Workers (BNP2TKI), the Minister of Manpower and Transmigration No. 18 of 2007 on the Implementation of the Placement and Protection of migrant Workers Abroad. Regulation of the Minister of Manpower and Transmigration No. 22 of 2008, and the Minister of Manpower and Transmigration No.. 20 Year 2007 on Indonesian Labor Insurance and other regulations.

Moreover, Law No. 39 of 2004 on the Placement and Protection of Migrant Workers Abroad is also associated with several equal laws, for example, Law No. 39 Year 1999 on Human Rights (HAM), because the work is part of the human rights. Likewise, the Law No. 32 Year 2004 on Regional Government, especially with regard to the authority of local government in placement Agency and migrant workers protection.

Regulations implementation of a law theoretically should be in sync with the above regulations (vertical), as well as other laws and regulations are equal (horizontal) so as to strengthen the enforceability (its validity) judicially. Similarly, the Law No. 39 Year 2004 on the Placement and Protection of Migrant Workers Abroad. Because it is necessary to investigate degree of synchronization in relation to migrant workers protection who working abroad.

2. Methods

This study is a legal research to examine the legal materials primary, secondary and tertiary. The approach taken is legislation and conceptual. Mechanical collection of legal materials is done by way of documentation. Processing and analysis of normative legal materials prescriptive done through legal reasoning are logical, systemic and coherent. The analytical tool used is a systematic interpretation of the particular legal interpretation and grammatical laws and principles preference.

3. Results and Discussion

3.1. Vertical Sync

Synchronization is derived from the word meaning synchronous line, corresponding, aligned. In English known as the synchronize which means operating, moving, shifting, etc. At the time, with the same speed, etc. (to operate, move, turn, etc. at the same time, speed, etc.).[2] So synchronization is meant fit or alignment of legislation with one another in different degrees or vertically.

In the Indonesian word meaning similar terms with is synchronous harmony that can mean alignment, compatibility, harmony. [3] However, the meaning of legal harmonization wider than synchronization. Synchronization is part of a study of harmonization, but synchronization can not be applied in the study of norms and global or transnational legal system.[4] Synchronization of legislation vertically studied whether a legislation that applies to a particular area of life does not contradict itself, when seen from the corner of hierarchy such legislation.[5] According to Arief Sidhartha inconsistencies laws and regulations vertically in terms of formatting rules that lower regulations conflict with higher laws.[6] Thus the study of the vertical synchronization in this

Ministry of People's Welfare of Indonesia, Jakarta, 2-3 Mei 2006, p. 64.

[1] Jawa Pos, 16 Desember 2008, hal. 7, *"Indonesian Labor Foreign Exchanges Perforate 130 Trillion Rupiahs"*.

[2] AS Homby, *Oxford Advanced Leaner's Dictionary*. Oxford University, 1995, p. 1211.

[3] M. Dahlan Al Barry, in Kusnu Goesniadhie S, *Harmonization of Law in Perspective Legislation*, JP Books, Surabaya, 2006, hal. 23.

[4] Kusnu Goesniadhie S, Ibid, p. 24.

[5] Soekanto, Soerjono, and Sri Mamudji, *A Normative Legal Research Brief Overview*, Rajawali Pers, Jakarta, 1985, p. 19.

[6] Arif Sidharta in Gatot Dwi Hendro, *Legal Framework Coral Reef Ecosystem Management to Support Sustainable Use of Biodiversity Ocean*, Dissertation, Graduate University Press, Surabaya, 2007, p. 289.

paper are legislation regulations on placement and protection of migrant workers abroad accordance with theory of a hierarchy or hierarchy of legal norms (*Stufenbautheorie*) from Hans Kelsen that legal norms were tiered and layered arrangements in a norm. Norma lower sourced and based on the higher norms, and so forth until the norm that cannot be traced further and are hypothetical and fictitious is basic norm (*grundnorm*). The explanation of this theory in the Indonesian legal system as set forth in Article 7 paragraph (1) of Law No. 12 Year 2012 on the Establishment of legislation as follows:

1. Constitution of the Republic of Indonesia Year 1945;
2. The Provision of People's Consultative Assembly (TAP MPR);
3. Act / Government Regulation Replacement of Act;
4. Government Regulation;
5. Presidential Regulation;
6. Provincial Regulation;
7. District / City Regulation.

