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## Provide or Demonstrate? Legal Comparison on Migrant Protection in Indonesia and Hongkong

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**Abstract:** This article examines the weakness of legal protection system for Indonesian migrant workers which are still vulnerably exposed to the practice of human trafficking leading to many cases of physical, sexual and psychological exploitation of Indonesian migrant workers abroad. This study quantitatively explores the model of providing legal protection for Indonesian migrant workers in Hong Kong, China in order to improve legal protection for Indonesian migrant workers abroad. Finally this study finds the effectiveness and successfulness of the well-established legal system of Hong Kong's government, as one of the most intended countries by Indonesian migrant workers, in providing protection and guaranteeing the rights of migrant workers. These models constitute the ideal Human Rights Protection schemes for the other countries in realizing strategy and policies for better regulation.

**Keywords:** legal protection, Indonesia migrant workers, human rights

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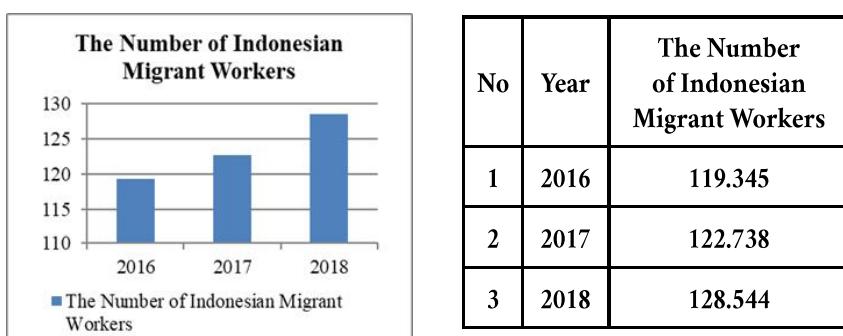


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## Introduction

The increasing number of Indonesian migrant workers working abroad is one of the effects of the lack of employment opportunity in the country. Therefore, being a migrant worker abroad is one of the responses opted by some citizens in the current national situation, in their effort to fulfill the needs of their families. The country also benefits from the migrant workers abroad who have contributed to the second largest national reserves generated by their foreign exchange activities after the oil and gas sector (ILO Indonesia, 2007). Based on the data from Bank Indonesia, the country's foreign exchange generated through the placement of Indonesian migrant workers abroad reached USD 6.6 billion in 2016, USD 8.761 billion in 2017 and USD 3.3 billion in the first semester of 2018 respectively. The large number of Indonesian migrant workers placed abroad from 2015 to 2018 can be seen from the following data (world Bank, 2007):

**Table 1: Number of Indonesian migrant workers placed abroad from 2015 to 2018**



However, the placement of prospective or current Indonesian migrant workers in the other countries has not been supported by a solid and comprehensive system of pre-employment and mechanism of protection, which provides key solutions to the problems faced by prospective or current Indonesian migrant workers, either during pre-placement, placement or after placement. The weakness of the protection system of Indonesian migrant workers abroad, leads to the vulnerability of the practice of human trafficking which makes them the object of exploitation physically, sexually and psychologically.

One of the problems faced by Indonesian migrant workers abroad is legal

uncertainty. This issue is rooted into three aspects which result in ineffectiveness and purposelessness of the management. Firstly, the system of protection and management is not in favor of Indonesian migrant workers, secondly, the clarity of those who are responsible for pre-placement, placement and after-placement is undetermined and thirdly, supervisory mechanism is inadequate which eventually brings about the lack of protection of migrant workers in the entire process.

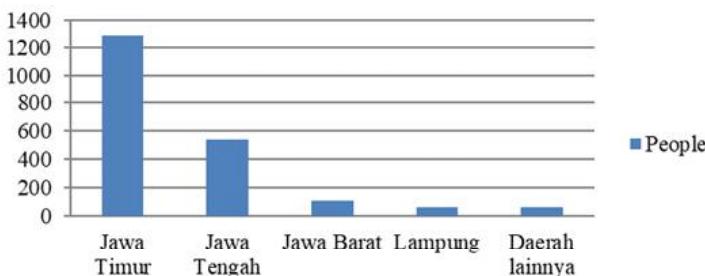
The various issues faced by Indonesian migrant workers are interesting research area. Therefore, the authors conducted a study that focuses on legal issues faced by Indonesian migrant workers, both as perpetrators and victims. This study entitled "Legal Protection for Indonesian Migrant Workers in Hong Kong-China", the author has been conducted in Hong Kong-China. Thus, this study specifically focuses on a case study of the legal protection system of Indonesian workers in Hongkong-China.

