

### **Chapter III**

## **Illegal Indonesian Migrant Workers in South Korea**

There are many Indonesian who work in South Korea. However not all workforces there work legally with official documents. The number of Indonesian who works illegally in South Korea is not just a few. Some of them also did not come back to Indonesia after their contract ended. Because of that, they become overstaying and illegal workers.

The delivery of Indonesian Workers to South Korea is one of cooperation between the governments. South Korea needs low skill workers in their country and Indonesia has more human resources than South Korea. Therefore, Indonesia sent workers to South Korea to decrease the unemployment In Indonesia and to prosper their life with a better job. However, the journey of sending workers to South Korea does not stop when the workers arrive there.

### **A. Illegal Workers in South Korea**

The number of Indonesian workers in South Korea is the third largest after Vietnam and Cambodia. This was mentioned by the Indonesian Ambassador in South Korea, John A Prasetio. At the time of this interview, John A Prasetio mentioned that there were around 38,000 Indonesian workers in South Korea. On average, there are around 5,000 Indonesian workers who come and go every year<sup>30</sup>.

The workers do not always stay still and work. There are many problems which come from the workers. Not just

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<sup>30</sup> Modin, M. (2017, January 6). *Dubes RI Seoul: Selamatkan Kesempatan Kerja di Korsel*. Retrieved March 14, 2019, from Deik News: <https://news.detik.com/wawancara/d-3389801/dubes-ri-seoul-selamatkan-kesempatan-kerja-di-korsel>

several times Indonesia workers are threatened to get deportation from South Korea government. Deportation is an action to repatriate foreign workers to their home country. This is happening because of the foreign worker has violated existing regulations. When a worker got deportation, he will be banned to come to the country he had a job before for years<sup>31</sup>. In the case of South Korea, the worker will be banned to enter South Korea for 5 years. In some circumstance, the worker also will have to pay the fine or get in prison. There are some major causes that make the Indonesia workers in South Korea get a deportation:

1. The Indonesia workers live in South Korea without any official documents such as passport and visa.
2. The Indonesian workers enter to South Korea with Tourism Visa. The workers should enter with worker visa according to what sector the workers get a job in South Korea.
3. The Indonesia workers did not submit an extension when his residence permit or document expired.
4. The Indonesian workers overstayed in South Korea.

The most important requirement to enter another country is a passport and visa if it is needed. Therefore, if there is no official document, the workers cannot enter South Korea. To work in South Korea, Indonesia workers have to pass the test from South Korea Government called Employment Permit System (EPS). With this system, the worker also can choose what sector they want to go to. If the document almost expires, the workers have to submit an extension to live in South Korea.

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<sup>31</sup> NN. (2015, June 04). *Penyebab Pekerja Asing Di Deportasi Dari Korea Selatan*. Retrieved February 27, 2019, from Info Menarik: <https://info-menarik.net/penyebab-pekerja-asing-di-deportasi-dari-korea-selatan/>

The absence of official documents will cause Indonesia workers to become illegal workers abroad. This will give a lot of risk to the workers outside there. However, the practice of sending illegal labor is still prevalent in Indonesia. Besides, because of the free visa to Jeju Island in South Korea for Indonesian, many workers go to South Korea through Jeju Island. But in the end, some of them ask the Indonesian government to bring them back to Indonesia<sup>32</sup>.

Based on '*Forum Sadar Hukum Indonesia*', an Indonesia worker becomes illegal if<sup>33</sup>:

1. Go abroad with just bringing a passport without any requires document or do not bring the passport.
2. Work abroad without a visa.
3. The process and procedures for becoming a legal worker has been passed well. However, there is an error in the requirement which causes the procedure to be invalid. If the worker still leave the country, it will be classified as illegal labor
4. Transferring a job without permission and running away from the job without permission or without rearranging documents will be illegal workers.
5. Keep working even though residence permit or work permit period has expired.

