

# Government Responsibility on Legal Protection to Indonesian Migrant Workers In Informal Sector

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## Abstract

Protection for Indonesian Migrant Workers in informal sector who work abroad is a manifestation of the Government's responsibility to fulfill constitutional rights as citizens. Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers is an Integral part of a system built based on the mandate of Article 28 D paragraph (3), where every citizen has the right to obtain decent work, meaning that the rights of every citizen are the right to work abroad and it is the Government's obligation to provide protection for Indonesian migrant workers in the informal sector who work abroad. There are Indonesian Migrant Workers in the informal sector because its characteristics are a group that is very susceptible to abuse, discrimination and injustice when working abroad. The most susceptible group among migrant workers are informal sector workers (domestic workers) because of the women. The responsibility of the state requires the Government to provide protection to Indonesian Migrant Workers regardless of their status, whether they are legal or illegal because they are out of the jurisdiction of the sending state.

**Keywords:** Government's Responsibility, Protection, Indonesian Migrant Workers

## 1. Introduction

The development of social welfare in Indonesia actually refers to the concept of a welfare state. In the Five Principles of Pancasila and the 1945 Constitution of the Republic of Indonesia, it stressed that the principle of social justice mandates the Government's responsibility in the development of social welfare<sup>1</sup>. However, the mandate of the constitution has not been conducted consequently, both during the New Order and the reform era, the development of social welfare is just an issue and it has not been integrated with economic development strategies. Development in the socio-economic sector as one of the implementation of national development policies received sufficient attention from the Government so that from time to time the development of the socio-economic sector experienced a lot of progress which in turn is expected to improve people's welfare. Thus, in turn, the welfare can be reached and can be enjoyed fairly, sustainably, fairly for all Indonesians.

Formally since 1945 Indonesia (Pre-Amendment Constitution) had declared itself as a state of law and reaffirmed in the 1945 Indonesian Republican Constitution (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), the amendment in article 1 paragraph 3 stipulates "Indonesia is a state of law". Therefore, by paying attention to the formulation of the concept of the legal state of Indonesia, Ismail Suny noted four formal requirements of legal state which are the obligation of the Government to be implemented, namely, Human Rights, Power Distribution, Government based on Administrative Law and Judiciary<sup>2</sup>. As a state of law, every community has the same position as others without the difference (equality before the law).

After the amendments of the 1945 Constitution, the purpose of the state declared in the Preamble of the 1945 Constitution, it still did not experience any amendments I-IV carried out since 1999-2002, meaning that even though the articles or formerly called the 1945 Constitution experienced many changes, conception of state objectives is still used as a basis for the implementation of the life of the country and nation.<sup>3</sup> However in its articles, the regulation of human rights contained in the 1945 Constitution after the amendment experienced many changes and additions, which seemed striking and were eager to enter all rights that were universally recognized in Universal Declaration of Human Rights 1948<sup>4</sup>. In the 1945 Constitution, the concept of state responsibility in human rights (state responsibilities) is tucked away, as involved in articles 28I (4) and (5), stating "Protection, improving, enforcement and fulfillment of human rights are the responsibility of the state, especially the government and to uphold and protect human rights in accordance with the principles of a democratic state of law, the implementation of human rights is guaranteed, regulated and stated in the law and regulations". Both are keys in seeing the constitutional responsibility that must be carried out by the state, in this case is the Government, to carry out efforts to improve human rights.<sup>5</sup>

Protection of labors/ workers is an inseparable part of the protection of citizens as a Government obligation. Basic rights as human beings must be fulfilled by obtaining protection wherever they work to get their basic

<sup>1</sup> Pasal 27 ayat 2 Tiap-tiap warga negara berhak atas pekerjaan dan penghidupan yang layak bagi kemanusiaan.

<sup>2</sup> Titik Triwulan Tutik, *Pokok-Pokok Hukum Tata Negara*, (Jakarta : Prestasi Pustaka, 2006), hlm. 120

<sup>3</sup> R Herlambang Perdana Wiratraman, *Jurnal Ilmu Hukum, Yuridika*, Vol. 20 No. 1 Januari 2005, hlm. 9

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

rights, both different status of their citizens and the same status of their citizens, so that they get a decent life as a human being in accordance with Article 28 D paragraph (3) 1945 Constitution of the Republic of Indonesia, that “Every citizen has the right to work and get compensation, fair and proper treatment in an employment relationship”.

