

REVIEW OF THE PROTECTION OF INDONESIAN CITIZENS OF INDONESIA WHO ARE EXPOSED TO CASES OF PILGRIMAGE VISA ABUSE IN SAUDI ARABIA

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Abstract

The high number of unemployed and the lack of available jobs in the country have caused the number of Indonesian Migrant Workers to increase every year. However, the large number of Indonesian Migrant Workers still many of them do not fulfill the departure documents as stated in Article 13 of Law No. 18 of 2017 concerning the Protection of Migrant Workers, but in this article there is no explanation regarding sanctions or punishments if these documents are not owned by Indonesian migrant workers. This study discusses legal protection and efforts to repatriate Indonesian citizens who are involved in cases of misuse of Pilgrimage Visas in Saudi Arabia. Researchers use normative legal research and a statutory approach, a case approach and a conceptual approach. Indonesian Labor Law has not yet regulated further regarding the legal protection that will be obtained by workers who depart illegally. The government provides a rehabilitation and reintegration program after the repatriation of Indonesian citizens involved in cases of misuse of pilgrimage visas and the government has also made several efforts to prevent similar cases from occurring.

Keywords : Legal Protection, Indonesian Citizens, Pilgrimage Visa, Indonesian Migrant Workers.

INTRODUCTION

Labor as one of the drivers of the economic life system and is a resource with a fairly abundant amount. This can be seen from the unemployment rate in Indonesia every year more and more, the high unemployment rate caused by the number of jobs that are less than the number of unemployed people. The high unemployment rate and lack of jobs in Indonesia encourage some people to decide to look for job opportunities abroad with the aim of improving their fate and finding a job that is more in line with what they want, sending Indonesian migrant workers abroad is done to reduce the increasingly high unemployment rate in Indonesia [1]. Sending workers abroad is an important factor in the field of development because by sending Indonesian migrant workers abroad Indonesia earns foreign exchange from this. Sending Indonesian migrant workers is not only done in Southeast Asian countries, sending migrant workers is also carried out in the western Asian continent, one of which is Saudi Arabia [2].

Saudi Arabia is a destination country for Muslims to visit and worship, besides that Saudi Arabia is also a destination country for Indonesian migrant workers. The government of Saudi Arabia has various types of visas to support the needs of foreign nationals to be able to visit Saudi Arabia to worship or work. One of the visas issued by the government of Saudi Arabia is a pilgrimage visa, the pilgrimage visa itself is divided into 3 types, namely: Syakhsiyah Pilgrimage Visa (personal visit), Tijariyah Pilgrimage Visa (business visit), Season Amil Visa (seasonal worker). The pilgrimage visa has a validity period of 90 days from the time the visa is issued, this visa is intended for foreign nationals who want to visit Saudi Arabia for a short time only. However, this pilgrimage visa is often misused for foreign nationals to work in Saudi Arabia. The misuse of pilgrimage visas is also often carried out by Indonesian migrant workers, they use pilgrimage visas to work in Saudi Arabia through illegal labor channeling companies. These migrant workers do not know if what they are doing is an illegal act which can later cause them legal problems in the form of violating workers' rights and exploiting workers. As happened in the case of Raja Hasmidah, an illegal migrant worker in 2021 who had to be imprisoned in Saudi Arabia for 20 days to return to Indonesia and also the case experienced by Traini, an illegal migrant worker who received harsh treatment and did not get a salary at all. These actions violate the 1990

International Convention on the Protection of the Right of All Migrant Workers and Members of Their Families.

The illegal placement of migrant workers violates *Article 41 of the Basic Law of Governance Royal Order No. (A/91)* which reads "*Residents in the Kingdom of Saudi Arabia shall adhere to its laws and respect the values, traditions, and sensibilities of Saudi society*" (If translated. Residents in the Kingdom of Saudi Arabia shall adhere to its laws and respect the values, traditions, and sensibilities of Saudi society). and *Article 69 of Law No. 18 of 2017 on the Protection of Migrant Workers* which reads "Individuals are prohibited from carrying out the placement of Indonesian Migrant Workers. (1) Every official is prohibited from dispatching Indonesian Migrant Workers who do not meet the requirements for completeness of documents as referred to in article 13, (2) Every official is prohibited from withholding the departure of Indonesian Migrant Workers who have met the requirements for completeness of documents as referred to in article 13 ". In addition, Indonesian migrant workers who leave illegally in Saudi Arabia violate.

