

Kewajiban Negara Dalam Menghormati, Melindungi, dan Memenuhi Hak Asasi Manusia Tenaga Kerja Indonesia

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Abstrak

ABSTRAK

Masalah-masalah yang dihadapi tenaga kerja Indonesia sejak masa awal pengiriman tahun 1979 hingga kini tidak pernah berhenti. Hampir setiap hari media di Indonesia menyajikan berita tentang penderitaan para TKI yang mengalami penyalahgunaan, pelecehan seksual, gaji tidak dibayar, dan berkonflik dengan hukum negara setempat dan bahkan kematian mereka sendiri. Dasar hukum dan prosedur administratif penempatan, pengiriman, dan perlindungan TKI telah dibuat, direvisi, dan diganti oleh pemerintah berkali-kali. Sejak penetapan dalam GBHN 1993 yang memuat prosedur pengiriman dan perlindungan TKI ke luar negeri sampai dengan diundangkannya W No. 39 tahun 2004 tentang Penempatan, dan Perlindungan TKI di Luar Negeri, masalah-masalah yang dihadapi TKI masih tetap berlanjut.

Penelitian ini bermaksud melihat bahwa kesinambungan persoalan TKI tersebut berakar pada kesalahan dalam kerangka teoritik kewajiban negara dalam menghormati, melindungi, dan memenuhi HAM TKI. Dasar hukum dan implementasi perlindungan itu seharusnya dilihat dalam kerangka interdependensi HAM yaitu, dalam hal hak-hak TKI, antara hak atas pekerjaan (the rights to work) dan hak dalam pekerjaan (the rights at work).

Dengan menggunakan metode penelitian kualitatif deskriptif dan metode yuridis formal terhadap bahan hukum mengikat termasuk bahan hukum sekunder dan tertier dari dasar hukum yang relevan dan implementasinya di bidang perlindungan TKI, penelitian ini menemukan bahwa dalam dasar hukum dan implementasi kewajiban negara untuk memberi perlindungan HAM kepada TKI tidak didasarkan pada kesalingterkaitan antara hak atas pekerjaan dan hak dalam pekerjaan. Absennya kerangka teoritik lingkaran hak-hak (circle of rights) dalam dasar hukum dan implementasi perlindungan HAM TKI ini menjadi penyebab berlanjutnya masalah-masalah yang dihadapi mereka.

ABSTRACT

Since the first implementation of overseas placement policy of Indonesian migrant workers in 1979, abusive problems faced by the Indonesian migrant workers have been being persisting. Almost everyday domestic media provides their miserable struggle to experience the abuse, sexual harassment, unpaid wages problem, to have conflict against the destination laws, and their own death. Legal basis and administrative procedures for placement and protection of Indonesian migrant workers has been established, replaced, and revised repeatedly. Since initially regulated by GBHN in 1993 up to the establishment of Law No. 39 Year 2004 on the Placement and Protection of Indonesian Migrant Workers, the problems that they face are still going on.

This thesis intends to examine and explain that the persisting problems root down in the fallacy of theoretical framework to explain the state obligation to respect, to protect, to fulfill the Indonesian migrant

workers human rights. The legal basis and implementation for the said protection shall have been based on the human rights principle of interdependence, between the rights to works and the rights at work.

By using descriptive qualitative research method, and formal juridical method towards the legal documents including the relevant secondary and tertiary legal documents of legal basis and its implementation in the protection of migrant workers, this research discovers that the legal basis and its implementation of migrant workers protection is not based on the interdependent principle of human rights between the right to work and the rights at work. The absence of this interdependent principle or circle of rights in the legal basis and implementation has become the grounds to the continuous problems faced by the migrant workers. Since the first implementation of overseas placement policy of Indonesian migrant workers in 1979, abusive problems faced by the Indonesian migrant workers have been being persisting. Almost everyday domestic media provides their miserable struggle to experience the abuse, sexual harassment, unpaid wages problem, to have conflict against the destination laws, and their own death. Legal basis and administrative procedures for placement and protection of Indonesian migrant workers has been established, replaced, and revised repeatedly. Since initially regulated by GBHN in 1993 up to the establishment of Law No. 39 Year 2004 on the Placement and Protection of Indonesian Migrant Workers, the problems that they face are still going on.

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