

**THE POLICY OF INDONESIAN GOVERNMENT
TOWARDS KAFALA SYSTEM IN SAUDI
(CASE STUDY: VIOLENCE AGAINST MIGRANT WORKERS)**

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Abstract

This thesis aims to explain how the policy of Indonesian government to protect Indonesian migrant workers in Saudi Arabia. The thesis conducted by descriptive analysis aimed to gain an overview about the real actions of Indonesian government towards Kafala system in Saudi Arabia which create many problems for TKI. The data's collecting in this thesis used secondary data, using library materials such as books, journals, articles, and also using downloaded data from several online sites on the internet and other media that relevant to the topic of research.

This thesis shows that the existence of Kafala system in GCC include Saudi Arabia caused many problems for Indonesian migrant workers, such as exploitation and sexual abuses. As the respond of that phenomenon Indonesian government who responsible for their citizens in Saudi Arabia makes some actions to protect them. There are two actions which mentioned in this paper, first creating some laws about protection and second is makes bilateral diplomacy between both countries which create bilateral agreement signed in 2014.

Keywords: Indonesian government, Kafala System, Indonesian Migrant Workers

INTRODUCTION

There are a lot of impacts from globalization, one of them is it can increase and expand the network to make relations wider even cross the border of states. Indonesia is one of the states which also get influence from this globalization. In the end of 1997, Indonesia faced economic crisis which also happened in almost of Asian countries, it made Indonesian's economic was buried. Indonesia is known as a country with a lot of citizens, and because of the crisis which still effected the economic on Indonesia until now, it creates a lack of job for citizens which not in a small number. Because of the lack of jobs but they want to get higher income, there are a lot of people choose to work abroad, like Malaysia as the first destination and also Saudi Arabia as the second country that become the best destination for Indonesian migrant workers. There are 2 kinds of migrant workers or in Bahasa we call it as *Tenaga Kerja Indonesia (TKI)*: Formal TKI and Informal TKI.

The number of Indonesian migrant workers placed in Saudi Arabia since 1976 until 1977 increased from 480 become 2.838. But in 2002-2003, the number of TKI decreased from around 213.603 to 169.038 (Geerards). The data from Ministry of Labor and Transmigration in February 2010 noted that there were 6,679,536 migrant workers of Indonesia who work in other countries. Malaysia is the first destination country for the migrant workers, in the same year there are 1.2 million Indonesians work there. The second destination state is Saudi Arabia with 927,500 people were there as migrant workers (anon, detik.com).

Meanwhile, according to the agency of national placement and protection of Indonesian workers or in Bahasa is *Badan Nasional Penempatan dan Perlindungan Tenaga Kerja Indonesia (BNP2TKI)* the

number of migrant workers from Indonesia since 2011-2014 is fluctuated. In 2011 there are 586,802 people, then in 2012 it decreases to 494,609 people, next 2013 increases to 512,168 people, and last in 2014 it decreases again become 429,872 people who work in other countries. Saudi Arabia is the second destination of Indonesian migrant workers, which means that there are a lot of Indonesians are there for work.

The bilateral relation between Indonesia and Saudi Arabia is quite tight. We can see that Indonesia is a country with the majority of the citizens are Muslim, and it is known as state with the largest Muslim population in the world, and Saudi Arabia is the based state of Muslim. Because of this background, it makes both countries has a good relations. One of the most popular relations that make by them is about workers or migrant workers. There are so many Indonesians who leave Indonesia for many years in order to look for jobs in Saudi Arabia.

Unfortunately, Saudi Arabia is known as the state with the high number doing violation towards Indonesian migrant workers. In 2011 noted that there were 18.977 cases of Indonesian migrant workers happened in Saudi Arabia (www.bnp2tki.go.id). The system used in Saudi Arabia that is "Kafala" making some Indonesian migrant workers gets violation. According to the Human Right Watch after collecting the data from the workers who ever get bad actions from the employer in Saudi Arabia, they said that the system in Saudi Arabia for the migrant workers is called as human right violation.

