

PROTECTION AGAINST WOMEN LABOR (TKW) ABROAD REVIEWED ACCORDING TO LAW NUMBER 39 OF 2004 CONCERNING PLACEMENT AND PROTECTION OF INDONESIAN WORKERS ABROAD

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Abstract — *The reason for choosing the research problem in this study was the result of literature research on the problems that befell Indonesian workers, especially TKW who work in destination countries (overseas). The discussion in this thesis uses a normative research method (juridical normative) with an approach to legislation, and concepts. Legal protection for TKI is all efforts to protect the interests of prospective TKI/TKI in realizing the guaranteed fulfillment of their rights in accordance with statutory regulations, both before, during and after work (Article 1 point 4 of Law No. 39 of 2004). Based on this understanding, Article 77 of Law no. 39 of 2004 mandates to provide comprehensive protection to TKI/TKW starting from pre- placement. During placement and after placement. However, Law no. 39 of 2004 does not regulate the legal protection of TKI/TKW in detail. In addition, it has not concretely regulated provisions concerning TKI who commit criminal acts in the country of destination, because in general, TKI who commit a crime are only given legal protection after the legal process in the destination country has entered a verdict, so that existing legal remedies are carried out through diplomatic channels by emphasizing the role of Indonesian representatives in the countries where Indonesian workers work. In Law no. 39 of 2004, the parties responsible for providing protection to TKI/TKW are PPTKIS and the ministry of foreign affairs, but PPTKIS is only responsible for providing protection to prospective TKI/TKI in terms of work agreements. The foremost pillar of protection for TKI/TKW working abroad basically lies with the Ministry of Foreign Affairs. This can be seen from the provisions of Article 78 paragraph (1) of Law no. 39 of 2004 which mandates the Indonesian Representative to provide protection for Indonesian Migrant Workers abroad based on Law no. 39 of 2004, as well as international law and practice.*

Keywords—*Legal Protection , TKW, Overseas*

I. INTRODUCTION

News about female workers (TKW) who work abroad (country of destination) facing legal problems, for example facing court proceedings in the country of work destination are really concerning, especially when they are sentenced to death. Mass media coverage related to legal problems faced by TKW in work destination countries (abroad) can be stated as follows:

Indonesian workers (TKI) from the village of Ceger RT. 03/01 Sukatani District, Bekasi, West Java, was sentenced to death by beheading in Mecca.

The holder of the Navy passport 786899 was sentenced to death for killing his employer's wife, Koiriyah Omar Moh. Omar Hilwani, in Mecca on January 12, 2010 after an argument because his wish to return home was not granted. Ruyati was sent to work in Saudi Arabia by the private TKI placement operator (PPTKIS) PT. Dasa Graha Utama since 2008

Apart from Ruyati, Tursilawati also had a similar fate. Policy observer of the Indonesian Migrant Workers Association (Migrant Care), Wahyu Susilo said there are Indonesian Migrant Workers (TKI) in Saudi Arabia who are thought to be sentenced to death. The following is Wahyu Susilo's statement:

Previously, it was reported that there were 28 TKI who were facing the death penalty, but in fact there were 44 TKI who had the potential to be sentenced to death. I think the closest thing will be experienced by Tuti Tursilawati, a TKI from Majalengka who works in Saudi Arabia. Tuti was found guilty of allegedly murdering the employer who hired her

Other problems that are often experienced by TKI (TKW), namely:

First, the labor migration process is vulnerable to exploitation.

Second, state policies that actually legitimize exploitation through policies that do not protect. Law No.39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad places more emphasis on the placement aspect of TKI than their protection.

Third, the problems faced by Indonesian migrant workers cannot be separated from the management systems of other countries, weak law enforcement and the absence of supervision of migration actors (PJTKI, government officials and law enforcement officers).

Fourth, the values that apply in society where girls who become migrant workers are family assets and the community is also the vulnerability of the migrant workers themselves.

Taking into account the problems of TKW as described above, it seems that they still revolve around problems related to civil aspects as a result of the agreement to place TKW abroad, and have not disclosed legal issues concerning the actions of TKWs who carry out legal actions related to criminal aspects.

“The contribution of TKI to the country's foreign exchange always increases from year to year. For example, the contribution in 2002 was US\$ 3.1 billion, and at the end of 2007 it was US\$ 4.85 billion (44 trillion rupiah) which came from 644,190 TKI”.