The problem of the illegal migrant workers in South Korea is a problem that is not over. Not only workers from Indonesia, but the number of illegal workers in South Korea is

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<sup>32</sup> Hanggoro, M. A. (2016, February 15). *TKI ilegal terus berdatangan banjiri Korea Selatan*. Retrieved February 27, 2019, from Merdeka: <https://www.merdeka.com/dunia/tki-ilegal-terus-berdatangan-banjiri-korea-selatan.html>

<sup>33</sup> Yafie, A. A. (2018). *Upaya Pemerintah Indonesia Menangani Persoalan Tenaga Kerja Overstay di Korea Selatan Periode 2012-2016*. *Undergraduate thesis*, 48-49

also quite a lot from the other countries which sent the migrant worker to South Korea. According to one of the Indonesian workers, Muslih, he said that he had left for South Korea with 13 of his colleagues<sup>34</sup>. However, after arriving in South Korea 12 of his colleagues decided to run away from where they worked and found other jobs. In this case, if their passport is held by the employer, they become an illegal worker because they do not have a legal document to work.

In an interview, Michel Catuira, the President of the Seoul-Gyeonggi-Incheon Migrants Trade Union (MTU), mentioned that a migrant worker can change workplaces 3 times according to his work permit<sup>35</sup>. However, many of the migrant workers in South Korea including Indonesian workers often run away from where they work. On average, they are people who work in the fishing sector. They left because they felt they were not compatible with their employer causing them find other workplaces.

The problem of illegal migrant workers also invites crime to those illegal workers. An illegal worker in South Korea mentioned via telephone lines with the writer that many South Koreans were using illegal foreign workers to earn money<sup>36</sup>. In South Korea, there are several projects that have only been carried out for several months. In this case, the project's owner is preferred illegal labor to be employed because they are only used for a few months. Usually, there will be South Koreans on duty to find the workers.

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<sup>34</sup> Muslih. (2019, February 27). (Z. Q. Haq, Interviewer)

<sup>35</sup> Catuira, M. (2011, January 8). LABOUR MIGRATION TO SOUTH KOREA: POLICIES AND PROBLEMS RELATED TO ILLEGAL WORKERS. (S. Hasan, Interviewer)

<sup>36</sup> TKI 1, T. (2019, March 13). Indonesian Overstaying Workers in South Korea. (Z. Q. Haq, Interviewer)

In this context, if illegal workers are not taking their action carefully, they can be deceived by people who collect the workers. Because the salary is received after work, they can be deceived and left to escape by those scammers. It makes them do not get money that should be their right. However, they also cannot report this scam because they are illegal labor.

The illegal worker's problem in South Korea became a complicated problem for both Indonesia and South Korean government. The illegal workers can drive to another problem such as human trafficking. In the other side, the illegal worker also will not get proper protection from the local government. It can harm the migrant workers if something happens to them.

## **B. Overstaying Indonesia Migrant Worker in South Korea**

Indonesia is one of 15 countries that made an agreement about workers delivery to South Korea. Indonesia is also one of the largest countries sending migrant workers to South Korea. This one is also supported by the big number of worker in Indonesia who still looks for a job. South Korea is one of the most favorite country where the workers want to get a job. This caused South Korea to accept the low-skill workers to their country to work in their industry.

The big number of Indonesian migrant workers in South Korea also drives to many problems. One of the problems is about the illegal migrant worker. This matter is a complicated thing to be solved. Even the government already made a constitution about the delivery migrant works abroad, but people still cross over it and go abroad without requirement documents.

In this case, the illegal migrant worker is the one who is still working when its residence permit or work permit has

expired. It is usually called overstaying migrant workers. In South Korea, the overstaying migrant worker is also a serious thing which has to be solved. This is because the permit for them already expired and they also cross the rules from the government. It can also make a buildup of the worker in South Korea and can hamper the delivery of new migrant worker because of the company is still full of workers.

