



## **Implementation of the Protection and Placement of Indonesian Workers Abroad Based on Law NO. 39 Year 2004**



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*communication;  
companies;  
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protection and  
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**Abstract**

The purpose of this research is to find out: (1). Protection and placement of Indonesian Migrant Workers Abroad according to Law no. 39 of 2004. (2). The obstacles faced in the protection of Indonesian Migrant Workers Abroad by the Provincial Service Center for Placement and Protection of Indonesian Migrant Workers (BP3TKI) - Banten. (3). Efforts in the protection of Indonesian workers abroad are carried out by the Center to provide Placement and provide Protection of Indonesian Migrant Workers. This research method uses a sociological juridical qualitative approach. The type of data used is secondary and primary data. Techniques for collecting study documentation, interviews, and field surveys. The results of the study obtained the following conclusions: (1). Legal protection of the rights of Indonesian workers, who have not worked well in their work, lack of legal direction, and Eliminate the sense of security while abroad. (2). Obstacles in the implementation of legal protection for workers, there are mistakes he did, namely not reporting to the Indonesian government where he worked, and relatively low education. (3). BP3TKI seeks to hold a job fair, which can be expected to be a vehicle for communication between job seekers and companies that supply jobs abroad.

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## 1 Introduction

The placement of workers abroad is an effort to realize equal rights and employment opportunities for workers to improve the welfare of workers and their families. The placement of workers abroad creates problems because Workers do not have legal protection and workers get into trouble with their employers in the country where they work (Mulyani, 2018). The need for public participation in a legal system to protect Indonesian workers who are placed abroad. Concerning the planning of the need for workers abroad, it is necessary to describe the current situation and conditions regarding the placement of workers abroad, which is still dominated by the informal sector, such as maids who are dominated by female workers. However, sending TKI abroad provides a small contribution to the state (Eyrich et al., 2008; Street Jr et al., 2009).

This is because the quality of the training results and the skills of the workforce are still very lacking, and they have not been managed professionally considering that at the time that Indonesian workers are weak, they are required to be skilled in various things. (Agusmidah, 2017). The development of Human Resources, especially Indonesian workers, through training and education must continue to be carried out by taking into account the ever-changing developments of science and technology, to improve abilities and skills. With this strategy, it is expected to produce professional, creative, and innovative TKI according to its work. The profession of Indonesian workers must adapt to the needs of the labour market to become Indonesian workers abroad. The challenge of relevance between the quality and efficiency of job training that has been carried out by the Overseas Job Training Center, with the needs of the overseas job market is still low (George et al., 2002; Paternoster et al., 2014).

Preparing skilled and quality Indonesian workers is a shared responsibility to improve human resources for Indonesian Migrant Workers, who work abroad (Noveria, 2017). This can be realized considering that many Indonesian workers have problems due to low skill levels and lack of ability in foreign languages. In this case, the efforts made by the government are the certainty of protection for candidates, as well as Indonesian workers. TKI who work abroad, often get harsh treatment, from their employers and some even die. Therefore, legal protection is needed for Indonesian workers as foreign exchange heroes for the country (Lieder & Rashid, 2016; Beasley et al., 2005).

Commitment to providing legal protection for Indonesian workers. Even though it is done without any pressure and asks for a large reward from prospective Indonesian workers. The legal protection must be applied following the rights and obligations (Hadiwinata, 2018). The right to utilize the existing workforce and the obligation to provide legal protection and security guarantees as well as a decent life, as a reward for what has been produced by the workforce concerned. Commitment to legal protection for workers must continue to be carried out regardless of the status of departure of migrant workers so that the relevant parties do not relinquish their responsibilities as distributors and regulations for workers.

## 2 Research Methods

Qualitative research methods that describe scientific findings as data, are to be used in collecting data to produce scientific truth (Sugiyono, 2017). Therefore research requires an appropriate method so that it can run more directly and systematic so that the data obtained from the results of this study can be justified. scientifically and does not deviate from the subject matter.

### *Data collection technique*

In data collection techniques used are as follows:

- 1) Observation as a participant makes observations that participate as well as become members of the

observed. In this type of observation, the researcher as an official member of the group, as an insider or an outsider, has been considered as a group. Participant observation is used in this study, namely to complete the data obtained from the interviews.

- 2) A documentation Study is looking for data on matters related to the research focus in the form of official records, books, newspapers, magazines, photographs, and films.