In the opening of 1945, there are four main ideas is none other than Pancasila. Pancasila ideals than as a legal (*rechtsidee*) as well as Fundamental Norms State, which is a basic norm or the highest norms for the operation of all legal norms. In this position Pancasila is also known as the source of all sources of law, meaning that all laws in force in Indonesia should be based on and derived from the Pancasila. While the 1945 Constitution is the highest law is the basis of the written sources of law for the laws under it.

According to the provisions of Article II of the Transitional Provisions in the 1945 Constitution which states that "all state and regulatory agencies that there is a direct effect, has not been held for a new one according to the Basic Law", then the existing rules relating to the deployment of Indonesian people who work foreign to the " Ordinance on the Mobilization of Indonesian to Perform Work Abroad or *Werving van Indoneiers voor het verrichten van arbeid buiten Indonesia* (Staatsblad Year 1887 Number 8) is current / valid.

After the independence of Indonesia nation, mobilization of Indonesian workers abroad began in 1970 which was arranged through the Minister of Manpower No. 4 of 1970 on Manpower Mobilization jo. Minister of Manpower Regulation No. 1 of 1983 on the Company's Deployment of Indonesian Workers Abroad and subsequently revised several times, most recently by the Minister of Manpower Decree No. 104 of 2000 on the Placement of Indonesian Workers Abroad jo. Decree of the Minister of Manpower No. 104 A of 2000 on the Placement of Indonesian Workers Abroad.

The reform movement that succeeded in overthrowing new order Government has been inspiring to make corrections / improvements to the shortcomings of past governments, including in the areas of law that are still using colonial laws and national laws or the product has been deemed incompatible with the development and needs of the community. Therefore, on March 25, 2003 the government established the Law No. 13 Year 2003 concerning Manpower (State Gazette Year 2003 Number 39, Supplementary State Gazette No. 4279). This law repeal ordinance six Dutch heritage is still valid, one of which is the Ordinance on the Mobilization of Indonesia to Perform Work Abroad. In this Act states that the provisions regarding employment abroad shall be regulated by law (Article 34). To carry out the mandate of Article 34 Act No.. 13 In 2003, then on October 18, 2004 the government established Act No. 39 Year 2004 on the Placement and Protection of Migrant Workers Abroad (State Gazette Year 2004 Number 133, Supplementary State Gazette No. 4445).

In the preamble to weigh Act No. 39 of 2004 letters A, D mention that the work is a human right that must be upheld, respected, and their enforcement guaranteed. State shall guarantee and protect the rights of its citizens who work both inside and outside the country based on the principles of equality, democracy, social justice, gender equality, anti-discrimination, and anti-trafficking.

Based on the consideration of the preamble, it is clear that the basic norms contained in the Constitution of the Republic of Indonesia Year 1945 has been used as a source of inspiration in the formation of Act No. 39 of 2004 on the Placement and Protection of Migrant Workers Abroad, in particular the recognition of work as part of a human Rights (Article 28D paragraph 2), the state's obligation to guarantee and protect the rights of its citizens who work both inside and outside the country (Article 28 paragraph 4), and employment policies abroad is an attempt by the government to meet obligations constitutional to citizens to provide employment and decent income for humanity (Article 27 paragraph 2 of the 1945 Constitution).

The next issue is yet it describes the basic norms contained in the RI State Constitution of 1945 to the provisions Act No. 39 of 2004 on the Placement and Protection of Migrant Workers Abroad. This law is more nuanced placement of the protection. Of the 109 chapters are arranged, only 8 (eight) protection clause governing the protection and even then only at the time of placement. While the protection of pre-placement and after placement is not strictly regulated. In fact the 7 letter E mentioned that the government's obligation to provide protection to migrant workers during the period prior to departure, the placement period, and after placement.