Overstay comes from Over and Stay, which mean stay longer. In the law dictionary, Overstay is living in a country exceeded the time which already exists in their residence permit or visa. The overstay problem can drive the migrant worker to get deported<sup>37</sup>. The period of migrant worker stays in a country is usually written in their official document or visa. It is also written in their job contract. When the permit or contract is expired, the workers have to leave the country and go back to their home country. Usually, the workers have a grace period to stay after the permit expires. If the workers exceed it, they can be included as an overstaying migrant<sup>38</sup>.

In general, when the workers have their permit document or visa expired, they will face two situations<sup>39</sup>:

1. If the remaining visa is more than two weeks, it will automatically be deducted into 14 days starting from the day the employer asks the workers to leave the workplace. In this situation, the workers have to

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<sup>37</sup> I.P.M, R. B. (2006). *Terminologi Hukum (Inggris-Indonesia)*. Jakarta: Sinar Grafika

<sup>38</sup> Adha, L. H. (2014). Perlindungan Hukum Tenaga Kerja Indonesia (TKI) Yang Melebihi Batas Tinggal (Overstay). *Jurnal Hukum Jatiswara*, 177-205

<sup>39</sup> *Tentang Pelanggaran Ijin Tinggal: Overstay Dan Kerja Ilegal*. (n.d.). Retrieved Maret 7, 2019, from Mission For Migrant Worker: <http://www.migrants.net/for-migrants/pahami-hak-anda/tentang-pelanggaran-ijin-tinggal-overstay-dan-kerja-ilegal/>

report to the Immigration Department before the two-week visa expires.

2. When the remaining visa is less than two weeks, the workers can stay only until the last day of his visa. There is no automatic visa extension for 14 days. In this case, the workers have to report to the Immigration Department before his visa expires.

If their passport is held by their employer, the workers still have to report that they do not work and stay any longer in their previous place and their work permit expires. The passport is important for migrant worker because they can be arrested as illegal migrant if they cannot show their passport.

The employment contract for workers in a South Korean company is for 3 years. If the company agrees to extend the contract, then the next contract is only for one year and ten months. However, if the company does not want to make an extension, the workforce must return to Indonesia or will be given time to look for work. If they still stay in South Korea after four years and 10 months as stated in their contract they will become overstay worker<sup>40</sup>.

The time for Indonesia migrant worker in South Korea is three months. In that time, they can look for a new job. But, if they cannot find a job in three months they have to go back to their hometown. In this situation, not just a few people still live in Korea even their permit already expires. Therefore, they will become the overstay worker<sup>41</sup>. If workers receive termination of employment in the middle of their contract, they are still given the opportunity to find another job within three months after the termination. But, if they cannot get a new job they have to leave South Korea.

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<sup>40</sup> Erwin. (2019, March 9). (Z. Q. Haq, Interviewer)

<sup>41</sup> Ibid

Migration phenomena are one thing that happens in Indonesia from its society to prosper itself. Many of Indonesian migrants have to face difficult things such as danger and risk of looking for a job abroad. Illegal Indonesian migrant workers are also everywhere. These problems drive to the other problems such as the arbitrary treatment of workers, human rights violations, etc. The overstaying Indonesian migrant worker also becomes the problem because they stay longer than the limit of their residence permit.

The problem of overstaying workers is not just a small problem. The government also has to take part to solve it. The government still has to give protection and also to decrease its overstaying migrant workers in South Korea. The governments from both Indonesia and South Korea also have to give more explanation about the important thing to obey the law and procedures which have been made.

### **C. The Impact of Overstaying Migrant Worker**

Everyone has the right to get their own welfare. Including the foreign exchange heroes who are going abroad to find a job. They do not merely want to have a job. However, Indonesian migrant workers also hope to get a better life. The South Korean government opens low-skill job opportunities by establishing bilateral cooperation with 15 other countries including Indonesia to send workers to South Korea through the Government to Government program (G to G).