Legal protection is an element that must be in a legal state. Every state formation must have a law to regulate its citizens and in a country, there must be a relationship between the state and its citizens, thus it obtains rights and obligations<sup>1</sup>. Legal protection on the other hand will be a right for citizens, and on the other hand it becomes an obligation for the state. This means that the government must provide legal protection to guarantee the legal rights of its citizens. The more explicit thinking about the law as a protector of the basic rights and freedoms of its citizens was stated by Immanuel Kant.<sup>2</sup> According to Kant, human beings are intelligent and free-willed and their country is in charge of asserting the rights and freedoms of its citizens. The prosperity and happiness of the people is the goal of state of law, therefore, the basic rights of citizens must not be obstructed by the state.

The principle of legal protection on government actions is based on the concept of recognition and protection of human rights because according to its history, the birth of the concept of recognition and protection of human rights is directed at the limitation and place of the obligations of the society and the Government. Legal protection for the people as a Government action can be preventive and repressive. Preventive legal protection is carried out by giving the opportunity of legal subjects to submit their objections or opinions before a government decision gets a definitive form. Preventive legal protection is very significant for government actions based on freedom of action, because by the preventive legal protection, the government is encouraged to be careful in making decisions. On the other hand, repressive legal protection aims to adjust the dispute.

In the labor / worker and employer relationship, the law of autonomy and heteronomy are applied, and these laws of autonomy and heteronomy that obtains labor law that is private law and public law. Private law means labor law regulates the relationship between workers and employers where each party is free to determine the form and content of the employment relationship between them. Public law shows that basically the rule of law which is compelled must be obeyed by the employer and laborer if they have relations before, during and after the period of employment.<sup>3</sup>

Uncertainty about all rights of migrant workers can be the subject of disputes between employer and workers and tends to trigger human rights violations. Legal protection policies for migrant workers through Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers cannot provide protection for Indonesian migrant workers in informal sector. Then most migrant workers have problems with official documents or work permits held by agents, employer or documents that are not in accordance with the contract.<sup>4</sup>

Facts on the ground that show that in the process of placing and sending Indonesian migrant workers or the so-called Indonesian Workers abroad there are three parties involved. First, it is the Indonesian migrant workers who aim to find decent work and work experience abroad. Second, the Government is a policy and regulation maker and that aims to provide a legal protection for the running of dispatch and placement of Indonesian migrant workers so that the resulting remittances can increase. Third, the private sector of Private Indonesian Workers Placement Company (PPTKIS) obtains a Placement Licenses (SIPPTKI) which runs a business in the field of providing migrant workers whose purpose is to obtain profits. Among those three parties, Indonesian migrant workers have the weakest position, because they come from individuals who come from poor families, have low education, do not understand their rights and are under economic pressure who are ready to do anything as long as they can be dispatched and get a job as soon as possible.

Based on the various background above, in this article it will discuss the meaning of government responsibility on legal protection of Indonesian migrant workers in informal sector (domestic workers or also called PLRT). The study was carried out by using a legislative approach and philosophical studies.

## 2. Research Method

This study discusses the problems in which this article used legal research. The approach used is the legislation approach and conceptual approach, Conceptual approach and legislation. These two approaches are intended to provide an analysis of the substance of the problem to existing legislation. Conceptual approach is conducted by investigating the concept of legal protection from legal experts, dictionaries and legislation.

The legal material analysis technique used in this study is a qualitative normative analysis, also known as qualitative juridical analysis, in which legal materials obtained through research are examined first and then systematically arranged and presented in the form of descriptive sentences. Furthermore, the collected data /

<sup>1</sup>Triana Sofiani, *Perlindungan Hukum Pekerja Perempuan Sektor Informal*, Volume 9, Nomor 2, Desember 2017, hlm. 145.

<sup>2</sup> *Ibid.*,

<sup>3</sup> Dede Agus, *Hukum Ketenagakerjaan*, (Serang : Dinas Pendidikan Provinsi Banten, 2012), hlm. 9-10

<sup>4</sup> Retno Kusniati, *Perlindungan Hukum Dalam Upaya Pemenuhan HAM*, Universitas Jambi, Januari-Juni 2009, Volume 11 Nomor 1, hlm. 47-56

legal material is analyzed based on the prevailing laws, theories, and legal doctrines to then be deductively deduced by starting from the study of general matters towards specific matters.