In acquiring the objective of this study, the author uses the method of explanation and description. Explanation method aims to answer cause and effect clearly and overall. While the description aims to explain the flow of state policy from year to year over the past two decades. So that, this research is expected to uncover the problems emerged from upstream to downstream by those involved in the system including the government. In analyzing the data obtained in the field, the author employs analytical techniques based on interactive analysis as proposed by Miles and Huberman, which consists of three activities that interact and continue to accomplish, so that the data is saturated. Activities in data analysis are data reduction, data presentation, and conclusion drawing/verification (B. M. Miles & A.M. Huberman, 1994).

## **The Current Situation of Indonesian Migrant Workers in Hong Kong- China**

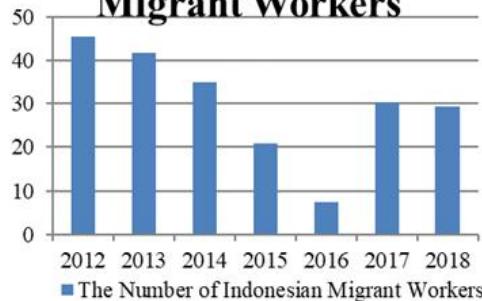
In fact, almost 95% of Indonesian migrant workers who work in the domestic workers sector are people from Java. The rest can be seen from the survey data conducted by the following Asian Migrant Care (BNPT, 2018):

## Based on Place of Origin



According to data from BNP2TKI, the total numbers of Indonesian migrant workers placed in Hong Kong from 2012 to 2018 are as follows (BNPT, 2018):

## The Number of Indonesian Migrant Workers



The condition of migrant workers in Hong Kong can be said to be better than migrant workers at another places (ILO-Indonesia & OXFAM-HK, 2007). This is because Hong Kong is one of the most clearly placed countries for Indonesian migrant workers in providing protection and guaranteeing the rights of migrant workers. Contracts between PPTKI, agents, employers and Indonesian migrant workers are generally clear, transparent and accountable.

The current conditions of Indonesian migrant workers abroad, with various problems, make Law No. 18 of 2017 concerning Labor mandate that the placement of workers abroad is regulated by separate laws and by considering the existing

conditions and enthusiasm to place Indonesian migrant workers in the right position according to their talents, interests and abilities while protecting the rights of Indonesian migrant workers. This law has the principle of protecting Indonesian migrant workers as equal rights, fairness, gender equality and without discrimination (McColgan, 2015).

The Ministry of Manpower, Immigration, and Hong Kong Police also provide services and information in various languages of migrant workers, including Indonesia. There is also a guidebook on various matters relating to employment in Hong Kong (Konsulat Jenderal RI, 2018). It easier for Indonesian migrant workers to be able to get to know more about how the employment in Hong Kong-China.

### **Regulation for Migrant Workers in Indonesia and Hong Kong**

Hong Kong is one of the most clearly placed countries for Indonesian migrant workers in providing protection and guaranteeing the rights of Indonesian migrant workers. The work contracts carried out are generally clear and accountable. Even Hong Kong is the only country where Indonesian migrant workers are placed to admit that domestic work is a job so foreign workers in the domestic workers sector receive the same legal protection as local workers. The basic law that applies in Hong Kong is a constitution imposed by the congress in lieu of the PRC Constitution. Although the constitution is different, Hong Kong is still a special administrative region of the PRC. As a derivative, there are laws that regulate employment or Employment Ordinance in Hong Kong. From this regulation, it is the basis of the agreement on migrant workers' employment contracts with their employers. The handling of many cases that occur for Indonesian migrant workers in conflict with the law often does not provide justice to the Indonesian migrant workers and their families. Access to Indonesian migrant workers in conflict with the law to justice (justice) is hampered. Likewise, the case with Indonesian representatives abroad is not free to intervene in cases faced by migrant workers because of problems with the legal jurisdiction of the country concerned. Indonesian legal jurisdiction does not apply in other countries except in Indonesian accreditation areas such as the Indonesian Embassy, Indonesian Consulate, Indonesian representatives, Indonesian-flagged aircraft / ships, and so on.