According to Article 33 of Law Number 13 of 2003, the placement of workers consists of: a. placement of workers in the country; and b. placement of workers abroad. Furthermore, based on the provisions of Article 34 of Law Number 13 of 2003, the placement of workers abroad is regulated by law, and the law in question is Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad.

If you pay attention to the problems as stated above, and considering the provisions in Law Number 39 of 2004, it is necessary for TKW who work in the work destination country (overseas) to be given legal protection, so that it is not only a matter related to civil employment relations, only, but also legal protection for TKW who face legal problems or problems related to criminal acts committed by TKW in the destination country.

II. LITERATURE REVIEW

Definition of Female Workers (TKW)

Before discussing further about the definition of TKW, it is necessary to first understand the juridical terms and definitions of workers/labourers, workers, and Indonesian workers (TKI), so that by understanding the three juridical definitions of labor, it will be easier to understand the meaning of TKW.

According to Abdul Rachmat Budiono, “the term labor has always been identified with menial jobs, low education and low incomes”. Even during the Dutch East Indies colonial period, the terms coolie, foreman and the like put the workers in a weak position under the entrepreneur. In fact, the existence of workers is very important for the survival of the company.

Meanwhile, the term worker has a very broad meaning, namely “any person who does work either in an employment relationship or in a self-employment relationship”. However, in Law Number 13 of 2003 concerning Manpower and Law Number 2 of 2004 concerning Settlement of Industrial Relations Disputes, the term worker is attached to one with the worker, thus using the term worker/labor. Article 1 point 3 of Law Number 13 of 2003 states: “Worker/labor is any person who works by receiving wages or other forms of remuneration”. The same understanding is also contained in Article 1 point 9 of Law Number 2 of 2004.

The definition of manpower is found in Article 1 number 2 of Law Number 13 of 2003, which states: “A workforce is every capable person who is able to do work to produce goods and/or services to meet their own needs and for the community”.

If you look at the definition above, in the context of using the term it seems more appropriate to choose the term worker/labor, because the term worker/labourer has something to do with the employment relationship. This is in line with the definition of an employment relationship contained in Article 1 number 15 of Law Number 13 of 2003, which states: “Employment relationship is a relationship between an entrepreneur and a worker/labourer based on a work agreement, which has elements of work, wages and orders.”

Furthermore, regarding the definition of Indonesian workers (TKI) can be found in the Decree of the Minister of Manpower and Transmigration (hereinafter referred to as Kepmen Nakertrans) Number: KEP-104A/MEN/2002 concerning the Placement of Indonesian Migrant Workers Abroad, which limits the understanding: Indonesians, hereinafter referred to as TKI, are Indonesian citizens, both male and female, who work abroad for a certain period of time based on a work agreement through the procedure for placing TKI. Meanwhile, Article 1 number 1 of Law Number 39 of 2004 provides a limitation on the understanding of Indonesian Migrant Workers (TKI) are every Indonesian citizen who meets the requirements to work abroad in an employment relationship for a certain period of time by receiving wages.

Taking into account the notion of TKI in the laws and regulations mentioned above, it appears that there is no official concept of Female Workers (TKW). The existing definition is the concept of Indonesian Migrant Workers (TKI) which is a term for Indonesians, both men and women who work abroad. It can be concluded that the definition of TKW is only a classification of TKI seen from the aspect of gender or gender.

Placement of TKI Abroad

Placement is a service activity to bring together TKI according to their talents, interests and abilities with overseas employers which includes the entire recruitment process, document processing, education and training, shelter, preparation for departure, departure to the destination country, and repatriation from the destination country.

In accordance with the mandate of the Convention and the 1945 Constitution, the National Policy for the Placement and Protection of Indonesian Migrant Workers (P3TKI-LN) must be comprehensive and integrative . by involving all relevant Government agencies in providing services to Indonesian Migrant Workers as well as services to Private Indonesian Migrant Worker Placement Companies (PPTKIS) and other supporting institutions. With integrated placement and protection services for TKI supported by strong law enforcement, the resulting social losses can be minimized as small as possible, so that TKI placement and protection services are efficient and effective in improving people's welfare and foreign exchange earnings.

The provisions of Article 34 of Law Number 13 of 2003 mandate that provisions regarding the placement of workers abroad are regulated by law. The law in question is Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad.