### Figure 5 South Korea Minimum Work Wage 2019<sup>42</sup>

Per Hour	: KRW 8.350
Per Day (8 Hours)	: KRW 66.800
Basic Per Month (209 Hours)	: KRW 1.745.150
Overtime Wages	: KRW 12.525
Night Shift Allowance per hour	: KRW 4.175

As a low-skill workforce, migrant workers in South Korea still get a salary according to the minimum wage standard. In 2018, the minimum wage in South Korea was KRW 7,530 per hour or around IDR 95,000. While in 2019, minimum wages increased to KRW 8,350 per hour or around IDR 105,000 with 8 hours of work per day excluding the overtime hours. With this amount, the workers can get KRW 1.745.150 or around IDR 22 million.

If a worker decides to stay in South Korea after his residence permit has expired or overstayed, the worker is also an illegal worker. Indonesia is also one of the countries that contribute to the biggest illegal worker<sup>43</sup>. There are still many companies in South Korea that recruit illegal labor because the cost of illegal labor is lower. The companies also do not have to pay the worker insurance. According to an illegal migrant worker from Indonesia, employers like to recruit illegal workers who have overstayed<sup>44</sup>. This is because

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<sup>42</sup> Leely, Z. (2019, March 12). *GAJI TKI KOREA 2019 TERNYATA ...???*  
Retrieved March 14, 2019, from Youtube Channel Zhiee Leely:  
[https://www.youtube.com/watch?v=Y\\_jl-3O8IzM&t=469s](https://www.youtube.com/watch?v=Y_jl-3O8IzM&t=469s)

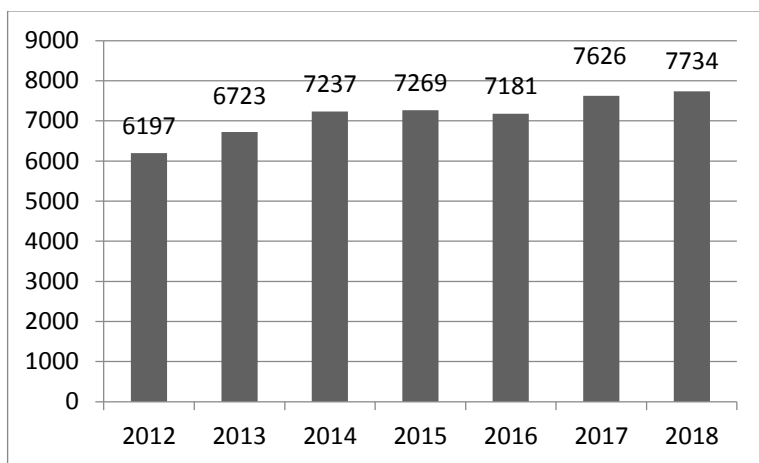
<sup>43</sup> Erwin. (2019, March 9). (Z. Q. Haq, Interviewer)

<sup>44</sup> TKI 1, T. (2019, March 13). Indonesian Overstaying Workers in South Korea. (Z. Q. Haq, Interviewer)

according to the illegal workers, those who overstay already have more adequate experience or have become skilled workers so they can work faster.

According to the data from the Korean Immigration Service in March 2018, the number of workers overstayed continues to increase from 2012 to 2018<sup>45</sup>.

**Figure 6 Number of Overstaying Indonesian Migrant Worker 2012-2018**



The number of Indonesian workers who overstayed continued to increase from 2012 to 2015. In 2012, the number of Indonesian workers overstayed in South Korea was 6,197 people, in 2013 there were 6,723 people, in 2014 there were 7,273 people, and in 2015 there were 7,267 people. In 2016, the number of Indonesian workers decreased to 7,181 people. However, in 2017, it increased again into 7,626 people and in