In addition to reviewing unsynchronized Act No. 39 of 2004 on the Placement and Protection of Migrant Workers Abroad with the Constitution of the Republic of Indonesia of 1945 as the basis of the written

law of the highest in Indonesia, will also be examined unsynchronized between with its implementation regulations of the law. Regulation of implementation meant is Presidia Decree 81 Year 2006 on National Agency for Placement and Protection of Indonesian Workers (BNP2TKI). Presidential Decree These was formed as implementation of the mandate of Article 97 of Law No. 39 of 2004 which states that the provisions regarding the establishment, functions, tasks, organizational structure, and functioning of the National Agency for the Placement and Protection of Migrant Workers regulated by Presidential Decree.

In Article 2 of Presidential Decree No. 81 Year 2006 states BNP2TKI includes representatives of government agencies have functions related to the implementation of policies on the placement and protection of migrant workers abroad are coordinated and integrated. In carrying out the functions referred to in Article 2 b, mention BNP2TKI organizing tasks "provide services, coordinate, and conduct surveillance on: (1) the document, (2) a briefing the end of the departure (PAP), (3) problem solving, (4) the sources of financing; (5) departure to return, (6) improving the quality of Indonesian Labor candidate; (7) information , (8). Implementing quality placement workers, and (9) an increase in the welfare of migrant workers and their families.

Based on that job description, it is clear that the BNP2TKI addition to providing services, coordinate, also supervise the implementation of the placement and protection of migrant workers from departure document handling, placement, until repatriation. The provisions of Article 2 Presidential Decree No. 81 of 2006 is not in sync with the provisions of Article 92 of Law No. 39 of 2004 which states that the monitoring of the implementation of the placement and protection of migrant workers abroad carried out by the agency responsible for labor affairs in the government, provincial, district / city governments. According to the author, the task of monitoring should be carried out in accordance with the provisions of Article 92 of Law No. 39 of 2004 which is conducted by the agency responsible for labor affairs in the government, provincial government, district/city government because this government agency has provided the institution/institutions of labor inspectors which was formed to carry out the task. Additionally BNP2TKI has a function as a policy implementing the placement and protection of migrant workers, making it less appropriate implementing agency and overseeing the implementation of the duties themselves.

Regarding supervision, the Law No. 13 Year 2003 on Employment Article 176 states that "the labor inspection conducted by labor inspectors who are competent and independent in order to ensure the implementation of labor legislation". In Article 178 paragraph (1) states that "the labor inspection carried out by a separate unit in the institution scope of duties and responsibilities in the field of employment in the central government, provincial governments, and district / city".

Law No. 3 of 1951 regarding the Applicability of Act No. 23 of 1948 concerning Labor Inspection governing authority of labor inspectors are (1) supervise the enactment of labor laws and regulations in particular, (2) gather information materials concerning matters of employment and the state of labor relations in the broadest sense in order to make the Act and other labor laws, (3) run other work submitted in accordance with the legislation regulations.

Based on a normative foundation, it is clear that the control of labor/employment undertaken by inspectors intended as preventive measures to avoid the occurrence of irregularities on the implementation of legislation regulations in the Labor which is often done by the employers to the workers / employees. P. Nicolai argue *"het toezich dat bestuursorganen kunnen uitoefenen op de naleving van de bij of krachtens de wet gestelde voorschriften en van de bij besluit individueel opgeledge verplichtingen* (organs of government may exercise adherence in or under the laws specified in writing and supervision of the obligations laid decisions to the individual).[1] Moreover, according to Ten Berge supervision is one of the administrative law enforcement instruments. Implementation is done by way of extension, monitoring and the like.[2]

