

CHAPTER I

INTRODUCTION

A. Background

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 169.038.¹ 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.²

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, and it will explain in the table 1 below:

Table 1. Indonesian Migrant workers (2011-2014)

No	Years	Number of migrant workers	Formal TKI	%	Informal TKI	%
1.	2011	586,802	266,191	45	320,611	55
2.	2012	494,609	258,411	52	236,198	48
3.	2013	512,168	285,297	56	226,871	44
4.	2014	429,872	247,610	58	182,262	42

Source: <http://www.bnp2tki.go.id/readfull/9801> April 13rd, 2015³

From the data above we can see that the number Indonesian migrant workers in other countries are not only in a big number, but also changes in every year. The

¹ Geerards, I. T. , *The Measures Taken by the Governments of Indonesia and Saudi Arabia in Dealing with Indonesian Workers in Saudi Arabia.*

² <http://m.detik.com/finance/read> accessed on April 13rd, 2015.

³ <http://www.bnp2tki.go.id/readfull/9801> accessed April 13rd, 2015.

change is shown 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.⁴ 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.

⁴ <http://www.bnp2tki.go.id/berita-mainmenu-231/8526-crisis-center-bnp2tkitangani-12270-pengaduan-permasalahan-tki.html> (accessed 11 October 2015)

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.⁵

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.⁶ 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.

⁵ <http://www.ips.org/mdg3/iwd-how> accessed April 13rd, 2015

⁶ http://www.bbc.co.uk/indonesia/berita_indonesia/2010/11/101122_komentarsumiati.shtml
(Accessed 11 October 2015)

B. Research Question

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

C. Theoretical Framework

To answer and to explain the problem above, the writer uses the theory and concept that agree with the discussion above to answer the problem; in this discussion the writer uses the concepts of protection and diplomacy. The concepts below also will explain the role of government in order to solve problems about Indonesian migrant workers who get violations from their employers under the Kafala system.

1. Concept of Protection

Every human being needs protection in every condition and in every place, no matter who they are and what their job is. Protection is something that keeps a person or thing from being harmed, lost, etc. Definition of protection in legal science is a form services must be implemented by law enforcement officials or security forces to provide a sense of security, both physical and mental, to the victims and sanctions of threats, harassment, terror, and violence from any party given at this stage of the investigation, prosecution, and upon examination in courts.⁷

⁷ Rahayu S, "Seputar Pengertian Perlindungan Hukum", seputarpengertian.blogspot.com(accessed August 27, 2015)

There are many kinds of protections such as legal protection and human right protection of the migrant workers. The legal protection conducted from pre-placement, placement period until after deployment, and those kinds of legal protection are form of administrative law and criminal law aspects. The aspect of administrative law protection is covering administrative guidance, administrative supervision and administrative sanctions. The aspect of the protection of criminal law in relation to criminal sanctions in Law No. 39 Year 2004 concerning the placement and protection of Indonesian migrant workers abroad is the principle of the rule of law (legality), the principle of prevention and principle of control.⁸

In giving such a protection in 11 August 2011 Indonesian government through ministry of migrant worker and transmigration made “*Moratorium Tenaga Kerja*” which was applied for informal sector of Saudi Arabia. In this case, moratorium means that Indonesia will stop or postpone to sending migrant workers to Saudi for a while until the certain time. The moratorium that made by Indonesia is to push Saudi Arabia to talk about “Memorandum of Understanding” (MoU) which there are some points to promote and guarantee TKI in Saudi Arabia. The Moratorium is made based on the Law No.39/2004 article 81 paragraph 1.⁹

Then in 19 February 2014 the delegates of Indonesia Muhaimin Iskandar with the delegates of Saudi Arabia Adel M. Fakieh already sign Agreement the Placement

⁸ Chakim Litfi M. “Perlindungan Hukum dan Hak-Hak TKI di Luar Negeri Melalui PJTKI dan Non PJTKI”. <http://www.lutfichakim.com/2012/08/perlindungan-hukum-dan-hak-hak-tki-di.html> (accessed 5 november 2015)

⁹ <http://depnakertrans.go.id/mou%bilateral/index.html>(Accessed 12 october 2015)

and Protection of Indonesian Domestic Workers (*persetujuan mengenai Penempatan dan Perlindungan Tenaga Kerja Indonesia Sektor Domestik*).¹⁰