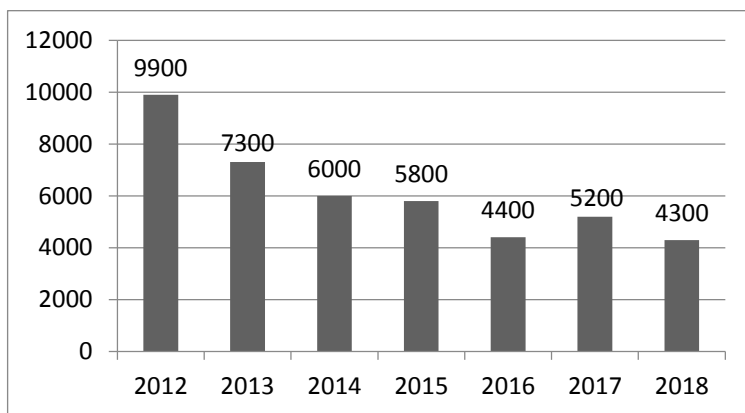
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<sup>45</sup> Yafie, A. A. (2018). Upaya Pemerintah Indonesia Menangani Persoalan Tenaga Kerja Overstay di Korea Selatan Periode 2012-2016. *Undergraduate thesis*.

March 2018 there were 7,734 Indonesian overstaying migrant workers in South Korea.

There are various impacts obtained from a large number of Indonesian workers who overstayed in South Korea. One of the impacts obtained was a reduction in the quota for worker recruitment by the South Korean government.

**Figure 7 Quota for Indonesian Migrant Worker Delivery to South Korea 2012-2018<sup>46</sup>**



The presence of workers who overstayed in South Korea was a determining factor in the number of workers quotas which will be delivered to South Korea. If the delivery quota of a country is reduced, then the quota can be transferred to another country which also belongs to a Government to Government (G to G) system agreement.

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<sup>46</sup> Yafie, A. A. (2018). Upaya Pemerintah Indonesia Menangani Persoalan Tenaga Kerja Overstay di Korea Selatan Periode 2012-2016. *Undergraduate thesis*.

The head of the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI), Nusron Wahid, said that this was a problem for BNP2TKI to increase the number of Indonesian workers to South Korea. The South Korean government limits the quota of Indonesian workers because there are still overstaying workers in South Korea. The Government to Government Program (G to G) is a program that has existed since 2004. If the workers's overstay increases more, the South Korean government might close the labor recruitment program<sup>47</sup>.

By attempting to increase the quota of sending workers to South Korea, Indonesia tries to maintain its economic interests and people's welfare by being able to employ Indonesian workers in South Korea. However, the large number of workers who did not return to Indonesia after their residence permit expired could have a negative impact on Indonesia. The number of remittances from Indonesian workers in South Korea according to BNP2TKI data from 2012 to 2016 reached 920,648,028 USD<sup>48</sup>. Besides having the effect of reducing shipping quota, the overstaying workers can also threaten the termination of sending workers to Indonesia.

Sending Indonesian workers to South Korea is also one of the national interests for the welfare of the people. With the Government to Government program (G to G) program, people can have the opportunity to get jobs. This can reduce the number of unemployed people in Indonesia and

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<sup>47</sup> Suwanto, T. (2015, June 28). *7.000 TKI Ilegal di Korea Selatan Hambat Peningkatan Kuota*. Retrieved March 14, 2019, from Pikiran Rakyat: <https://www.pikiran-rakyat.com/ekonomi/2015/06/28/332783/7000-tki-ilegal-di-korsel-hambat-peningkatan-kuota>

<sup>48</sup> BNP2TKI. (2016). *Dokumen Data Penempatan dan perlindungan Tenaga kerja Indonesia Tahun 2016*.

South Korea enables to accept low-skill workers. Therefore, Indonesian people who do not have special skills can continue to join the program. Although South Korea welcomes low-skill workers through this program, it is impossible for countries to completely prevent illegal workers to work in there. Many aspects that pull them to work more in South Korea even they do not have legal document anymore. This is become one of many problems faced by the government. The Illegal workers can trigger the other problems which may endanger the workers abroad.