

## ABSTRACT

### LEGAL PROTECTION FOR INDONESIAN WORKERS

Budi Kusumaning Atik

The largest majority of the Indonesian migrant workers work in Malaysia compared with other countries in the world. Many regulatory and social problems related to the Indonesian workers placement emerge in Malaysia. Some legal issue raised in this research are : (1) What legal relationship is applicable for the parties, including Indonesian workers, PJTKI, PJTKI partners and users as regards the Indonesian workers placement process in Malaysia and (2) what legal provide adequate protection for the Indonesian workers.

In this context, there are three agreement legally binding for the parties. The three agreements begin by the cooperation agreement for workers placement to which the participating parties are PJTKI and PJTKI partners, then proceed with the placement agreement to which the participating parties are PJTKI and Indonesian workers. When the Indonesian workers have arrived in Malaysia, Indonesian workers and the users will enter into the working agreement. In addition, Indonesian government has signed a joint agreement related to the regulation of Indonesia workers placement in Malaysia.

However, in fact, the three agreements regulating the Indonesian workers placement have been made in the form of the inadequate standard contract in which the Indonesian workers have by no means a bargaining power. Thus, the most possible consequence is "take it or leave it". Unfortunately, almost all Indonesian workers do not have a comprehensive understanding of the agreements they have entered into. Thus, they are legally bound to the ill-defined-agreement.

Furthermore, the Indonesian workers undergo some discrimination, including a difference in wage between the Indonesian workers and those from other countries, difference in the rights to engage in association, as well as difference in the rights to marry. The Indonesian workers ' agony is not confined to this condition. Very frequently, after having worked for a long time in Malaysia, their wages are not given. More tragically, the workers are often physically tortured by their employers. This situation shows to us that the legal protection for the Indonesian workers has not been fully enforced in Malaysia and this is absolutely contradictory to the applicable Malaysia laws, ILO convention and Indonesian laws. The legal protection for Indonesian workers has been specifically regulated in Law No. 39/2004. However, the law merely regulates agreements drawn up and signed in a country where Indonesian workers will work, and it is not subject to the laws applicable in Indonesian. (*lex loci executionis/lex loci solutionis*). Therefore the law No. 39/2004 regarding the workers placement in foreign countries should be revised since what should be considered further is the coming outlook (*ius constituendum*) not just laws applicable in current time (*ius constitutum*) Key words : legal protection, cooperation agreement for workers placement, placement agreement, working agreement.