



Legal Protection of Indonesian Migrant Workers Affected by Covid-19*

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Abstract

Covid-19 has interrupted the fulfillment of Indonesian migrant workers' rights, while the State has promulgated Law Number 11 of 2020 concerning Job Creation and revised Law Number 18/2017 concerning Protection of Indonesian Migrant Workers. This research aims to find out how protection and law reinforcement are given to Indonesian migrant workers by the state during the pandemic according to Law Number 18/2017 in conjunction with Law Number 11/2020. This research employed a normative method and a statutory approach. The research results have revealed that according to Law Number 18/2017, the protection given to the migrants only took repatriation, and another form of protection is still deemed to be not optimal since it did not take the engagement of roles of the companies sending Indonesian migrants. Moreover, pursuant to Law Number 11/2020, there is no reinforcement implied since the changes taking place are likely to ease administrative measures, contrary to the fact that strict permits could reduce the likelihood of illegal and non-procedural placement of migrant workers. This issue affects the fulfillment of the rights of Indonesian migrant workers, especially during the pandemic. Thus, it is essential that the state reinforce the protection given to Indonesian migrant workers during the pandemic by reinforcing legal protection every company providing labor placement service has to take into account and by imposing administrative measures as sanctions or sentencing in case of failing to abide by regulations. Moreover, permit issuance to the companies running labor placement services for Indonesian migrants has to be made stricter to ensure that only credible companies pass the requirement of migrant placement services, allowing the status of the rights of Indonesian migrant workers to be properly met amidst the pandemic.

Keywords: legal protection; Indonesian migrant workers; COVID-19.

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Perlindungan Hukum Buruh Migran Indonesia yang Terdampak Covid-19

Abstrak

Covid-19 telah mengganggu pemenuhan hak-hak pekerja migran Indonesia, sedangkan negara telah menerbitkan Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja dan merevisi Undang-Undang Nomor 18 Tahun 2017 tentang Perlindungan Tenaga Kerja Indonesia. Penelitian ini bertujuan untuk mengetahui bagaimana perlindungan dan penguatan hukum yang diberikan negara kepada pekerja migran Indonesia di masa pandemi menurut Undang-Undang Nomor 18/2017 jo Undang-Undang Nomor 11/2020. Penelitian ini menggunakan metode normatif dan pendekatan perundang-undangan. Hasil penelitian mengungkapkan bahwa menurut Undang-Undang Nomor 18 Tahun 2017 perlindungan yang diberikan kepada TKI hanya berupa pemulangan, dan bentuk perlindungan lainnya masih dirasa belum optimal karena tidak melibatkan peran perusahaan pengirim TKI. Apalagi, menurut Undang-Undang Nomor 11/2020, tidak ada penguatan yang tersirat karena perubahan yang terjadi cenderung memudahkan tindakan administratif, padahal izin yang ketat dapat mengurangi kemungkinan penempatan pekerja migran ilegal dan non-prosedural. Isu ini berdampak pada pemenuhan hak-hak pekerja migran Indonesia, terutama di masa pandemi. Oleh karena itu, negara perlu memperkuat perlindungan kepada TKI di masa pandemi dengan memperkuat perlindungan hukum yang harus diperhatikan oleh setiap perusahaan penyedia jasa penempatan tenaga kerja dan dengan memberikan tindakan administratif berupa sanksi atau hukuman jika tidak mematuhi peraturan.

Kata Kunci: Perlindungan Hukum; Pekerja Migran Indonesia; COVID-19.

