

# ROLES OF INDONESIAN EMPLOYEE PLACEMENT AND PROTECTION SERVICE (*BP3TKI*) IN TULUNGAGUNG

## Abstract

**Surjanti  
Susy Lestari**

E-mail: [surjanti.unita@gmail.com](mailto:surjanti.unita@gmail.com)  
E-mail: [susy.lestari2019@gmail.com](mailto:susy.lestari2019@gmail.com)

Universitas Tulungagung  
Jl. Ki Mangun Sarkoro, Beji,  
Tulungagung, East Java, Indonesia

ISSN : 2714-8149

Labors of Indonesian who have worked abroad often become objects of trafficking, including slavery and forced labor, violence, arbitrariness, crime against human dignity and treatments that violate human rights. Responding to these human rights violations, the state is obligated to protect the rights of foreign labors based on the principles of equality, democracy, and social justice, gender equality, anti-discrimination and anti-trafficking. The research focused on two areas: a). How is the implementation of the Center for Services Placement and Protection of Overseas Labor (*BP3TKI*) in *Tulungagung*. b). What factors are the obstacles Hall Placement Services and Protection of Indonesian Workers (*BP3TKI*) in *Tulungagung*. This research used a descriptive analytical method and sociological juridical approach. The research found a). *TKI* placement by *BP3TKI Tulungagung* an extension of *BNP2TKI*, so that in carrying out its duties and functions, must be based on what has been defined by *BNP2TKI* and coordinate to *P4TKI*, and reporting each month based on the results of its execution, be it *BP3TKI* and *P4TKI* then forwarded to *BNP2TKI*. b). The limited facilities, infrastructure and budget constraints in supporting the implementation of the tasks and functions of *BP3TKI Tulungagung*.

**Keywords :** *BP3TKI*, *TKI*, Legal Protection

## I. INTRODUCTION

Welfare of the people as a nation is one of the main objectives of Indonesia. As has been stated in the Fourth Paragraph of the Preamble of the Constitution of the Republic of Indonesia Year 1945 (Constitution NRI 1945) that the country aims to "realize social justice and common prosperity for all Indonesian people then poured into Article 27 Paragraph (2) which reads "Every citizen has the right to work and a decent living for humanity."

Less attractive economic conditions in Indonesia and substantial income and that appear more attractive in the destination country has become a trigger for international labor mobility. Protection of the employment abroad is closely related to the management and control system carried out by various parties involved in the sending of Indonesian workers abroad. In relation to management of employment in foreign countries, Indonesia has set mechanisms through three phases namely the placement of responsibility the pre placement, during placement and after placement.

The arrangement of the placement of Indonesian workers abroad is regulated by Law No. 39 of 2004 concerning with the Placement and Protection of Indonesian Workers Abroad. Therefore, the state must guarantee and protect the rights of citizens who work both at home and abroad based on the principles of equality, democracy, social justice, gender equality, anti-discrimination and anti-trafficking.

In the case of placement of Indonesian workers abroad is an effort to realize equal rights and opportunities for workers to obtain decent work and income, the implementation of which is carried out with due regard to dignity, human rights, human rights and legal protection as well as equal employment opportunities and the supply of labor in accordance with national needs. In the process of convergence of supply and demand for labor from one country to another will certainly occur a transformation of values, so that the social and legal problems often faced by labor migrants. Various problems often faced by Indonesian workers who work abroad this so well that occurs in pre-placement phase, during placement and post placement. In each phase has always involved a triangular pattern that is labor relations, labor placement employers and government as policy maker. Especially for the rights of labor was obtaining legal protection in accordance with the legislation on measures that can lower status and dignity as well as the violation of the rights established in accordance with the laws and regulations for placement abroad and gain assurance the return of safety and security protection of Indonesian Workers (TKI) to the place of origin.

To minimize the problems faced by workers abroad as well as to protect the dignity of labor, the regulation on the placement of Indonesian workers abroad in Law No. 39 2004 was a way out, the Government has established a Service Center for Placement and Protection of Indonesian Workers, the Centers regulated by Presidential Decree Number 81 Year 2006 regarding the National Agency for Placement and Protection of Indonesian Workers (BNP2TKI).

The main point that discusses the performance hall and the protection of Indonesian Migrant Employment Placement described in Articles 23, 24 and Article 25, which would provide a guarantee of protection, care and placement of Indonesian workers.

Based on the description of the background of the above, the issues discussed was how the implementation of the Center for Services Placement and Protection of Overseas Labor (BP3TKI) *Tulungagung* in providing service protection and placement of Indonesian Workers abroad and what factors are the obstacles Hall Placement Services and Protection of Indonesian Workers (BP3TKI) in *Tulungagung* TKI placement.

