

THE RESPONSIBILITY OF NATIONAL INSTITUTION FOR PLACEMENT AND PROTECTION OF INDONESIAN WORKERS IN OVERSEAS BASED ON PERSPECTIVE OF HUMAN RIGHTS

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Abstract: National constitutes is part of human right inherent to every one and option against work. Based on article 38(2) UU No. 39/1999 on human right mention that “every people is freely to choose profession as he like and titled on behalf of conditions of fair labour” It is also including those who are willing to working in overseas. Responsible of the government related to human right, appreciate, protect, enforce and advance human right governed by UU No. 39 2004, as well as in international law on human right. The main issues in this research are; first, how does responsibility of National Agency of Placement and Protection of Indonesian Workers (BNP2TKI) against Indonesian labor in overseas based on persepective of human right. Second, how does the coordination between BNP2TKI with ministry of labor, Republic of Indonesia Embassy and foreign affair ministry against the replacement of Indonesia labor in overseas correlated with states responsibility in offering the protection of Human Right. The results of these research a first, the form of BNP2TKI responsible against replacement of Indonesia in Labor based on written agreement between the government of the user of Indonesia’s labor or the entrepreneur of destination state, giving services, coordinating and supervising related to document, final preparation of dispatch, dispute resolution, sources of budgeting, dispatch until to the arrival, enhancing quality of candidate of Indonesia labor, information, quality of committee of candidate of Indonesia labor replacement and on haucing prosperity of Indonesia’s labor and that family (article 94 and 95 UU 39/2004. Second, coordination of BNP2TKI against protection of human right consist of the labor ministry, province government, regency or district government, Indonesia’s embassy or foereign ministry a PPTIS. Coordination will be effective in the government implement it’s responsibility fulltable with it’s authority, mainly the protection of human right for all of Indonesia labor since pra-despatch, on the time of working, pasca working (Art, 5, 6, 7 UU No. 39/2004). In order the violence of human right unrepeated, government is hoped to review regulation on the replacement of Indonesia labor in oversea and to enhance coordination among corelated institutions in order to give responsibility against human right, by adequate budget for all institutions against the handling of rights violation to the Indonesia’s labor.

INTRODUCTION

Life is part of human rights, similarly for determining the choice of job. Article 38 Paragraph (2) of Law No. 39 Year 1999 on human rights states “Everyone has the right to freely choose a job he likes and is entitled also on conditions of employment fair”. While the Government is obliged and responsible to respect,

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protect, uphold and promote human rights, set out in legislation, other legislation and international law on human rights ratified by the Republic of Indonesia. The shape of the obligation and the government, including the implementation of effective measures in the areas of legal, political, economic, social, cultural, defense and security, and other areas (Article 71 and 72 of Law No. 39 of 1999).

Defense of the juridical basis of human rights, Article 28D Paragraph (2) states that “everyone has the right to work and to receive remuneration and fair and proper treatment in employment”. Then Article 28 Paragraph (4) also stated that “the protection, promotion, enforcement and fulfillment of human rights are the responsibility of the state, especially the government”. Republic of Indonesia Constitution of 1945 as a normative foundation contains a double meaning, which gives basic rights to citizens in the form of jobs and livelihood and burdensome obligations on states to comply. However, based on actual situation countries have not been able to meet fully the fundamental rights due to the complex problems in the field of employment, wide social inequalities, poverty is still a serious problem the country is very difficult to overcome. Large population is a problem for provision of jobs in Indonesia. In addition, the large number of residents who have a variety of potential conflict between them. One of the solutions to overcome these problems is by sending of Indonesian Workers abroad.

Based on the report protection agency and the Indonesian manpower placement in the year 2013 the number of migrant workers reached 512,168 consisting of 285,197 (56 per cent) of formal workers, and 226,871 (44 per cent) of informal workers. One of high interest Indonesian workers to work abroad, the government should also improve services and every effort to protect the interests of the Indonesian Labor in order to realize the fulfillment of basic rights of Indonesian Workers, as well as the protection of Human Rights (HAM), in accordance with mandated by Law No. 39 of 1999, concerning of human rights and other legislation. Law No. 39 of 2004, on the placement and protection of Indonesian workers abroad. In Article 2 set the “Placement and protection of Indonesian workers candidate or Indonesia labor based on cohesion, equality, democracy, social justice, equality and gender equality, anti-discrimination and anti-trafficking”.

The government’s responsibility to the placement of Indonesian workers abroad, is to manage, develop, implement, and oversee the implementation of the placement and protection of Indonesian workers abroad. In performing these duties, the government can be as authority and assistant task to local authorities in accordance with statutory regulations. In the preamble to weigh paragraph of Law number 39 of year 2004, states that “the state shall guarantee and protect the rights of citizens who work both at home and abroad based on the principles of equality, democracy, social justice, welfare and gender equality, anti discrimination, and anti trafficking”. Based on these considerations it is clear that the protection of human

rights of Indonesian workers to be the reason the enactment of some principle that will be used as basis in the formulation of norms placement and protection of Indonesian workers. Many cases experienced Indonesian migrant workers abroad, proving how bad the delivery management of Indonesian workers. In addition, the impression that the Indonesian government is still reluctant to deal better with Indonesian workers abroad, as well as a lack of defense of their rights. So many Indonesian workers get bad treatment from their employer's place of work.