In Article 23 paragraph (1) of Presidential Regulation No. 81 of 2006 states that for the smooth implementation of Indonesian Manpower placement services, was formed Center Placement Service and Protection of Indonesian Workers (BP3TKI) in the Provincial Capital and / or points to migrants necessary. BP3TKI has the task to provide ease of processing the whole document placement services, protection and resolution of problems of Indonesian Workers are coordinated and integrated in their respective work areas BP3TKI (Article 24, paragraph 1). However, under Article 42 Based on these argument Decree of the Minister of Manpower and Transmigration (PERMENAKERTRANS) No. 18 of 2007 on the Implementation of the Placement and Protection of Overseas Labor as the implementing regulations of Law No. 39 of 2004 stipulates that BP3TKI, provincial, district / city governments with other relevant government agencies to coordinate in providing services appropriate placement and protection of migrant workers each task. Task performed by BP3TKI based both the above rules are not in sync, pursuant to Article 24 paragraph (1) Presidential Decree No. 81 of 2006 provide ease of processing the whole document placement services, protection, whereas under Article

[1] P. Nicolai, in Ridwan HR, *Administrative Law*, RajaGrafindo Persada, Jakarta, 2007, p. 311.
[2] Ten Berge dalam Philipus M. Hadjon, *Law Enforcement Administration in Environmental Management, Environmental Law Enforcement Workshop Papers*, Unair, Surabaya, 1996, p. 6.

42 of the Minister of Manpower and Transmigration No. 18 of 2007 to coordinate in providing services placement and protection of migrant workers. The lack synchronous/vertically antinomy These norm will affect the validity of the norm itself and ultimately affect its effectiveness, as stated Antony Allot *"Valid norm a norm which is formally correct, having been made in due form. A valid norm which secures a high degree of compliance: i.e. one which is actually complied with.*"[1] The validity of the legal norm is obtained for its formation is based on the higher norms that appropriateness of the legal norms with the legislation regulations on it.

In harmony with the enactment of Government Regulation No. 38 Year 2007 on the coordination between the Government, Provincial Governments and Local Government District / Municipality, the Minister of Manpower and Transmigration No. 18 of 2007 was replaced by the Minister of Manpower and Transmigration No. 22 of 2008 for be adapted with the spirit of regional autonomy that the Government Regulation.

In addition to customized with the spirit of regional autonomy, the issuance of the Minister of Manpower and Transmigration No. 22 of 2008 replaces Regulation of the The Minister of Manpower and Transmigration No. 18 of 2007 as defined in Section 2 is intended to regulate the placement and protection of migrant workers abroad conducted by Executive Placement Indonesian Manpower Private (PPTKIS). It is based on the provisions of Article 95 paragraph 2 of Law No. 39 Year 2004 jo. Article 3 paragraph (1) letter a Government Regulation of No. 81 of 2006 which states that the task is BNP2TKI "placement on the basis of a written agreement between the government and the state government users or user migrants legal status in the country of destination placement referred to in Article 11 paragraph (1) ". In Article 11 paragraph (2) regarding the procedures mentioned implementation of placement workers government further regulated by Government Regulation.

Based on the article above, it is clear that BNP2TKI charge of placement workers between the government and the state government users or user migrants with legal status. The word "or" means an alternative that has been with the state government users are not the user means a legal entity owned by the government and private and / or individuals. During BNP2TKI is handled by the placement of migrant workers between the government and the state government users (Government to Government or G to G). Means the placement of migrant workers in the interests of legal entities and / or individuals in foreign countries under the authority PPTKIS. Based on these argument Decree of the Minister of Manpower and Transmigration (KEPMEKERTRANS) No. issuance. 22 of 2008 that to regulate the placement and protection of migrant workers abroad undertaken by PPTKIS can be legally justified. While government regulation to regulate the placement of migrant workers conducted by the government until now has not been released.

Another authority of BNP2TKI accordance with the provisions of Article 25 paragraph (2) b of Law No. 39 Year 2004 jo. Article 3 paragraph (1) letter b of Government Regulation No. 81 of 2006 is to provide services, coordinate, and supervise the document, PAP, problem solving, financing sources, departure to return, improving the quality of prospective migrants, information, quality executive placement workers, and improving the welfare of migrant workers and their families. This article gives a clear formulation of the task to BNP2TKI to provide, coordinate, and supervise the general good placement workers conducted by BNP2TKI itself and conducted by PPTKIS, therefore shifting this task to other institutions (Directorate General of Employment Ministry) as regulated in Regulations of the Minister of Manpower and Transmigration No. 22 of 2008 on the Implementation of the Placement and Protection of Migrant Workers cannot be legally justified because the substance is contrary to the law No. 39 Year 2004 jo. Government Regulation Number 81 of 2006.