Правовая Защита Индонезийских Трудовых Мигрантов, Пострадавших от Covid-19

Аннотация

Covid-19 помешал осуществлению прав индонезийских трудовых мигрантов, в то время как государство обнародовало Закон № 11 от 2020 г. о создании рабочих мест и пересмотрело Закон № 18/2017 о защите индонезийских трудовых мигрантов. Цель этого исследования - выяснить, каким образом государство обеспечивает защиту и укрепление законодательства индонезийским трудовым мигрантам во время пандемии в соответствии с Законом № 18/2017 в сочетании с Законом № 11/2020. В этом исследовании использовался нормативный метод и законодательный подход. Результаты исследования показали, что в соответствии с Законом № 18 от 2017 г. защита, предоставляемая TKI (Индонезийским трудовым мигрантам), предусматривает только репатриацию, а другая форма защиты по-прежнему считается неоптимальной, поскольку она не предполагает участия компаний, отправляющих индонезийских трудовых мигрантов. Более того, в соответствии с Законом № 11/2020 не подразумевается никакого усиления, поскольку происходящие изменения, вероятно, облегчат административные меры, вопреки тому факту, что строгие разрешения могут снизить вероятность незаконного и непроцессуального размещения трудовых мигрантов. Эта проблема влияет на соблюдение прав индонезийских трудовых мигрантов, особенно во время пандемии. Таким образом, важно, чтобы государство усилило защиту, предоставляемую индонезийским трудовым мигрантам во время пандемии, усилив правовую защиту, которую должна учитывать каждая компания, предоставляющая услуги по трудоустройству, и путем введения административных мер в виде санкций или наказания в случае несоблюдения правил. Кроме того, необходимо ужесточить выдачу разрешений компаниям, предоставляющим услуги по трудоустройству индонезийских трудовых мигрантов, чтобы гарантировать, что только заслуживающие доверия компании удовлетворяют требованиям служб трудоустройства трудовых мигрантов, что позволит должным образом соблюдать статус прав TKI в условиях пандемии.

Ключевые слова: Правовая защита; Индонезийские трудовые мигранты; COVID-19.

A. INTRODUCTION

The outbreak that struck in 2020 has affected not only health sectors but also other sectors especially the economy, which extends further to a great number of layoffs in Indonesia, accounting for more than 3 million people. According to the Indonesian Ministry of Labor ([CNN Indonesia 2020](#)). This has happened in both formal and informal sectors ([Putri et al. 2020](#)).

The effects of the pandemic have left impacts worldwide and the world is experiencing the worst recession in history, hitting 4.2% ([United Nations 2020](#)). In Indonesia, according to the Indonesian Finance Minister, the recession hitting in 2020 following the outbreak was at 1.7% ([Suwikyo 2020](#)), interrupting the rights and status of Indonesian migrant workers in the countries where they work.

In general, there were 176,000 Indonesian migrant workers returning to Indonesia from 83 countries during the pandemic ([Agustiana 2020](#); [Tristiawati 2020](#)), and they were forced to return home since their life and their status were left in limbo, leaving them unpaid and forcing them to work for over 12 hours. They also have to be confronted with sexual and physical violence and face layoffs ([Tristiawati 2020](#)). An Indonesian migrant worker in Malaysia, for example, recalled that during the pandemic she was unpaid for three months. Similarly, another migrant, Solahuddin, recalled that he had to face a hurdle for three months, barely capable of feeding himself and paying house rent ([VOA 2020](#)).

In such a situation, the state should be present ([Hidayah 2020](#)) to protect migrant workers. Normatively, the protection for migrant workers is governed in Law Number 18/2017 concerning the Protection of Indonesian Migrant Workers. Constituting 91 articles, this law is intended to assure the rights and opportunities without giving a sense of discrimination to get a job and to protect people from any likelihood of human trafficking, slavery, forced labor, exploitation, and other crimes violating the dignity of the migrant workers.

The amendment to Law Number 18/2017 regarding Indonesian migrant worker protection is underway, and this law is one of the laws amended to Law Number 11/2020 concerning Job Creation based on omnibus law.

Previous studies revealed that protection for Indonesian migrant workers was enforced optimally ([Widodo and Belgradoputra 2019](#); [Hidayah 2020](#)) before placement ([Widodo and Belgradoputra 2019](#)), during placement ([Atedjadi 2015](#)), and after placement ([Febriyanto and Rohman 2018](#)) due to several factors including human resources ([Kusumawati 2016](#)), company issues regarding the

placement ([Yolanda 2020](#)), document falsification ([Darmo and Saputra 2011](#)) and others. The measures taken may involve more engagement of government's role at both central and regional levels ([Sonhaji 2020](#)), The National Board for Placement and Protection of Indonesian Overseas Workers (henceforth referred to as BNP2TKI) ([Atedjadi 2015](#)), procedure drafting that guarantees the protection against trafficking ([Noeswantari et al. 2011](#)), and the issuance of Law Number 18/2017 to protect Indonesian migrant workers ([Yolanda 2020](#)).