RESEARCH METHOD

Normative Legal Research, the research literature or secondary data research. Legal research done by researching library materials or mere secondary data, it can be called a normative legal research or legal research literature.

1. **Research Approach** : Approach is used in a possible legal research to utilize the findings of law by legal science scholars and others experts sciences for analysis and explanation. So that the approach in this study is the approach of legislation, it means reviewing and studying the legislation and regulations relating to the responsibility of National Agency for placement and protection of Indonesian workers (BNP2TKI) abroad. So this research is done with the approach in the legal aspects of the state's responsibility to the Indonesian workers in the curved state, in accordance with the regulations in force.

Case approach, it means reviewing a wide range of cases experienced Indonesian workers abroad via documentation. The cases studied to gain an overview of the impact attitude dimension in a rule of law in the practice of law. The use of this approach is intended to understand the relationship of the case with the legal aspect of the responsibility of the state to the Indonesian workers abroad. The results of the analysis can be input for the government (state), especially in terms of responsibility of the state to the placement of Indonesian workers abroad.

2. **Research Principle** : Basen on research principle of this research is a descriptive study, with a view to obtaining an overview of the responsibilities of National agency for placement and protection of Indonesian workers abroad. This study tried to find the facts to give the proper interpretation of the data, and the underlying theory of the legal state goals connected with the protection of human rights. On the other hand for an explanation of the state's responsibility to the citizens who works in abroad. It is intended to create a description or figure and the facts of the issue responsibility protection agency and the Indonesian manpower placement abroad. This study seeks to get the right solution of the responsibilities of National

agency for placement and protection of Indonesian workers abroad in the perspective of human rights. So that the Indonesian workers who work abroad should obtain legal protection of human rights is the responsibility of the state.

DISCUSSION

1. Responsibilities of the National Agency for Placement and Protection of Indonesian Workers Against Employment Abroad.

The responsibility of the state is obliged to protect, shelter, creating a sense of security and peace for its citizens, including the Indonesian workers abroad.

Toshiro Fuke (2000) explained that the regulation of the state's responsibility to protect the Indonesian Workers (TKI) in Law No. 39 of 2004 does not have a strong normative foundation, because no underlying legal principle in the legislation. The principle of state responsibility in this context is important because the state's obligation to protect their citizens, wherever located, including those working abroad, the responsibility of the state to ensure the rights of citizens to a decent life as a human being, it is appropriate opinions Toshiro Fuke "the state now assuming the general mandate to secure for the individual citizen Reviews their right to a life worthy of a human being".

Juridical basis of state responsibility in the field of placement and protection of Indonesian workers abroad, in accordance with the mandate of Article 28 Paragraph (4) of the 1945 Constitution states "The responsibility of the state for the protection, promotion, enforcement and fulfillment of human rights.

Special government policy on the placement and protection of Indonesian workers abroad are directed to maximize the placement and protection of Indonesian workers with the highest priority and the aspects of the protection of the inherent dignity and the safety and health of Indonesian workers, since the beginning of the pre-placement, future placement to return to their homes. In order to realize the duties, responsibilities, and obligations of the Labor government of Indonesia in abroad, Article 5 of Law No. 39 in 2004 stated that "The government is set up, develop, implement, and oversee the implementation of the placement and protection of Indonesian Workers abroad. In carrying out the task in question, the government can bestow as function and/or assistant task to local authorities in accordance with statutory regulations.

Distribution of government responsibility, based on Law No. 39 in 2004, starting from the central government, provincial, district or city, until the Indonesian representatives abroad, such as the Indonesian Embassy and the Consulate General of the Republic of Indonesia.

In the framework of the protection of Indonesian workers, it is responsible for supervision to all activities related to the implementation of the placement and protection of Indonesian workers abroad. In the coaching can involve implementing private placement of Indonesian workers, organizations and/or society, which is implemented in an integrated and coordinated.

Article 6 of Law No. 39 of 2004 stipulates that “the Government is responsible for enhancing the protection of Indonesian workers abroad”. The scope of the government’s responsibility under Article 7 of Law No. 39 Year 2004, explains: “In carrying out the duties and responsibilities referred to in Article 5 and Article 6 the government is obliged:

1. Guaranteeing the rights of candidates for labor and manpower Indonesia, both concerned departs through Implementing placement of Indonesian migrant workers, as well as those set out independently
2. Supervise in the implementation of the prospective placement of Indonesian workers.
3. Establish and develop information systems placement of prospective Indonesian workers abroad.
4. Diplomatic efforts to ensure the fulfillment of the rights and protection of Indonesian workers optimally in the destination country.
5. Providing protection for Indonesian workers during the earlier times of departure, time placement, and full-time placement.