Article 1 point 3 of Law Number 39 of 2004 states: "The placement of TKI is a service activity to bring together TKI according to their talents, interests, and abilities with employers abroad which includes the entire recruitment process, document processing, education and training, shelter, preparation for departure to the destination country, and return from the destination country.

The executor of the placement of TKI abroad consists of the government and the executor of the placement of private TKI (Article 10 of Law Number 39 of 2004). The executor of the placement of private TKI is a legal entity that has obtained written permission from the government to provide services for the placement of TKI abroad (Article 1 point 5 of Law No. 39 of 2004).

In addition, there are several related parties, namely:

a. Prospective Indonesian Migrant Workers (Prospective TKI).

A prospective TKI is every Indonesian citizen who meets the requirements as a job seeker who will work abroad and is registered with a Regency/City Government agency responsible for the field of manpower (Article 1 point 2 of Law No. 39 of 2004).

Based on the provisions of Article 51 of Law no. 39 of 2004, to be able to be placed abroad, prospective TKI must have documents including:

- 1) Identity card, latest education certificate, birth certificate or birth certificate;
- 2) Certificate of marital status, for those who are married, attach a copy of the marriage book;
- 3) Certificate of husband or wife's permission, parental permission or guardian's permission;
- 4) Work competency certificate;
- 5) Health certificate based on the results of health and psychological examinations;
- 6) Passport issued by the local immigration office;
- 7) Work visa;
- 8) TKI placement agreement;
- 9) Employment agreement;
- 10) Overseas work certificate (KTKLN).

b. Business partner

Work partners are agencies or business entities in the form of legal entities in the destination country that are responsible for placing TKIs on users (Article 1 point 6 of Law No. 39 of 2004).

c. TKI service users

TKI service users (Users) are government agencies, government legal entities, private legal entities and/or individuals in the destination country that employ TKI (Article 1 point 1 of Law No. 39 of 2004).

d. Company

The company is for its own sake, is an Indonesian legal entity, the TKI who are placed are employees of the company itself (Article 26 of Law No. 39 of 2004).

III. METHOD

Research, which in English is called research , is essentially a search effort. "Through research , people search for new findings, in the form of true knowledge (truth, true knowledge), which can be used to solve problems . " Soerjono Soekanto said "research is a scientific activity related to analysis and construction which is carried out methodologically, systematically and consistently" .

In the world of research, research is the application or application of predetermined methods with very strict requirements based on a well-maintained scientific tradition so that the results of research carried out have scientific value that is appreciated by the related scientific community (intersubjective) .

It should be understood that in legal science textbooks written by legal experts, there are at least 2 (two) types of legal research. For example, Roni Hanitijo Soemitro distinguishes legal research into "normative legal research and sociological legal research" . Normative legal research is carried out by examining library materials which are secondary data, while sociological or empirical legal research mainly examines primary data. Meanwhile, the definition of legal research according to Peter Mahmud Marzuki, is "a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced" .

Taking into account the types of existing legal research and research objectives, in this paper the method used follows the methods in normative legal research, in the sense of examining legal materials through library research which is secondary data.

Research approach

Starting from the selection of normative legal research methods, the problem approach used in this research is the statutory approach .

This statutory approach is carried out to examine regulations relevant to the subject matter or legal issues raised, namely those related to the issue of legal protection for Indonesian migrant workers based on Law Number 39 of 2004.

Legal materials

The legal materials needed in the research include primary legal materials and secondary legal materials.

- a. primary legal materials, including statutory regulations, namely the 1945 Constitution, Law Number 13 of 2003 concerning Manpower, Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad, as well as relevant laws and regulations with the subject matter.
- b. materials , namely the scientific works of scholars contained in text books (literature), scientific journals or previous scientific research that have relevance to the legal issues raised.

Legal materials collection method

The collection of legal materials is done by conducting library research , namely by studying the laws and regulations related to the problem, and literature books written by legal experts, as well as searching through the internet related to research problems. .

Processing and analysis of legal materials

Legal materials are collected from library research, then processed and studied from the legal aspect by citing the articles in the legislation that are relevant to the problem, while the opinions or views of legal experts contained in textbooks or in scientific journals quoted to be used as a reference and theoretical basis in answering and solving research problems.