Withdrawal BNP2TKI authority as policy implementers placement and protection of migrant workers by Minister of Labor as regulators indicate a tug of authority between the two government institutions. Whereas Article 48 Presidential Decree No. 81 of 2006 stipulates that the formation of BNP2TKI, the Directorate General of Foreign Employment Ministry removed. So it is with all documents relating to the placement and protection of migrant workers as well as employees within a maximum period of six months shall be transferred to the BNP2TKI (Article 49 paragraph B, C). But it turns out that the Directorate is still there and carry out the duties and functions of Directorate General of Foreign Migrant Workers Placement with changes in nomenclature as the Directorate General of Employment on duty to formulate policies and implement policies and technical standardization in the Agency of Employment Development (Article 5 of Presidential Decree No. 7 of 2007).

According to the theory of law, the settlement of the inconsistency or conflict vertically legal norms (antinomy) between the lower regulation with regulation of a higher order, the settlement mechanism (Legal Remedies) was performed using the common law principle of "*lex superior derogat legi inferiori (higher level rules override rules lower).*"

3.2. Horizontal Synchronization/ Harmonization

The term harmonization is etymologically derived from the word harmony, refers to process that stems from an

[1] Allot, Antony, *The Limits of Law*, Butterworths, London, 1980, p. 30.

effort towards realizing the system or harmony. The term harmony is also interpreted as the conformity, compatibility, harmony, balance. In English known as the Harmonization, which is derived from Harmonize verb meaning "to be or the make something harmonious" (make or create something appropriate or conformable). The term harmony derives from the Greek is "*Harmonia*" which means harmonious and appropriate bound. In a philosophical sense is defined as "cooperation between various factors such a way that these factors result in a sublime unity". So, unsynchronized or disharmony is meant unconformity or incompatibility between the legislation regulation of one another.

From the above it is clear that harmonization has a close meaning with the synchronization as suitability, conformity, compatibility. Based on that, in the study of jurisprudence known the presence of vertical synchronization and horizontal synchronization or harmonization. In horizontal synchronization studied legislation that equal that is governing the same field. The same field which is intended is legislation regulations that have the same arrangement substance or relevance to the field being studied. Inconsistencies legislations horizontally occurs from the substance of the rules, ie, some rules are hierarchically parallel, for example both are laws but one substance is more common than others. Legislation referred in relation to the placement and protection of migrant workers working abroad are:

3.2.1. Law No. 39 Years 1999 on Human Right

Human endowed by Almighty God of reason and conscience which gives him the ability to distinguish the good and the bad that will guide and direct attitudes and behavior in living life. With reason and conscience, the human has the freedom to decide their own behavior or actions. In addition, to compensate that freedom, human beings have ability to take responsibility for all their actions. Fundamental freedoms and basic rights those so-called human rights inherent in human beings naturally as a gift of God Almighty. These rights cannot be denied. The denial of this right is deny human dignity. To protect, maintain, and enhance human dignity requires the recognition and protection of human rights, because without it man would lose the nature and dignity, so as to push the man into a wolf to other humans (Homo Homini Lupus). Therefore, the state, the government, or any organization is carry out the obligation to recognize and protect the human rights of every human being without exception. This means that human rights should always be the starting point and destination in the organization of society, nation, and state. To guarantee these rights implemented, then established Law Number 39 Year 1999 on Human Rights.

The rationale for the establishment of the Law No. 39 Year 1999 on Human Rights thought above, in line with the view of the Indonesian nation, as UN member states who see "Universal Declaration of Human Rights" not just as a "statement of objectives" solely, but believe in it as "constitutes an obligation for the members of the international community" which has to be guaranteed and enforced.

Law No. 39 Year 2004 on the Placement and Protection of Indonesian Workers Abroad in the preamble, consider, states that (1) work is a human right that must be upheld, respected, and guaranteed enforcement, (2) Indonesian workers abroad often become objects of human trafficking, including slavery and forced labor, victims of violence, abuse, crimes against human dignity, as well as other treatments that violate human rights.