To enhance Indonesian legal instruments on the protection of overseas manpower, the Indonesian government has ratified the migrant workers convention (the International Convention on the Protection of the All Migrant Workers and Members of Their Families) on 12 April 2012. The protection of migrant workers and their family contained in the second part of the migrant workers convention, namely:

- a) Right to Non-discrimination.
- b) The right to leave any country, including their own.
- c) The right to life must be protected by law.
- d) The right to be free on treatment or subjected to torture and cruel, inhuman and degrading.
- e) Right to free enslaved and servitude, and are protected from forced and compulsory labor.
- f) The right to freedom of thought, religious belief.
- g) The right to hold opinions and to seek receives and imparts any information.
- h) The right to protection of interfering with the arbitrary and illegitimate.

- i) Right to own property and reasonable compensation if seized.
- j) The right to liberty and security of the person.
- k) The right to humane treatment when deprived of liberty and respect for cultural identity.
- l) The right to presumption of innocence.
- m) Right to jail for inability fulfills treaty obligations.
- n) The right to be free from the destruction of identity documents, documents permission to enter or exit, residence, work permits apart by officials may be authorized, including the right to foreclosure without rights.
- o) The right to collective expulsion targets.
- p) The right to protection and assistance consular and diplomatic officials if migrant workers' rights are violated.
- q) Right to recognition everywhere as a person before the law.
- r) Right to treatment no less favorable than those applied to nationals of the work in terms of payroll.
- s) Right to follow the unions and other associations.
- t) The right to equal treatment with nationals in the country where they work in terms of social responsibility, for meeting the requirements in accordance with the legal provisions in force in the country, bilateral and multilateral agreements.
- u) Right to receive urgent medical care necessary for their survival or to prevent irreparable damage to their health, based on equal treatment with nationals of the country concerned.
- v) The rights of children of migrant workers in the name, registration of birth and nationality.
- w) The right of access to education as citizens of the country of employment.
- x) The right to cultural identity.
- y) Right to transfer their earnings and savings to origin, and private property according to applicable laws in the country of origin.
- z) Rights informed the country of origin, transit countries, and countries of employment rights under the convention.

In addition to the rights mentioned above, migrant workers and their families with the status of legal have additional rights as set forth in Article 36 s / d Article 56 of the convention on migrant workers. Additional rights such as the following:

- a) Rights is fully informed before departure about the conditions and provisions regarding their admission, length of employment, wages, terms of employment in the country and officials who can be contacted if there is a change on the terms.
- b) The right to effective protection for acts of violence, physical injury, threats, intimidation by public officials as well as individuals, groups or institutions.
- c) Right to time off from work without affecting the residence permit and operation.
- d) The right of free movement and residence in the country work.
- e) The right to form associations and association.
- f) The right to participate in the government of the country of origin to vote and be elected.
- g) Rights of the politics in the working state if the state in the exercise of its sovereignty gives these rights.
- h) Right to equality with nationals of employment in access to educational services, vocational guidance and placement services for, access to housing, access to social and health services, access to cooperatives and self-management that does not result on their migration status, and access to participation in culture.
- i) Right to family unity or people who have a family relationship with migrant workers.
- j) Right to enjoy the convenience of customs and import and export duties.
- k) Right to transfer their earnings and savings to the country of origin.
- l) The right to be free from taxes, duties or charges or any higher than the citizens of employment.
- m) Right to obtain a residence permit time period at least equal to the work permit, if two separate licenses.
- n) Right to duration of work permits consideration of the family unit, if the migrant worker dies or dissolution of the marriage.
- o) Right to freely choose an alternative employment and the rights to participate in the scheme of jobs and retraining during the remaining period of their licenses.
- p) Right to freely choose a paid activity with limitations.
- q) Right to family members who have a residence permit or entry permits indefinitely or automatically renewed, to choose the job with the same requirements with migrant workers.

- r) Right to equal treatment as citizens of the work in terms of: protection against dismissal, unemployment benefits, access to public plans addressing unemployment, and access to an alternative job in terms of cessation of employment.
- s) Right to equal treatment as citizens of employment if they have a work permit.
- t) Rights can not be expelled except on grounds that state law and conventions.

The government's responsibility towards the implementation of the placement of Indonesian Workers abroad:

- a) Inspired by a written agreement between the Government and the state government of Indonesian Workers, or the legal entity in the country of destination. While the company will be the Executing Private Placement of Indonesian workers must obtain written permission in the form of license implementing Indonesian Labor Placement of the Minister of Labor.
- b) Through the diplomatic function, then Husni, (2014) explained that the diplomatic function with host countries of Indonesian workers become important in the implementation of the government's responsibility to the Indonesian workers abroad. Through diplomatic function to create a bilateral agreement or multilateral agreement.
- c) To provide guidance to all activities related to the implementation and protection placement of Indonesian workers abroad. In doing coaching can to involve implementing Private Placement of Indonesian workers, organizations and / or communities are integrated and coordinated. Form of guidance by the government done in the field of information, Human Resources, and protection of Indonesian workers.
- d) Provide guidance and advocacy for Indonesian workers from pre-placement, placement and after placement period (Article 90).
- e) To facilitate settlement of disputes or disputes prospective Indonesian workers / labor Indonesia with the user and / or the Executive Employment Indonesia.
- f) Develop and announced the list of business partners and problem users periodically in accordance with the legislation.
- g) Conducting international cooperation in the framework of the protection of Indonesian Workers in accordance with the legislation.
- h) Monitoring the implementation of the placement of Indonesian workers abroad can be done. Placement and supervision of the operation and protection of Indonesian Workers abroad carried out by the agency

responsible for labor affairs in the Government, Provincial Government and District or City Government, in accordance with the duties, functions and responsibilities.