### 3. Results and Discussion

#### 3.1 *International Convention on Migrant Workers and ILO Convention on Domestic Workers or also called PLRT (Domestic)*

The United Nations adopted the Convention on Migrant Workers on December 1990 (UN Convention on the Protection of Migrant Workers and their Family Members) on December 18, 1990 (UN General Assembly Res 45/158, 18 Dec 1990). The Convention was applied (entered into force) on July 2003 after being ratified by 20 countries which was reached on March 2003 (according to the requirements of the Convention).

This Convention in principle provides protection to all migrant workers regardless of the way they enter a country<sup>1</sup>. This Convention regulates the rights that apply to all migrant workers regardless of their legal status and regulates the rights that apply to migrant workers (a regular situation) as well as basic freedoms for migrant workers<sup>2</sup>. This Convention provides a very complete human rights standard that must be guaranteed by the state, to all those who qualify as migrant workers. This Convention is an International Convention that regulates comprehensively the relationship between human migration and human rights. This Convention had been ratified by 41 countries, which the majority of the ratifying countries are sending countries such as Mali, the Philippines, Sri Lanka and Indonesia. Indonesia had ratified this Migrant Workers Convention on April 12, 2012 with Law No. 6/2012.

The Migrant Workers Convention Article 2 paragraph 1 describes the definition of 'Migrant Workers' as 'any person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national'. This means that international law provides protection to migrant workers, namely someone who is going to be, is doing or has done the paid work in a country where the person is not a local citizen. For refugees and stateless persons, their rights will only be recognized in the Convention if this is also regulated in the national provisions of the country concerned.

This Convention tries to guarantee the human rights of migrant workers broadly including civil and political, economic and socio-cultural rights. One group called illegal immigrants (undocumented) are usually asylum seekers who refuse permanent residence permits, or 'overstay', which is people who live in a country but the residence permits / visa has expired and it is categorized as illegal immigrants<sup>3</sup>.

At the 100<sup>th</sup> Conference of International Labor Organization (hereinafter referred to ILO) on June 2011, this organization adopted ILO Convention number 189 which is Convention on Domestic Workers as Decent Workers in 2011 (*the convention concerning Decent Work for Domestic Workers*) which is a Convention regulating employment standards of domestic workers (referred to Domestic Workers Convention, 2011 number 189) and Recommendation No. 201. This Convention was approved by voting of 396 agreed and 16 disagreed, with 63 countries abstaining. However, Recommendation number 201 was adopted with 434 agreeing and 8 disagreeing votes, with 42 abstentions.

This Convention on Domestic Workers, according to article 21 (2) had been ratified by two countries as a condition of its application, namely by Uruguay on June 14, 2012 and the Philippines on September 5, 2012, so that the Convention can be applied (enter into force) a year after the second ratification text registered in the ILO Directorate General. According to the Convention, what is meant by domestic worker is "someone who is employed in domestic work in a work relationship". This work can include tasks such as cleaning the house, cooking, washing and ironing clothes, caring for members of a family; children, elderly or sick, gardening, taking care of the house, driving for families, even caring for animals.

The two Conventions mentioned above are conventions that recognize and support the existence of migrant workers in particular (domestic workers or also called PLRT). However, the level of willingness of countries to ratify this Convention is relatively low. In addition, considering the structure of the International Convention whose enforceability depends on the existence of ratification, so the protection of migrant workers depends on whether there is cooperation between the government, especially the receiving and the sending countries. Intergovernmental cooperation is sometimes not carried out so human rights violations still occur to migrant workers so that their lives are very miserable in the country. In this context, the sending and receiving countries are responsible for the protection of their citizens who are migrant workers abroad.

<sup>1</sup> Linda S Boniak, *Intrepreting the Convention : Human Rights, State Sovereignty and the Protection of Undocumented Migran under the International Migran Workers Convention*, Int'l Migration Review, Vol. 25 no. 4 Winter 1991, hlm 738.