From the establishment of the philosophical foundation of this Act it is clear that the main base stand from the concept of work as a human rights that must be respected and guaranteed enforcement, while the empirical conditions showed concern that Indonesian workers who work abroad often become objects of human trafficking, including slavery and forced labor, victims of violence, abuse, crimes against human dignity, as well as other treatments that violate human rights. However, the contradictory conditions appear in preamble section refers only to Article in the Constitution of the Republic of Indonesia Year 1945 and Law No. 13 Year 2003 concerning Manpower, while others such as Law No. 39 Year 1999 on Human Rights is not included.

In line with the Human Rights Act, the government has also ratified the International Covenant on the Rights of Economic, Social and Cultural Rights (International Covenant on Economic, Social and Cultural Rights) through Law No. 11 of 2005. Covenant is confirmed and outlined the main points of human rights in the economic, social and cultural rights of the Universal Declaration of Human Rights which is a second-generation human rights provisions into a legally binding.

Based on both law is clear that normative workers who work both domestically and abroad have better protected their rights over wages, social security, working conditions are conducive, and set up a trade union / labor, education and training and other work. However, because this law is not used as a basis in the formation of Law No. 39 of 2004 on the Placement and Protection of migrant workers abroad, the norms contained therein do not reflect the principles of human rights protection.

The principle is that work is part of the human rights and state responsibility for protection, compliance and enforcement. Form of protection, compliance, and enforcement is through the arrangement and description of the economic rights in legislation and regulations placement and protection of migrant workers, and to ensure compliance and enforcement. Economic rights is essentially a demand social equality, so it is often called positive rights whose fulfillment requires the active role the state. The involvement of the state must show

a positive sign, it should not show a negative sign. So to fulfill the rights that grouped into the second generation, the state is required to prepare and implement programs for the fulfillment of these rights.

Economic rights which are the second generation of human rights emerged in the early 19th century in France through revolutionary struggle for the welfare of the result of violations or abuses of the capitalist that legitimizes the exploitation of the workers due to the capitalist economic system which gives freedom to compete (free competition) individually in economics.

Until this very day there are different views on human rights, particularly with regard to civil and political rights and economic rights. Western countries influenced the philosophy of liberal individualism prioritize civil rights and politics. In fact they not consider the economic, social and cultural rights as a human rights. Instead socialist countries are influenced by the teachings of Marxism / socialism and third world countries consider that the main task of the state is the welfare of the community, with an active set of economic, social and cultural. Therefore, the economic, social and cultural rights are more mainstream.

3.2.2. Law No. 32 Years 2004 on Regional Government

Disadvantages of regional autonomy arrangements in Law No. 22 of 1999 have been enhanced through Law No. 32 of 2004 on Regional Government. As with previous legislation that adheres to the principle of autonomy in the sense region are given the authority to regulate and manage all administrative matters outside the affairs of the authority of the government's foreign policy, defense, security, finance, justice, and religion. These authorizations are under the authority of the government because it involves in ensuring the survival of the nation and the country as a whole.

In addition to governmental affairs which are the full authority of the government, there is concurrent governmental affairs means that the handling of government affairs in a particular section or area can be carried out jointly between the government and local government. Thus there is a division of authority between the governments, there is provincial jurisdiction, and no matter which part of the authority given to the district / city. Affairs division of authority assigned proportionally based on the criteria of externality, accountability, and efficiency with attention to the harmonious relationship between the composition of government. Implementation of government affairs is the implementation of the authority relationship between the government and the provincial governments, district and city or regional intergovernmental interrelated, dependent, and synergistically as a system of government. Government affairs under the authority of the regional government, consisting of obligatory functions and affairs of choice. Mandatory government affairs are government affairs that must be held by the local government related to basic services for the community. Government affairs optional are prioritized by the government affairs of local government to be held associated with efforts to develop the potential of seed (core competence) that characterize the area.