Implementation of the placement and protection of Indonesian workers abroad is a shared responsibility involving relevant government agencies, so that the National agency for placement and protection of Indonesian manpower in implementing policies works placement and protection of Indonesian included representative's related agencies.

1. **The Provincial Government Responsibility :** Government is responsible for overseeing the return of Indonesian workers, to the area of origin, in the event of war, natural disasters, epidemics and deportation. When the Indonesian Workers died in the countries where it works, then his remains should be returned to its original place in a proper manner, and bear all necessary expenses, including funeral expenses in accordance with the procedures religion Indonesian workers in question and the undertaker in the country of destination placement of Indonesian workers with the consent of they family or in accordance with the provisions in force in the country concerned.

In case of any problems between the Indonesian workers with implementing placement of Indonesian private workers regarding the implementation of the treaty placements, then the two sides to seek a peaceful solution by means of deliberation, but if it is not achieved by peaceful means and deliberation, then one or both parties may request assistance from the responsible agency in the field of employment in the district or city, province or government. Government agency responsible for manpower affairs to the provincial and district or city governments must report the results of monitoring of the implementation the placement and protection of Indonesian workers abroad in the region based on the duties, functions and authority to the Minister.

2. **Responsibilities of the District or State :** Responsibility of the district or city government to the placement and protection of Indonesian workers abroad, as well as the responsibility of the provincial government to regulate, and supervise the placement and protection of Indonesian workers abroad, as assistant task from the Central Government to the District or City. Regency or City Government as Article 36 Paragraph (1) of Law No. 39 of 2004, regulating the responsibility to carry out the registration receipt labor forces who are interested to work abroad.
3. **Responsibilities of the Indonesian Mission Overseas :** Responsibilities and obligations of the country to protect its citizens who are abroad, including Indonesian workers who are working abroad, carried out by the diplomatic and consular functions in a country.

Consular functions set out in Article 5 of the Vienna Convention of 1963, on consular relations. One of the points in Article 5 of the convention states that, “This consist consular functioning: protecting in the receiving State the interests of the sending state and of its nationals, both individuals and bodies corporate, within the limits permitted by international law”. Based on the statement can be known, that the real sender state consular representatives in the recipient country is obliged to protect its citizens and their interests. Shape responsibility Indonesian mission abroad against Indonesian workers abroad, among others:

- a) Assessment of business partners and users of Indonesian workers, both individual users and business partners who registered in law.
- b) Representative of the Republic of Indonesia and the government should take care of the return of Indonesian workers to the region of origin.
- c) Obtaining information from the implementing private placement of Indonesian workers, on departure and return of Indonesian workers.
- d) Responsible for providing protection against Indonesian workers abroad together with labor attaché to the representation of the Republic of Indonesia in the country of destination.

- 4. Responsibilities protection of Indonesian workers abroad by implementing private placement of Indonesian workers:** Responsibility implementing private placement of Indonesian workers to carry out the delivery of Indonesian workers abroad are the two variables that can not be separated from each other. Delivery of Indonesian workers abroad, including one of the crucial problems in the employment system in Indonesia, because the revenue of the country enormously from the delivery and placement of Indonesian workers abroad. Legislation that provides protection against Indonesian workers during the pre-placement, during placement and after placement, are the responsibility of the executive private placement of Indonesian workers.

- a) Pre-placement of Indonesian workers abroad
 - Deployment handling permit
 - Recruitment and selection
 - Education and training
 - Examination of health and psychology
 - Document attachments
 - Waiting period in-escrow
 - Final pre-departure

- b) Future placement of Indonesian migrant workers in overseas.
- c) Full placement of Indonesian migrant workers abroad.

Refer to the complexity of the problems faced by the Indonesia candidate of and the placement of Indonesian workers from past and future placement.

5. Analysis of responsibility BNP2TKI against migrant workers abroad human rights in perspective.

State government and community have the responsibility to respect, uphold, and meet the economic, social culture of all citizens. State government is responsible for encouraging the people to be able to meet their basic needs in order to get a decent life for all citizens, in accordance with the mandate of the Act of 1945.

Juridical basis of state responsibility on employment, among others:

- a) Every citizen has the right to work and a decent living for humanity (Article 27, Paragraph (2) of the 1945 Constitution).
- b) Each worker has an equal opportunity to obtain employment without discrimination (Article 5 of Law No. 13 of 2003).
- d) The government is responsible to seek expansion of employment opportunities both within and outside employment (Article 39 Paragraph (1) of the Act No. 13 of 2003).