In addition, not all destination countries or placements have a legal system that

is friendly to foreigners, and easily known and accessed by foreigners. For example, Saudi Arabia, Saudi Arabia's legal system is almost unknown to Indonesian migrant workers as well as the right to privacy of the domestic workers which is very strong in Saudi Arabia so that the term applies "state law can work behind closed doors." In fact, when referring to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which has been ratified by law Number 6 of 2012, a number of things have been mentioned which mention and regulate the protection of Indonesian migrant workers conflict with the law in the destination country, as follows Article 18 "Migrant workers and members of their families must have equal rights with citizens of the country concerned before courts and tribunals. In determining allegations of crimes against them or determining the rights and obligations of those who are legally sued, they must have the right to undergo fair hearings by competent, independent, and impartial law tribunals. The protection provided to migrant workers or Indonesian migrant workers includes providing guidebooks in various languages. The guidebook serves to find out what are the rights and obligations of Indonesian employers and migrant workers, including when in conflict with the law. In addition, the local ministry of labor, immigration, and the Hong Kong police also provide various services and information needed by foreign workers in Hong Kong.

According to Article 81 of the Hong Kong Basic Law, courts in the Hong Kong region include the Court of Final Appeal, District Court, Magistrates Court, and other special courts. In criminal law in Hong Kong, the litigation process in court uses a jury system. The most serious criminal acts, such as murder, rapist, armed robbery, drug trafficking, all are brought to the first level court using a jury system. This jury numbered seven to nine people who will decide whether the defendant is guilty or not (<http://www.doj.gov.hk/eng/legal/>, 2014).

In the applicable law in Hong Kong, a number of principles of rights before universal law are in accordance with Article 14 of the International Covenant on Civil Rights and Political Rights, which has been implemented in the Hong Kong Bill of Rights Ordinance and has been incorporated into Ordination of Procedural Laws. This makes the defendant have a guarantee that there is no discrimination before the law. Regarding access to justice itself, the justice system built by Hong Kong makes it easier for defendants to access justice. Law enforcement in Hong Kong is quite cooperative and supportive in treating migrant workers who are in conflict with the

law. Translator and advocate services are also provided under certain conditions.

The policy of the Indonesian government to migrant workers is now widely spent. The policy aims to protect Indonesian migrant workers both domestically and abroad. Indonesia has produced a comprehensive regulation of the level of the Act, a regulation, ministerial regulation, ministerial decree, until circulars minister concerned with the protection of Indonesian workers.

The emergence of various kinds of government policies in the form of ministerial regulations and per presidential rules since the new order period, finally, during the administration of President Megawati, Indonesia had a law specifically discussing migrant workers which was regulated in Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad. This Law was passed on 18 October 2004 which contained 109 Articles and consisted of 16 chapters in general illustrating that protection for workers has entered a new phase in legal protection in Indonesia. In law, in the first law, generally discuss the migrant workers which contains definitions of migrant workers, the terms of migrant workers, the placement of which is based on interest and skill, the service user Indonesian migrant workers, the agreements are written among workers migrant and his business partner, the placement agreement in writing between the prospective Indonesian migrants Workers and PPTKIS, the definition of employment agreements, foreign workers cards (KTKLN), Visa, permits the implementation of placement and deployment license granted to the private sector. This law also discusses more deeply the rights and obligations of migrant workers, the implementation of the placement, the placement procedure, protection, dispute resolution, coaching, supervision, administrative sanctions, until the provisions of the criminal investigation. So that with the existence of the first law that addresses the protection of migrant workers, it will provide better treatment in the labor sector abroad in particular and employment in Indonesian in general.

But over time, the complexity of the problems faced by Indonesian workers abroad today, and there are many weaknesses in the previous law, prompted the Indonesian government to make a new innovation by passing Law No. 18 of 2017 concerning the Protection of Migrant Workers Indonesia on October 25/2017. This law is a revision of Law No. 39 of 2004 concerning Placement and protection of Indonesia migrant workers. According to the Secretary General of the Ministry of Manpower (Kemnaker) Henry Sudarmanto, said the old law talked more about the

placement of Indonesia migrant workers. but minimally regulated the protection of Indonesian migrant workers abroad. The initiative to revise this Law is a form of commitment to protect Indonesian migrant workers both inside and outside the country.

