

CHAPTER IV

RESULT AND DISCUSSION

A. Analysis on Protection of Migrant Workers from International Law

In the scope of International labor, there were 8 (eight) fundamental Conventions International Labor Organization (ILO). Consists of four groups, namely:

1. Freedom of Association (ILO Convention 87 and 98)
2. Prohibition of Discrimination (ILO Convention 100 and 111)
3. Prohibition of Forced Labor (ILO Conventions 29 and 105)
4. Prohibition of child / Child Protection (ILO Convention 138 and 182)

Besides, there are also five ILO Conventions are classified into the general convention, which is as follows:

1. Convention 19 on equal treatment for national and foreign workers.
2. Convention 27 on the granting of the packing heavy large items raised by ship.
3. Convention 106 on the weekly rest in commerce and offices.
4. Convention 144 on Tripartite Consultation
5. Convention 68 on Certification for the cook in the ship.

Some rights are also covered under the International Covenant on Economic Social and Cultural Rights in 1966. Article 6 established the right to work, article 7, right upon fair working conditions and good, article 8, right to form and join trade unions and article 9, right upon social security.

ILO on convention 102 defines, social security as a protection against social and economic risks resulting in a loss of income due to old age, disability, death or an illness / accident.³⁹

United Nations (UN) regarding protection of human rights has been ratified international treaties on the rights of economic, social and cultural rights. As listed below. Article 6 on Economic Social and Cultural Rights:

Article 6

- 1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
- 2) The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- 1) Remuneration which provides all workers, as a minimum, with:

³⁹ Wiwcho Seedione, *Human Rights in Africa*, P.T. Bina Akpan, Yarmouk, 1982, p. 42.

- i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - ii. A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- 2) Safe and healthy working conditions;
 - 3) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
 - 4) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

- 1) The States Parties to the present Covenant undertake to ensure:
 - i. The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the

- ii. The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
 - iii. The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
 - iv. The right to strike, provided that it is exercised in conformity with the laws of the particular country.
- 2) This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
 - 3) Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

One thing that seems important to be explained, is conceptual framework of right to work from a human rights perspective. Description of the conceptual framework of the right to work at once wanted to show how complex and useful about the right to work, not only at the national level but also international level

Krzysztof Drzewicki,⁴⁰ in one of his articles, argued that the rights to work and rights in works constitute a core of not only socio economic rights, but also a fundamental human right. This opinion led to the norms of international law that lay down in Article 6 paragraph (1) and (2) the International Covenant on Economic, Social and Cultural (1966) can not be interpreted as concrete one, because right to work not only be classified as basic rights (fundamental rights) but also as socio-economic rights and culture.

Furthermore, why regulation on the protection and fulfillment of the right to work quite lacking at the national and international level. Although the ILO has produced hundreds of conventions that are at least 15 of them have been ratified by Indonesia. Not only at the national level (Indonesia), at the international level the guarantees of right to work is still debatable.⁴¹

International human rights law protects a spectrum of workers' rights.⁴² Articles 23 and 24 of the UDHR outline rights to just and favorable conditions of work, remuneration, freedom to form and join trade unions, rest, leisure time, reasonable limitations of working hours, and periodic holidays.⁴³ Article 11(d) of Convention on the Elimination of All Forms of Discrimination against Women

⁴⁰ Krzysztof Drzewicki, a senior lawyer at the office of the Organization for Security and Co-operation in Europe (OSCE), High Commissioner on National Minorities (HCNM) and his article *The Right to Work and Rights in Work*, Asbjorn Eide, et al., (eds), *Economic, Social and Cultural Rights, A Textbook*, Martinus Nijhoff, Dordrecht / Boston, London, 1995 retrieved in Koesparmono Irsan, *Hukum dan Hak Asasi Manusia*, Yayasan Brata Bhakti, Jakarta, 2009, p.126

⁴¹ Koesparmono Irsan, *Hukum dan Hak Asasi Manusia*, Yayasan Brata Bhakti, Jakarta, 2009, p.127

⁴² Human Rights Watch, *Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia*, July 2004 Vol. 16, No. 9 (B), p.73

⁴³ United Nation, *Universal Declaration of Human Rights*, art. 23 and 24, retrieved in <http://www.un.org/en/documents/udhr/index.shtml#5>, accessed on December 12th 2011, 7:00 p.m.

