

## Optimization of Legal Protection for Indonesian Migrant Workers in South Korea Who Are in Failure of Employment Agreements

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### Abstract

*This research aims to dig deeper into legal protection for Indonesian Migrant Workers (PMI) who are involved in defaulting on work agreements in South Korea. With the high employment opportunities in South Korea's manufacturing sector, the Indonesian government has taken steps through the G to G Program scheme to send PMI to the country as a solution to overcome the high unemployment rate in Indonesia. Even though this program has succeeded in providing employment opportunities for PMI, the increase in their numbers in South Korea has had negative impacts in the form of legal problems. Some PMIs are involved in acts of default by running away from the workplace, making them illegal workers who violate work agreements. This research uses a literature study method to examine various relevant sources to gain an in-depth understanding of this problem. The research results show that the legal protection provided by the Indonesian government for PMI involved in default has been working well. However, increasing protection is an important need because most illegal PMI do not report themselves to the embassy, complicating the process of legal protection if problems occur. Therefore, further steps are needed to ensure that PMIs involved in defaults continue to receive adequate legal protection, including increasing awareness and coordination between relevant parties in Indonesia and South Korea. Apart from that, this research also highlights the importance of empowering PMI in understanding their rights and obligations, so as to reduce incidents of default. Coordination between the Indonesian embassy and South Korean authorities also needs to be improved to facilitate more effective reporting and protection.*

Keywords: *Indonesian Migrant Workers; G to G Korea, Legal protection*

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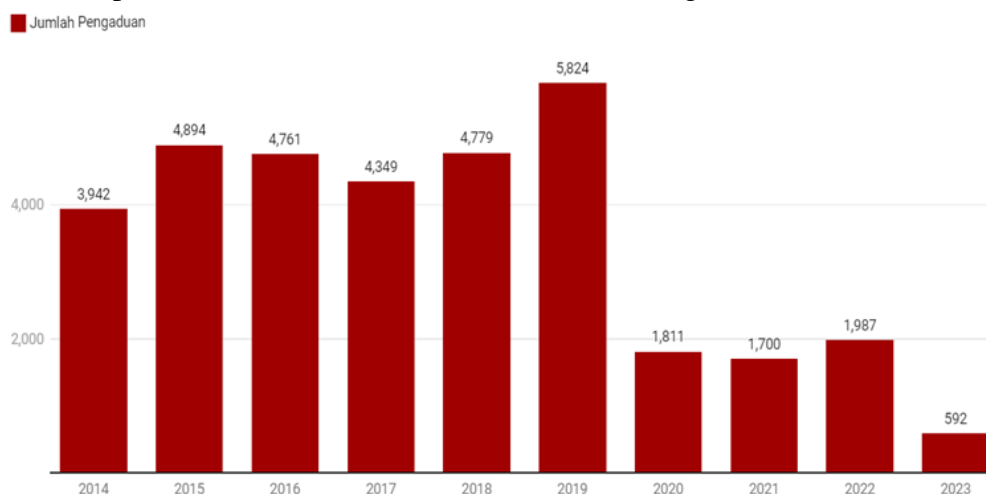
### I. INTRODUCTION

Many Indonesian migrant workers are looking for opportunities in South Korea, both to increase their income and look for better job opportunities.<sup>1</sup> However, issues related

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<sup>1</sup>Romdiati, H. (2016). Migrasi tenaga kerja Indonesia dari Kabupaten Tulungagung: Kecenderungan dan arah migrasi, serta remitansi. *Jurnal Kependudukan Indonesia*, 7(2), 27-53.

to illegal Indonesian Migrant Workers (PMI) and the Crime of Human Trafficking (TPPO) still pose a serious threat to Indonesia. Even though various efforts have been



made, the number of illegal or problematic PMI abroad continues to fluctuate and has not been fully resolved.<sup>2</sup> Based on data from the 2022 Crisis Center report of the Indonesian Migrant Worker Protection Agency (BP2MI), the problems faced by PMI include unpaid wages, failure to leave, human trafficking, violation of work contracts, violence from employers, mental welfare problems, job opportunity fraud, and so on during the 2019-2021 period. During the January-April 2023 period, the Indonesian Migrant Worker Protection Agency (BP2MI) recorded a significant decrease of 53% in the number of complaints about the placement of Indonesian migrant workers (PMI) compared to April 2022, according to data which recorded 592 complaints in total.

