

## The Role of Indonesian Diplomatic Representatives in Resolving Cases of Persecution of Indonesian Migrant Workers in Malaysia

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### Article Information

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### Abstract

To achieve economic improvement and the welfare of its citizens, Indonesia is one of the countries that supports the practice of sending workers abroad or often referred to as Tenaga Kerja Indonesia (TKI). One of the leading destination countries for Indonesian migrant workers is Malaysia due to the geographical proximity and cultural similarities. However, the large number of Indonesian migrant workers in Malaysia is also proportional to the number of human rights violations experienced by Indonesian workers. Violations of rights such as embezzlement of salaries, physical torture, to murder often occur to Indonesian migrant workers in Malaysia. Based on the condition, the writer aims to analyze the role of the Indonesian government in protecting TKI who experience human rights violations in Malaysia through diplomatic representatives.

### I. INTRODUCTION

Economic growth can be used to identify the level of financial performance that a country has carried out. Successful economic growth can be seen if there is an increase in income or an increase in the welfare of the people of a country from year to year [1]. Indonesia is one of the countries that is struggling to improve the economy through various steps. About 9.8% of Indonesian are still below the poverty line. This value is far from Malaysia, which has only 0.4% poverty in 2018 [2]. The poverty rate in Indonesia cannot be separated from the Indonesian population number and the lack of available job opportunities. In overcoming this problem, the migration of workers abroad is one solution that the government can offer. The migration of workers abroad, more

commonly known as TKI (Tenaga Kerja Indonesia), has an essential role in economic growth in Indonesia [3]. Besides improving the personal standard of their lives, TKI also contributes to an increase in foreign tax exchange for the state. Legalities of Indonesia Workers is loaded in UU No. 39 of 2004 about the Placement and Protection of Indonesian Migrant Workers [4].

However, many situations must be faced for Indonesian workers when working over the countries. From overstay issues, legalities until the human rights violations issue that often happens to workers committed by the boss. The number of Indonesian Migrant Workers (TKI) who experience various problems abroad reaches 1.8 million people when around 1,250,000 problems occur in

Malaysia, and 588,000 problems occur in Saudi Arabia [5].

There are many cases of Indonesian migrant workers with various problems that arise with the boss. Several factors that support the existence of TKI by employers are miscommunication, low competence, cultural differences, feudal behaviour, bad institutions and differences in the Manpower Act [6]. In the case of problems with Indonesian workers abroad, two main institutions have the authority to protect and provide services related to resolving the issues or disputes. Namely, BP3TKI is the agency responsible for delivering the TKI and the representative institutions of the Indonesian government or Indonesian Embassy that safeguards the interests of Indonesian citizens abroad. The Indonesian Embassy has technical duties that can directly provide legal protection for workers from Indonesia who experience legal problems abroad.

Based on this situation, the writer aims to analyze the role of the Indonesian diplomatic institution (Indonesia Embassy) in protecting Indonesian Migrant Workers (TKI) who experience human rights violations or investigations in Malaysia. The author takes a case study of Indonesian Migrant Workers in Malaysia because there are many cases in Malaysia and tries to deeply analyze what has been done by Indonesian representatives in protecting Indonesian citizens who experience human rights violations. This research has the title **The Role of Indonesian Diplomatic Representatives in Resolving Cases of Persecution of Indonesian Migrant Workers in Malaysia.**

## II. CONCEPTUAL FRAMEWORK

### The Role Theory

According to Mohtar Masoed in "The Study of International Relations at the Level of Analysis and Theorization", Role Theory is

defined as the behaviour that is expected to be carried out by someone who occupies a position.

"Role theory asserts that political behaviour is behaviour in running a politics. This theory assumes that most political behaviour results from the demands or expectations of roles that happen to be held by political actors.

### Formation of Diplomatic Representatives

Relations between countries are considered necessary for the state to achieve their national interest and protect their nationals. Establishing an international relationship between nations is deemed beneficial for each country and deserves to be developed [7]. Based on this statement, Indonesia regulates the legality of international relations in Law No. 37 1999 concerning foreign relations, which defined as:

"International relations or foreign relations are every activity involving regional and international aspects carried out by the government at the central and regional levels and their institutions, state institutions, business entities, political organizations, community organizations, non-governmental organizations or Indonesian citizens."