Kafala system or also known as sponsorship system is a system used to monitor the construction and domestic migrant laborers in the Gulf States such as Lebanon, Saudi Arabia, Jordan, Bahrain,

Iraq, Kuwait, Oman, Qatar, and the UAE. The meaning of this system is all unskilled laborers are required to have an in-country sponsor, and their employer is responsible for their visa and legal status. This system was criticized by many people because with this system it will make the exploitation and violence practice is easier, by take the passports and do a little abuse to the workers. (anon, www.ips.org)

The existence of Kafala system makes many employers can do exploitation toward migrant workers easily, because the employers will take the passports and do what they want to do, such as they do not gives them foods, the workers should work more than 24 hours non-stop and sometimes they will not get the salary and can't move to other employers. The example of violation toward TKI happened in 2010 when one of TKIs that is Sumiati she just work for 4 months but she gets violation from her employer already and caused she will get paralyzed and sexual abuses (www.bbc.co.uk, 2010). Then, Indonesian government predicted that the kafala system will harm not only for TKI but also for Indonesia itself. So, it is important to know and to analyze how the respond and actions of Indonesian government toward these cases.

RESEARCH QUESTION

How the policy of Indonesian government in solving the problem of migrant workers caused by Kafala system?

RESEARCH AREA

In writing this undergraduate thesis, the writer limits the discussion about relations of Indonesia and Saudi in the case of migrant workers and to overcome the violations from 2004-2012. The writer take those years as research area because, in 2004 Indonesian government makes law No.39

about placement and protection of TKI, and in 2014 both countries signed an agreement about placement and protection of Indonesian Domestic Workers.

Methods of Writing

To complete the research, the writer uses library research method, to collect the data using literatures method, from books, newspapers, journal, magazines, internet, and other literatures sources. The collecting data will be analyzed using theoretical framework and explaining the problems as well as analyzing the hypothesis.

DISCUSSION

The relations between Indonesia and Saudi Arabia are so tight, and it is make a lot of TKI want to work in Saudi Arabia. The factors which encourage TKI to work in Saudi Arabia are similar to something that encourage them to work in other countries namely the disparity between demand and offer in which those who need jobs are big so that the available employment inside the country is limited, and the fact that the salary they get there is relatively bigger compared to those in the country (T, 2002). In addition, there is also another reason for TKI to choose Saudi Arabia as their destination country that is they will be able to observe umroh or hajj (Tobing, 1990). With those factors, the TKI want to try their fortune in Saudi Arabia with the purpose to get better life.

In fact, there are a lot of Indonesian migrant workers who get violations from their employers when they work there. The problems are variety like what explained in chapter II, there are so many kinds of problems such as they did not get salary, work for more than 24 hours, sex abuses, and many others. Those kinds of problems are happen because the existence of system

that implemented in GCC namely Kafala or sponsorship system. The violations towards Indonesian migrant workers still happen until now, and with this kind of phenomenon Indonesian government make some actions to respond it.

There are 2 actions that Indonesia did to protect Indonesian migrant workers in Saudi Arabia, first is legal protection which done by two aspects they are administrative law protection and protection of criminal law and the second is bilateral agreement between Indonesia – Saudi Arabia. Actually the actions of Indonesian government are not only legal protection and bilateral agreement. In 2006 there was the president's instruction no 6 about the reformation policy of Indonesian migrant workers placement and protection system. Then in 2011, Indonesian government also implementing moratorium of informal TKI to Saudi Arabia but then it was withdraw after there was an existence of MOU between both countries about manpower. Furthermore in 2012, Indonesia was signed cooperation agreement of TKI placement about MOU with the government of Saudi Arabia (Indah).

Creating Law to Protect Indonesian Migrant Workers

The effect of kafala system were happened to Indonesian migrant workers since the first time Indonesian government send TKI to Saudi Arabia around 1997, because Kafala system already exist before Indonesia send TKI to Saudi Arabia. Indonesian government already makes some actions in order to give protection to Indonesian migrant workers they are legal protection No. 39 of 2004, ministry of labor and transmigration Republic of Indonesia regulations (*Menakertrans*) NO: PER-23/MEN/V/2006 about insurance of Indonesian Migrant Workers, Creating

National Agency for Indonesian Migrant Workers Placement and Protection (Badan Nasional Penempatan dan Perlindungan TKI / BNP2TKI), publish president's instruction No 6 of 2006 about policy of reformation for TKI's placement and protection system, creating advocacy team in order to guide TKI in Saudi Arabia, and publish government regulation No. 3 of 2013 about protection of Indonesian Migrant Workers abroad.