Figure 1 Graph. Total Complaints from Indonesian Migrant Workers Abroad (Based on data for 2014-2023 (January-April))

The difference between the crime of trafficking in persons (TPPO) and Indonesian Migrant Workers (PMI) which violates the law, as well as noting that South Korea has been recognized as a developed country by UNCTAD. Since 1994, Indonesia has sent PMI to South Korea through various schemes, especially the Employment Permit System (EPS) since 2004. Increased cooperation between Indonesia and South Korea, especially in the field of employment, has become a significant phenomenon. However, the presence of a number of PMIs in South Korea has given rise to legal problems, especially related to mental and physical unpreparedness, finances, and lack

<sup>2</sup> ORANG, T. P. P., & UTAMI, R. D. (2022). PERLINDUNGAN HUKUM YANG DILAKUKAN KONSULAT JENDERAL REPUBLIK INDONESIA JOHOR BAHRU MALAYSIA TERHADAP PEKERJA MIGRAN INDONESIA SEBAGAI KORBAN

of understanding of the Korean language. This research tries to optimize protection for PMI who are in default of employment agreements, underscoring the importance of optimally understanding the protection provided to PMI in South Korea.

## **II. LITERATURE REVIEW**

### **1. Legal Protection**

The origins of the theory of legal protection are related to the flow of natural law, which is believed to come from God and is universal and eternal. Thomas Aquinas added a new dimension by arguing that natural law aims to achieve goodness and is regulated by those who manage human life. Even though there is rejection of the concept of natural law, some legal experts who reject it often do not consciously use this understanding. The theory of legal protection, or the theory of legal feasibility, is the philosophical and ideological basis of a country's legal system. Legal protection is defined as a conscious effort to secure welfare in accordance with human rights, forming the basis for everyday understanding and application of law.

Expert views on legal protection vary. Satjipto Rahardjo considers it an effort to protect individual interests, while Setiono emphasizes legal protection in the context of protecting society from the arbitrary actions of the authorities. Muchsin, in his view, states that legal protection involves activities to protect individuals and create order in everyday life. Regarding the protection of Indonesian migrant workers (PMI), the Indonesian Migrant Worker Protection Law no. 18 of 2017 and Presidential Decree no. 90 of 2019 established the Indonesian Migrant Worker Protection Agency (BP2MI). BP2MI focuses on eradicating non-procedural PMI broadcast syndication with the aim of increasing PMI protection and welfare, as well as improving good governance. Data as of June 2022 from BP2MI records the number of PMI abroad, especially in the domestic helper, clerk and operator sectors, with main destination countries such as Hong Kong, Taiwan, South Korea and Malaysia

### **2. Indonesian Migrant Workers in South Korea**

Article 1 Paragraph (2) Law no. 13 of 2003 concerning Employment provides a definition of labor as individuals who are able to carry out work to produce goods or services, both for their own needs and those of the community. This definition strengthens the concept of labor which is in line with Law Number 14 of 1969 concerning Employment Principles. According to Soepomo (1985), a worker is someone who carries out tasks, both in formal and informal work contexts. Workers

are individuals who work for or for an employer, receive compensation, and have an official and ongoing employment relationship.

Indonesian Workers (PMI) are Indonesian citizens who work abroad under a work agreement with a foreign industrial company, receiving a salary as compensation. The aim of placing Indonesian workers in foreign countries is to provide equal opportunities for work and decent income, by paying attention to human rights and legal protection. However, existing labor regulations are inadequate regarding the placement and protection of Indonesian workers abroad. To overcome this, it is necessary to establish laws that strictly regulate the placement and protection of Indonesian workers abroad. The Government to Government (G to G) program between South Korea and Indonesia is an initiative step to facilitate the placement of Indonesian migrant workers in South Korea, based on several laws and regulations, such as Law no. 18 of 2017 concerning Protection of Indonesian Migrant Workers, Government Regulation no. 4 of 2013 concerning procedures for implementing the placement of Indonesian Migrant Workers (PMI), and Regulation of the Head of BNP2TKI No. 06 of 2016 concerning the Implementation of Final Departure Debriefing for Prospective PMI to the Republic of Korea.

### 3. Default

Default, in civil law, refers to actions or actions that are not in accordance with the contents of the agreement or agreement (contract). Forms of default can include non-fulfillment of obligations in full, partial fulfillment, or timely fulfillment as previously agreed. In Indonesian constitutional law, the 1945 Constitution is the state constitution which regulates the rights and obligations of citizens and state administrators, especially the government. The 1945 Constitution sets out four state goals, including protecting the Indonesian nation, promoting public safety, educating the nation's life, and realizing world order based on independence, eternal peace, and social justice.

Default shows a lack of performance in the context of contract law, where one party does not fulfill its obligations in accordance with the contents of the agreement. Other terms for default can include performance of a promise of performance or lack of performance of a promise. Default arises when one of the parties breaks a promise or does not carry out obligations according to the agreement. This can occur in several forms, such as not fulfilling achievements at all, fulfilling achievements not on time, or implementing achievements that are inappropriate or wrong. Subekti noted that default can occur in various forms, including non-implementation of promises, inappropriate implementation of promises, late implementation, and implementation that violates contractual agreements.