IV. RESULT AND DISCUSSION

Implementation of TKI Placement in Destination Countries

In accordance with the provisions of Article 10 of Law no. 39 of 2004, that the executor of the placement of TKI Abroad is carried out by the government and by the private sector in this case is the PJTKI. Implementing the placement of TKI abroad by the government can be carried out on the basis of a written agreement between the government and the government of the country using TKI or users who are legal entities in the destination country, while Implementing the placement of private TKIs must obtain written permission in the form of a Permit for Implementing TKI Placement (SIPPTKI) from Minister of Manpower and Transmigration (Article 12 of Law No. 39 of 2004).

To discuss whether the placement of TKI abroad, either through PJTKI or non-PJTK, is carried out according to regulations, it is necessary to first discuss the procedures for placing TKI abroad carried out by the PJTKI.

General Provisions :

a. Base :

- 1) Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad. Some definitions related to the placement and protection of Indonesian Migrant Workers Abroad are as follows:
 - a) Indonesian Migrant Workers, hereinafter referred to as TKI, are every Indonesian citizen who meets the requirements to work abroad in an employment relationship for a certain period of time by receiving wages.
 - b) Prospective Indonesian Migrant Workers, hereinafter referred to as TKI candidates, are every Indonesian citizen who meets the requirements as job seekers who will work abroad and is registered with the district/city government agency responsible for manpower affairs.

- c) TKI placement is a service activity to bring together Indonesian workers according to their talents, interests and abilities with overseas employers which includes the entire recruitment process, document management, education and training, shelter, preparation for departure, departure to the destination country, and return from the destination country.
 - d) Protection of TKI is all efforts to protect the interests of prospective TKI/TKI in realizing the guaranteed fulfillment of their rights in accordance with the laws and regulations, both before, during and after work.
 - e) The executor of the placement of private TKI is a legal entity that has obtained written permission from the Government to provide services for the placement of TKI abroad.
 - f) Business Partner is an agency or business entity in the form of a legal entity in the destination country which is responsible for placing TKI on Users.
 - g) TKI Service Users, hereinafter referred to as Users, are Government agencies, Government Legal Entities, Private Legal Entities, and/or Individuals in the destination country that employ TKI.
 - h) Placement Cooperation Agreement is a written agreement between the executor of the placement of private TKI with Business Partners or Users which contains the rights and obligations of each party in the context of the placement and protection of TKI in the destination country.
 - i) TKI Placement Agreement is a written agreement between the executor of the placement of private TKI and prospective TKI which contains the rights and obligations of each party in the context of placing TKI in the destination country in accordance with the laws and regulations.
 - j) Employment Agreement is a written agreement between a TKI and a User that contains the terms of employment, rights and obligations of each party.
 - k) Overseas Worker Card, hereinafter referred to as KTKLN, is an identity card for TKI who meet the requirements and procedures for working abroad.
 - l) Work Visa is a written permit given by an authorized official to a representative of a country containing approval to enter and do work in the country concerned.
 - m) Permit for Implementing TKI Placement, hereinafter referred to as SIPPTKI, is a written permit granted by the Minister to a company that will become the executor of the placement of private TKI.
 - n) Deployment Permit, hereinafter referred to as SIP, is a permit granted by the Government to the executor of the placement of private TKI to recruit prospective TKI from certain regions within a certain period of time.
- 2) Due to the fact that the implementing regulations for Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad have not been issued, the provisions used are the Regulation of the Minister of Manpower and Transmigration Number: PER.22/MEN/XII/2008 concerning Implementation of the Placement and Protection of Indonesian Migrant Workers Abroad.

Implementing Private TKI Placement:

Legal entities that obtain written permission from the government to provide services for Indonesian Migrant Workers Abroad are Indonesian Migrant Worker Service Companies (PJTKI) or Private Indonesian Migrant Worker Placements (PPTKIS).

TKI Placement Agreement:

A written agreement between the executor of the placement of TKI or PJTKI and the prospective TKI, which contains the rights and obligations of each party in accordance with the laws and regulations.

Employment agreement :

A written agreement between a worker and a labor user that contains the terms of work, rights and obligations of each party.

Work Visa :

Written permission given by the authorized official to the representative containing approval to enter and do work with the person concerned.

TKI Placement Implementation Permit (SIPPTKI):

SIPPTKI is a written permit by the Minister to the company that will be the executor of the placement of TKI.

Work partners :

Agency/Business Entity in the destination country that is responsible for placing TKI in labor users.