Understanding employment law depends on the positive law of each country. Therefore, it is not surprising that a definition of labor law (employment) is expressed by legal experts are also different, especially regarding their generality. This is considering the breadth of coverage of labor law (employment) in each country is also different. In addition, differences in viewpoint also lead to legal experts provide a definition of labor law (employment) is different.

NEH van Esveld, as quoted by Faith Supomo assert labor law (employment) also includes the work performed by all workers who perform work on their own responsibility and risk. By definition, this would mean that the purpose of the labor law (employment) law is not only concerned with the employment relationship, but also the laws concerned with work outside the employment relationship. Molenaar confirms that the labor law (employment) is part of a law that essentially governs the relationship between labor and employer, between labor and workers and between workers and employers, between workers with workers and between workers with ruler

In this positioned so it is difficult to expect them to be able to perform Bargaining Power confront the employer (which was then in employment law called the employer / entrepreneur). Therefore, exists a third party, namely the rulers (government) to protect people who work. The things mentioned here that an embryonic labor law (employment).

How far this is the intervention of the authorities that will determine the breadth of labor law restrictions.

In Indonesia regulation concerning Minimum Wage / District Minimum Wage is an example of government intervention in protecting workers. Soetikno, an expert in Indonesian law, gives the definition of labor law (employment) as follows: "Labor law (employment) is the overall legal regulations concerning the employment relationship which resulted in someone personally placed under the command (command) another person and-state the living conditions are directly to do with the employment relationship ".

Reviewing the above understanding, the understanding given by Faith From the elements above, it is clear that the substance of labor law (employment) relates only to the rules governing the legal relationship of a so-called labor workers in others the so-called employer (is civil in nature), so do not regulate legal relationships outside the employment relationship. This concept is in accordance with the understanding laborers / workers by legislation.

Law labor is a species of the genus law generally. Talking about the limitations of the legal sense, until now scientists have not found the limits of standard and satisfy all parties about the law, due to the law itself has the shape as well as the terms are very diverse. Dutch jurist, J. van Kan, as cited by Lalu Gusni, defines law as a whole provisions coercive life, which protects the interests of people in the community. With the definitions of labor law (employment) mentioned above, when this condition has changed with the massive government intervention in the field of labor / employment, so the policy issued by the government has been so widely not only the legal aspects related to the employment relationship, but before and after the employment relationship. This concept is clearly accommodated in Act No. 13 of 2003 on Manpower.

Law Number 13 of 2003 has been adjusted to the progress of reform, especially concerning the right of association / organization, dispute resolution industrial. In this labor a law no longer found in terms of workers and employers, but has been replaced by the term workers and employers. In Article 1 of Law No. 13 of 2003 on Labor states that Labor are all matters of matters relating to the labor force in the time before, during, and after the work.

In general, the law can be divided into two, namely the law Imperative (*dwingend recht* or force of law) and the law Facultative (*regelend recht* or *recht aanvullend* or legal or extra). According to Boediono Abdul Rachmat, that the imperative law is the law that must be

obeyed absolutely, while the facultative law is a law that can be ruled out (usually by agreement).

Placement and Protection of Indonesian Workers Abroad that every prospective migrants / migrant workers are required to report his arrival to the representative of the Republic of Indonesia in the destination country. The obligation to report the arrival of the workers who work on individual users conducted by PPTKIS. According to Article 63 Paragraph (1), (2), (3) the Minister of Labor and Transmigration Republic of Indonesia No. KEP-104 A / MEN / 2002, recruitment agency in collaboration with Business Partners and Perwalu obliged to take care of the return of migrant workers arrived at the airport in Indonesia, in the case of: a) a work agreement has expired and does not extend the employment agreement; b) TKI troubled, ill or dies during the employment agreement could not complete the work agreement; c) The recruitment agency must notify the departure schedule TKI Indonesian Mission in the country concerned and the Director-General no later than seven (7) days before the date of return; d) In the care of the return of migrant workers, the recruitment agency is responsible to help solve problems and take care of migrant workers and bear the maintenance cost disadvantages workers who are sick or died.

Mentioned in Article 77 Paragraph (1) Every prospective migrants have right to obtain protection in accordance with the legislation. The understanding of the protection of migrant workers have been mentioned in Article 1 paragraph 4, which referred to the protection of migrant workers is all the effort to protect the interests of prospective migrants / migrant workers in realizing the assurance of fulfillment of their rights in accordance with the legislation, both before, during and after work , Protection of migrant workers referred to in paragraph (1) is carried out starting from the pre-placement, the placement period, until after placement.