### **III. METHODOLOGY**

This research uses literature study methodology as a research approach. This methodology aims to analyze relevant literature, legal concepts, and previous research related to the issue of default in the employment agreements of Indonesian migrant workers in South Korea.

Literature study is the appropriate method for this research because it can provide an in-depth understanding of legal concepts, labor regulations, and legal protection issues that are relevant to Indonesian migrant workers in South Korea. This research will identify cases of default in Indonesian migrant worker employment agreements, analyze regulations relating to legal protection for migrant workers, and evaluate the implementation of these regulations.

By exploring the latest legal literature, this research will provide a strong theoretical basis for understanding the legal aspects related to the issue of default in the employment agreements of Indonesian migrant workers in South Korea. It is hoped that the results of the literature study analysis can provide recommendations or strategies to optimize legal protection for migrant workers who experience default on work agreements in South Korea.

### **IV. RESULT AND DISCUSSION**

#### **1. Process of working in Korea with the G to G Korea Prograk scheme**

The work process in South Korea through the Government to Government (G to G) Program begins with the registration of Prospective Indonesian Migrant Workers (CPMI). Cooperation between the Indonesian and South Korean governments, based on the Memorandum of Understanding (MoU) between the Indonesian Ministry of Manpower and Transmigration and the South Korean Ministry of Labor, regulates the placement of Indonesian migrant workers in Korea through the Employment Permit System (EPS). As a first step, all prospective workers who are interested in working in South Korea under EPS must follow a recruitment process using the Points System, which is regulated by the Human Resources Development Service of Korea (HRD Korea).



Figure 2. G to G Korea Program Placement Flow (source BP2MI).

G to G Korea's process flow for working in South Korea involves several stages. First, there is pre-registration which is carried out online by the Indonesian Migrant Worker Protection Agency (BP2MI), with age requirements of 18-39 years, minimum education of junior high school or equivalent, not being color blind, not having finger defects or amputations, and a number of other requirements. Second, document verification is carried out by the EPS-TOPIK exam committee to ensure that CPMI meets the requirements. Third, CPMI takes the EPS-TOPIK exam, and those who pass are participants with a score of 110 points or more. Fourth, CPMI data that meets the requirements is sent to the Human Resources Development Service of Korea (HRD Korea). Fifth, Preliminary Education is carried out, which is training to prepare CPMI mentally, personally, and with knowledge related to working and living temporarily in South Korea, involving developing Korean language skills, knowledge of Korean work culture, and others. During this stage, CPMI also obtains a signed Employment Contract with Korean HRD before entering into an Employment Contract with the employer after arriving in Korea. This process ensures that CPMI who will work in South Korea have gone through a number of selection and preparation stages in order to successfully adapt to the work culture prevailing in that country. Apart from that, the work contract obtained



from the Preliminary Education stage shows legal seriousness and readiness before actually starting work in South Korea.



**2. Protection of Migrant Workers Who Default on Work Agreements**

Illegal Indonesian Migrant Workers (PMI) and the Crime of Human Trafficking (TPPO) are still serious problems for Indonesia. Although the government has taken steps to protect PMI, the problem has not been completely resolved. Data from the Indonesian Migrant Worker Protection Agency (BP2MI) shows that throughout 2019-2021, PMI faced various problems, including unpaid wages, failure to leave, human trafficking, work not in accordance with the contract, violence from employers, depression, job opportunity fraud, and others. Despite a decrease in complaints in April 2023, the issue remains relevant.

Various factors cause PMI problems, including workers' limited understanding of contracts, language barriers, weakness in fighting for rights, and inappropriate

working hours which can affect health. Training and service delivery factors also play a role, such as inappropriate skills education, lack of language understanding, and lack of safety in shelters. Apart from that, the agency that places the migrant workers also influences this, with the lack of synergy and the success of illegal migrant workers escaping from the embarkation point.

The Indonesian government has passed various laws to protect migrant workers, including Law no. 39 of 2004, Law no. 6 of 2012, and Law no. 18 of 2017. This latest law provides more effective protection by adopting international conventions and providing a new understanding of prospective migrant workers and Indonesian migrant workers (PMI). Regular monitoring and an enhanced legal protection system are part of the government's efforts to address PMI problems.