Based on this legality, we can see that Indonesia has its focus on foreign affairs. Indonesia views relations with other countries as essential for the survival of the country and its citizens. The Indonesian government also issued regulations regarding diplomatic representative institutions as government representatives in other countries through Presidential Decree No. 108 2003 concerning the Organization of Representatives of the Republic of Indonesia abroad. In the Presidential Decree, it is explained that:

"Changes and developments that have occurred at the national and international levels have provided greater opportunities and challenges for the implementation of foreign relations and the implementation of foreign policy so that it is necessary to increase the organizational capacity and readiness of adequate human resources, and also that diplomacy implementers are needed. quality so that the implementation of foreign relations and the implementation of foreign policy is more focused, selective, comprehensive, coordinated, efficient and effective".

According to Article 1 Number 4 of the Decree of the President of the Republic of Indonesia Number 108 of 2003 concerning Organizations of Representatives of the Republic of Indonesia Abroad, Diplomatic Representatives are:

"Embassy of the Republic of Indonesia and Permanent Mission of the Republic of Indonesia that carry out diplomatic activities throughout the territory of the Receiving State and/or in International Organizations to represent and fight for the interests of the Nation, State and Government of the Republic of Indonesia."

Meanwhile, internationally, the right to place diplomatic representatives is regulated in several international conventions such as the 1928 Havana Convention and the 1961 Vienna Convention.

### **Diplomatic Representative Duties**

In the 1961 Vienna Convention article 3 paragraph 1, it is clearly stated that:

"The functions of a diplomatic mission consist, inter alia, in:

(a) Representing the sending State in the receiving State; (b) Protecting in the receiving State the interests of the sending State and of its nationals, within limits permitted by international law; (c) Negotiating with the Government of the receiving State; (d) Ascertaining by all lawful

means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State; (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations".

While in Law no. 37 1999, Article 19 b describes the duties and obligations of representatives of the Republic of Indonesia to provide protection, protection, and legal assistance for Indonesian citizens and legal entities abroad according to statutory regulations and customary international law [8]. Some of the functions of diplomatic representatives more broadly include:

#### 1. Representation

B. Sen explained that the primary function of diplomatic representatives is to represent the citizens of the sending country in the receiving country and act as an official channel of liaison between the two countries' governments. Diplomatic representatives aim to maintain diplomatic relations between countries, and diplomatic officers are tasked with conducting negotiations and conveying the views of their government to the government of the receiving country [9].

#### 2. Negotiation

In negotiations that are often carried out by countries with other countries, a diplomat has the task of being a representative in expressing the attitude of his country of origin to the receiving country regarding the interests of the two countries in the negotiations carried out [10].

#### 3. Reporting

In Article 3 of the 1961 Vienna Convention on Diplomatic Relations, it has been stated that one of the duties of diplomatic representatives is:

"Provide reports to the sending country on the conditions and developments in the receiving country in ways that can be justified by law."

Through this task, diplomatic representatives are tasked with reporting any situation or development in the receiving country in order to develop any policies in origin countries. The report could be a report on the market or any political situation of the receiving state. By the market report, the sending country can use it as a directive of the trading strategy that should be implemented in the future. The political report can be used as the leading step of the origin country to protect the interests of its citizens and how to act in the international political sphere

Through this, it can be interpreted that diplomatic representatives function to protect the interests of the sending country and its citizens in the area where it is accredited within limits permitted by international law [11]. Diplomatic representatives must be able to see profitable opportunities that may be exploited for the development of the sending country while remaining alert to any actions that may threaten the interests of the sending country and citizens [12].

All sovereign countries in the world own the right to place diplomatic representatives because they are considered to have had the *Right of Legation* [13]. The appointment of an ambassador as the head of diplomatic representative can occur after the receiving countries approve the diplomatic delegates' name. Then, the receiving country's government can send a letter of credence as a form of official legality for the implementation of diplomatic missions [14].