However, there has not been any research investigating how Indonesian migrant workers affected by the pandemic are protected according to Law Number 18/2017 and what measures are taken to reinforce Law Number 11/2020. This research is intended to give a contribution to the state for the improvement of the legal protection of Indonesian migrant workers before, during, and after placement in the countries of destination.

B. METHODS

This research employed a normative method ([Efendi and Ibrahim 2018](#)) and aimed to understand the legal protection of Indonesian migrant workers affected by Covid-19 or according to Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers within the framework of Law concerning Job Creation. To help understand the measures taken by the government to reinforce the position of Indonesian migrant workers post-pandemic according to Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers within the framework of Job Creation Law, this research required secondary data such as legislation (primary legal materials), experts' notions/doctrines (secondary materials), and legal terms referring to law dictionary/scientific terms (tertiary legal materials). Secondary data was obtained from library research, in addition to the statutory approach ([Peter Mahmud Marzuki 2017](#)) and doctrinal approach ([Peter Mahmud Marzuki 2017](#)). The research data were qualitative-based, presented in a descriptive analysis.

C. RESULTS AND DISCUSSION

1. Legal Protection of Indonesian Migrant Workers affected by Covid-19 according to Law Number 18 of 2017 concerning Indonesian Migrant Workers

Migrant workers serve as an element of industrial relationships with fundamental rights protected by the constitution to earn decent wages and salaries and to have their dignity protected. Migrant workers working overseas

are more vulnerable to discrimination in the place they live and in their workplace. Therefore, Law Number 18/2007 concerning the Protection of Indonesian Migrant Workers was passed to give legal protection to Indonesian migrant workers and their family members.

Article 1 point (5) of Law Number 18/2017 mentions “all measures intended to protect the interest of Indonesian candidates of migrant workers and/or Indonesian migrant workers and their family members to guarantee the fulfillment of rights in legal, economic, and social aspects”. The protection of the migrant workers should exist before, during, and after a work contract ([Widodo and Belgradoputra 2019](#)).

These three scopes of protection ([Suhandani, Perdana, and Manurung 2020; Widodo and Belgradoputra 2019](#)) involve: first, the protection is given to the candidates registering to the program in the preparation of departure. Second, the protection is given to the migrant workers living abroad for work, and third, the protection is given to migrants’ family members and the migrant workers returning to their home country at debarkation point in Indonesia till they reach their hometown, including further services for the Indonesian workers as productive workers.

First, the protection given to migrant workers before they start their job involved administrative and technical protection, where the former complies with Article 8 Paragraph (2) of Law Number 18/2017, constituting document checklist and validity, and the conditions and work requirements, while technical protection, according to Article 8 Paragraph (3) of Law Number 18/2017, involves: a). Disseminating information; b). Improving the quality of the candidates of migrant workers from Indonesia through education and job training; c). Social security; d). Facilitating the fulfillment of Indonesian migrant workers’ rights; e). Reinforcing the role of functional career-escorting staff; f). Giving services of placement at one-stop placement and protection services for Indonesian migrant workers; and g). Conducting Coaching and Supervision.

Second, the protection given to migrants when they work is governed in Article 21 Paragraph (1), constituting: a). Keeping a record and registering performed by employment attachés or designated officials of foreign affairs; b). Supervising and evaluating job providers, job, and working conditions; c). Facilitating the fulfillment of Indonesian migrant workers’ rights; d). Facilitating resolution of disputes in employment; e). Providing consular services; f). Facilitating mentorship, mediation, advocacy, and legal aid through advocacy services provided by Central Government and/or the representatives of the Republic of Indonesia, or according to the guardianship that applies to the law

of the states concerned; g). Providing training aimed for Indonesian migrant workers; and h). Facilitating repatriation.

Third, the protection that is provided post-work, as governed in Article 24 Paragraph (1) of law Number 18/2017, consists of: a). Facilitating the return of the workers to their hometown; b). Settling the unfulfilled rights of the migrant workers; c). Facilitating the migrant workers who are ill or pass away; d). Facilitating social rehabilitation and reintegration; and e). Empowering migrant workers and their family members.