## **V. CONCLUSION**

This research reveals the challenges faced by Indonesian Migrant Workers (PMI) in South Korea and the legal protection efforts taken. Even though many PMIs are looking for opportunities in South Korea to increase their income, the issue of illegal PMIs and the Crime of Trafficking in Persons (TPPO) remains a threat. The government, through BP2MI and Law no. 18 of 2017, seeks to address this issue, with data showing a decline in complaints by 2023. However, complex issues such as unpaid wages, human trafficking and violence are still relevant. The PMI placement process through the G to G Korea Program has stages, but the issue of default in employment contracts is the main focus. Limited understanding, language barriers, and inappropriate working hours can affect PMI's health. This literature study uses Literature Study methodology as a research approach, analyzing legal literature, employment regulations, and legal protection issues relevant to Indonesian migrant workers in South Korea. By exploring the latest legal literature, this research provides a strong theoretical basis for understanding legal aspects related to the issue of default in PMI employment agreements in South Korea. It is hoped that the results of the literature study analysis can provide recommendations or strategies to optimize legal protection for PMI who experience default on work agreements in South Korea. Therefore, further steps are needed to overcome this complex problem and increase the effectiveness of legal protection for PMI abroad.

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### REFERENCES

- Afriani, R., & Maimunah, M. (2020). *Penguatan Keterampilan Bahasa Inggris Pekerja Migran Indonesia (Pmi) Cirebon*. Equalita: Jurnal Studi Gender Dan Anak, 2(1), 75-88.
- Alie, S. A. (2023). *Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual (Studi Kasus Kepolisian Resor Jeneponto Tahun 2020 S/D Tahun 2022)* (Doctoral Dissertation, Universitas Hasanuddin).
- Anshori, A. G. (2018). *Filsafat Hukum*. Ugm Press.
- Effyanto, I. R. (2023). *Tinjauan Yuridis Kepailitan Dan Penundaan Kewajiban Pembayaran Utang Terhadap Pelaku Wanprestasi* (Doctoral Dissertation, Universitas Islam Sultan Agung Semarang).
- Hartana, H. (2016). Hukum Perjanjian (Dalam Perspektif Perjanjian Karya Pengusahaan Pertambangan Batubara). *Jurnal Komunikasi Hukum (JKH)*, 2(2).
- Jaang, S. (2022). *Perlindungan Hukum Pangan Lokal Berdasar Prinsip Keadilan. (Local Food Legal Protection Based On The Principle Of Justice)* (Doctoral Dissertation, Universitas 17 Agustus 1945 Surabaya).
- Junaidi, J., Abqa, M. A. R., Abas, M., Suhariyanto, D., Nugraha, A. B., Yudhanegara, F., ... & Mulyadi, D. (2023). *HUKUM & HAK ASASI MANUSIA: Sebuah Konsep Dan Teori Fitrah Kemanusiaan Dalam Bingkai Konstitusi Bernegara*. PT. Sonpedia Publishing Indonesia.
- Kurnia, T. S., & Darumurti, K. D. (2015). Mahkamah Konstitusi Dan Desain Hubungan Pusat-Daerah Berdasarkan Asas Negara Kesatuan. *Www. Mpr. Go. Id*, 117.
- Mita Noveria, D. K. K. (2021). *Perlindungan Pekerja Migran Indonesia*. Yayasan Pustaka Obor Indonesia.
- ORANG, T. P. P., & UTAMI, R. D. (2022). *Perlindungan Hukum Yang Dilakukan Konsulat Jenderal Republik Indonesia Johor Bahru Malaysia Terhadap Pekerja Migran Indonesia Sebagai Korban*.

- Romdiati, H. (2016). Migrasi Tenaga Kerja Indonesia Dari Kabupaten Tulungagung: Kecenderungan Dan Arah Migrasi, Serta Remitansi. *Jurnal Kependudukan Indonesia*, 7(2), 27-53.
- Siagian, B. G. A. (2022). *Perlindungan Hukum Terhadap Tenaga Kerja Asing Dalam Implementasi Transfer Of Knowledge Terhadap Tenaga Kerja Indonesia (Studi Pada Kawasan Industri Kota Batam)*.
- Susanti, H., Syafrinaldi, S., & Hajri, W. A. (2022). Perbandingan Aturan Hukum Tentang Tindak Pidana Perdagangan Orang Di Indonesia Dan Malaysia. *Kodifikasi*, 4(1), 91-108.
- Wahyurudhanto, A. (2019). Kerjasama Antar-Negara Dalam Penanganan Tindak Pidana Perdagangan Orang (TPPO)(Studi Kasus Kerjasama Indonesia–Malaysia). *Jurnal Ilmu Kepolisian*, 13(1), 16.
- Wildan, M. (2017). Perlindungan Hukum Tenaga Kerja Kontrak Dalam Perjanjian Kerja Waktu Tertentu Berdasarkan Undang-Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan. *Jurnal Hukum Khaira Ummah*, 12(4), 833-841.