First in 24 September 2004 Indonesian government made legal protection Law no 39 of 2004 in hope that the process of Indonesian migrant workers placement abroad has law and give the power of law. Based on the legal protection of migrant workers both at the pre-placement, placement and after placement period, based on the analysis is a form of legal protection aspects of administrative law and criminal law aspects. It can be seen from the provisions of Law No. 39 Year 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad. There are two aspects of legal protection that are Administrative law protection aspect and aspect of criminal law.

1. Aspect of Administrative Law Protection

The aspect of administrative law protection is covering administrative guidance, administrative supervision and administrative sanctions. Administrative guidance set out in Article 86 s / d Article 91, and the kinds of guidance are such as information, human resources, and the protections for migrant workers. Next is the guidance in the field of protection towards migrant worker mentioned in article 90, and there are 4 kinds of protection guidance. First is providing guidance and advocacy for workers from pre-placement, placement and after the placement period. second is facilitate the clearing disputes of migrants /

migrant workers with the user and / or implementers of migrant workers, third is formulate and announce a list of Business Partners and Users problems periodically in accordance with the legislation, and the last is carry out international cooperation in the framework of the protection of migrant workers in accordance with the legislation.

About the administrative guidance Indonesian government makes limitation for migrant workers who want to work abroad must educated minimum in junior high School (*Sekolah Menengah Pertama/ SMP*). Indonesian government also create policy about insurance for TKI it is a kind of protection for TKI in a form of compensation/ money as a result of a risk which mentioned in the ministry of labor and transmigration Republic of Indonesia regulations (Menakertrans) NO: PER-23/MEN/V/2006 that may happen to them before, during, and after placement.

As mentioned above in order to give protection for Indonesian migrant worker abroad, based on the president's regulation No 81 of 2006 and considered to bring in reality the goal of placement and protection of TKI abroad purposed in Law No 39 of 2004, it is needed to build the National Agency for Indonesian Migrant Workers Placement and Protection (Badan Nasional Penempatan dan Perlindungan TKI / BNP2TKI). Creating BNP2TKI is a good idea, because this agency has some duty which mentioned in article 3 of the president's regulation. The duties are first doing placement with written agreement between sender government (Indonesia) and receiver government. Second duty is give services, coordinate, and doing control.

2. Aspect of Criminal Law

There are 3 kinds of criminal law aspect in relation to criminal sanctions in Law No. 39 Year 2004 concerning the

Placement and Protection of Indonesian Migrant Workers Abroad are the principle of the rule of law (legality), the principle of prevention and the principle of control.

The principle of legality (*asas legalitas*), which has the principle of legal certainty, clarity and sharpness in formulating rules in criminal law, particularly which relates to the formulation of articles and sanctions in order to make the offender obey to the norm. Precautionary principle (*asas pencegahan*), such as in case of danger or threat, a serious offense and irreversible, then the less perfection of human resources can be used as an excuse to delay the placement of migrant workers and improve the system to Foreign Affairs.

Control principle (principle of restraint) which is also one of the requirements of criminalization, which states that criminal sanctions should be only used when the civil administrative sanctions and other tool were not appropriate and did not effective to overcome the certain criminals. In the criminal law in this case is known principles of subsidiarity or ultimate ratio principle or *ultimum remedium*.

Bilateral Diplomacy between Indonesia and Saudi Arabia

Drs. H. Muhaimin Iskandar, M.Si as Minister of Manpower and Transmigration of Indonesia (*Menakertrans*) visit to Saudi Arabia for 5 days, start from Saturday 4 December 2010 until Wednesday 8 December 2010. Drs. H. Muhaimin begins with visiting Sumiati, a migrant worker who persecuted by her employer in King Fahd Hospital, Medina. This visit was accompanied by the General Consul of Indonesia in Jeddah, Zakaria Anshar.

The next day in 6 – 7 December 2010 *Menakertrans* of Indonesia held a

meeting with Minister of Labor of Saudi Arabia, Adil Bin Muhammad Faqeeh and also General Secretary of the Ministry of Internal Affairs of Saudi Arabia, Ahmed Ibn Mohammed Al-Salem. In the meeting the representative of Indonesia was accompanied by the Ambassador of Indonesia to the Kingdom of Saudi Arabia that is Gatot Abdullah Mansour, Sunarno as Director General of Binapenta Kemenakertrans, Special Staff of the Minister that is Jazilul Fawaid, Director of migrant worker's placement abroad that is Roostiawati, Hendrar Pramudyo and Shabda Thian as Executive Protocol and Consular, as well as Labour Attaché, Mustafa Kamal.