(here and hereafter: CEDAW) define the “right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value” and article 11(f) describes the “right to protection of health and to safety in working conditions.”⁴⁴

International law prohibits discrimination on the basis of such distinctions as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.⁴⁵

B. Analysis on Protection of Migrant Workers from Indonesian Law

In the implementation of national development, labor has a very important role and position as a principal and development goals. In accordance with the role and position of labor, it is needed employment development, to improve the quality and contribution in the development and protect the rights and interests of labor in accordance with human dignity.⁴⁶

As the purpose of development, labors need the protection in all aspects, including the protection of basic rights, health and safety work, protection of wages, social security, peace, fulfillment of justice, as well as the establishment of a prosperous life and mind, harmony, harmonious and balanced.⁴⁷

In his article, *Economic, Social and Cultural Rights as Human Rights*, Asbjorn Eide said:

⁴⁴ CEDAW, art. 11(d) and 11(f).

⁴⁵ *Right to Work, Vol. 1*, 1991, at 100-101. See also, *Right to Work, Vol. 1*, 1991, at 100-101.

State obligations must be seen in this light. Human rights impose three types or levels of obligations on State Parties: the obligations to *respect*, to *protect*, and to *fulfil*. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide.⁴⁸ States must, at the primary level, respect the resources owned by the individual, her or his freedom to find a job of preference and the freedom to take the necessary actions and use the necessary resources alone or in association with others to satisfy his or her owned.

Majda el Muhtaj in his book dimensions of human rights stated that, the right to work and rights at work is a human right.⁴⁹

Rights of Workers in the 1945 Constitution can be seen in the following chapters:

Article 27

- 1) All citizens shall be equal before the law and the government and shall be required to respect the law and the government, with no exceptions.
- 2) Every citizen shall have the right to work and to earn a humane livelihood.
- 3) Each citizen shall have the right and duty to participate in the effort of defending the state.

Article 28 A

The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law.

⁴⁸ See Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999), paragraph 15. Report of the Committee on Economic, Social and Cultural Rights, UN doc. E/2000/22, pp. 102-110; and Annex 2 to this volume dalam Asbjorn Eide, et al., (eds), *Economic, Social and Cultural Rights, A Textbook*, Martinus Nijhoff, Dordrechts / Boston, London, 1955.

⁴⁹ Majda El Muhtaj *Dimensi-Dimensi Hak Asasi Manusia; mengurai Hak Ekonomi, Sosial, dan Budaya*, Rajawali Press, Jakarta, 2008, p.181

Article 28 C

- 1) Every person shall have the right to develop him/herself through the fulfilment of his/her basic needs, the right to get education and to benefit from science and technology, arts and culture, for the purpose of improving the quality of his/her life and for the welfare of the human race.
- 2) Every person shall have the right to improve him/herself through collective struggle for his/her rights to develop his/her society, nation and state.

Article 28 D

- 1) Every person has the right to recognition, security, protection and legal certainty of fair and equal treatment before the law.
- 2) Every person has the right to work and receive benefits and fair treatment and decent working relationship.
- 3) Every citizen is entitled to equal opportunities in government.
- 4) Every person has the right to citizenship status.

Article 28 H

- 1) Everyone has the right to live prosperous and spiritual, living, and earn a good living environment and healthy and receive medical care.
- 2) Any person entitled to special treatment facilities and to obtain the same opportunities and benefits for achieving equality and justice.
- 3) Every person has the right to develop oneself fully as a dignified human

- 4) Every person has the right to private property and property rights should not be taken over arbitrarily by anybody.