Deployment Permit (SIP) :

Permits granted to executor of the placement of private TKI to recruit prospective TKI from certain areas. Certain positions, and to be employed by certain prospective users for a certain period of time.

Procedures for Placement of Indonesian Migrant Workers Abroad

- a. The implementation of the placement of TKI abroad consists of:
 - a) Government

- b) Implementation of the placement of private TKI (PPTKIS/PJTKI) (Law of the Republic of Indonesia No. 39 of 2004 Article 10). Implementing the placement of TKI abroad by the government can be carried out on the basis of a written agreement between the government and the government of the country using TKI or users who are legal entities in the destination country. Implementing the placement of private TKIs must obtain written permission in the form of a Permit for Implementing TKI Placement (SIPPTKI) from the Minister Indonesian Manpower and Transmigration (Law No. 39 Year 2004 Article 12).
- b. The Private TKI Placement Executor (PJTKI/PPTKS) has cooperation with business partners in the destination country which is known by the Indonesian representative in the country and registered with the Director General of PPTKLN.
- c. PJTKI/PPKTIS get Job Orders (real requests) from the destination country.
- d. After the PJTKI obtains a Job Order /real request from the destination country, a Permit for Deploying is requested from the Director General of PPTKLN covering:
 - 1) Placement cooperation agreement.
 - 2) Job Order / real request.
 - 3) Work Agreement (Draft) and TKI placement agreement.
 placement cooperation agreement , job order and draft work agreement must be legalized by the authorized official at the RI Representative in the destination country (UU RI No. 39 of 2004 Article 32).

Regarding the procedure for placing TKI abroad, based on Law Number 39 of 2004, it can be broadly explained as follows:

Pre-placement of TKI

According to the provisions of Article 31 of Law no. 39 of 2004, pre-placement activities for Indonesian workers abroad include:

- a. SIP management;
- b. Recruitment and selection;
- c. Education and job training;
- d. Health and psychological examination;
- e. Document handling;
- f. Competence test;
- g. Departure final briefing (PAP);
- h. Departure.

Several things need attention in pre-placement activities, including recruitment and selection. According to Article 35 letter a of Law no. 39 of 2004, the recruitment of prospective TKI by PPTKIS must be carried out on prospective TKI who have met the requirements, including at least 18 years of age, except for TKI who will be employed by individual users of at least 21 years. "The rationale for this is actually to protect TKI, namely so that TKI can avoid the possibility of sexual harassment, because TKI who are 21 years old have psychological maturity, so they are guaranteed to be safe from acts of sexual harassment".

Although it is intended to protect TKI, this requirement has been submitted for judicial review to the Constitutional Court (MK) because it is considered contrary to Article 27 paragraph (2) of the 1945 Constitution and Article 28D paragraph (2) of the 1945 Constitution. Regarding the judicial review , the Court is of the opinion that the provision in Article 35 letter of Law no. 39 of 2004 is not an abolition of the right to a job, but a justified requirement in order to fulfill the state's obligation to protect its citizens who are employed by individual users abroad.

Thus the petition of the applicant who argues Article 35 letter a of Law no. 39 of 2004 contradicting Article 27 paragraph (2) of the 1945 Constitution and Article 28D paragraph (2) of the 1945 Constitution is groundless, therefore the Court rejected the applicant's application.

Another thing that has been submitted for judicial review to the Constitutional Court, is the educational requirements of TKI who have at least graduated from Junior High School (SLTP) or the equivalent (Article 35 letter d of Law No. 39 of 2004). This provision is considered contrary to the 1945 Constitution, in particular Article 27 paragraph (2), Article 28D paragraph (2), and Article 28J paragraph (2). The Constitutional Court is of the opinion that the education level limit (SLTP) can only be justified if the job requirements do require it. Restrictions on the level of education beyond those determined by work in Article 35 letter d of Law no. 39 of 2004 actually does not have a justification basis (rechtsvaardigingsgrond) according to Article 38J paragraph (2) of the 1945 Constitution. Based on that, the Constitutional Court granted the applicant's request and stated Article 35 letter d of Law no. 39 of 2004 is contrary to the 1945 Constitution, so it does not have a binding basis.

Another issue that needs attention is the provisions of Article 54 paragraph (1) of Law no. 39 of 2004 which states: "PPTKIS are obligated to report every agreement on the placement of TKI to the district/city government agency responsible for the field of manpower".