The International Labor Organization (ILO) as an international labor organization serves to carry out operational programs and labor training, with the aim of conducting activities to guide the creation of workers' justice and human rights, improving living and working conditions, and increasing opportunities work. So the main task of the ILO is to create protection of workers' rights, expand employment, and improve the standard of living of workers.

Limitations of employment at home, causing many citizens to seek employment abroad. Working abroad legitimized by the state, because it is a meeting of two interests, namely the interests of the Indonesian workers themselves, and the interests of the state as the bearer of responsibility to realize human rights, to obtain a decent work and livelihood.

In order to guarantee the realization and achievement of the placement of Indonesian migrant workers abroad, an integrated service and responsibility is required. Therefore, the government shall establish a National agency for the placement and protection of Indonesian migrant workers (BNP2TKI) as a non-departmental government agency responsible to the President, plicies in the field of placement and protection of Indonesian workers in a coordinated and responsible manner.

Implementation of the placement and protection of Indonesian migrant workers abroad is a joint responsibility that involves and is represented by relevant government agencies. Representatives of relevant Government agencies have the function and authority of policy implementation in the field of placement and protection of Indonesian workers overseas in a coordinated and integrated manner.

Distribution implementation of the functions and responsibilities of this agency is for the placement and protection of Indonesian migrant workers abroad starting from the central, provincial and district government to Indonesian representatives abroad, such as the Embassy of the Republic of Indonesia and the Consulate General of the Republic Indonesia abroad. The responsibility of BNP2TKI is:

- a) Ensure the fulfillment of the rights of prospective Indonesian migrant workers and Indonesian migrant workers, both of which go through the Indonesian workers placement executor, or who leave independently.
- b) Monitoring the implementation of the prospective placement of Indonesian migrant workers.
- c) Establish and develop information system of prospective placement of Indonesian migrant workers abroad.
- d) Make diplomatic efforts to ensure the optimal fulfillment of the right and protection of Indonesian migrant workers in the destination country.
- e) Provide protection to Indonesian migrant workers during the previous period of departure, placement period, and the post retirement period.

The burden of responsibility provided by the government against BNP2TKI in the implementation and protection of Indonesian migrant workers abroad is the case of Indonesian Labor abroad, it seems that BNP2TKI's responsibility seems ineffective, since Indonesian workers are positioned as commodity exports, because Indonesian workers working abroad actually include the state's interest as the bearer of the responsibility of realizing the human rights to obtain decent jobs and livelihoods, on the other hand workers also want to pursue his dream to get a decent life.

The weakness of BNP2TKI in its responsibility to the placement and protection of Indonesian migrant workers abroad has had an impact on the occurrence and repetition of human rights abuses abroad, as the authors have pointed out earlier, such as among others:

1. Ceriyanti Binti Dapinos a worker that working as domestic servant with her employer in Malaysia, proved always gets mistreatment from her employer. If the responsibility of BNP2TKI for monitoring is done maximally through the Embassy of the Republic of Indonesia, through the Employee Attaché the event of this financing will not always be repeated.

2. The case of Erwiana Sulistyarningsih, origin of Sragen Central Java, worked in Hong Kong as a domestic worker, a day of work for 21 hours without room rest and bed facilities, all day eating bread with little rice and tap water. At night he had to be on guard and should not sleep, and his passport was held by his master. The Asian human rights committee in its report said that Erwiana always get focusing by her case.
3. Tragedy experienced by NurMiyati as housemaid from Sumbawa who works in Riyadh. She always suffered torture from her employer resulting in injuries throughout her body, bleeding in both eyes, bruised lips, one front tooth, a wound on her shoulders, ears and one leg. From the torture of her employer resulted in infection from the bruised wounds of the bruises, in addition to having impaired vision in the left eye and hearing in the left ear.
4. Ruyati Binti Satubi, age 54 was sentenced to be head after he was convicted of murdering Khairiyah Hamid bintiMijlid his employer. The case that ensnared Ruyati was accused of killing his employer using a kitchen knife. Administratively Ruyatican not be discharged, because it has exceeded the age, in the passport Ruyati slavish 9 years by the private employment placement employer Indonesia. The cause of human rights violations occurring in the regions when the administrative completion process of candidate for Indonesian workers.

In addition to human rights violations against prospective Indonesian migrant workers, human rights violations are also triggered by government policies that allow prospective employers to directly recruit Indonesian manpower for employment abroad, as well as lack of respect for the human rights of others, morals, ethics, and order of community life, nation and state, human resources are still low. Interpretation and wrong application of religious norms and instructions, so good governance and corporete governance is still rhetoric.

1. Coordinating Agency for Placement and Protection of Indonesian Migrant Workers with Ministry of Manpower, Embassy of the Republic of Indonesia, Provincial, Regency / Municipal Governments on the Protection of Human Rights for Indonesian Migrant Workers Abroad.
 - a) Coordination of BNP2TKI with the Ministry of Manpower on the Placement and Protection of Indonesian Migrant Workers Abroad in Human Rights Perspective.