Article 34

- 1) The poor and neglected children maintained by the state.
- 2) The state develops the social security system for all citizens and to empower the weak and not able to correspond with human dignity.
- 3) The State is responsible for the provision of health care facilities and public service facilities are feasible.
- 4) Further provisions on the implementation of this Article set out in legislation.

Based on the explanation above, it is clearly stated that the rights of workers have been regulated explicitly in our Constitution.

Koesparmono Irsan in his book *Law and Human Rights*, explains that manpower development aims at:⁵⁰

1. Empowering the workers

Empowerment of the workers is an activity that can be integrated to provide employment opportunities as possible for Indonesian workers.

Through empowerment, workers are expected to be able to participate optimally in national development, but still upholding the human values.

2. Realizing equal employment opportunities and providing the workers in accordance with national and regional development.

Equal employment opportunities should be pursued throughout the whole

⁵⁰ Koesparmono Irsan, *Hukum dan Hak Asasi Manusia: Yayasan Prati Bhakti*, Jakarta, 2000, p.110.

territory of Republic of Indonesia as a whole the labor market by providing equal opportunities for employment for the entire workers with talents, interests and abilities. Similarly, the employment equity should be pursued in order to fill the needs in all sectors and regions.

3. Protecting the workers.
4. Providing welfare for the workers and their families.

Protection of workers is intended to guarantee basic rights (basic rights) of workers and ensure equality of opportunity (equal opportunity) and treatment without discrimination for the welfare of workers / laborers and their families within the framework of industrial relations based on justice.

He added that, abilities, skills, and workers' skills have to be improved through work planning and employment information including training, apprenticeship and job placement services.

Similarly, with Law Number 39 of 2004, it is stated in:

Article 41

- 1) Applicant must have a certificate of competence of workers working in accordance with the requirements of the position.
- 2) In the case of labor migrants do not have the competence referred to in paragraph (1) executing the private placement of migrant workers are required to educate and training in accordance with the work to be done

Article 42

- 1) Applicant are entitled to get an education and job training in accordance with the work to be done.
- 2) Education and training for the applicant as referred to in paragraph (1) intended to:
 - a. Equip, place and develop the working competence of applicant;
 - b. Give the knowledge and understanding of the situation, conditions, customs, culture, religion, and the risks of working abroad;
 - c. Provide the ability to communicate in discussing the country of destination; and
 - d. Give the knowledge and understanding of rights and obligations of prospective migrant workers / workers.

Article 43

- 1) Education and vocational training, executed by private employment or vocational training institutions that have met the requirements.
- 2) Education and training as referred to in paragraph (1) shall meet the requirements according to legislation relating to education and job training.

Article 44

Applicant gain the employment certificate, after following the recognition of competence education and vocational training organized by education and training institutions. As referred to Article 43, in the form of certificates of competency

education and training institutions, that have been accredited by the competent authority when passing the certification of labor competencies.

Article 45

Private placement migrant organizer is prohibited from placing applicant who does not pass the competency test of work.

Article 46

Applicant who are following the education and training are prohibited to be employed.

Government has six tight agenda of TKI employment placement, especially domestic labor, to Hong Kong, Macao, and Singapore.⁵¹

- a. First, through online registration, the applicants have to register themselves, in Migrant Workers District Office.
- b. Second, improve the quality of the applicant.
- c. Third, pay the placement for the applicants to Hong Kong, Macao, and Singapore.
- d. Fourth to make work Agreement and extension work in Singapore we use “Endorse Mechanism” as a part of our program.
- e. Fifth, finance mechanism for the placement of applicant to Hong Kong, Macao and Singapore.
- f. Sixth, finance Procedures for the placement of applicants to Hong Kong, Macao and Singapore.