During the pandemic, the protection of migrant workers is governed in law Number 18/2017, specifically in article 27 Paragraph (1) letter (f), Article 39 letter f, Article 40 letter b, Article 41 letter d, and explanation of Article 21 Paragraph (1) letter h. Article 27 Paragraph (1) regulates that the return of the workers to their home country should involve the protection against any diseases upon their arrival from the country they work in. Article 39 letter f regulates that repatriation due to an epidemic is the responsibility of the Central Government. Article 40 letter b regulates that such repatriation is the responsibility of the Central Government and provincial governments. Article 41 letter d regulates that this repatriation is the responsibility of local governments at both regency and municipality, and, pursuant to Article 21 Paragraph (1) letter b, 'facilitating repatriation' involves aid to repatriate the migrant workers following an outbreak.

According to the above details, explicitly, the protection of Indonesian migrant workers provided by the state through either central or local governments due to an outbreak is categorized as repatriation and/or repatriation facilities that are given as protection post-work. The Indonesian government has repatriated Indonesian migrant workers from 62 countries ([Santoso 2020](#)) amidst COVID-19.

No more legal protection was specifically given to the migrant workers during an epidemic, but the above four articles lead to the same matter, repatriation. What stands different is the matter regarding who is responsible for the repatriation (central government, provincial governments, and local governments in the regency or municipality).

In addition, some other articles generally govern the protection of Indonesian migrant workers implementable during COVID-19 situations. *First*, Article 15 Paragraph (2) letter d, in conjunction with Article 15 Paragraph (2) letter f governs work contract between Indonesian migrant workers and employers, suggesting that "rights and obligations of the parties" and "safety

and security guarantee for Indonesian migrant workers at work” have to be set forth. However, the purview of security and safety guarantee only covers the guarantee at work. The provision of this article represents the protection before the job takes place.

Second, the provisions of Article 21 Paragraph (1) letter c deals with “facilities to fulfill the rights of Indonesian migrant workers,” in conjunction with Article 21 paragraph (1) letter d concerning “facilities to settle employment-related disputes,” and, in conjunction with Article 21 Paragraph (1) letter f concerning “mentorship, mediation, advocacy, and legal aid by providing advocacy services by the Central Government and/or the representatives of the Republic of Indonesia and the guardianship according to the laws of the states concerned.”

However, the parties in charge of providing legal protection as intended in Article 21 paragraph (1) letter c, d, and f, are not explicitly mentioned in Law Number 18/2017, but this matter is rather generally mentioned in Article 33 implying that central and local governments provide legal protection pursuant to current laws, unlike the regulatory provision regarding the repatriation of workers amidst an epidemic. Specifically, the central government, provincial governments, and local governments at regency/municipality are responsible for the repatriation of migrant workers.

Lack of explicitness of mentioning the parties in charge of providing legal protection as intended in Article 21 Paragraph (1) letter c, d, and f, could lead to a situation where governments may blame each other over who is responsible for the case during an epidemic. Moreover, the operational definition of “local government” referring to Article 1 paragraph 22 of Law Number 18/2017 is deemed to be too broad, where “a local government is defined as the Head of a regional area as an element responsible to perform local government and to lead government agenda as part of the autonomous authority.” That is, a local government can refer to a village government, a government at a regency/municipality, or province.

The tasks and the responsibility of both central and local governments are set forth in Article 39 of Law Number 18/2017, governing the tasks and the responsibility of the governments and Article 40, 41, and 42 2017 governing the tasks and the responsibility of the governments at provincial, regency/municipality, and rural levels. None of those articles, however, mentions who is to be responsible for the legal protection of Indonesian migrant workers during work. Explicitly, Article 41 letter e of law Number 18/2017 simply states that the governments at provincial and regency/municipality levels are

responsible to protect workers before they start working and after their job completes. On the contrary, in Article 7 of Law Number 18/2017, the protection of Indonesian migrant workers not only covers the time before they start their job and after the job ends, but also when the work is in progress. In terms of the central government, the length of the protection given is not outlined, while Article 39 letter c states that “central government guarantees the fulfillment of the rights of the candidates of Indonesian migrant workers and/or Indonesian migrant workers and their family members.” Again, the tasks and responsibilities of central and local governments are not mentioned. In terms of implicit definition, fulfilling the protection for workers during work is the responsibility of the central government.