## **II. RESEARCH METHODS**

### **a. Research approach**

This study used sociological juridical approach, namely by reviewing or analyzing secondary data and primary data in the form of secondary legal materials to understand the law as a set of rules or norms of positivity within the regulatory system that governs the human life. While the primary data deal with the data obtained from the discussion . Hence the results of this study can be understood as the library research or the research of secondary data.

b. Specifications Research

Specifications of this research is descriptive analytical research. This research describes and analyzes the existing problems and included in this type of library research (library research) which will be presented descriptively.

c. Types and Sources of Data

This research includes the study of normative law, the types of data used got from the secondary data. The Secondary data studied are of primary legal materials legally binding material; and secondary law, a material that provides an explanation of the primary legal materials in the form of documents or minutes of legislation; and tertiary legal materials that provide deeper explanation of the primary legal materials and secondary law.

d. Technique of Collecting Data

In accordance with the use of secondary data in this study, the data collection is done by collecting, reviewing and systematically processing library materials and documents related. Secondary data regarding the primary legal materials, secondary and tertiary derived from library materials, with due regard to the principle of updating and relevance.

e. Data analysis

Data were analyzed normative-qualitative by interpreting and constructing the statement contained in the documents and legislation. Normative for this study starts from the existing regulations as a positive legal norms, while qualitative data analysis means that the starting point in the discovery business principles and new information.

### III. FINDINGS AND DISCUSSION

#### A. Employee Placement and Protection Service (*BP3TKI*) In Providing Services Placement and Protection of Indonesian Workers abroad.

According to Article 25, paragraph 2 *BP3TKI* formation set by the Head *BNP2TKI* after obtaining approval from the Minister responsible in the field of utilization of state apparatus. The functions of the National Agency for the Placement and Protection of Indonesian Overseas Workers (*BNP2TKI*) is the implementation of policies in the field of placement and protection of Indonesian workers abroad are coordinated and integrated, (Article 95, paragraph 1, of Law No. 39 of 2004), whereas the task *BNP2TKI* there are two: 1) Carry out the placement on the basis of a written agreement between the government and the governments of the TKI or the legal status destination country placement and 2) Providing

services, coordinate and conduct surveillance of: Document, debriefing late departure (PAP), Troubleshooting, Source -sources of financing,

BP3TKI formed to help facilitate the ministry in charge of the placement of Indonesian Workers, this *BNP2TKI* listed in Article 23 paragraph 1 of Law No. 39 of 2004.

Based on the interview with Mr. Mohd. Agus Bustami, SE, it was explained that in carrying out its duties and functions *BP3TKI Tulungagung* in two ways:

- 1) Manual service system, which is known by face to face with the system of counters, shelters for example providing information on matters relating to the implementation of the management of labor abroad, serving on the complaints about the problems faced by Indonesian workers abroad either of *TKI* itself or from the family of the migrant worker.
- 2) Computerized system of foreign labor (sisko *TKLN*) that is used to complete these documents through the website. For example, documents or information job labor abroad.

According to Agus Bustami, SE function *BP3TKI* No 3 that:

- 1) Reduction of unemployment because high unemployment is accompanied by a low skill abilities. As well as employment in the country is limited.
- 2) Poverty alleviation due to the workings of Indonesian workers abroad, it can support a family in Indonesia.
- 3) Improved well-being due to income earned abroad more than at home.

While the task of *BP3TKI* there are three, namely:

- 1) Before departing overseas migrant workers are preparing people interested in employment abroad with a definite and complete the incomplete document preparation and establish what skills they can rely on when working abroad.
- 2) When abroad, namely to control, monitor and know the state of the rights and obligations of migrant workers, namely: cooperation with the Embassy of the Republic of Indonesia (Embassy), Consul General of the Republic of Indonesia (Consulate) or trade representative where she put migrant workers, during the tenure of how workers is whether the rights and obligations fulfilled, and the situation is still healthy, or constrained by legal problems abroad.
- 3) After the return of migrant workers that is set up rehabilitation setting funds collected by way of example taught the fund management business, entrepreneurial and production practice even when he was sick there is insurance that protects.

To apply the functions and duties of *BP3TKI*, preparing from the beginning to the end of the employment of migrant workers. Known ways of migrant workers also mentioned that there are two Courant:

- 1) Issuing permits or examinations to prospective overseas employers, namely examining whether the overseas service company really exists and is able to protect what rights and obligations are needed and bring together recipients and suppliers in this case the Indonesian Manpower Services Employer (*PJTKI*) which is legally registered and is legal in delivering labor.
- 2) Prepare documents prospective migrants for example ID cards, medical examination by a designated clinic, *SKCK*, passport, visa and other documents to be expected that no further obstacles faced by migrant workers when it started to work abroad.
- 3) It also describes things that are not allowed and the sanctions that would be acceptable if it violates the provisions of the contractual eg mating, gambling, rioting, and other drugs.