It is very important coordination in the process of integrating objectives and activities in separate units of an organization to achieve efficient and effective goals. So coordination becomes important and useful, to avoid feelings apart from each other, between organizational units or between officials within the organization. Coordination can prevent an opinion or the feeling that an organization or official is the most

important. In addition, coordination can also avoid the possibility of conflict between parts of the organization. Law No. 39 of 2004 concerning the placement and protection of Indonesian migrant workers abroad, adopted and enacted on 18 October 2004, derived from the decree of the Minister of Manpower and Transmigration No. 104A / Men / 2012, on the placement of Indonesian migrant workers abroad. The term is often referred to decision Minister who in “Invite”, because it is exactly the same with the Ministerial Decree.

The objective is stipulated in Law No. 39 of 2004, in order to provide legal protection to Indonesian workers that working abroad and often faced with various issues of violation of human rights, such as sexual harassment, abuse, exploitation and so on. In the Law No. 39 of 2004 on the placement and protection of Indonesian migrant workers, there is a vague normal for example in Article 95 of Law no. 39 of 2004 stated earlier that the National agency for placement and protection of Indonesian migrant workers has a function of policy implementation in the field of placement and protection of Indonesian migrant workers abroad in a coordinated and integrated manner. While the task of the National agency for the delivery and protection of Indonesian workers is mentioned in Article 95 paragraph (2) letter a, namely placing on a written agreement between the government and the government of the country of the Indonesian manpower legal user in the destination country of the placement as In the intent of Article 11 Paragraph (1).

Article 95 Paragraph (2) b, is also a provision governing the duties of the National agency for the delivery and protection of Indonesian migrant workers, namely providing services, coordinating and supervising documents, final disbursement, problem solving, funding sources of departure until return, Improving the quality of candidates for Indonesian workers, information, the quality of implementing the placement of Indonesian workers, and improving the welfare of Indonesian workers and their families.

The conflict between the Indonesian National agency for the delivery and protection of Indonesian migrant workers with the Minister of Manpower proves that the expected coordination of the placement and protection of Indonesian migrant workers abroad is difficult to achieve, as set out in consideration of Law no. 39 of 2004, that is the state shall guarantee and protect the human rights of its citizens working both inside and outside the country based on the principles of equal rights, democracy, social justice, equality and gender justice, anti-discrimination and anti trafficking.

In Law no. 39 of 2004 on the placement and protection of Indonesian workers, it is explained that the Indonesian private employment executor with the government has an obligation to protect Indonesian migrant workers before departing, while working in the destination country, and after returning to the country of origin. Government and private employment placement executives Indonesia should coordinate in protecting the rights of Indonesian migrant workers including the protection of human rights of Indonesian migrant workers. Coordination is carried out in accordance with the responsibilities of the task, as well as the obligations of each stakeholder with a balanced responsibility and associated with mutual information.

Coordination between the Ministry of manpower and the National agency for the delivery and protection of Indonesian migrant workers shall be implemented when it will formulate policies and decision-making on issues relating to Indonesian workers, prior to deployment, during overseas employment and after returning to their home region.

- b) Coordination of BNP2TKI with the Ministry of Foreign Affairs, Embassy of the Republic of Indonesia, against the placement and protection of Indonesian migrant workers abroad in human rights perspective.

In the foreign relations of the Ministry of Foreign Affairs have the following duties:

1. Implementation of foreign relations and policy, including its implementation facilities and mechanisms, central coordination and representation, authority and delegation of authority in the conduct of foreign relations and the implementation of foreign policy.
2. The principal provisions concerning the manufacture and ratification of treaties, which regulate them in more detail, including the coveners of international treaties whose ratifications require the approval of the People's Legislative Assembly, are established by law.
3. Protection of Indonesian citizens, including provision of legal aid and counseling, and consular services.
4. Foreign relations apparatus.

The Ministry is obliged to carry out governmental affairs whose scope is mentioned in the 1945 Constitution of the State of the Republic of Indonesia, which includes religious, legal, financial, security, human rights, education, culture, health, social, employment, industry, trade, mining, energy, public works, transmigration, transportation, information, communications, agriculture, plantation, forestry, animal husbandry, marine, and fisheries. So Ministry is runs a function such as:

- a) Formulation, determination, and implementation of policies in the field.
- b) Property management of the country which is his responsibility.
- c) Supervision over the execution of duties in his field.
- d) Implementation of technique guidance and supervision on the implementation of ministry affairs in the region.
- e) Carry out nation wide technical activities.

In providing protection to Indonesian citizens abroad, the representatives of the Republic of Indonesia are obliged to foster unity and harmony among fellow citizens abroad, as well as provide protection, protection and legal assistance as citizens and Indonesian legal entities abroad, in accordance with National legislation and international law and customs.

Embassy of the Republic of Indonesia, is the diplomatic representative office in a foreign country with diplomatic relations with Indonesia and headed by an Ambassador, office of the Embassy of the Republic of Indonesia which is permanently placed in the capital of another country or international institution or organization, the Ambassador of the Republic of Indonesia in implementing the placement and protection of Indonesian migrant workers abroad assisted by the labor attache.

