

CHAPTER II

LITERATURE REVIEW

A. Laborer

The use of the term of a laborer despite workers has no legal consequences anymore. As a word “laborer” can be interpreted as a condition of labor who works to another people (entrepreneur). Based on the Article 1 Paragraph 1 of the Law No 13 of 2003 regarding Manpower, manpower affairs or laborer refer to every matter that is related to people who are needed or available for a job before, during and after their employment.⁹

The Article 1 Paragraph 2 of Law No. 13 of 2003 on the Manpower, defines the laborer as every person who can work in order to produce goods or services both to meet their own needs and for the community.¹⁰

Furthermore, Article 1 Paragraph 3 explains a worker/ laborer is every person who works for a salary or other forms of remuneration.¹¹ Meanwhile, Article 1 Paragraph 4 emphasizes that employers are individuals, entrepreneurs, legal entities, or other bodies that employ manpower by paying them a salary or other forms of remuneration. Then, Article 1 Paragraph 2 mentions that people available for a job or person available for a job is every individual or person who can work in order to produce goods and/or services either to fulfill his or her

⁹ZaeniAsyhadie, 2013, *Hukum Ketenagakerjaan Bidang Hubungan Kerja*, PT RajaGrafindo Persada, Jakarta, p.1

¹⁰Subijanto, “Peran Negara Dalam Hubungan Tenaga Kerja Indonesia, *“Jurnal Pendidikan dan Kebudayaan”*, Vol 17 No. 6(2011): p. 708

¹¹*Ibid.*, p. 19

own needs or to fulfill the needs of the society. Besides, based on the Statistics body, laborer as the entire population of working over 15 years old who have the potential to produce goods and services.¹²

According to Telly Sumbu, the laborer is the one that works on a task entrusted to him as an employee, servants and so on. Payaman Simanjuntak in the book entitled “Pengantar Ekonomi Sumber Daya Manusia” defines manpower as a person that already or is at work, and carries out other activities such as school or taking care of the household. The definition of employee and unemployed is determined by age.¹³

B. The Indonesian Migrant Workers (TKI)

Based on the Law No. 39 of 2004 on the Placement and Protection of Indonesia Migrant Worker Abroad, Indonesian Migrant Worker is: “any Indonesian citizen who is qualified to work in an employment relationship for a specific time with salary.” Furthermore, based on the Presidential Regulation No. 81 of 2006 on the National Board for Placement and Protection of Indonesian Migrant Workers (BNP2TKI), workers are each citizen of Indonesia that qualify as job seekers who will work abroad and register at district/city government agencies responsible in the field of employment.

¹²Badan Pusat Statistik Kota Bandar Lampung, 2015, Accessed From <https://www.bps.go.id/> , on Tuesday, November 14, 2017, at 09.15 A.M.

¹³Sedjun H. Manulang, 1995, *Pokok-Pokok Hukum Ketenagakerjaan di Indonesia*, PT Rineka Cipta, Jakarta, Cet. II, p. 3

Then, based on the Ministerial Regulation No. 22 of 2014 Article 1 Paragraph 1 on the Implementing Placement and Protection of Indonesian Migrant workers reveal Indonesian employee candidate is that every citizen of Indonesia that qualify as job seekers who will work abroad and registered in the district/city government agencies have responded in the field of employment. It was related to the Article 1 point 2 of which stated that Migrant Workers or TKI is every citizen of Indonesia who is qualified to work in the abroad certain period with receive salary.

In the Ministerial Degree of Manpower and Transmigration of the Republic of Indonesia No. KEP-104A/MEN/2002 on the Indonesian Migrant Worker Overseas Placement Article 1 Paragraph 4, TKI is defined as Indonesia citizen both men and women who work abroad during a specified period based on agreements through the placement procedures of TKI. In Article 1 Paragraph 3, it is stated that Indonesia Migrant Workers candidate here and after is mentioned as TKI have been registered and passed the selection session at PJTKI and has been signed of placement agreement.