<sup>2</sup> Rachel Silvey, *Transnational Domestication : More Power and Indonesia Migran Woman in Saudi Arabia*, Political Geography 23, 2004, P. 78

<sup>3</sup> Walter Deville, 2010, *The Right to Health Care for Vulnerable Population Groups in The Netherlands and in Europe*, in Human Rights and Biomedicine, A den Exter (ed) Antwerpen : Maklu, P. 89.

### 3.2 Characteristics of Migrant Workers in Informal Sector and Protection of Migrant Workers in Informal Sector

Protection of migrant workers actually depends entirely on the law of the State of placement. It is as the jurisdiction of the person (migrant worker) located. State jurisdiction refers to the state's authority to run government of people and property with the application of its national law (criminal law and civil law). It is stated that the jurisdiction of a Government can only be applied to the territory of the country<sup>1</sup>. Therefore, in the context of the protection of citizens, the national law of the sending State cannot reach the national law of the receiving countries. Thus, in protecting migrant workers it requires cooperation or agreement (MoU) between the sending country and the receiving countries<sup>2</sup>.

Basically, sending and placing the migrant workers abroad is an agreement between countries (bilateral agreements) with humans as their object. Thus, the sending country is obliged to provide legal protection to migrant workers (namely their citizens) who are abroad, because they are not commodities but they must be required as the nation's assets. Based on this, it is a violation of law when a person sends migrant workers to a country where there is no memorandum of understanding (MoU) or bilateral agreement with Indonesia.

The majority of informal sector migrant workers are women, who choose to work abroad for the purpose of being independent and fulfilling the needs of their families. Work schemes of migrant workers in informal sector with a temporary duration of 2 (two) years led to the perception that they were "not invited" so they did not work "to work". The scope of the work of Informal sector (domestic workers or also called PLRT) includes responsibilities, functions and duties that are very broad, often invisible and undervalued, which are carried out in domestic and for households<sup>3</sup>. Consequently, there is an assumption that the informal sector (domestic workers or also called PLRT) is different from other formal workers. Therefore, if other types of work are given rights as workers automatically, it is different from Informal sector (domestic workers or also called PLRT).

The workplace for the Informal sector (domestic workers or also called PLRT) is the residence of housemaids. They live with their employers in their employer's house. Therefore, this results in limited autonomy and mobility of housemaids. Moreover, the absence of a good recruitment mechanism that is not provided by clear information about the terms and conditions of the type of work, labor law, local socio-culture, and the prohibition to participate in labor organization, resulting in isolated informal sector migrant workers due to language and customs differences in the country of placement.

The candidate of migrant workers who are sent to work abroad frequently do not have the capacity and capability of both adequate soft skills and hardskills according to the type of work in the country of placement. This has led to various forms of ill-treatment of the informal sector migrant workers (domestic workers or also called PLRT) either in the form of "verbal abuse" or "physical abuse" or "sexual harassment" even some cases can reach death.

From the characteristics and types of work, a general conclusion can be drawn is that in the informal sector (domestic workers or also called PLRT) usually women and their jobs are not categorized as 'productive' jobs but as 'non-productive personal care service' or often claimed that housemaids as part of the family (a part of the family). As a consequence of this view, housemaids tend to be de facto excluded from formal legal provisions and their application. Work and work ethic of housemaids are regulated more by beyond norms regulated by the state, especially related to work in their workplace, namely their employer's house. According to ILO, at International Labor Conference, 99<sup>th</sup> session. Report IV (I), Decent Work for Domestic Workers, housemaids are the most marginalized workers.

The group of housemaids is an unprotected group both legally and socially, and their rights often become the object of exploitation and are neglected. By these characteristics, and also the structured rejection of the state, the type of work of housemaids will remain 'invisible' in all forms of work. Therefore, if you want to provide protection to housemaids then you have to regulate the individual of employer, and the recruitment company that conducts recruitment and placement, and the agency in the placement country. If you want to provide comprehensive protection to the informal sector migrant workers (housemaids) then the state must make laws that categorize domestic work as "decent work" and give them "social protection". Hence, a "minimum living standard" is formed which is in accordance with the dignity of housemaids so it provides justice for housemaids.