Illegal migrant workers leave for Saudi Arabia through illegal companies that dispatch prospective migrant workers non-procedurally. Illegal migrant workers do not have documents in accordance with *Article 13 of Law No. 18 of 2017 concerning the Protection of Migrant Workers* which reads "To be placed abroad, prospective Indonesian Migrant Workers must have documents which include: a. a certificate of marital status, for those who are married, attach a photocopy of the marriage book; b. a certificate of permission of the husband or wife, permission of the parents, or permission of the guardian known by the village head or village head; c. work competency certificate; d. health certificate based on the results of health and psychological examinations; e. passport issued by the local immigration office; f. Work Visa; g. health certificate based on the results of health and psychological examinations; e. passport issued by the local immigration office. Work Visa; g. Indonesian Migrant Worker Placement Agreement; and h. Work Agreement."

The article mentions what documents must be owned by prospective migrant workers, but there is no explanation of sanctions or penalties if these documents are not owned by Indonesian migrant workers. The absence of an explanation of sanctions and penalties is one of the reasons prospective migrant workers choose to depart non-procedurally through illegal labor channeling companies. Every year there are still many departures of illegal migrant workers to Saudi Arabia using pilgrimage visas, and every year there are also cases of exploitation of workers. So How is the legal protection of Indonesian citizens who use pilgrimage visas to work in Saudi Arabia? How are the efforts of the Indonesian government in rehabilitation and social reintegration for Indonesian citizens who are repatriated due to cases of pilgrimage visa abuse in Saudi Arabia?

METHODS

The research method in this study was conducted using normative research methods. According to Peter Mahmud Marzuki in his book, normative legal research is the process of finding a rule of law, legal principles and legal doctrines in order to answer the legal issues at hand. The normative legal research method is a research method on the rules of legislation both in terms of the hierarchy of legislation and the harmony of legislation [3]. Based on this definition, this research is a normative legal research that analyzes the problem by means of a literature study of legal materials and cases related to migrant workers in Saudi Arabia who use pilgrimage visas.

This research uses a *statutory* approach, *case* approach, and conceptual *approach*. This research was conducted using primary legal materials, secondary legal materials and non-legal materials. The data collection technique in this research was carried out by conducting a literature study. Literature studies are conducted on legal materials, both primary legal materials and secondary legal materials [4]. The collection of legal materials can be done by reading several laws, journals, articles and cases related to illegal Indonesian migrant workers who experience problems, especially those working in Saudi Arabia. This research uses prescriptive analysis techniques which are carried out by providing arguments regarding the legal protection that will be obtained by Indonesian migrant workers in Saudi Arabia who use pilgrimage visas to depart.

RESULTS AND DISCUSSION

1. Legal Protection of Indonesian Citizens Who Use Pilgrimage Visas to Work in Saudi Arabia

According to the *International Law Commission (ILC)* in *Article 1 of the International Law Commission (ILC) Draft Articles on States Responsibility (2001)* "Responsibility of a State for its internationally wrongful acts Every internationally wrongful act of a State entails the international responsibility of that State." (If translated, every internationally wrongful act of a state entails the international responsibility of that state). The protection of citizens is the responsibility of the state to ensure that the rights of citizens are fulfilled. Indonesia is responsible for its citizens both at home and abroad. Indonesian citizens who are abroad are the responsibility of the state to protect them through the Diplomatic representatives of the Republic of Indonesia in the countries where Indonesian citizens are located. The role of diplomatic representatives is needed in the protection of citizens who are abroad to ensure the fulfillment of the right to life of these citizens properly. The importance of legal protection of Indonesian citizens has been regulated in the 1963 Vienna Convention which regulates one of the functions of diplomatic representatives in *Article 5 point a* "protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;" (which translates to protecting the interests of the sending state and its nationals, both individuals and *bodies corporate*, in the receiving state, in accordance with the limits permitted by international law). The Diplomatic Representative of the Republic of Indonesia is assigned to represent and fight for the interests of the nation and state, one of which is to protect Indonesian citizens and Indonesian legal entities who are abroad.