Based on the Private Employment Agencies of Indonesian Migrant Workers (PPTKIS) in the fulfillment of the rights of labor, Indonesian Migrant Workers as TKI is the citizen of Indonesia both man and woman who perform economic activities, social and cultural training while working abroad in a certain period based on the agreements.¹⁴

¹⁴Basani Situmorang, *op. cit.* p 9

C. The Private Worker Placement Agency (PPTKIS)

The Private Worker Placement Agency hereafter is called as (PPTKIS) “*Pelaksana Penempatan TKI Swasta*”. It has legal entity obtained written permission from the government to conduct worker placement service abroad. The placement of TKI is the service activities to introduce worker according to his/her talent, interest, and ability with employment in a foreign country that converting the entire process of recruitment, document handling, education and training, accommodation, departure preparation, departure to the destination country, and returning from the destination country.

In Kepmenakertrans No 104 A/Men/2002 article 1 paragraph 4 it is mentioned that the placement of TKI carried out by executive agencies that consist of PPTKIS and government institute that responsible in the area of TKI placement abroad.¹⁵

Therefore in Law No 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad, as regulated further in the Government Regulation No. 4 of 2013 on the Procedure and Placement of Indonesian Migrant Workers abroad by Government, decide the implementation of placement of Indonesian Migrant Workers Abroad namely:¹⁶

1. Government; and
2. Private Agency.

¹⁵Muslan Abdurrahman, 2006, *ke Tidak Patuhan TKI*, UMM Malang, p.34

¹⁶*Ibid.*, p.34

The placement of the worker abroad by the government only conducted based on a written agreement between the government and the government of the worker-employer country of legal entity employer in the destination country.

In the placement of TKI abroad, the government must organize, build, educate, implement, and supervise the organization of the placement and protection of TKI abroad. The implementation and placement of TKI abroad are carried out in a balanced way by Government and society, so that the implementation of the TKI placement abroad can succeed.

The private agency of placement organizer should be a legal agency of the limited liability company (PT) and has obtained License for Executive Placement Process of Indonesian Workers (SIPPTKI) issued by the Minister of Manpower and Transmigration. Thus, the implementation of the placement of the TKI abroad cannot be done by individuals, because the license is only granted to the private agency in the form of a legal entity.¹⁷

The companies, private agency as stated in Article 10 letter b of Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers abroad, should have written approval form (Worker Placement Agency Permit) or what has been called as (SIPPTKIS) “*Surat Izin Pelaksana Penempatan TKIS*” given by the Minister. In order to obtain SIPPTKIS, the private agency should fulfill the requirements below:¹⁸

1. A limited liability company (PT) established based on the regulations;

¹⁷*Ibid.*, p.86

¹⁸Law No. 39 of 2004 on The Placement and Protection of Indonesian Migrant Workers abroad, op. Cit. Article 13 Paragraph 1

2. Has deposited capital as stated in the company establishment deed minimum Rp. 3.000.000.000,00 (three billion rupiah);
3. Deposit as the guarantee is a form of time deposit of Rp. 500.000.000,00 (five hundred million rupiahs) to the government banks;
4. Has worker placement and protection scheme abroad minimum for 3 (three) current years;
5. Has training units; and
6. Has worked placement facilities and means.

According to the condition progress, the amount of deposited capital as stated in point 2 in above, and guarantee in the form of deposit as stated in point 3, may be reviewed and amended by Minister Decree.

According to the permit, the agency can conduct worker placement abroad given for the 5 (five) years term and may be extended every 5 (five) years. The permit extension as stated in above, may be given to private agency beside it should meet requirements as follows:

1. Has conducted its obligation to hand over the periodical report to Minister;
2. Has conducted worker placement minimum 75% (seventy-five percent) from placement at the time obtaining SIPPTKI;
3. Still has facilities and means according to specified standards;
4. Has balance sheet for last 2 (two) years and does not suffer loss audited by the public accountant; and
5. Not in a suspended condition.

Besides, the Minister may revoke SIPPTKI if the private agency:

1. Does not fulfill the requirements anymore as stated in the requirement of a private agency; or
2. Does not fulfill its obligations and responsibilities and/or violate prohibitions in the worker placement abroad arranged by this act; and
3. The revocation of SIPPTKI by minister as stated in above, does not reduce this private agency obligation on workers have been placed and still work abroad.