Compared to housemaids who work in their own country, migrant workers (domestic workers or also called PLRT) have more human rights problems. Living in another country is the most difficult experience for Indonesian migrant workers or TKI (domestic workers or also called PLRT) who do not have sufficient education, are inexperienced and are not equipped with the skills, law and culture of the destination country. Then when compared with male workers, then workers (domestic workers or also called PLRT) women are more

<sup>1</sup> Rebecca M.M Wallace dan Olga Martin-Omega, *International Law*, Sixth Ed. Sweet & Maxwell, Thomson Reuters, 2010, hlm. 120

<sup>2</sup> Koesrianti, *Kewajiban Negara Pengirim dan Penerima Untuk Perlindungan Pekerja Migran*, Jurnal Diplomasi, Jurnal Kementerian Luar Negeri Indonesia, Volume 2 Nomor 1 Maret 2010, hlm 10

<sup>3</sup> Adelle Blackett, *The Decent Work for Domestic Workers Convention and Recommendation*, 106, American Journal of International Law, 788, 2011, hlm. 779

vulnerable to “gender-based violence”, from sexual abuse to rape. The risk and vulnerability of migrant workers (domestic workers or also called PLRT) is worsened by the conditions when they do not have immigration documents (passports or travel documents such as passports) because they will be deported if they report the mistreatment of their employer to an authorized official in the destination country. As a result, female migrant workers who work as domestic workers or also called PLRT are very vulnerable and have a high risk of unfair treatment and exploitation related to the characteristics of the dominant work and individual of migrant workers who are not educated with minimum formal training qualifications.

### 3.3 *Diplomatic Protection as Protection of Indonesian Workers Abroad.*

If it is associated with legal protection obtained, formal workers are protected by better legal protection, because generally the receiving country has properly regulated workers’ rights in national legislation.<sup>1</sup> Informal workers should not get their basic rights because the majority of receiving countries do not regulate the rights of informal workers in their national legislation. Therefore, informal workers often experience inhumane actions and their rights are often violated.

In practice sometimes the sending and placement of Indonesian Workers is done by breaking the applicable legal rules. In the case of sending Indonesian workers who have no MoU with the country of placement, it will be difficult to carry out adequate protection. In this context, international law regulates diplomatic protection from the state. The relationship between diplomatic protection of a country and its citizens cannot be separated<sup>2</sup>. In the case of the Panevezys-Saldutiskis Railway, the Permanent International Court of Justice stated: when there is no special agreement, the tie between the state and the individual concerned can give the right to the state to provide protection to its citizens<sup>3</sup>. A country can only provide diplomatic protection to someone by making a claim if the country can show that the person is a citizen of them. Furthermore, that:

*‘State responsibility in International law refers to liability-that of one State to another for the non-observance of the obligations imposed by the international legal system’*

The responsibility of the state according to International Law refers to the responsibility of a country on another country due to the country’s disobedience with the obligations carried out by the international legal system. If viewed from the nature and consequences of international violations done by the state, then the form of state responsibility is divided into three, namely: political, material and moral<sup>4</sup>. Political responsibility can be in the form of restrictions on the sovereignty of the violating state in running the government. Hence, political responsibility is very important. The form of political action from this responsibility can be in the form of termination of diplomatic relations or withdrawal of diplomats and representatives of violating countries. However, the material responsibility can be in the form of reparations, namely repairing the damages of relations caused by international crime, or restitution, namely returning to the previous condition, for example returning the property that was seized, returning state boundaries as used to be. Moral responsibility in the form of satisfaction which can be in the form of giving the forgiveness to wrong state is usually done with a special ceremony. This moral responsibility is closely related to political responsibility.

### 3.4 *Protection of Indonesian Workers Abroad (Placement Period)*

When Indonesian Workers work in the country of placement, Indonesian Workers are struggling alone to survive. Therefore, the presence of the state is needed by Indonesian Workers. Part of the form of protection of Indonesian Workers abroad, the government has issued a policy in the form of the completion of placement and protection systems of Indonesian Workers abroad. This is a form of state responsibility for Indonesian Workers as citizens. This policy includes increasing bilateral, regional and multilateral foreign cooperation. There are 9 (nine) placement countries having MoU, namely Malaysia (2 MoUs). South Korea, Jordan, Kuwait, Taiwan, United Arab Emirates, Australia, Qatar and Japan<sup>5</sup>. Regional agreements such as the ASEAN Ministerial Meeting (Forum on Migration / Technical Meeting) and the scope of the Asia Europe Meeting (ASEM); Abu Dhabi Declaration and Bali Declaration. On the other hand, in the International Scope it can be in the form of the ILO Convention, International Organization on Migration (IOM), United Nations Development Fund or Women (UNIFEM). Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) where as coordinator, Women’s Empowerment and Child Protection Minister for the Protection of Women. Some forms of Government policy in enhancing the protection of Indonesian Workers abroad are described below:

<sup>1</sup> Rachel Silvey, *Op. Cit.* P. 248

<sup>2</sup> Koesrianti dan Lina Hastuti, 2009, Peran ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers bagi Indonesia untuk perlindungan pekerja migran Indonesia di luar negeri, Penelitian (tidak dipublikasikan)

<sup>3</sup> Guy Goodwin Gill, 19878, *International Law and the Movement of Persons between States*, Clarendon Press, Oxford. P. 9

<sup>4</sup> Y.A Korovin, 2010, *International Law*, Foreign Languages Publishing House, Moscow, P. 131

<sup>5</sup> Rosstiawati, *Perlindungan TKI Di Luar Negeri, Perluasan Kesempatan Kerja dan Peningkatan Peningkatan Pelayanan Penempatan, Lokakarya Nasional Perlindungan TKI, Surabaya, 24 Maret 2010*

### **a. Arrangement and Review of the MoU for the Placement and Protection of Indonesian Workers**

Protection of Indonesian Workers abroad demands the presence of the state in its implementation in the form of bilateral cooperation in the form of an MoU with the destination country. Therefore, it is necessary to review the existing MoU and the arrangement of a MoU with countries that do not have a MoU. The government has conducted a review in term of the establishment and renewal of the MoU on the Placement and Protection of Indonesian Workers in countries<sup>1</sup>.

#### **1. Kuwait**

The subject of the MoU with Kuwait seeks to separate the formal and informal sectors, but it has not found a match between the two countries even though negotiations with Kuwait concerning Indonesian Workers (Domestic Workers or also called PLRT) have been carried out since 2010.

2. Brunei Darussalam (discussion of the MoU on Placement and Protection of Indonesian Domestic Workers at the Joint Working Group / JWG at the ASEAN Forum on 19-20<sup>th</sup> of August 2013);
3. Saudi Arabia (MoU between Saudi Arabia and the Government of Indonesia is still in the process of discussion, at the Joint Working Committee it has been discussed about the placement of Indonesian Workers and Indonesian Workers in the domestic sector but the agreement has not been reached).

### **b. Moratorium**

In order to provide protection to Indonesian Migrant Workers (TKI), especially Indonesian Workers, domestic workers or also called PLRT, the Government issued a moratorium on the placement of TKI (domestic workers or also called PLRT) to Malaysia on June 29, 2009, because Malaysia has not provided guarantees for protection of Indonesian Workers (domestic workers or also called PLRT) who work in their countries. Besides Malaysia, there are several other countries that are subject to a moratorium on the placement of Indonesian Workers (domestic workers or also called PLRT), namely Saudi Arabia, Syria, Kuwait, Egypt, Libya and Jordan. The moratorium was carried out due to political or security turbulence in the placement country (Syria, Egypt and Libya).

The moratorium on placement of Indonesian Workers (domestic workers or also called PLRT) is a temporary closure of the placement of Indonesian workers in the domestic sector which is aimed at overall improvement of the dispatch of domestic workers in those countries because there is no guarantee of adequate legal protection. Then for the placement of Indonesian Workers with skills, semi-skills and professionalism, the Government does not conduct a moratorium. The moratorium policy is carried out in placement countries that have not made a MoU with Indonesia with a great number of problems / cases of Indonesian Manpower with a minimal protection. The moratorium policy was taken in the country of placement that already had a MoU but it was not implemented by the placement country. This moratorium is the first step in reforming the placement of Indonesian Migrant Workers (TKI) in the informal sector towards 'Zero Domestic Workers in 2017'<sup>2</sup>.