#### *Objectivity and data validity*

The validity of the data is very supportive in determining the final results of the study. Therefore, a technique for checking the validity of the data is needed that utilizes something that is outside the data, for checking purposes or as a comparison against the data (Moleong, 2017). In this study, the data source triangulation technique was used which was achieved by road. Comparing observational data with interview data. The triangulation technique used by researchers is checking through other sources that are following the focus and can be achieved by:

- 1) Comparing observational data with interview data.
- 2) Comparing the data that people say in public with the data that is said in private.
- 3) Compare the data that people say about the research situation with what is said over time.
- 4) Comparing one's perspective with various opinions of people such as people, educated, middle or high school people, wealthy people, and government people.
- 5) Comparing the results of interviews with documents related to research problems

### **3 Results and Discussions**

#### *Service center for placement and protection of Indonesian migrant workers (BP3TKI) Banten Province*

The National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI), consists of several related agencies (Maksum, 2017). Based on Law no. 39 of 2004, followed by Presidential Regulation No. 81 of 2006, as well as Presidential Instruction No. 6 of 2006 coordinate and integrate related agencies that often occur miscommunication in the process of organizing the placement and protection of Indonesian workers. BNP2TKI. The relevant agencies, such as the Ministry of Foreign Affairs, and the Police of the Republic of Indonesia. Ministry of Law and Human Rights, Ministry of Manpower, Ministry of Social Affairs, Ministry of Transportation, Ministry of Home Affairs, Ministry of Women's Empowerment, and Ministry of Health.

A BP3TKI institution is a place for placing and protecting Indonesian workers' services carried out by the government before and after placement or work (Ariani, 2018). BP3TKI in providing a sense of security to workers at every stage of placement starting from the initial process, recruitment, at work until the completion of the contract, and returning to the area of origin. The BP3TKI institution is responsible for being the Head of the National Agency for the Placement and Protection of Indonesian Migrant Workers.

#### *The BP3TKI empowerment protection*

BP3TKI Institute of Banten Province. Has the main duties and obligations, according to the Provincial Regulation - Banten No. 1 of 2002 concerning the Establishment (Baharudin, 2017). Position, Main Duties, Functions, and Organizational Structure of the Technical Implementation Unit of the Banten Province Manpower and Transmigration Office which are as follows:

- 1) Coordinate the implementation of protection services for Indonesian Migrant Workers with litigation and non-litigation.
- 2) Protecting and advocating for the empowerment and development of Indonesian Migrant Workers.
- 3) Monitoring of the departure and service of returning Indonesian Migrant Workers from the country of placement.

- 4) Monitor and evaluate the placement, service and protection of workers in countries where workers work.
  - 1) Coordinate and monitor the implementation of foreign cooperation and promotion.
  - 2) Coordinate and prepare implementation materials and facilities for solving the problems of Indonesian Migrant Workers.
  - 3) Setting up a one-stop integrated service unit facility in the service of placement and protection of workers.
  - 4) Collecting data as an information service and monitoring information systems and networks in the placement and protection of workers
  - 5) Perform final verification, document departure, and return of Indonesian Migrant Workers.
  - 6) Coordinate placement service activities with Government and Non-Government Agencies related to one-stop service.

#### *Indonesia workers of the placement period*

Legal protection provides rights and obligations related to the work of Indonesian workers. Explain the rights of workers and carry out their obligations (Puspitasari, 2017). The rights and obligations of every Indonesian worker who works abroad are stated in a work agreement that has been signed by 3 parties, namely prospective Indonesian workers, namely: (a). The relevant Indonesian worker's service users and labour inspectors. (b). Proper legal protection of the rights of migrant workers in work agreements. 5 prospective workers will work in Japan and 7 former workers who work in Malaysia, and 10 people who work in Saudi Arabia. Provide placement and protection while working in the country (Javadian et al., 2013; Sadeghi & Abasi, 2021).

Workers have a way of thinking and perspective that is still weak, as domestic workers. Because domestic workers, accept all the policies that have been set by their employer's domestic workers who dare to think critically to fight for their destiny have not been able to materialize (Hidayat, 2017). This fact is emphasized again by former Indonesian workers who worked in Malaysia: Every Indonesian worker is also a participant in the labour social security program and the labour social security system or other insurance in the local country where the worker works.

#### *Protection of Indonesian migrant workers during placement*

- 1) Handling of disputes between Indonesian Workers and service users. If there is a problem, it must be resolved by deliberation (Pramitaningrum et al., 2018). If deemed necessary, you can ask for assistance from the Indonesian Embassy in your local country.
- 2) Handling the problems of Indonesian Workers due to accidents, illness, or death abroad, the Service Company is fully responsible and takes care of the inheritance and rights of workers
- 3) Extension of work agreement, in this case, Indonesian Workers may ask for assistance from service users or representatives abroad, or business partners, and are obliged to extend their participation in the Workers' Social Security program.