Law of the Republic of Indonesia no. 37 of 1999, Article 29, provides that the Ambassador Extraordinary and Plenipotentiary is a state official appointed and dismissed by the President as Head of state, as representative of the state and nation of Indonesia and becomes a personal representative of the President of the Republic of Indonesia in a country or an organization international.

Duties and diplomatic representatives of Indonesia abroad generally include the following:

- a) Representation, in addition to representing the government of his country, he can also protest, conduct an investigation with the recipient country government, he represents the political wisdom of his country's government.
- b) Negotiation, in example holding negotiations or talks with the country where it is accredited and with other countries.
- c) Observation, in example to thoroughly examine any event or event in the recipient country that may affect the interests of the country.
- d) Protection, which protects the personal, property and interests of its citizens abroad.
- e) Friendship, which is to enhance friendly relations between sending countries and recipient countries, both in the economic, cultural and scientific and technological fields.

In carrying out its duties a diplomat may serve as a symbol of the national prestige of his country abroad and represent his head of state in the state as recipient. In addition he can serve as a juridical representative of his country's government, for example diplomats can sign agreements, ratify documents, declare statements and others. As a political representative, a diplomat can be a reciprocal link between his country's interests and the interests of the recipient country.

To provide protection of Indonesian citizens abroad, as stipulated in the Regulation of the Minister of Foreign Affairs of the Republic of Indonesia No. 01/A/ OT/I/2006 In year 2006, the Directorate of Indonesian citizens protection and Indonesian legal entity has the duty of providing Indonesian citizens with domestic and foreign protection, Indonesian legal entities abroad, consular supervision and assistance Social and repatriation.

In connection with the duties, the directorate of the protection of Indonesian citizens and legal entities of Indonesia performs the functions:

- a) Preparation of policy formulation and standardization.
- b) Coordination and implementation of policies and technical standardization.
- c) Negotiations in terms of protection.
- d) Preparation of standards, norms, guidelines, criteria and procedures in the field of protection.
- e) Provision of technical guidance, information, evaluation, and reporting in the field of protection, and administrative implementation of the Directorate.

Directorate of Indonesian citizen protection and Indonesian legal entity comprises such as:

- a) Sub-directorate of Indonesian citizen protection and Indonesian legal entity abroad.
- b) Sub-directorate of Indonesian citizen protection in Indonesia.
- c) Subdirector of consular supervision.
- d) Sub directorate of social assistance and repatriation of Indonesian citizens.
- e) Subdivision of administration.

The role of the Foreign Ministry against Indonesian Workers is problematic abroad, that is since getting reports from the Indonesian Embassy or Consulate General of the Republic of Indonesia concerning Indonesian Workers who have problems abroad. So the Ministry of foreign affairs should immediately notify the Indonesian migrant workers family and take care of the envoys from his family to come to the country where the Indonesian workers work. Ministry of foreign affairs requested support from local government and family of Indonesian workers to solve the problems of the Indonesian workers.

1. Coordination analysis of BNP2TKI with related institution to implementation of placement and protection of overseas workers in human rights perspective. Protection of labor migrants against human rights violations can not be separated from the effective coordination between relevant agencies on the implementation of placement and protection of overseas workers. Coordination becomes important and useful to avoid feelings that are separated from each other. Coordination can also avoid an opinion or feeling, that an organization or official is the most important. In addition, coordination can also avoid the possibility of a conflict between the inside of the organization. Implementation of placement and protection of Indonesian workers abroad involves various agencies, in order to achieve the goal of placement of Indonesian migrant workers abroad, necessary coordination among relevant agencies. As coordination between agency and the Ministry of Foreign Affairs or Embassy of the Republic of Indonesia in the country of overseas employment of Indonesian migrant workers, coordination between BNP2TKI and Provincial Government and Regency or City Government. Law no. 39 of 2004, explicitly explains that Indonesian private employment placements with the government are obliged to protect Indonesian workers before departure, while working in the destination country and after returning to their home country. PPTKIS must always coordinate in protecting the rights of Indonesia workers, including protection of human rights of them. Coordination in accordance with the responsibilities of each stake holder, with balanced responsibility and mutual information.

Refer to the cases of human rights violations affecting Indonesian migrant workers, it could be due to poor coordination between stake holder placement and protection of Indonesian workers. As a proof of violation of human rights in the case, as follows:

- a) The case of human rights violations experienced by IwinBintiSudinta aged 50 years, from Majalengka working as domestic servants in Abu Dhabi, he repatriated his employer in a state of stroke. Since there was no coordination with agency, the staff of Consulate in Abu Dhabi only took Iwin to SoekarnoHatta airport. In addition, Iwin's treatment request was rejected on the grounds that there was no recommendation or coordination from the Foreign Ministry or the Embassy.
- b) B. YantiIrianti from Cianjur works as a household provider in Saudi Arabia sent through by PT AvidaAviaduta. The case of YantiIrianti died while working with her employer. Although the compensation received by her family, but does not mean the death of YantiIrianti has been completed, because the family demands that the Government of

the Republic of Indonesia immediately repatriate the body YantiIrianti, and give finalty to companies who send Irianti, because neglected not provide accurate information about Irianti's death in Saudi Arabia.