It is explained in the fourth paragraph of the 1945 Constitution that protecting the entire Indonesian nation is a national goal to protect Indonesian citizens wherever they are, including Indonesian citizens affected by cases of pilgrimage visa abuse in Saudi Arabia. Indonesian citizens involved in cases of pilgrimage visa abuse in Saudi Arabia violate Saudi Arabian state regulations regarding foreign nationals as stipulated in *Article 41 of the Basic Law of Governance Royal Order No. (A/91)* which reads: "Residents in the Kingdom of Saudi Arabia shall adhere to its laws and respect the values, traditions, and sensibilities of Saudi society" (If translated. Residents in the Kingdom of Saudi Arabia shall adhere to its laws and respect the values, traditions, and sensibilities of Saudi society). Many Indonesian citizens involved in the misuse of pilgrimage visas are caused by Indonesian citizens' disobedience to the regulations that have been set to leave and enter a country. Many cases of pilgrimage visa abuse involve Indonesian citizens who will work abroad, most prospective Indonesian migrant workers are reluctant to complete the documents that are required to work abroad. Incomplete documents also cause migrant workers to be unable to obtain legal protection from the country of origin. This illegal departure does not rule out the possibility that the Indonesian worker or citizen is not involved in the crime of human trafficking because many cases of human trafficking make Indonesian citizens who leave illegally as targets. In addition, these illegal migrant workers also often get violence and work exploitation from their workplace. The government of Saudi Arabia itself provides sanctions in the form of imprisonment as well as fines and deportation to foreign nationals who abuse pilgrimage visas. The legal protection of citizens is indeed one of the obligations of a state, but the state will find it difficult to know the situation of its citizens abroad if these citizens are abroad without official permission and documents from the government. This causes the legal protection obtained by Indonesian citizens who do not fulfill limited permits to be different from Indonesian citizens who officially have permission to work.

2. **The Indonesian Government's Efforts in Rehabilitation and Social Reintegration for Indonesian Citizens Repatriated Due to Cases of Misuse of Pilgrimage Visas in Saudi Arabia**

Rehabilitation and Reintegration programs are provided after repatriation efforts, after the return of the Indonesian citizen requires support to return to the community. The Indonesian government provides assistance programs for repatriated Indonesian citizens to help adapt back to society.

Some of the rehabilitation programs provided by the government are:

1. **Health Examination**

Indonesian citizens who are repatriated to their homeland will have access to health checkup services with the aim of identifying any health problems that may exist. In addition, they will also undergo a psychological evaluation to detect signs of trauma, depression or other health problems that the individual may be experiencing. The Health Check is not only aimed at ensuring that the Indonesian citizen is physically healthy, but also to assess their mental state, so that it can be ensured that they are ready to follow the rehabilitation program provided.

2. Needs Identification and **Talent** Interest Identification

The Indonesian government takes proactive steps in identifying the needs of repatriated Indonesian citizens, with the aim of determining the specific needs of each individual. This process includes important aspects such as: provision of adequate temporary shelter, access to nutritious food, provision of necessary clothing, as well as any medical needs that may be required. The government also identifies the interests and talents of each Indonesian citizen to understand the potential of the individual. This process is carried out by categorizing based on the identified interests and talents, so that adjustments can be made in the provision of training in accordance with these interests and talents.

3. **Skills** Training

The Indonesian government actively provides skills training specifically designed to be relevant to the needs of the local labor market, with the aim of improving the competitiveness and employability of repatriated Indonesian citizens in the hope of improving the skills and knowledge of Indonesian citizens, so that they have a better chance of getting a job after returning to their home areas [5]. [5].