Specialized in the field of labor which is the focus of this study, obligatory function of local government authority in the affairs of the province is a provincial scale covering the field of employment services across districts / cities (Article 13 h). Obligatory function of local government authority for the district / city is a matter of scale, district / city covering the field of employment services (Article 14 letter h).

Further elaboration of the affairs division is regulated in Government Regulation No. 38 Year 2007 on the coordination between Government, Provincial Government, and the Government of Regency / City.

In the form of government regulation, authority given to the area is in the form of coaching, supervision and protection of migrant workers placement in the province and district / city. Authority in the field of surveillance carried out by the agency responsible for labor affairs at the provincial, district / city governments in accordance with the provisions of Article 92 of Law No. 39 of 2004. In addition to supervision, district / city governments also have the authority in the field of migrant workers in the form of registration and selection of prospective migrants, service and equal treatment in the placement of workers abroad and on stage after placement in the form of returning migrant services in accordance with the provisions of Article 8, paragraph b, c; Law No. 39 Year 2004 on the Placement and Protection of migrant Workers Abroad.

Pursuant to the authority granted to the provincial and district / city in the field of placement and protection of migrant workers, it appears that neither the Law No. 39 of 2004 nor Government Regulation No. 38 Year 2007 on the coordination between Government, Provincial Government and District Administration / City both patterned centralized in terms of protection of migrant workers. All protection under the authority of GOI Center on the grounds of protection of migrant workers with regard to relations with other countries. Though the protection of migrant workers not only at the time of placement, but also pre-placement and post-placement. As a result, migrant workers cannot be adequately protected, especially in the pre-placement stage.

According to the author along with the implementation of regional autonomy, then it should be for the protection of pre-placement left to the local area completely because most people know the characteristics and needs of the region. For example, the problem of information and registration center prospective workers should do in the responsible agencies in the field of employment districts / cities. Rules like this are less functional because prospective workers are mostly from rural and less educated it will have difficulty in accessing information or to register a migrant worker in the Department of Labor-regency / city quite far from home

workers. Because it would be more appropriate if the center and place of registration information was handed over to the local government authority districts / cities, so the county has the discretion to set, for example through Regional Regulation. In the area of regulation is made by region, can make the village as a center of information (information center) and the registration of prospective migrants because this institution closest to the people, making it easier for prospective workers to access information including all the necessary documents. This system also will be able to cut the role of middlemen who had been heavily involved in the recruitment and management of documents prospective migrants.

4. Conclusion

From the above it can be concluded that unprotected workers who work abroad normatively based on Law No. 39 Year 2004 on the Placement and Protection of Migrant Workers Abroad norm because it is not regulated in both vertical and horizontal sync.

a. Vertically not reflect the substance of the provisions of Article 28D paragraph (2), Article 28 paragraph (4) RI State Constitution of 1945. Additionally Presidential Regulation No. 81 Year 2006 on BNP2TKI not in sync with the provisions of Law No. 39 of 2004, especially in terms of monitoring the protection of migrant workers . As a result there are overlaps in monitoring the protection of migrant workers. Similarly, between the Ministry of Manpower and Transmigration No. 18/MEN/IX/2007 on the Implementation of the Placement and Protection of Migrant Workers Abroad with Presidential Decree No. 81 Year 2006. BNP2TKI authority in the field of placement and protection of migrant workers are set out in the regulation partially pulled back to the Ministry of Manpower and Transmigration through the Ministry of Manpower and Transmigration Decision No.22/MEN/XXI/2008, the consequence there is a conflict of authority between Ministry Manpower as BNP2TKI as regulators and implementers of policies on the placement and protection of migrant workers.
b. Horizontally not synchronized between Law No. 39 of 2004 to Law No. 39 Year 1999 on Human Rights, especially regarding the elaboration of the concept of working as part of human rights and state responsibility in the protection, compliance and enforcement. The same thing happened to Law No. 32 Year 2004 on Regional Government relating to the protection of migrant workers authority between the central government and local governments.

4. Recommendation

It needs to held a law reform (legal reform) on the substance of the Law No. 39 Year 2004 on the Placement and Protection of Migrant Workers in Foreign Affairs in particular to c the norm as opposed to each other either vertically or horizontally

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