⁵¹BNP2TKI Ketatkan Pengiriman TKI PLRT Retrieved from <http://bnp2tki.go.id/berita-mainmenu-231/6505-bnp2tki-ketatkan-pengiriman-tki-plrt> accessed on April 20th 2012 8:22 am

Developing the skill of applicants, were done by making close supervision in the Vocational Training Center,⁵² especially for time duration control of the household training.

Migrant workers who will depart to Malaysia are required to attend the 200 hours or 20 days training course. Moreover, 400 hours or 40 days training for Singapore and 600 hours training for Hong Kong. Unlike Malaysia, Singapore, and Hongkong. Taiwan and Brunei Darussalam are required to go through 600 hours or 60 days training for Taiwan, and 200 hours or 20 days training for Brunei Darussalam. Special for the past workers are required to attend 100 hours or 10 days training.

Regarding the protection of migrant workers, the government was issued new rules pertaining to TKI. According to Ahnas, Head of Sub Directorate of Preparation Departure Provision BNP2TKI, on May 1st, 2012 BNP2TKI simultaneously will lock document service of domestic worker/maid services.⁵³

Locking system⁵⁴ starts from PPTKIS (committee of private placement of Indonesian workers) officer responsibility to send the applicant registration to

⁵²In Indonesian language, it is known as Balai Latihan Kerja (BLK)

⁵³In Indonesian language, it is known as Penata Laksana Rumah Tangga (PLRT)

⁵⁴To prevent 'data manipulation' are often performed by PPTKIS (Pelaksana Penempatan Tenaga Kerja Indonesia Swasta) BNP2TKI has implemented a Computerized System on Foreign Workers SISKOTKLN (Sistem Komputerisasi Tenaga Kerja Luar Negeri). Through the connected system, the parties such as PPTKIS, Department of Manpower, BNP2TKI, Indonesian Representative Overseas, they will know the position of migrant workers in real time. And also the system will lock automatically, if one procedure is not

workers district offices, before they were carry out in to the shelter. Training supervision in BLK based on time duration and the managing of health certification based on “paper security”.

Another services who provide by BNP2TKI are Call Center TKI. It is a complaint service center for TKI that was established by BNP2TKI. Before established the Call Center, on November 2008 there was “Crisis Center”. It provides services through direct complaint from the workers and their families regarding TKI problems. Now, this service was held by “Call Center”BNP2TKI. Meanwhile, for the workers who were abroad, may use the email which is provide by BNP2TKI in *halotki@bnp2tki.go.id* via email or fax. If by telephone it can through Call access Center BNP2TKI +6221 29.2448 but for a this time is not toll free.

Function of call center are to serve a variety of complaints / cases of applicants, migrant workers, or their families either in Indonesia or abroad. There are three kinds of call center services as follows:

1. Provide the information;
2. Assisting the workers, as like as in term of legal advocation and mediation;
3. Dispute settlement;

Placement of migrant workers is based on Government Policy in 1969. The placement of migrant workers abroad involved the private sector⁵⁵ when

Government Regulations Number 4 of 1970 issued, it also introduce for the first time, inter-regional work program and inter- state work program.⁵⁶

In order to protect migrant workers, on April 16th 1999, there was establishment of agency which coordinates the placement of migrant workers through Presidential Decree No. 29 of 1999. Membership of placement coordination agency workers consists of nine related agencies to improve employment programs abroad in accordance with the duty. Regional Bureau for Placement and Protection of Indonesian Workers (BP2TKI)⁵⁷ also establish in each province to make simplification of procedures and mechanism, as well as in increasing migrant workers placement service centers. BP2TKI have function, as a one-stop service, for simplicity, cheap, accelerate and secure the placement of workers.

Article 5 of Law Number 39 of 2004 has mentioned that:

- 1) Government responsible for managing, developing, implementing, and overseeing the implementation of the placement and protection of migrant workers abroad.
- 2) In carrying out the duty referred to in paragraph (1), the Government may as a delegated authority and / or duty to local governments' accordance with the legislation.