*BP3TKI* also handles prospective migrants who want to work but not through an outside company that has worked with *BP3TKI*, such as recruitment through direct admission through tests (not through a service company), here *BP3TKI* ask for a contract between the worker and the recipient company. And issued a permit for work. Besides working *BP3TKI* also issue licenses for the purposes of study or internship abroad in the company.

As stated in article 27 and 28 *P4TKI*;

#### Article 27

- (1) In order to smooth the implementation of the departure and the return of Indonesian Workers at the doors of certain embarkation and disembarkation formed post-service posts.
- (2) Postal Service has the task of doing service to expedite the departure and return of Indonesian Workers.
- (3) Postal Service in carrying out their duties are coordinated by the Center for Services Placement and Protection of Indonesian Workers.
- (4) Postal Service is headed by a Coordinator

#### Article 28

Establishment of service posts and supporting facilities that meet the requirements set by the Head BNP2TKI after obtaining the approval of the Minister responsible for the field of utilization of state apparatus.

B. Factors that become obstacles Employee Placement and Protection Service (*BP3TKI*)  
*Tulungagung*.



In carrying out its duties and functions *BP3TKI* inhibitory constraints are encountered during the running of its activities, therefore, the author wants to discuss about any factors faced by *BP3TKI*.

Based on an interview with Mr. Moh. Agus Bustami, SE there are two factors that become an obstacle in carrying out its duties and functions. The first internal factors include the limited facilities and infrastructure in supporting the implementation of the tasks and functions of *BP3TKI* Tulungagung and budget constraints / funds in the process of good service to the community that prospective workers and workers who have been placed abroad. Then the second external factors, including the lack of support from local governments in the placement of Labor program abroad, in the form of available funds in regional development budget (*APBD*) and also weak regulation and legal differences between the two regulations in two different areas.

According Nurmiaty S, Sos, MM, problems found by *BP3TKI* described some examples:

- 1) Registered or not migrant workers at home and abroad, is: a lot of workers who work abroad unregistered (illegal) but *BP3TKI* and forwarded to *BNP2TKI* continue coordination with the Embassy or Consulate to know the state and the presence of the migrant workers.
- 2) Scalpers or recruitment agency that does not have permission. That is: there are some cases that occurred with the lure of jobs on offer but it was only under the guise of a person concerned. So what happens designation is Human Trafficking.
- 3) Information about the accident or calamity that occurred abroad namely: there are events going on outside the country such riots or transportation accidents, so check if there are Indonesian workers who work in these places.
- 4) Evacuation of victims of migrant workers, that is: knowing the circumstances whether alive or dead here in need deportations with rules adapted to the conditions in Indonesia and the country's sovereignty.
- 5) *TKI* legal problems in the State of the migrant worker works. Namely: their migrant workers abroad legal problems caused by the actions of migrant workers or administrative problems.
- 6) Intimidation obtained by Indonesian workers. Namely: the violence that can *TKI* either physically or psychologically regarding where the migrant worker worked,

Dari some problems and obstacles encountered in carrying out its duties and functions, the data obtained from the author of the recapitulation of the handling of cases reported from January to December 2018, according to Mr. Moh. Agus Bustami, SE. The report is still a lot of undiscovered because most people do not report or not found by the government, in this case the authorities *BNP2TKI* and ranks. Therefore, it takes the cooperation of the public and other authorities, in order to assist the duties and functions because of the many factors *BP3TKI* obstacles.

#### IV. CONCLUSIONS AND RECOMMENDATIONS

##### A. Conclusions

1) *TKI* placement by *BP3TKI Tulungagung* an extension of *BNP2TKI*, so that in carrying out its duties and functions, must be based on what has been defined by *BNP2TKI* and coordinate to *P4TKI*, and reporting each month based on the results of its execution, be it *BP3TKI* and *P4TKI* then forwarded to *BNP2TKI*.

2) Factors that become obstacles Employee Placement And Protection Service (*BP3TKI Tulungagung*) (*BP3TKI Tulungagung*) in carrying out its duties and functions, namely:

##### a. Internal factors :

Limited facilities and infrastructure in supporting the implementation of the tasks and functions of *BP3TKI Tulungagung*. Budget constraints and fund services to the community in the process of either prospective workers and workers who have been placed abroad.

##### b. External factors:

Weak local government support in overseas employment programs, namely: there is no budget available in local development budget (*APBD*). Weak regulatory and legal differences between the two regulations in two different areas.

##### B. Suggestion

- 1) Provide maximum service to both Prospective Indonesian Workers and Indonesian Workers who have been placed so as to guarantee the fulfillment of labor rights.
- 2) The government should give more attention to the employment problem in terms of budget and facilities are adequate.

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