Based on the above provisions, the central government has a demanding authority. This archipelagic state with 33 provinces and 416 regencies/municipalities ([BPS 2016](#)) seems to add to the burden the government has to face in taking immediate measures and providing protection amidst an epidemic. Covid-19 is no longer an epidemic and has turned into a pandemic, resulting in slow responses given by the state in giving protection to Indonesian migrant workers currently working overseas.

Some migrant workers were quite unfortunate, as reported on mass media since some workers did not receive their full salary and some were even left unpaid. Some workers were forced to work overtime without decent wages or their rights to a place to live and to food were violated; some were sacked from their job without their consent or agreement ([Lumbanrau 2020](#)). There have not been any obvious measures from the government to facilitate the fulfillment of the rights of Indonesian migrant workers but the repatriation of the workers.

The protection of the migrant workers given when their work period is in progress should be the responsibility of the central government in terms of the great tasks and responsibility as outlined in Law Number 18/2017. The reinforcement of legal protection of Indonesian migrant workers can no longer await; this reinforcement should take into account the role of companies that place migrant workers. Article 52 Paragraph (1) letter c of law Number 18/2017 governs that “the labor providers placing Indonesian migrant workers as intended in Article 49 letter b have the responsibility to settle the disputes faced by the migrant workers that the providing companies have placed.” However, this provision seems to be not more than just a formality recalling that the phrase “settle the disputes” seems too broad, unlike the term used in another article regarding the legal protection of Indonesian migrant workers such as ‘epidemic’, ‘war’, ‘advocacy’, ‘legal protection’, and many more. This is worsened by the

administrative and criminal sanctions imposed on the labor-providing companies failing to abide by the provision of Article 52 Paragraph (1) letter c of Law Number 18/2017. Not only does the central government hold the responsibility to provide protection, but the companies in charge should also carry out the same task, recalling that they also gain profit from sending the Indonesian migrant workers to the countries of destination.

Laws governing the protection of Indonesian migrant workers consisting of the reinforcement of the protection of Indonesian migrant workers amidst the epidemic/pandemic must exist through the reinforcement of the role of the labor-providing companies in giving protection to workers before, during, and after work, especially amidst an epidemic spreading in the country to which migrant workers are sent. Moreover, to ensure that this regulatory provision is enforced, administrative and criminal sanctions have to be designated and imposed on the companies failing to abide by the regulatory provision.

2. Measures taken by the government to reinforce the status of Indonesian migrant workers post-COVID-19 pandemic according to Law Number 11 of 2021 concerning Job Creation

Measures taken to protect Indonesian migrant workers are more than just responsibility; they represent the recognition of the dignity and human rights as well ([Sudrajat 2020](#)). This principle of recognition implies that the protection given to the migrant workers should represent respect to human existence as the creation of God.

The amendment to Job Creation Law involves: First, an amendment to Article 1 point 1 to 16, Law Number 18/2017 concerning operational definition. Secondly, the amendment to Article 51 of Law Number 18/2017 concerning the companies in charge of the migrant worker placement to have a business permit. Third, an amendment to Article 53 of Law Number 18/2017 concerning the establishment and activities of branch companies in charge of the placement of migrant workers outside the domicile of head offices. Fourth, an amendment to Article 57 of Law Number 18/2017 concerning the responsibility of the companies to submit the latest information on workers. Fifth, insertion of Article 89A of Law Number 11/2020 concerning the adjustment of the definition SIP3MI in the earlier regulatory provision regarding the business permit.

From the above elaboration, no amendment regarding the protection of Indonesian migrant workers, especially during an epidemic, has been made, while the amendments are often concerning an administrative permit.