This rule, if observed, creates confusion and can be misused because PPTKIS can report the placement agreement of TKI to any district/city government agency responsible for the manpower sector. As a result, district/municipality manpower agencies have difficulty collecting data on migrant workers from the relevant districts/cities, even though data on Indonesian migrant workers is very important. This can be one of the reasons why districts/cities do not have accurate data on TKI originating from their respective regions.

To that end, the provisions of Article 54 paragraph (1) of Law no. 39 of 2004 should be revised. PPTKIS should be obliged to report every agreement on placement of TKI to the Manpower Office of the Regency/City of the TKI domicile. Violation of these obligations should not be enough to just be subject to administrative sanctions as stipulated in Article 100 of Law no. 39 of 2004, but also criminal sanctions so that they can be implemented properly.

Placement period

During the placement period, based on the provisions of Article 71 paragraph (1) of Law no. 39 of 2004, requires every TKI to report his arrival at the Indonesian Representative in the destination country. Consideration of these provisions can be seen in the Elucidation of Law No. 71. 39 of 2004 which states that basically to report yourself as a citizen residing in a foreign country is the responsibility of the person concerned. However, given the scattered placement locations, the PPTKIS can carry out self-report obligations, while TKIs who work for individual users are required to report to the PPTKIS who place them (Article 71 paragraph 2 of Law No. 39 of 2004).

When examined, the formulation in Article 71 paragraph (1) of Law no. 39 of 2004, does not differentiate the types of TKI, namely independent TKI, TKI placed by the company, and TKI placed by PPTKIS. The provisions of Article 71 paragraph (1) of Law no. 39 of 2004, it is more appropriate if it is intended for independent TKI (TKI who go abroad on their own).

The provisions of Article 71 of Law no. 39 of 2004 is basically intended so that TKI who work abroad are properly recorded whose function is to protect the TKI themselves while working abroad.

During the placement period, it is also regulated regarding the prohibition for PPTKIS to place TKI who are not in accordance with the work as referred to in the provisions of the work agreement that has been agreed and signed by the TKI concerned. This provision is intended so that TKI can work well in the destination country because they have received education and training that is appropriate to the job.

Post placement

Likewise, upon arrival, TKI who will return to Indonesia are required to report their return to the Indonesian Representative in the destination country, while reporting for TKI who work for individual users is carried out by PPTKIS. This report is required for the benefit of TKI. As with reporting on arrival, the provisions for reporting on return should also differentiate the type of TKI and for the effectiveness and efficiency of reporting should be carried out by the executor of the placement (company and PPTKIS). In addition, with the obligation to report by the executor of the placement, it is expected to always monitor the presence of TKI. This is important, considering the provisions of Article 74 of Law no. 39 of 2004 gives the responsibility to the executor of the placement to take care of returning from the destination country until arriving at the area of origin.

Legal Protection According to Law no. 39 of 2004

Protection of Indonesian Migrant Workers, namely all efforts to protect the interests of prospective Indonesian Migrant Workers in realizing the guaranteed fulfillment of their rights in accordance with laws and regulations, both before, during, and after work (Article 1 point 4 of Law No. 39 of 2004). Thus, TKI who work abroad receive legal protection from the government, because it has been mandated by Law no. 39 of 2004.

According to the provisions of Article 77 of Law no. 39 of 2004, every prospective TKI/TKI has the right to obtain protection in accordance with the laws and regulations, starting from pre-placement, placement period to post-placement. If you look at the formulation of Article 77 of Law no. 39 of 2004, it appears that the protection of TKI starting from pre-placement, placement period to post-placement is still a right and not at the level of obligation.

This is in line with the provisions of Article 6 of Law no. 39 of 2004 which states: "The government is responsible for increasing efforts to protect Indonesian migrant workers abroad". Furthermore, based on the provisions of Article 80 paragraph (1) of Law no. 39 of 2004, the protection during the placement of TKI abroad is carried out, among others:

- a. Providing legal assistance in accordance with the provisions of the legislation in the destination country as well as international law and practice;
- b. Defending the fulfillment of rights in accordance with work agreements and/or laws and regulations in the country where the TKI is placed.

Provisions regarding the provision of protection during the placement of TKI abroad are further regulated by **Government Regulation (Article 80 paragraph 2 of Law No. 39 of 2004)**.