#### *Service for Placement and Protection of Indonesian Migrant Workers in Banten Province*

The development of prospective Indonesian workers abroad requires extra attention from the government (Irianto, 2018). This is caused by two factors, namely: (a). Population problems that have an impact on socioeconomic, unemployment and poverty problems, and urbanization problems, (b). The existence of job opportunities abroad so can absorb large numbers of Indonesian workers. Indonesian workers have the right to protection and services, as well as safety for the health of the workers themselves. Maintain a dignified attitude, and morals and uphold cultural and human values according to Article 86 paragraph 1. Law Number 13 of 2003, related to worker law.

Based on this, the central government and local governments as well as related communities are obliged to protect every worker (Cici, Valency, 2017). Legal protection of workers, which has been regulated in Law No.

1 of 1970, is related to worker safety. Service, Placement and Protection for workers in Banten Province. In protecting these Indonesia workers, it is guided by Law Number 39 of 2004 article 3, related to the Placement and Protection of Indonesian Workers Abroad, to empower workers and utilize Indonesian workers, optimally guarantee and protect Indonesian Workers, through training, and accommodation domestically, as well as in the destination country, and until they return to Indonesia. So that it can improve the welfare of the family (Chen et al., 1994; Bielicki et al., 2020).

#### *Legal protection pre placement of indonesian migrant workers*

To minimize the occurrence of violence and disputes between workers, and employers or with supplying companies, the BP3TKI Institution is obliged to provide protection and placement for workers while working in the destination country (Larasati & Windiani, 2018). The Banten Provincial Government has provided training and education to prospective TKI who will go to the destination country, education, and job training, to equip, skill, and improve worker competencies, can provide knowledge, experience and understanding of customs, culture, religion and also the risks that may occur abroad. Improve skills in communicating following the language of the destination country, and improve in understanding the rights and obligations of workers (Suryasa et al., 2022).

The Banten Provincial Government requires that prospective Indonesian workers, who will work abroad, must attend training with conditions that must be complied with, Indonesian workers must have skills and be proven by a skills certificate from the competent authority (Kaltara, 2017). The BP3TKI Institute of Banten Province provides a place for education and training for prospective workers abroad, they are required to attend training which is carried out for 3 (three) months before leaving for the destination country. According to Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers, of Indonesian workers abroad, there are several obligations for prospective workers, before departure abroad. There are several obligations for the government and distribution companies, obliged to provide education and job training, in Article 41, namely as follows: (a). Prospective Workers are required to have a certificate of work competence following the requirements of the position. (b). If in this case, the worker does not have the work competence following the work requirements (c). Implementers of the placement of private Indonesian workers are required to carry out education and training following the work to be carried out.

#### *Obligations of private companies as distributors of Indonesian migrant workers*

Some of the obligations of the Manpower Supply Company abroad. Robby, D. Nasution., (2017). Providing education and job training, as stated in Article 42:

- 1) Prospective migrant workers are entitled to education and job training following the work to be carried out in the destination country.
- 2) Education and job training for prospective Indonesian workers following the work to be carried out, namely: (a). Equip and develop the work competencies of prospective Indonesian workers. (b). Provide understanding and experience, about the situation, customs, culture, religion, and the risks and impacts of working abroad. (c). Equip the ability to communicate using the language according to the destination country. (d). Provide understanding, knowledge and experience, related to the rights and obligations of workers in Indonesia.

Protecting education and job training at the Banten Province BP3TKI Institution. It is following the provisions of Article 41 and Article 42 of Law 39. The year 2004. Regarding the placement and protection of Indonesian Migrant Workers abroad (Sari & Sudirman, 2019). Prospective workers are required to carry out education and job training following the work to be carried out in the destination country. Prospective Indonesian workers will receive recognition of work competence after attending education and training as well as obtaining a certificate of work competence organized by the Banten Province BP3TKI institution. Therefore, the BP3TKI of Banten Province has implemented Article 41 and Article 42 of Law Number 39 of 2004 concerning the placement and protection of Indonesian Migrant Workers abroad.

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*Barriers to the placement and protection of Indonesian migrant workers in Banten Province*

Obstacles in protection in cases of abuse and violation of workers' rights abroad, namely: (a). Language barrier to communication. (b). The factor of excessive use of Indonesian worker's services when workers make work mistakes. (c). The unpreparedness of workers is minimal so workers do not understand the conditions of the destination country, this causes disputes between workers and employers.