### III. ANALYSIS

Malaysia is a country that always occupies the first position as the location destination country of the Indonesian Migrant Workers—followed by Taiwan and Hong Kong in second and third place. Until 2008, the Indonesian Embassy noted that around 2 million Indonesian citizens worked legally in

Malaysia. Meanwhile, there are still about 800,000 illegal workers too [15]. Large number of Indonesian migrant workers in Malaysia cannot be separated from the similarities between the religion and the culture of the two countries [16]. In addition, the reason why TKI chooses to work in Malaysia is the close distance and a large number of TKI who are already working in Malaysia. It is not uncommon to find several close relatives who work together as Indonesian migrant workers in Malaysia [17]. These conditions assume that working as a migrant worker in Malaysia is more accessible than in other countries with cultural differences and more complex obstacles. Indonesia regulates the placement of Indonesian Migrant Workers abroad in Law No. 39 of 2004 concerning the Placement of Indonesian Workers Abroad. Article 1 31 of the Law states that every worker has the same rights and opportunities to choose, get, or change jobs and earn a decent income at home or abroad. Unfortunately, this is not an assumption that does not always lead to good results, considering the many cases of law violations and breaches of human rights received by Indonesian workers. From year to year, news about the problems of Indonesian migrant workers in Malaysia always comes to the fore. Starting from abuse by employers, rape, confinement, murder, confiscation of administrative documents, and non-payment of wages for TKI often occur [18]. Some examples of cases of migrant workers in Malaysia include:

1. The case of severe abuse experienced by Bonat within five months of working in Malaysia. Bonat is a TKI from East Nusa Tenggara who was physically abused, which left bruises and burns all over his body. According to her witness, she was persecuted only for accidentally breaking the master's cup and was punished with mistreatment and imprisonment [19].

## 2. Meriance Kabu's molestation case

Meriance Kabu is a migrant worker from Kupang, East Nusa Tenggara, who was abused in December 2014. Meriance received inhumane treatment such as being told to drink her urine, forced tooth extraction, and physical abuse such as whipping with rattan, electric shocks, and genital stabbing. After working for eight months, Meriance also did not receive his salary entitlement [20].

3. The case of the death of Adelina Lisao  
Adelina is a 21-year-old girl from East Nusa Tenggara who died in February 2018 after being abused by her employer. Adelina's case was reported by her employer's neighbors. During the investigation process, Adelina was found with a malnourished condition and had severe injuries all over her body. Adelina was also mistreated by being forced to sleep with her master's dog. A day after being hospitalized, on February 11, 2018, Adelina died because of her complication injury. But unfortunately, after a thorough investigation, Adelina was an illegal TKI, so her status was not strongly recognized. As a result of this condition, the Penang Island Court finally decided that the employer was acquitted of all charges in April 2019 [21].

## 4. Suyanti Binti Sutrisno's persecution case

Suyanti is an Indonesian Migrant Worker from Medan, North Sumatra, who has just started working as a housemaid in Kuala Lumpur for two weeks. In his short working time, she has received physical abuse and human rights violations. Suyanti is only allowed to eat and bathe once a day and is forbidden to communicate with the outside world. Suyanti's case was revealed after she managed to escape and was found by a Malaysian citizen on the side of the road full of bruises [22]. This case was reported to the

local police for further handling by the Indonesian Embassy to Malaysia.

After seeing the many cases of abuse of Indonesian Migrant Workers in Malaysia, then what is the role of diplomatic representatives in dealing with this problem and carrying out their role as government representatives in the receiving country?

Actually, the concrete steps taken by diplomatic representatives in dealing with a problem dealing with problematic TKI do not have a fixed legal basis. All forms can be carried out as long as they do not violate international law and the sovereignty of the country concerned. In general, the role that diplomatic representatives can play in protecting problematic Indonesian Migrant Workers is by providing assistance, facilitating housing, repatriation, and providing legal assistance to the physical and psychological rehabilitation process. The legality of the duties of diplomatic representatives related to Indonesian Migrant Workers is contained in Article 18 A-D of the Minister of Foreign Affairs of the Republic of Indonesia No. SK.06/OT/2004/01, which states that:

The Diplomatic and Consular Officers, as referred to in Article 18, carry out the functions:

- a. Providing protection, protection, and legal assistance to Indonesian Citizens including Indonesian Migrant Workers and Indonesian Legal Entities in the event of threats and/or legal problems in the receiving country, as opposed with the local law as well as customs, and international law;
- b. Handling of complaints regarding problems faced by Indonesian Migrant Workers with employers and/or with the local government;

- c. Identification of problems faced by Indonesian Migrant Workers and consulting services and information on consular issues;
- d. Providing advice and seeking legal assistance in the event of a labor dispute between employers and Indonesian Migrant Workers, the Indonesian Migrant Worker Service Provider Company and the Foreign Worker Service Provider Company, the local government, as well as fellow between Indonesian Migrant Workers [23].