When considering the provisions of Article 80 of Law no. 39 of 2004, the Government needs to provide socialization and general knowledge to TKI regarding the law in the country of work destination, so that it is in line with the purpose of providing protection to TKI during the placement period. In addition, when examined further the provisions of Article 80 of Law no. 39 of 2004, provides possible forms of protection, namely legal assistance and defense in relation to rights that arise in civil relations and problems relating to criminal offenses.

However, the law orders that further provisions regarding the protection of Indonesian Migrant Workers during this period of placement have not yet been issued a legal product in the form of a Government Regulation.

Then Article 82 of Law no. 39 of 2004 states that the executor of the placement of private TKI is responsible for providing protection to prospective TKI/TKI in accordance with the placement agreement.

So, in addition to the government, the executor of the placement of private TKI is also responsible for providing protection to prospective TKI/TKI in accordance with the laws and regulations and placement agreements.

Government Supervision

Placement and protection of migrant workers abroad based on Law no. 39 of 2004, is also supported by the supervision that must be carried out by the government. The role of the government in carrying out the supervisory function on the placement of Indonesian workers abroad consists of the following stages of activity:

Before placement

The form of supervision of TKI begins before placement. Supervision of prospective TKI/TKI needs to be carried out prior to placement including making work agreements starting from recruitment, education and training and others. Differences in interpretation of the implementation of Law no. 39 of 2004 between 2 (two) state institutions, namely the Ministry of Manpower and Transmigration (Kemennakertrans) and the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI), specifically the issue is whether BNP2TKI only carries out the placement and protection of Indonesian Migrant Workers by the government. Since 2007, BNP2TKI has provided services for the placement of Indonesian Migrant Workers by the government, PPTKIS, independent TKI and placement of their own companies. The history of the placement of TKI is the justification for what was usually done in the past, that is the most correct.

The placement and protection of Indonesian Migrant Workers must be guided by at least 2 (two) laws, namely Law Number 32 of 2004 concerning Regional Government and Law Number 39 of 2004 and its implementing regulations. If the two laws and implementing regulations are understood correctly, surely, no one or any institution will be trapped in the issue of authority. Because whoever is the authority holder, is not the main measure, but who takes the biggest role in guaranteeing the rights of TKI. The handling of authority for the placement and protection of TKI services must be guided by Law Number 32 of 2004, meaning that the government functions to formulate standards, guidelines, norms, and criteria which are embodied in the form of Minimum Service Standards (SPM) and discuss them with the Minister of Home Affairs and other stakeholders, including BNP2TKI. Article 38 paragraph (1) of Law no. 39 of 2004 concerning requiring PPTKIS to make and sign placement agreements with job seekers who have been declared to meet administrative requirements in the recruitment process. In this case, the role of the Regency/City Government, through the agency responsible for manpower affairs, is to:

- a. Knowing the work placement agreement (Article 38 (paragraph (2)));
- b. Receive a report on the placement agreement from the executor of the placement of private TKI (Article 54 paragraph (1)).
- c. Witness the signing of the work agreement (Article 55 (3)).

Provisions concerning this work agreement are very necessary if it is consistent in its implementation. This is related to a phenomenon that many prospective migrant workers do not have a work agreement that they must study before pre-placement. Sometimes, some of them even get a work agreement when they are about to leave. Not a few who do not really understand the agreement.

During placement

In the context of providing protection during the placement of TKI abroad, the Representatives of the Republic of Indonesia carry out guidance and supervision of representatives of PPTKIS and TKI who are placed abroad.

Article 85 paragraph (2) of Law no. 39 of 2004 states: "In the event that a deliberation settlement is not reached, then one or both parties may request assistance from the agency responsible for manpower affairs in the Regency/City, Province or Government".

This provision places the local government as an institution that is also affected by a problem with migrant workers (TKI who work abroad).

Article 95 paragraph (1) explicitly states that BNP2TKI has the function of implementing policies in the field of placement and protection of Indonesian Migrant Workers abroad in a coordinated and integrated manner.

Furthermore, Article 95 paragraph (2) BNP2TKI is tasked with:

- a. Placement on the basis of a written agreement between the government and the government of the country using TKI or users with legal entities in the destination country of placement as referred to in Article 11 paragraph (1);
- b. Providing services, coordinating, and supervising:
 - 1) Document;
 - 2) Final Departure Briefing (PAP);
 - 3) Problem solving;
 - 4) Sources of financing sources;
 - 5) Departure to return;
 - 6) Improving the quality of prospective TKI;
 - 7) Information;
 - 8) Quality of the implementation of the placement of TKI; and
 - 9) Improving the welfare of migrant workers and their families.