In the bilateral meeting the two sides agreed to make corrections in placement and protection of migrant workers in Saudi Arabia. The joint effort is partly done by increasing employment agreement, Job Order, tightening selection and PJTKA requirements and user / employer, easy communication access for workers as well as insurance coverage. Iskandar said that as a concrete action, both parties agreed for the special forum like the level as senior officials (SOM / Senior Officer Meeting), Indonesian Ministry of Labor and Labor Ministry and also Internal Affairs of Saudi Arabia have duties to discuss and resolve issues collectively in every cases that happen to the migrant workers. The existence of SOM / Senior Officer Meeting will be the first step for both parties that the Government of Indonesia and Saudi Arabia in making MoU Placement and Protection of migrant workers (Kemenlu, 2010).

Senior Officer Meeting SOM between Saudi Arabia and Indonesia has an important meaning for both countries where they agreed with the existence of discussion about Memorandum of Understanding (MoU) concerning the placement and protection of Indonesian Workers in Saudi

Arabia, which is planned to be signed within the next six months. The agreement to discuss MoU in the forum of SOM done through collective signing in the form of Statement of Intent or similar to the Letter of Intent (statement will joint) between the chairman of Indonesia government delegation Head of National Agency for Placement and Protection of Indonesian Workers (BNP2TKI) Moh Jumhur Hidayat and Head of Delegation of Saudi Arabia Saudi Arabia's Minister of Labor, Mohammad Adel Fakieh (Azwar, 2011).

In order to follow up the results of the Statement of Intent (SoI) that was signed on May 28, which mandates the MoU for migrant workers in Saudi Arabia both countries held bilateral meeting of Joint Working Committee (JWC) I, on July 11 until 15, 2011 in Ryadh, Saudi Arabia. The bilateral meeting is an early stage of negotiations to discuss the creation of a Memorandum of Understanding (MoU / Memorandum of Understanding) on the placement and protection of migrant workers in Saudi Arabia expected to be completed within six (6) months (Azwar, 2011).

In order to push Saudi Arabia to sign the MoU as soon as possible, Indonesian government makes policy about moratorium of Indonesian migrant workers. Moratorium is an action where Indonesia stops sending migrant workers to Saudi Arabia until the certain time. Then the moratorium for informal migrant workers to Saudi Arabia which has been running for more than three years and end in early 2014, but stepped on the Memorandum of Understanding is under the Record of Discussion, although it almost reached the finalization of the draft agreement. One of the reasons why the MoU is still under the record of discussion is because Saudi Arabia has no employment act, that's why the government of Saudi

Arabia needs a long time to consider signing because it is not an easy thing to apply it without any related laws. After the moratorium was issued for three years, on 19 February 2014 delegation of Indonesian government Muhaimin Iskandar with the delegation of Saudi Arabia Adel M. Fakieh has signed an Agreement about The Placement and Protection of Indonesian Domestic Workers (*persetujuan mengenai Penempatan dan Perlindungan Tenaga Kerja Indonesia Sektor Domestik*) (Muhammad, 2014).

The first step to make this agreement is both sides between Indonesia and Saudi Arabia are make negotiation about the document of the agreement. After that, continued with the next step that is acceptance or adoption of the agreement. This phase shows that the parties which doing negotiations have reached an agreement on the draft treaty, although the text is not yet a final agreement or has not been a definitive manuscript. The step of acceptance, adoption, and authentication are combined into one. The acceptance of the agreement is also the authenticating the text of the agreement, with the merger of the two phases/ steps makes the agreement are made quickly and more efficient.

After the steps of adoption and authentication, the next step is consent to bound by a treaty. Previously, the nomenclature of this agreement is MOU as preliminary agreement or a pre-contract agreement before it is signed by the parties. Representatives of Indonesia and Saudi Arabia held negotiation in drafting the MOU. After the document is completed, then make a viability study first before making any more detailed agreements. After the two countries have agreed to be bound by the MOU, then it can be done with the signing, ratification, or accept the MOU.

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