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To represent its interest, the private agency should have a representative in the country where the workers placed. The representative of the private agency should be a legal body established based on regulations in the destination countries. Besides, the activities conducted by a branch office of private agency become the responsibility of private worker placement of head office, and the private agency may delegate the authorities to its branch office to:

1. Conduct counseling and collecting data of candidate worker;
2. Conduct registration and selection of candidate worker;
3. Solve the case of a candidate worker/worker in pre or post placement; and
4. Sign the placement agreement candidate worker on behalf or private agency.

Based on the description above, all activities conducted by the branch office of a private agency become the responsibility of the head office private agency. Besides by government and private agency, the company may place a worker abroad for its own company itself on the basis of a written permit from the minister.¹⁹ In sending its own worker to its subsidiary abroad, the company should fulfill the requirements:

1. The company should be in the form of a legal entity;
2. Workers who will be placed are the worker of the company itself;
3. The company has ownership evidence or job contract known by the Representative of the Republic of Indonesia;
4. Workers have an employment contract;
5. Workers provided by social security program and/or have insurance policy;
and
6. Workers, who will be placed aboard, should have the Overseas Worker Card or KTKLN (*Kartu Tenaga Kerja LuarNegeri*).

Besides that, the placement of TKI for its own company is conducted in term of:²⁰

1. Have the ownership relations with the companies abroad;
2. Obtained a work contract;
3. Expand business in the placement of destination country; and

¹⁹ Article 26 Paragraph 1 of Law No 39 of 2004 regarding of Procedure of Placement of Indonesian Migrant Workers abroad

²⁰ Article 41 of Law the Regulation of Manpower and Transmigration Minister No. PER-22/MEN/XII/2008 on Implementation and Protection of Indonesian Migrant Workers in Foreign Country

4. Improve the quality of Human Resources (SDM).

Furthermore, to get the written permit from Minister of Manpower and Transmigrations, related to the Article 26 of Law No. 39 of 2004 regarding of Placement and Protection of Indonesian Migrant Workers abroad, the leader of a company should attach with his/her application form:

1. The statement letter that the TKI will be placed in its own company domiciled abroad for a private company, not PPTKIS;
2. The employment of contract between the applicant company and the employer abroad for the regional-owned company that has been recognized by the Representative of the Republic of Indonesia in the destination country:
3. The employee affair status document to be placed:
4. The written statement from the company about the willingness to take full responsibility for the safety, welfare, repatriation, and protection of TKI:
and
5. TKI who will be placed by the company for their own interest should be included in the Social Security Program (Jamsostek) and have an insurance policy.

Before the departure of TKI applicant, the company for its interest should be taken care of KTKLN where used for identity worker cards during the

placement in destination countries.²¹ KTKLN is meant that it can only be given if the workers fulfilled the requirement, there are:

1. Has fulfilled document requirement of worker placement abroad;
2. Has attended pre-departure training (PAP); and
3. Has insured in insurance program protection

Based on Article 2 that the Extension of working agreement referred to in Paragraph 1 of Law No 39 of 2004 Regarding of Placement and Protection of Indonesian Migrant Workers abroad, the employment obliged to guarantee:

- a. The insurance premiums of TKI accordance with the Ministerial Regulation;
- b. The legalization of the extension of the working agreement;
- c. Reward (payment company) for PPTKIS senders and business partner, and individuals also employment of the legal entities in accordance with the employment agreement.

In this insurance, PPTKIS obligates to ensure of TKI in insurance program its mean that the insurance of TKI is a form for protection for TKI such as the compensation in the form money, as the result of risk experienced by TKI, before, during and after work abroad.²²

²¹Satryo Pringgo Sejati, *“Perlindungan Tenaga Kerja Indonesia di Luar Negeri”*, Magister Ilmu Hubungan Internasional Universitas Muhammadiyah Yogyakarta, p. 1-20

²²Article 1 Paragraph 8 of Ministerial Regulation and Transmigration No. PER-20/MEN/X/2007 regulated of the Insurance of Indonesian Migrant Worker

The insurance program of TKI is implemented by Insurance Company Losses and Life Insurance who has to obtain the appointment letter from the Ministry of Labor by establishing a consortium. The insurance company should fulfill the requirement are:

- a. Legal entities and received permission from the Ministry of Finance to conduct the business of insurance;
- b. Make the statement to organize an insurance program for TKI;
- c. Hass a branch of office domicile of BP3TKI;
- d. Has an online collection system; and
- e. Fulfill the other provisions which in the guidelines implementation of selection.