The case shows that human rights violations have occurred, because the PPTKIS sending Kasem is not responsible to coordinate with Kasem's family about the situation experienced by Indonesian Workers (Kasem). This event shows the coordination between PPTKIS with BNP2TKI and the Embassy of the Republic of Indonesia does not run in accordance with the expectations of legislation. Based on various cases of human rights abuses experienced by overseas workers, the coordination between stakeholders Placement and protection of Indonesian migrant workers abroad is very important. Especially to provide protection for human rights of Indonesian workers abroad.

CONCLUSION

Based on the description in previous discussion, it can be concluded as follows:

1. National agency for placement and protection of Indonesian workers (BNP2TKI), is a non-departmental government agency responsible to the President. As the organ of the government BNP2TKI is technically responsible in the process of placement and protection requirements of overseas workers, in accordance with the mandate of Law no. 39 of 2004, that the placement of overseas migrant workers is an effort to realize equal rights and opportunities for workers to obtain decent work and income, whose implementation is carried out with due regard to the dignity and respect of human rights.

The occurrence of human rights abuses against Indonesian migrant workers abroad can be caused by unsaved part of the responsibility of BNP2TKI to the supervision of Indonesian workers especially regarding the completeness of documents, the final briefing of the departure, the settlement of problems faced by workers, the service of departure until the repatriation of Indonesia workers laws and regulations, ineffective in improving the quality of prospective migrant workers, do not provide accurate information on the implementation of placement of migrant workers, so the responsibility of the Government BNP2TKI, to improve the welfare of Indonesian workers and their families has not been successful.

2. Coordination of the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) in the framework of the protection of Human Rights against Indonesian workers, comprising the Ministry of Manpower of the Republic of Indonesia, Provincial Government, Regency or City Government, Embassy of the Republic of Indonesia or Ministry of Foreign Affairs and PPTKIS.

References

- Abdul Khakim, *Dasar-Dasar Hukum Ketenagakerjaan Indonesia*, Citra Aditya Bakti, Bandung, 2014.
- Agusmidah, *Hukum Ketenagakerjaan Indonesia, Dinamikadanteori*, Chalia Indonesia, Bogor, 2010.
- Any Suryani, *Tanggung Jawab Negara Terhadap Korban Perdagangan Orang dan Hak Asasi Manusia*, Pustaka Bangsa, Mataram, 2014.
- Bahder Johan Nasution, *Negara Hukum dan Hakasasi Manusia*, Mandar Maju, Bandung, Tahun 2012.
- Basani Situmorang, *Tanggung Jawab Lembaga Pengerah Tenaga Kerja (PPTKIS) Dalam Pemenuhan Hak-Haktenaga Kerja*, BPHN Kementerian Hukum dan Hak Asasi Manusia RI, Jakarta, 2013.
- Fathor Rahman, *Menghakimi TKI Mengurai Benang Kusut Perlindungan TKI*, Pensil-324, Jakarta, 2011.
- Ismantoro Dwi Yuwoyono, *Hak dan Kewajiban Hukum Tenaga Kerja Indonesia (TKI) di Luar Negeri*, Pustaka Yustisia, Yogyakarta, 2011.
- Jimly Asshiddiqie dan Hafid Abbas, *Hak Asasi Manusiadsalam UUD 1945 dengan Perubahan UUD 1945 tahun 2002*, Kencana, Jakarta, 2015.
- Joni Bambang, *Hukum Ketenagakerjaan*, Pustaka Setia, Bandung, 2013.
- Lalu Husni, *Hukum Penempatan dan Perlindungan Tenaga Kerja Indonesia*, Program Pasca Sarjana, Universitas Brawijaya, Malang, 2010.
- Mahmud F Rakasimadkk, *Seratus TKI Sukses*, BNP2TKI, Jakarta, 2009.
- Worker Agency, *Saratus TKI Sukses*, BNP2TKI, Jakarta, 2012.
- Worker Agency, *Saratus TKI Sukses*, BNP2TKI, Jakarta, 2013.
- Nurul Qamar, *Hak Asasi Manusiadalam Negara Hukum Demokrasi (Human Rights in Democratiche Rechtsstaat)*, Sinar Grafika, Jakarta, 2014.
- Otje Salman & Anton F.S., *Teori Hukum*, Rafika Etima, Bandung, 2005
- Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2010.
- Philipus M. Hadjon., *Perlindungan Hukum Terhadap Rakyat*, Binallmu, Suranaya, 1987.
- Soedarjadi, *Hukum Ketenagakerjaan di Indonesia Panduan Bagi Pengusaha Pekerjadan Calon Pekerja*, Pustaka Yustisia, Yogyakarta, 2008.
- Soehino, *Hak Asasi Manusia Perkembangan Pengaturan Dan Pelaksanaan Hak Asasi Manusia Di Indonesia*, BPFE, Yogyakarta, 2013.