The Banten Province BP3TKI institution continues to socialize and educate workers to follow the rules and regulations required by the government. Collaborating with work partners of Indonesian worker's supplier companies to provide a complete explanation of the provisions of the employment contract regarding the rights and obligations of workers, during the period of the employment contract. Implementation of protection for workers before and after work (Febriyanto & Rohman, 2018). According to BP3TKI it always goes well, following the implementation of the agreement between the employer, prospective Indonesian workers, and the Company, and a good relationship is established. The government is a place of service for placing protection and as a mediator between workers and employers in the event of a dispute or problem. The BP3TKI institution tries to resolve the problem by way of deliberation. However, if there is no resolution to the deliberation, then the problem that is currently occurring will be requested settlement assistance from the Indonesian government in the country where the Indonesian workers are (Rusakova et al., 2022).

Based on the results of research on prospective and former Indonesian migrant workers from Malaysia (Suanggana, 2018). Whereas most of them have low education, out of 6 (six) prospective workers, 4 (four) are high school graduates or the equivalent, 1 (one) is a junior high school graduate and 1 (one) is an elementary school graduate. Based on the education data owned by workers, it can be an obstacle to service and legal protection. Workers with low education will be confused when asked about the meaning and word of protection given to the question of protection.

According to Law No. 39 of 2004 article 35 first point, every prospective Indonesian worker to be able to become a good worker must have. (Tjitrawati, 2017). The following requirements: (a). At least 18 years old, except for Prospective Indonesian workers who are employed as individual users at least 21 years old. (b). Article 80 reads, and conducts a selection regarding Age, education, health, physical and administrative. (c). Those who meet the requirements are designated as Indonesian workers Candidates and will be channelled through PPTKIS for the placement process.

*Institutional Efforts (BP3TKI) Banten Province*

Based on the explanation of Law No. 39 of 2004 article 98b, concerning the Placement and Protection of workers (Bareta & Ispriyarso, 2018). That is the BP3TKI institution of Banten Province. Having the intention as a place of departure for Indonesian workers deemed necessary, the local government is tasked with providing convenience in the processing of all worker placement documents which are carried out together with the relevant agencies. This is not appropriate, there are still many parties who are not involved in handling the recruitment procedure, causing losses for the Indonesian workers (Ananda et al., 2022).

Therefore, the BP3TKI of Banten Province has not fully implemented it. Article 35 of Law Number 39 of 2004 concerning the placement and protection of Indonesian Migrant Workers abroad properly (Marto, 2017). When viewed from the BP3TKI institution, Banten Province has the purpose of protecting Indonesian workers, which is to provide maximum protection to workers, before and after the placement of workers. Aims to provide a sense of security and comfort to workers, at every stage of placement starting from the initial recruitment process, and at work until the completion of the contract back to the area of origin.

This is not in line with the expectations of workers working abroad (Raharto, 2017). According to Law No. 39 of 2004, Article 75c concerning the Placement and Protection of Indonesian Migrant Workers clearly states that the provision of protection measures for Indonesian workers from the possibility of actions by parties who are irresponsible and can harm workers on their return. Therefore, the BP3TKI institution of Banten Province has not been able to implement Article 75c of Law Number 39 of 2004 regarding the placement and protection of Indonesian Migrant Workers abroad properly.

## 4 Conclusion

Based on the description and discussion by the author above, the following conclusions can be drawn:

- 1) Protecting the legal aspects of their rights and obligations, Indonesian workers abroad have not worked properly, due to the lack of guidelines and legal definitions and understanding for workers, which makes it difficult for workers and eliminates a sense of security and comfort for workers while abroad.
- 2) Obstacles to the implementation of legal protection for Indonesian Migrant Workers are mistakes made by workers, namely not reporting the problem to the Indonesian government in places where workers work abroad, and the education of workers is still low.
- 3) The BP3TKI Institute seeks to hold a job fair for Indonesian Migrant Workers so that it can be expected to be a means of communication for job seekers and companies distributing Indonesian workers.

### *Suggestion*

As suggestions related to legal protection. Based on Law Number 39 of 2004, related to the Placement and Legal Protection of Indonesian Migrant Workers abroad, are as follows:

- 1) Indonesian workers who are working abroad, and who are having problems with their employers or with service users in fulfilling workers' rights, should report to the Indonesian government in the destination country of the Indonesian workers.
- 2) Improving services for prospective Indonesian Migrant Workers, who have not worked or are already working.
- 3) Carry out coaching and counselling activities for workers who will work abroad, so that these workers are ready to work abroad. Increase counselling for Indonesian Workers and must meet the requirements, namely: having skills and expertise following competence, as evidenced by a certificate from a training institution accredited by the competent authority.

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