The function of BNP2TKI can be said to be a mere government placement agency, if you pay attention to the construction of Article 95 which consists of 2 (two) paragraphs and the writing in one article, this is because there are similarities in material between paragraphs (1) and (2) and a series of materials that do not can be separated .

After placement

After the TKI works at the destination, it does not mean that the protection from the Government stops. After placement until the repatriation period of the TKI back to their country of origin. The form of protection for TKI that can be provided by the Government is in the form of problem solving, defense of the fulfillment of the rights of TKI and restoration of the dignity (physical and psychological) of TKI as well as managing the return of TKI.

V. CONCLUSION

Protection of migrant workers abroad is regulated in Law Number 39 of 2004, and the protection referred to includes protection before placement, during placement and after (post) placement. Pre-placement protection Prospective TKI/TKI must follow certain procedures and conditions and mechanisms in accordance with applicable regulations. During the placement period, Prospective TKI/TKI must report their arrival in the destination country. Reporting at the time of placement should be carried out by the PJTKI, so that the data and identity of the Indonesian Migrant Workers can be monitored by the Representative of the Republic of Indonesia in the country of placement, so that if there are cases involving TKI, they can be handled properly by following the applicable legal rules. At the end of placement, as well as upon arrival, TKI who will return to Indonesia must report their return to the Indonesian Representative of the destination country, while reporting for TKI who work for individual users is carried out by PPTKIS (PJTKI).

The government's efforts to provide legal protection to TKI are regulated in Law no. 39 of 2004, this protection also includes protection for pre- placement, during placement, and after placement. In Law No. 39 of 2004, legal protection for TKI is provided in the legal aspects of administrative law and criminal law. Protection in the aspect of civil law has not received adequate arrangements. In addition, it has not concretely regulated provisions concerning TKI who commit criminal acts in the country of destination, because in general, TKI who commit a crime are only given legal protection after the legal process in the destination country has entered a verdict, so that existing legal remedies are carried out through diplomatic channels by emphasizing the role of Indonesian representatives in the countries where Indonesian workers work.

REFERENCES

- [1] Baharudin, Erwan, "Legal Protection of Indonesian Migrant Workers Abroad Pre-Departure, Placement and Post-Departure", *Lex Journalica* , Vol. 4 No. 3, August 2007.
- [2] Budiono, Abdul Rachmad, *Labor Law in Indonesia* , Raja Grafindo Persada, Jakarta, 1999.
- [3] Handoko, Marhendra, *Advocacy Against the Problem of Placement and Protection of Indonesian Migrant Workers Abroad* , Warta Hukum VII Edition January – February 2010.
- [4] Ibrahim, Johnny, *Theory and Research Methodology of Normative Law*, Second Edition, Bayumedia Publishing, Malang, 2006.
- [5] Johannes, "Labor Law Politics is a Result of Observations on Policies and Problems of Indonesian Migrant Workers", *Jurnal Hukum* No. 3 Vol. 14, July 2007.
- [6] Khakim, Abdul, *Basics of Indonesian Labor Law* , Edition III, Citra Aditya Bakti, Bandung, 2009.
- [7] Marzuki, Peter Mahmud, *Legal Research* , Prenada Media, Jakarta, 2003.
- [8] Raharjo, Teguh, "Diplomacy for the Protection of Indonesian Migrant Workers Abroad" *Journal of Diplomacy* Volume 2 Number 1 March 2010.
- [9] Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia, *Summary of Decisions of the Constitutional Court 2003-2008* .
- [10] Soekanto, Soerjono, *Introduction to Legal Research* , University of Indonesia, Jakarta, 1981.

- [11] Soemitro, Roni Hanitjo, Legal and Jurimetric Research Methodology , Fourth Edition, Ghalia Indonesia, Jakarta, 1990.
- [12] Syamsudin, M., Operationalization of Legal Research , Citra Aditya Bakti, Bandung, 2007.
- [13] Wilujeng, JM Henny, “Lack of Legal Protection Who Will/Work Abroad”, Gloria Juris , Vol. 8 No. May 2–August 2008.