The reason for the moratorium in the placement country is as follows. Saudi Arabia is the country that has the largest number of Indonesian Migrant Workers (TKI) in the Middle East region. It is happened because in 2009 the demand for Indonesian Migrant Workers (TKI) was very high at that time reaching 272,676 informal workers with a total number of women migrant workers 251. 724 people. But until now there has been no MoU between Indonesia and Saudi Arabia which regulates the protection and placement of Indonesian Migrant Workers (TKI) so the problems of Indonesian Migrant Workers (TKI) such as unpaid wages, health insurance and acts of mistreatment are the focus of Government's attention in providing protection for Indonesian Migrant Workers (TKI). The moratorium was carried out in order to increase protection and also resolve various problems of the Indonesian Workers.

In contrast, between Indonesia and Jordan there has been a domestic sector MoU signed on June 27, 2009 in Bali. But on September 6, 2010 a moratorium was imposed on the Jordan of domestic workers in accordance with the Circular Letter of the Minister of Manpower and Transmigration Number: SE.172 / MEN / PPTK-TKLN / VII / 2010 dated July 29, 2010 concerning Temporary Termination of Placement Services of Indonesian Migrant Workers (TKI) ) to Jordan for Workers in Domestic sector (domestic workers).

For Kuwait, the moratorium policy was carried out since September 1, 2009, based on the results of evaluation of conditions in the field. In the Case in Kuwait, the core of the negotiation was emphasized on the kafil's position (user / sponsor) which had been very detrimental to Indonesian Migrant Workers (TKI). Indonesia will continue negotiations between the two countries if the Kuwaiti government has issued a policy on the kafil. The moratorium will be revoked if an agreement is reached in the MoU. As for the Syria, a moratorium policy has been implemented since September 5, 2011. This is taken because there are many problems experienced by informal Indonesian Migrant Workers/ domestic workers due to the large number of service users who violate contracts that are very detrimental to Indonesian Migrant Workers (TKI) and weak law

<sup>1</sup> Reyna Usman, *Penyempurnaan Proses Penyediaan dan Penempatan TKI Di Luar Negeri serta Perlindungan WNI Di Luar Negeri*, Jakarta : Direktorat Jenderal Pembinaan Penempatan Tenaga Kerja Kementerian Tenaga Kerja dan Transmigrasi Republik Indonesia, 2012, hlm. 1

<sup>2</sup> Reyna Usman, *Op. Cit.*, hlm. 10

enforcement against violators and the large number of Indonesian Migrant Workers (TKI) who are non-procedural / illegal thus increasing the complexity of the problem.

The government also improves and reviews the procedures and implementation of the cost structure (cost structure) which so far has caused a heavy burden on Indonesian Migrant Workers (TKI) or domestic workers covering Malaysia, South Korea, Singapore, Hong Kong and Taiwan. This cost structure is set in the form of People's Business Credit (KUR) for Indonesian Migrant Workers (TKI) given by the Bank appointed by the Government then it can be repaid by Indonesian Migrant Workers (TKI).

#### 4. Conclusion

Protection of Indonesian Workers is a protection that requires a strong legal basis and support, coordination and synergy of all agencies, both the Central Government, Regional Governments (provinces and districts / cities), the National Agency for the Placement and Protection of Indonesian Migrant Workers (or abbreviated BNP2TKI), and also Service of Private Recruitment and Placement Agency or PPTKIS and agency in the country of placement. Indonesian workers who work in the informal sector need more attention in handling than Indonesian workers who work in the formal sector, because the law of state placement does not provide adequate legal protection for this group. Indonesian workers who work as domestic workers need legal protection from the state because this group is vulnerable to unfair treatment and human rights violations. Protection of Indonesian Workers who work as domestic workers requires not only cooperation and coordination from all parties involved but also extra hard work because the nature of women places Women Workers in the group that is most vulnerable to abuse, mistreatment, sexual abuse and human rights violations. Since the migrant workers work in other countries, namely in the country of placement, the cooperation with other countries in the form of bilateral agreements (MoU) is something that must be done for the maximum protection of Indonesian Workers who work as domestic workers.

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#### Law and Regulations

UUD 1945 Pasal 27 ayat 2 'Tiap-tiap warga negara berhak atas pekerjaan dan penghidupan yang layak bagi kemanusiaan'.