In addition, the government also conducts socialization to the community to reduce the negative stigma towards repatriated Indonesian citizens, as well as providing an overview of the dangers of working abroad non-procedurally. After the rehabilitation program is completed, the government will conduct monitoring to ensure that the Indonesian citizen can adapt well in the community, and regular evaluations are carried out to ensure that Indonesian citizens get good assistance [6]. The rehabilitation and social reintegration process aims to help Indonesian citizens repatriated from Saudi Arabia to adapt well to society, overcome trauma or psychological problems that may be experienced, and have the ability to be economically independent.

The case of illegal PMI departure to Saudi Arabia using a pilgrimage visa is still often carried out every year by illegal labor channeling agents. Article 69 of Law No. 18/2017 concerning the Protection of Indonesian Migrant Workers states that "Individuals are prohibited from carrying out the placement of Indonesian migrant workers" the departure of prospective migrant workers who are not in accordance with applicable regulations is a form of illegal departure. There are several efforts that have been made by the Indonesian government to prevent visa abuse including:

1. Establishment of the Anti Syndicate Task Force for Illegal Placement of Indonesian Migrant Workers. The formation of this task force is tasked with conducting strict supervision in the field of immigration to ensure that all PMI placement processes run in accordance with established procedures [7].

2. Taking Firm Action Against Perpetrators of Illegal Recruitment The government is committed to taking firm action against individuals or groups involved in the illegal recruitment of migrant workers. This includes stricter law enforcement and severe sanctions for those found guilty of violations.
3. Socialization on the Requirements and Risks of Working Abroad The government is also implementing a socialization program aimed at providing clear information on the requirements needed to work abroad, as well as the risks that migrant workers may face, especially in areas with the highest number of migrant workers. This is important to raise public awareness of the potential dangers of working non-procedurally.
4. Cooperation between Indonesia and Saudi Arabia Bilateral cooperation between Indonesia and Saudi Arabia continues to be enhanced, with a focus on preventing.
5. Visa abuse cases. This includes strengthening communication and coordination between the two countries to protect the rights of migrant workers and ensure that they work in safe conditions and in accordance with the law.
6. Improving the PMI Placement System The government seeks to provide easy access to information to prospective migrant workers and improve services provided by the Indonesian Migrant Workers Protection Agency (BP2MI). This step is expected to accelerate the legal and safe placement process for migrant workers.

These efforts are carried out on an ongoing basis to protect migrant workers from exploitation and human rights violations, efforts are also made to raise public awareness about the dangers of misusing visas, and to eradicate the practice of illegal migrant worker departures, as well as to tighten supervision of migrant worker departures and their placement in destination countries.

CONCLUSION

Based on the research results previously described regarding the legal protection of Indonesian citizens affected by cases of pilgrimage visa abuse in Saudi Arabia. Protection of citizens is the responsibility of the state which is regulated in international and national law. The Indonesian Embassy represents Indonesia to provide protection to Indonesian citizens who face legal problems abroad by collecting data, providing legal assistance, providing assistance during the legal process, and coordinating with the local government regarding the penalties given to Indonesian citizens involved in cases and regarding the return of Indonesian citizens. However, it is limited because the Indonesian Embassy finds it difficult to find out data on the whereabouts of each Indonesian citizen.

The Indonesian government provides a rehabilitation program for repatriated Indonesians, which includes medical examinations and job training aimed at helping Indonesians return to society. The Indonesian government has attempted to prevent cases of visa abuse by making several efforts such as: Establishing a task force against illegal placement of migrant workers, taking firm action against perpetrators of illegal recruitment, conducting socialization on the requirements and risks of working abroad, increasing cooperation between Indonesia and Saudi Arabia, and improving the migrant worker placement system.

SUGGESTIONS

The Ministry of Labor needs to tighten supervision of agents and brokers who distribute illegal workers, and take firm action against those involved in recruiting illegal migrant workers. And the Ministry of Foreign Affairs can provide clear information about the rights and obligations of Indonesian citizens abroad. And for prospective Indonesian migrant workers, it is hoped that they will comply with existing regulations and be able to take part in training and debriefing provided by the government.

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