2. Concept of Diplomacy

The word of “Diplomacy” is from Greek which has meaning as the art of negotiations in making deal with other countries.¹¹ In international relations, the art of negotiation is very important in order to support policies of a states based on the national interest. According to **Ivo D. Duchacek**, diplomacy is the practice to do foreign policy using negotiation with other countries.¹²

Another definition by **KM Panikkar**, diplomacy is the art of forwarding one’s interest in relation to other states.¹³

According to G. R. Berridge in his book “Diplomacy: Theory and Practice” explained that the activity of diplomacy can run by bilateral and multilateral diplomacy. Bilateral diplomacy based on state-to-state where every state emphasized on the diplomatic communication activities through informal representative of both sides. Multilateral diplomacy will involve more sides including countries and international organizations, the government doing multilateral diplomacy where the

¹⁰ Khaitam Muhammad W, *Agreement the placement and protection of Indonesian Domestic workers antara Republik Indonesia dengan Arab Saudi dalam perlindungan hukum terhadap TKI di Arab Saudi*, Universitas Brawijaya, 2014.

¹¹ A.S. Hornby, *Oxford Dictionary*, (Great Britain, Oxford University Press, 1995), Page 325

¹² Takky N, *Definisi-Definisi Diplomasi*, Sunday, May 22, 2011

¹³ K. M. Panikkar, *The Principles and Practice of Diplomacy*, (New Delhi, The Delhi School of Economic, 1952)

international agreement needed in a certain cases.¹⁴ The main tool in doing diplomacy is by negotiation, and the negotiation itself can run or happen by organize a meeting and conferences or even conducted through letters and by exchange memorandum.

Lately there are a lot of violations that face by Indonesian migrant workers especially in Saudi Arabia. Like what happened in 2010, one of Indonesian migrant workers Kokom from Sukabumi, West Java was violated by her employer in Saudi until she was paralyzed.¹⁵ Not only Kokom as the victim but also still there are a lot of migrant workers from Indonesia or other countries who get violations from their employers.

In order to solve the problem of violations toward migrant workers, Indonesian government makes some negotiations with the government of Saudi Arabia. The negotiation is about bilateral agreement that happened in 2003. The action of Indonesian government in order to protect and solve the problems of Indonesian migrant workers in Saudi Arabia is they make bilateral diplomacy between Indonesia and Saudi Arabia. This bilateral diplomacy contain an agreement that all of the Indonesian migrant workers problems can solved in a good ways with kind of negotiation.¹⁶

¹⁴ G. R. Berridge, *Diplomacy: Theory and Practice*, 2nd Edition, (Basingstoke: Palgrave MacMillan, 2002), hlm. 146-151.

¹⁵ Kistyarini, "TKW sukabumi di siksa sampai lumpuh di arab Saudi", *Tuesday, October 8, 2013*, regional.kompas.com/

¹⁶ <http://mkp.fisip.unair.ac.id/index.php?> (Accessed April 14th, 2015)

Negotiation and diplomacy are very important to solve the problems of violation toward migrant workers. Because it is impossible to stop sending migrant workers to Saudi Arabia, because Saudi Arabia is the best destination for Indonesian migrant workers to looking for jobs after Malaysia. So, Indonesian government has to do negotiations and MoU with Saudi to talk about migrant workers, whether make such policy to give more protection for the migrant workers or to delete the *Kafala* system in Saudi if it is possible.

D. Hypothesis

From the explanation above, and supported by theoretical framework, finally the writer finishes on hypothesis that, the actions of Indonesian government toward Kafala system in the case of violation to migrant workers are:

1. Increasing the protection and guarantee the human right of migrant workers by creating law to protect Indonesian migrant workers, and
2. Creating bilateral agreement about The Placement and Protection of Indonesian Domestic Workers.

E. Purpose of Research

1. To explain and to describe the actions of Indonesian government towards Kafala system which doing violation to the migrant workers.
2. To apply the theories which the writer got along studies in University

F. 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.

G. 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 2004-2014. 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.

H. Organization of Writing

Chapter I explains Introduction, Problem Background, Research Question, Purpose of Research, Theoretical Framework, Hypothesis, Research Methodology and System of Writing.

Chapter II discusses about Indonesia's policy towards Indonesian migrant worker issues overseas.

Chapter III discusses and gives information about Kafala system and the effect for the Indonesian migrant workers.

Chapter IV discusses about the actions of Indonesia government toward Kafala system in the case of violation to migrant workers, the effort of the government to protect the migrant workers in Saudi.

Chapter V contains of the conclusion from all chapter and also answer the research question.