In addition, there is also the Law Number 37 of 1999 on foreign relations, and regulation of manpower and transmigration minister Number 7 of 2010 regarding workers insurance that all intended to settle the case of workers.

⁵⁶ In Indonesian language, it is known as Antar Kerja Antar Daerah (AKAD) and Antar Kerja Antar Negara, (AKAN)

⁵⁷ In Indonesian language, it is known as Balai Pelindungan dan Pemantauan Tenaga Kerja Indonesia (BP2TKI)

Therefore, based on the Constitution, the country has shown the determination to take responsibility on TKI.

Based on the discussion above, it can be concluded, that Indonesia has a lot of efforts to protect the rights of labors. Government as an actor of this issue has been passive in protecting the rights of Indonesian workers who work abroad, by issuing the regulation that protects the rights of labor and the ratification of various conventions. The point is there are initial steps of the government to realize the rights of Indonesian workers.

Nonetheless, this is a passive act. The people of Indonesia need a real action, they need an active action. Particularly, for the families and the victims of human rights violations on the migrant workers. Legislation is not sufficient to protect the arbitrary actions of the persons who are not responsible. The real action here, the Indonesian government is expected to have the "guts" to make a bilateral agreement not only accommodate the interests of the ruler but also the interests of labor. For example, clearly and unequivocally sanctions to the parties that commit the violence, sexual harassment, rape and even murder into Indonesia migrant workers.

Settlements of the cases also have to be clear. Perhaps someday, there will be same cases like this. State of the migrant workers required to advance the legal action related to the issues. Because of all forms of human rights violations that suffered by Indonesian workers, is a form of humiliation for the Indonesian people. Government must cover it, by making clear agreements relating to the placement and protection of migrant workers.

C. The Problem of Migrant Workers Protection

1. The Problem of Migrant Workers Protection from Indonesian Government

Juridically, working abroad as a migrant worker is a basic right of every worker/labor which is guaranteed by the law. Therefore, it should be accompanied by adequate guarantees of legal protection. By having legal protection, it is expected that workers can work in peace and earn a decent income for his private and family life. But unfortunately, the legal protection is not well provided and performed by the state.

Strengthened enforcement of Law Number 39 of 2004 by the government (Department of Manpower and Transmigration) shows that the government has no commitment to the fulfillment of rights of Indonesian migrant workers. While in fact, the willingness to become migrant workers is increasing. It can be seen from the lack of action in the form of administrative sanctions and criminal sanctions. On the other hand, the government also "failed" to encourage settlement of human rights violations against them, both civil and criminal, committed agents and employers/companies and host governments.

Weakness of the government's commitment in providing legal protection also can be seen from the "ignorance" of the government from the number of TKI who work abroad. How many workers are working abroad, government didn't know it at all. Because, the Committee of Private Placement of Indonesian Workers⁵⁸ does not report how many workers were dispatched abroad.

⁵⁸ In Indonesian language, it is known as *Badan Penyelenggara Penempatan Tenaga Kerja (BPTKIS)*

Problems of Migrant workers today can not be separated from the role of government. According to Leida Hanifa Amaliah, Member of House of Representatives Commission IX⁵⁹ the role of government in responding the issues that affecting the migrant workers seems reactive, without understanding the causes of this problem, why the citizens being a migrant worker and another consequences pertaining to this matter. As member of international organizations G20, hopefully it should be an instrument for Indonesia to address the issues of human rights violations.

Talking about Indonesia labor, she added, is inseparable from the stages starting from the pre-placement, placement and after placement. In the Law Number 39 of 2004, it was classified. But there are some things still in note. In Article 27 paragraph (1) mentioned:

Placement of migrant workers abroad can only be made to destination countries whose the governments have made a written agreement with Indonesian government or foreign workers.