The implementation of this role is then grouped into several protective measures, namely:

#### 1. Technical Protection

Technical protection is carried out by the Diplomatic Representative of the Republic of Indonesia by providing a safe and comfortable shelter for Indonesian workers who are facing problems. In addition, the Diplomatic Representative through the embassy also obliged as a facilitator in the case that occurred [24].

The task to provide shelter facilities is not contained in Law no. 37 of 1999 concerning Foreign Relations, but this facility can be carried out as a form of protection assistance services for TKI who experience problems in foreign countries. According to Prof. Boschard also argues that the act of providing housing for troubled Indonesian workers is not a legal duty for Diplomatic Representatives but rather a moral duty that representative diplomatic offices can give.

#### 2. Juridical Protection

It is legal aid protection provided by diplomatic and consular representatives to Indonesian Workers who experience problems in foreign countries. In this process, diplomatic representatives can work with lawyers and experts to obtain legal advice regarding the case [25]. The expert will focus on the procedural law and

applicable legal system and how to behave and act according to the law in the recipient country. In this case, diplomatic representatives play a role in assisting and ensuring Indonesian workers' rights and ensuring that the law is fair and does not violate their fundamental rights.

#### 3. Political Protection

This protection is not directly assigned to diplomatic representatives but is under the state's interests. In this function, the state is tasked to arrange an agreement or Memorandum of Understanding (MoU) related to the protection of Indonesian Migrant Workers with the destination country's government. Through these agreements, it is hoped that there will be cooperation between countries to take care of each other and protect every foreign worker while working in their country.

In the case study of the persecution of Indonesian Migrant Workers in Malaysia, the roles assigned by the Indonesian Embassy are not far from the technical and juridical protection guidelines as described above. The handling of each case will be adjusted to the case that occurs and still adhering to the principles of technical and juridical protection and legality according to Article 18 A-D of the Minister of Foreign Affairs Decree No. SK.06/OT/2004/01. While political protection is in the form of cooperation with government authorities by forming an MoU and cooperation through international organizations engaged in the field of labor, such as the International Labor Organization (ILO) [26]. The ILO can act as a negotiator and facilitator in the ongoing problems of Indonesian Migrant Workers.

## IV. CONCLUSION

To alleviate poverty, Indonesia is one of the countries that supports and facilitates facilities for Indonesian citizens to work abroad or often referred to as Indonesian Migrant Workers (TKI). Malaysia is the main destination country for Indonesian migrant

workers based on the country's geographical proximity, similarities in culture and religion, and the number of predecessors of Indonesian migrant workers who have worked in Malaysia. However, the large number of Indonesian migrant workers in Malaysia is also proportional to the number of human rights violations experienced by Indonesian migrant workers. Every year news about violations of rights ranging from breaches of salary rights, persecution to the murder of Indonesian migrant workers still often surface.

In dealing with this condition, the Indonesian government has provided protection to Indonesian workers who experience legal problems. The Indonesian government is engaged in providing protection through diplomatic representatives who act as state envoys to protect the state's interests and its nationals. In the case of mistreatment of Indonesian

workers, diplomatic representatives play a role by referring to Article 18 A-D of the Minister of Foreign Affairs of the Republic of Indonesia No. SK.06/OT/2004/01 and apply the principles of technical and juridical protection. In terms of technical protection, the diplomatic representative office can provide temporary residence to accommodate Indonesian migrant workers who suffer a problem. The provision of this facility is intended so that TKI can receive comfort and security during the legal process.

Meanwhile, in juridical protection, diplomatic representatives have the authority to provide legal assistance to troubled Indonesian migrant workers. These legal aid diplomatic representatives can work with lawyers to find out the procedural law process and make all legal processes as fair as possible.

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