Surprisingly, the business permit seems to have been made easier. The permit to establish the business, according to Article 51 of Law Number 18/2017, is issued by a minister in the form of SIP3MI. In the amendment to Law Number 11/2020, the permit is issued by a central government not in SIP3MI, contrary to the fact that the permit should involve strict procedures since the companies responsible for the placement of workers play a vital role in the procedural placement of Indonesian migrant workers and prevention of illegal workers ([Alysa 2020](#)). Which party is responsible to issue a permit is being questioned. Illegal migrant workers are facing the risk of not being in the database, and this will just add another problem during an epidemic such as COVID-19 these days. If this is the case, not only are the migrant workers at risk of not getting their rights from the central and local governments, but they are prone to further problems later when they start working overseas.

The government should establish a credible institution authorized to issue the business permit for companies in charge of the placement of Indonesian migrant workers. The procedures and rules of permit issuance should be made stricter than before to avert any possibility of illegal migrant workers or non-procedural migrant worker processing, or the migrant workers will be put at risk especially during COVID-19.

Legal protection given to Indonesian migrant workers amidst COVID-19 does not fully cover their rights. Explicitly, the legal protection aimed for particular conditions during an epidemic only covers post-work protection involving repatriation and the facilities that support it, while the rest of the protection is not specifically given for the conditions of an epidemic but it still covers the possibility of giving protection relevant to the epidemic conditions: pre-work protection requiring the formulation of agreement that regulates rights and obligations of parties and guarantee of security and safety of Indonesian migrant workers, the protection given during work including facilities to meet the rights, facilities to settle employment-related disputes and mentorship, mediation, advocacy, and aid of advocacy services. The tasks to give protection to the workers at work are in the hand of the central government, and this single agent holding the responsibility explains why aid sluggishly reaches the migrant workers. Huge responsibility held by the government to give protection impedes the process or even completely erases the rights during COVID-19. Thus, the role of the companies placing the workers must be optimized, recalling that the companies also earn sizeable profit from sending the workers. New regulatory provisions must be made regarding the legal protection of Indonesian migrant workers during an epidemic. Moreover, administrative and criminal sanctions

must also be taken into account to ensure that the protection is enforced by the companies responsible to send Indonesian workers.

In the amendment (Law Number 11/2020), no specific regulatory provisions are set forth regarding the protection of Indonesian migrant workers but eased business permit to set up the business as mentioned above is likely to lead to illegal status and non-procedural departure process. This will certainly affect the protection of the migrant workers overseas, especially during the COVID-19 pandemic these days. The government should draft the procedures of stricter permit issuance to allow the establishment of a company authorized to send workers overseas for the sake of the protection of Indonesian migrant workers during either the epidemic or pandemic.

D. CONCLUSION

The legal protection given to Indonesian migrant workers during COVID-19 according to the provisions in Law Number 17/2017 needs further improvement. Explicitly, the legal protection aimed during epidemic conditions only involves the protection during work including repatriation and the facilities that support it, while the rest of the protection is not specifically related to the time the epidemic takes place although this protection is deemed to still give the protection in such conditions, including pre-work protection that requires an agreement regulating rights and obligations of parties and security and safety guarantee for Indonesian migrant workers; the protection given during work, facilitating the fulfillment of rights, dispute resolution, and mentorship, mediation, advocacy, and advocacy services. The central government is responsible to give this protection, and this central government's responsibility indicates why the aid does not immediately reach the migrant workers. Too much responsibility of the central government not shared with other institutions may impede the aid delivery, even leading further to the complete absence of the rights the migrant workers should not deserve during COVID-19. If this is the case, the role of the companies sending the migrant workers needs optimizing. New regulations concerning the responsibility to provide legal protection to Indonesian migrant workers during the epidemic need to be considered, and administrative and criminal sanctions need to be enforced to encourage the sending companies to perform the responsibility to protect the migrant workers.

The amendment of Law Number 11/2020 does not specifically regulate the legal protection of Indonesian migrant workers, and this amendment seems to have eased the permit issuance allowing the easier establishment of companies

sending migrant workers abroad, causing them to serve as illegal workers and leading to non-procedural processes. It is necessary that the central government through Job Creation Law set the procedures required to issue a permit allowing the establishment of a company as an agency eligible to send migrant workers abroad especially during either the epidemic or pandemic.

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