In fact the state that would be destination of the workers, are still using the *Memorandum of Understanding* (MoU), not in form of *Bilateral Agreement*. She added, *Bilateral Agreement* should be a guideline, because it has strong position. Not related to technical aspects, but government to government. After that, MoU is allowed to set the technical problems, such as the mechanism of sending the workers, the problem of wage / salary, the protection, and whether the workers were also given the right to vacation or leave, and others.

⁵⁹ Kompas, Hukum Nasional, *TKI Melangs Disahkan?*, Desain Hukum Vol 11 No. 1 Jakarta, 2011, p.12

Ledia added, related to the protection, there should be a lawyer who can defend the rights of migrant workers. But the problem, from the beginning, position of Indonesia was weak. This is because, Indonesia has no bilateral agreement with the countries where the workers work. About insurance, it's not protection. Because the insurance only as a precaution only. The important things are debriefing skills / expertise, language, introduction of culture, etc.

Rieke Diah Pitaloka, member of the House of Representatives committee IX also gave her opinion related to this issue. She argued that around 109 articles in Law Number 39 of 2004 there were only eight articles that contain protection of migrant workers, while the rest are about trading. She added that the crucial issue is the state officials do not have clear data pertaining to the number of Indonesia employment agencies (recruitment agency, here and hereafter: PJTKI) whose run the business. In this case, not only registered recruitment agency but also are not listed. In addition, the government also does not have data on how many workers around the world, what are their professions, and where they are abroad.

The next problem is the lack of cooperation between the ministries of labor and migration and the National Board of Placement and Protection of Indonesia Migrant Workers Overseas (BNP2TKI). There was institutional dualism that never finished. Whereas there was Ministry Regulation Number 14 of 2010. But the fact, the issue is divert, from one institution to another. The issues of migrant workers actually need the involvement of the ministries of law and human rights, the ministry of women's empowerment and child protection, social ministries and

social ministries. The reality, there are less coordination. As a citizen of

Indonesia, the workers supposed to be protected completely from these ministries; start from the requirement, training, sending to the placement country, then returned to his homeland and returned to the family.

Finally, Rieke said the things that make Indonesia weak in destination countries are the absence of government to provide social security for the migrant workers. Even though the Governing of insurance was carry out by the private sector, the main role of government is very needed than anything. Therefore, Indonesia should learn more from the country like Philippines. Philippines have a clear system of social security for migrant workers. Even, Philippines has an MoU with the destination countries, to get protection and even social security from the destination countries of their migrant workers.

Another opinion comes from Rifqy Thantawi, staff of *Design Magazine* at the National Law Commision. He argues that the accredited business partners' of placement of migrant workers is one policy that has to be done. If we look into business partners in foreign countries, they are not burdened to this problems. They still gain a profit with the large demand of migrant workers (TKI) in foreign countries. Government and the recruitment agency can still be forced to be responsible, through the existing rules in this country. However, partners usually cannot to be force to take the responsibility. Therefore, the things that can be done by the government are preparing a law administrative policy or another policy, in order to select the business partners. The selection of business partners can classify which one the most feasible to establish business relationship with the

Policy regarding the accreditation status of these business partners can make them careful to establish their business. This accreditation status is one factor that is important to show the quality / ability of a business partner in organizing the placement of workers.

Indonesia as a country that has taken very long time to be independent should guarantee the society to get free from the poverty. This is not desired by the whole people in Indonesia. Therefore, to solve this problem it is compulsory for the government of manpower to take more action related to this issue. The society community needs to fight all forms illegal migrant sendings. They can report any illegal recruitment or some strange action if they know it when it happens somewhere or even inside their community in order to decrease and eradicate all forms of inhumane violence that is suffered by the workers who work abroad.

Governments have the obligation to realize the right in the best they are. Module 10: The Right to Work and Rights at Work provides the following explanation.