Besides, the company should be taken care of KTKLN with the following conditions:

1. The written permission from the Manpower and Transmigration Minister; and
2. The evidence of participation in the program of the social security program and have an insurance policy.

D. The Placement Process of Indonesian Migrant Workers (TKI) in Malaysia

The placement process of TKI is an activity to find appropriate Indonesian labor interests, talent, and ability by giving a job abroad covering the entire process of recruitment, the management of documents, education and

training, shelter, preparations of departure until the destination country, and the repatriation of the country of destination.²³

Based on Law No. 39 of 2004 on the Placement of TKI abroad can only be conducted in the state that has an agreement with the Government of the Republic of Indonesia or the country who have protection system for foreign labor, but the provisions did not mention in the Manpower Minister decision No. KEP-104A/MEN/2002 on the Indonesian Migrant Worker Overseas. This provision aims to avoid inhumane treatment like human trafficking, slavery, forced labor, arbitrariness, a crime against human dignity, as well as other inhuman treatment. The placement activities of TKI abroad include:²⁴

1. Maintaining License Deployment (SIP);
2. Recruitment and selection;
3. Education and job training;
4. The Medical checkup and psychology;
5. Clearance of documents;
6. A test of competence;
7. The final supply briefing for departure (PAP), and
8. Departure.

²³Suwardjo, 2018, "*Prosedur Penempatan Tenaga Kerja Indonesia ke Luar Negeri oleh Pelaksana Penempatan Tenaga Kerja Indonesia Swasta (PPTKIS)*", accessed from https://scholar.google.co.id/scholar?hl=id&as_sdt=0%2C5&q=syarat+PPTKIS&btnG=, on Thursday, November 2, 2017, at 11.40 A.M.

²⁴ Law No. 39 of 2004 Regarding of the Placement and Protection of Indonesian Migrant Workers Article 27.

To obtain the implementation of the SIP from Minister, the placement of the TKI should have cooperation agreements, letters of request for TKI from the user, the draft of placement agreement of labor agreement. All the requirements above must be approved by officials of authority from Representative of the Government of the Republic of Indonesia in the destination country.

The recruitment and selection are began by providing information to the candidate of TKI at least about the recruitment procedures, the necessary documents, the rights and obligations candidates of TKI, situations, conditions, and risks, and protection for TKI in the destination country. The recruitment of candidates of TKI have to fulfill the requirements among others, minimum 18 years old, except for candidates who would be employed by individual users are at least 21 years old, educated at least Junior High School (SLTP) or equivalent. This requirement is important to avoid unwanted/ inhuman treatment such as torture and other acts of violence that experienced by TKI abroad. However, the TKI cannot do anything because of illiteracy and does not understand how and where to complain.

Job seekers who are interested in working abroad must be registered in Government agencies, which is responsible for the field of employment. The government has to make socialization regarding the registration process since it is not as difficult as they think. To register as TKI, they may register to the field officer without coming to the office directly.

Furthermore, if a TKI does not have the certificate of work competence, he/she is obliged to join the training intended to provide, improve and develop his/her skill. He/she will be provided with knowledge and understanding about the situation, the conditions of the society, cultures, religions, and the risks of working abroad. The training provides him/her the ability to communicate in the language of the destination country, and to understand his/her the rights and obligations during the process of placing of TKI. It is intended to find out the health conditions, mental and psychology of TKI candidate are whether they are ready or not to be employed in the destination country.

To be placed abroad, TKI candidates must possess documents such as:

1. Identity card;
2. The last education diplomas;
3. Birth certificate, marital status certificate;
4. Letter of a statement from husbands or wife;
5. Permission from parent or guardian;
6. Work of certification competence;
7. Healthy certificate;
8. Medical checkup;
9. Passport;
10. Visa;
11. Agreement of the TKI placement;
12. Working agreement and;

13. Card of employee (KTKLN).

The requirements above were regulated in the Minister decree of manpower and transmigration of the Republic of Indonesia No. Kep 104 A/MEN /2002.