

CHAPTER ONE

INTRODUCTION

A. Background

It is recorded that until March 2019 there have been 19.695 Indonesian workers in Malaysia, 17.244 people in Taiwan, 4.139 in Singapore, and 16.827 workers in Hong Kong.¹ It means Indonesian foreign workers in Malaysia are the largest number compared to those of other countries. A large number of Indonesian migrant workers is triggered by lack of job vacancies provided in the country, so the people look for a job abroad as solution for survival.²

Badan Pusat Statistik Indonesia noted that the unemployment rate in February 2019 was 5.0 per cent or around 13.376.700 out of 276 million people.³ High unemployment rate is the main reason for Indonesian workers to choose to work abroad.⁴ Good employment and high income are the main attraction of Indonesian workers to migrate.⁵ Indonesian migrant workers

¹ BNP2TKI, "Data Penempatan dan Perlindungan TKI Periode 1 JANUARI S.D MARET 2019", http://www.bnp2tki.go.id/uploads/data/data_18-04-2019_010851_Laporan_Pengolahan_Data_BNP2TKI_Bulan_Maret_.pdf, Accessed on April 24th 2019 at 16.07 p.m.

² Rizky Dian Baretta dan Budi Ispriyarso, "Politik Hukum Perlindungan Tenaga Kerja Indonesia Fase Purna Bekerja." *Kanun Jurnal Ilmu Hukum*, Vol. 20 No.1, 2018 p. 164.

³ Iwan Supriyatna dan Achmad Fauzi, Suara.com, 2019, "Data BPS: Angka Pengangguran Turun ke Level 5,01 Persen", <https://www.suara.com/bisnis/2019/05/06/133435/data-bps-angka-pengangguran-turun-ke-level-501-persen>, Accessed on May 7th 2019 at 10.08 a.m.

⁴ *Ibid*

⁵ Hamdan Tri Atmaja dkk, "Model Pemberdayaan keluarga Tenaga Kerja Wanita (TKW) Indonesia Berbasis Arena Produksi Kultural Dalam Upaya Menciptakan Keluarga Mandiri Sejahtera di Propinsi Jawa Timur", *Fakultas Ilmu Sosial Universitas Negeri Semarang*, Semarang, 2014, p. 26-28.

mean any Indonesian citizen who will work, currently works, or has worked for wage outside the territory of the Republic of Indonesia.⁶

A jobseeker who wants to be migrant worker should fill the application to the District, City or Government Institutions which related to manpower. The registration of job seekers is carried out by Ministerial Regulations.⁷ Actually, to become Indonesian workers is not easy; there are several requirements that must be met such as the minimum age of eighteen years old, having the competency, physically and mentally healthy, being registered and having a social security membership number, and possessing the required documents.⁸ Due to the difficulty of the terms and conditions and completing the documents, some of the Indonesian citizens do short cut by leaving Indonesia without considering the risks, so they went abroad illegally or follow non-procedural way.⁹

Indonesian illegal workers often get inhumane treatment.¹⁰ Besides not being given a proper place to live, they also do not get the proper food allowance.¹¹ There is no health insurance and life insurance, so if they are sick or die, there is no guarantee of the cost of treatment and repatriation of the dead body to Indonesia.

⁶ Article 1 the Law No 18 of 2017 on Protection of Indonesian Migrant Workers

⁷ Article 6 the Law No.18 of 2017 on Protection of Indonesian Migrant Workers

⁸ Article 5 the Law No. 18 of 2017 on Protection of Indonesian Migrant Workers

⁹ BNP2TKI, "Kenapa TKI Non Prosedural Lebih Gampang dan Cepat Berangkat ke Luar Negeri?", <http://www.bn timer.go.id/read/9643/Kenapa-TKI-Non-Prosedural-Lebih-Gampang-dan-Cepat-Berangkat-ke-Luar-Negeri>, Accessed of on April 13th 2019 at 16.19 p.m.

¹⁰ Fatkhul Muin, "Perlindungan Hukum Terhadap Tenaga Kerja Indonesia" *Jurnal Cita Hukum* Vol. 3 No.1 Juni 2015. ISSN: 2356-1440. P. 19.

¹¹ Kurnia Novianti, "Analisis Trend dan Dampak Pengiriman TKI: Kasus Dua Desa di Lombok Timur, Nusa Tenggara Barat" *Jurnal Kependudukan Indonesia* Vol. V, No.1, 2010, p. 34.

In May 24th, 2018, the Malaysian Immigration Office detained 6.315 Indonesian illegal workers.¹² Principally, they are protected under the *Universal Declaration of Human Rights* (UDHR)¹³ and *International Covenant on Economic, Social and Cultural Rights* (ICESCR).¹⁴ The UDHR and ICESCR recognize the right to work as a human right, thus giving birth to the obligation of the state to protect it. The state's obligation explained in ICESCR *General Comment 3* regarding the nature of states parties' obligation to do something, and the country can achieve full realization progressively.

Indonesia has a regulation on Labor Protection as stated in Article 1 paragraph (5) the Law No. 18 of 2017 on Protection of Migrant Workers that protection of worker is all efforts to protect the interest of prospective worker or worker in accomplishing the compliance with his rights according to the law, either before employment, during employment, or other employment in legal aspect, social, and economic. Therefore, based on the data above, it can be said that Indonesia government should protects every citizen, even though they are illegal workers, they are still Indonesian citizen. Thus, the author would like to conduct a research on the legal protection of Indonesian illegal workers in Malaysia.

B. Statement of Problem

1. How does the Indonesian government protect Indonesian illegal workers

¹² Arkhelaus Wisnu Triyogo, Tempo.co, 2019, "Sebanyak 6.315 TKI Ilegal ditahan Malaysia", <https://nasional.tempo.co/read/1092721/sebanyak-6-315-tki-ilegal-ditahan-di-malaysia/full&view=ok>, Accessed on May 7th, 2019 at 10.56 a.m.

¹³ Universal Declaration of Human Rights (UDHR)

¹⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR)

in Malaysia?

2. What are the obstacles faced by the government in protecting illegal workers in Malaysia?

C. Objectives of Research

1. To know the form of legal protection provided by the Indonesian government to protect to Indonesian illegal workers in Malaysia.
2. To identify the obstacles faced by the government in carrying out its performance, especially those related to the process of protecting Indonesian illegal workers in Malaysia.

D. Benefit of Research

Based on the problems and objectives of the research, the benefits of research are as follows:

1. Theoretical Aspect

This research gives the advantage to know the form of government protection to Indonesian illegal workers and the government constraint in the protection of illegal workers in Malaysia.

2. Practical Aspect

- a. For the Government

This research is expected to give information and become the reference for the government, especially the stakeholders who deal with Indonesian illegal workers abroad, to be used as a formulation procedure for the protection and handling of Indonesian workers

abroad and to find clearer, more written and law enforcement systems.

b. For the Society

This research can be used by the society in terms of protection Indonesian illegal workers abroad, especially in terms of understanding procedures, handling, regulating laws, holding stakeholders who are authorized to deal with Indonesian illegal workers abroad.