“The generic state obligation under the right to work includes the state’s obligation to respect, protect and fulfill each person’s access to work to earn one’s living and the obligation to guarantee that this work can be freely chosen or accepted. This means, for example, that states must not destroy a person’s opportunity from being destroyed by third parties (obligation to protect). States must provide the opportunity to earn one’s living to each person who currently

does not have this opportunity (obligation to fulfill). Moreover, people's preferences as to the type of work they do must be satisfied as far as possible".⁶⁰

Finally, the protection of migrant workers can only be done, if government has a big will for realize it. Enact the conventions are one of the way to overcome the migrant workers issues. Quote from Bill Jordan words:

"Unfortunately, and in spite of a battery of international conventions, migrant workers' rights are increasingly being flouted. So there is no need to enact new laws. Standards already exist. Governments must now be led to ratify them - and most importantly of all they must be enforced."⁶¹

2. The Problem of Migrant Workers Protection from International Institution

The nature of international law is a "Soft Law". It means that international law cannot force the regional country to protect the rights of migrant workers. International law allowed to gives a suggestion toward regional country in pertaining to the protection of human rights.

The protection on migrant workers it is depend on the regulation of the state. The international law only as a guideline of the protection on migrant workers, because of the nature of international law is soft law. It means that, there is only moral sanction not law sanction.

The sanctions on the contex of international law defined as a legal threat that is used as a way to enforce a provision or a pain that will be obtained as a

⁶⁰ See www1.umn.edu, in Majda El Muhtaj *Dimensi-Dimensi Hak Asasi Manusia mengurai Hak Ekonomi, Sosial, dan Budaya*, Rajawali Press, Jakarta, 2008, p.182

⁶¹ ICFTU Trade Union World editorial on Migrant workers and exploitation (1/9/1998). Retrieved in Piyasiri Wickramasekera, *Asian Labour Migration: Issues and Challenges in an Era of Globalization* International Migration Programme International Labour Office Geneva

result of the violation of an offender provision. The Sanctions in international law can be considered to be weaker and less certain times when compared with national law. The international law does not has the ultimate power to enforce the provisions of this law as national law.

Even though the states have been ratified the international convention but international law cannot force the regional state to use that law, because it depend on the state, whether it will be used or not.

Although International law cannot force and gives a sanction pertaining to the violation on migrant workers, but actually international law can gives the contribution in order to protect the rights of migrant workers. Some of international institution such as Association for Southeast Asian Nations (ASEAN) and another international donors as like as United Nations, World Bank, European Union, etc are hopefully, can use the powers to perform the contribution pertaining to this migrant issues.

Human Right Watch give some recommendations to the ASEAN and also International Donors as follow⁶²:

To the Association for Southeast Asian Nations (ASEAN)

1. Create a working group to study regional labor migration and propose solutions, including multilateral agreements on labor standards and protections for migrant domestic workers.

⁶² Human Rights Watch, *Migrant Workers in the Global Economy: Rights at Work* (New York: Human Rights Watch, 2011), p. 10.

2. Establish a regional human rights mechanism that could address the protection of human rights, labor migration, and trafficking in persons in the region.

To International Donors (United Nations, World Bank, European Union, United States, Japan)

1. International donors should:
 - Provide resources for support services, including legal aid, health care, shelter, job training, and psychological counseling.
 - Provide resources for strengthening the capacity of research and advocacy organizations working on behalf of migrant workers, especially those focusing on female domestic workers.
 - Raise attention to the abuses faced by migrant domestic workers in bilateral and multilateral meetings with the governments of Malaysia and Indonesia. Press for the reforms recommended above.
2. The Global Commission on International Migration should address in detail the situation of migrant domestic workers in its research, consultations, and recommendations.
3. The International Labor Organization (ILO) should ensure substantial attention to domestic workers when implementing its plan of action on migrant workers adopted in June 2004. The ILO should also create model bilateral labor agreements and model standard contracts for domestic workers