**Table 2: The Process of Revising the Migrant Workers Act**

2004	November 2004	Law no. 39/2004 concerning the placement and protection of Indonesian migrant workers abroad
2010	November 2010	Revision of Law No. 39/2004 becomes the agenda of the House of representative -RI National Legislation Programme (Prolegnas)
2012	April 12, 2012	Ratification of Law No.6/2012 concerning the Ratification of the International Convention for the Protection of the Rights of Migrant Workers and Members of Their Families
	May 23, 2012	Harmonization, rounding and fixing the concept of the PPILN Bill
	July 5, 2012	House of representative plenary session ratifies RUU Revised PPILN Law (Protection of Indonesian Workers Abroad) becomes House of representative initiative bill
	August 2, 2012	The President issues a presidential mandate to appoint 6 ministries in the discussion of the PPILN Bill
	September 11, 2012	The House of Representatives established a Special Committee for the PPILN Bill

	February 6, 2013	The government (executive) submits a list of investment issues to the Special Committee for the PPILN Bill
2013	February 26, 2013	Meeting on the establishment of a working committee (standing committee) on the PPILN Bill between the special committee and the government
2014	October 2014	The process of revising Law No. 39/2004 by the House of representative for the 2009-2014 period ended in the level I discussion
	January 9, 2015	The House of representative plenary meeting stipulates the revision of Law No. 39/2004 as one of the priority programs in 2015
	March 2015	The House of Representatives Commission IX of the Republic of Indonesia handed over the making of academic manuscripts and bills to the PUU bureau of the general DPR-RI
2015	August 26, 2015	Commission IX of the House of Representatives of the Republic of Indonesia asks the House of representative legislative body to conduct harmonization, rounding up and strengthening the conception of the PPILN Bill
	October 13, 2015	The PPILN bill was established as the right of initiative of the DPR through the House of representative plenary session
	December 10, 2015	The President issued a presidential mandate that appointed 6 ministries to provide responses regarding the PPILN Bill

2016	January 26, 2016	The PPILN bill entered the National Legislation Program
	February 3, 2016	The House of Representatives Commission IX together with the government formed Standing Committee House of representative PPILN Bill
	July 26, 2016	Standing Committee House of representative changed the title of the RUILN Bill to a bill on the protection of Indonesian migrant workers (PPMI) with 380 DIM and Article 82
	December 2016	The discussion of the 2016 PPMI Bill was stopped until the first level discussion
2017	July 24, 2017	The discussion of the PPMI Bill at the panja level was completed
	October 3, 2017	Discussion of the drafting team / synchronization team of the PPMI Bill
	October 12, 2017	The PPMI bill was approved to be passed as a law
	October 25, 2017	The PPMI bill was approved to be passed as a law
	November 22, 2017	The law on the protection of Indonesian migrant workers is enacted into law No. 18 of 2017

Indonesia is one of the countries that has signed the International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families since September 2004, and began to ratified it in May 2012. Indonesia has adopted this convention in Indonesian law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. This Convention applies to all migrant workers and members of their families without any differentiation such as gender, race, color, language, religion or belief, political opinion, etc, nationality, ethnic or social origin, nationality, age, position, economy, wealth, marital status, birth status and others. The ratification of this law is considered as a form of commitment by the Indonesian government which is quite serious in protecting its citizens who are working abroad. Unlike Hong Kong-China, until now the Hong Kong has not yet

ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, while the list of international conventions has been ratified by China.

**Table 3: Status of Ratification**

Human Right Instrument (Date (into force	Ratification Status	Declaration
International Convention on the Elimination of All Forms of Racial Discrimination: 1969	Signature: NA Ratification / Accession: 1981	✓
International Covenant on Civil and Political Rights: 1976	Signature: 1998 Ratification / Accession: NA	
Optional Protocol to the International Covenant on Civil and Political Rights: 1976	Signature: NA Ratification / Accession: NA	
Second Optional Protocol to the International Covenant on Civil and Political Rights, 1991	Signature: NA Ratification / Accession: NA	
International Covenant on Economic, Social and Cultural Rights: 1976	Signature: 1997 Ratification / Accession: 2001	✓
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: 2013	Signature: NA Ratification / Accession: NA	
Convention on the Elimination of All Forms of Discrimination against Women: 1981	Signature: 1980 Ratification / Accession: 1980	✓
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women: 2000	Signature: NA Ratification / Accession: NA	
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: 1987	Signature: 1986 Ratification / Accession: 1988	✓

Optional protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: 2006	Signature: NA Ratification / Accession: NA	
Convention on the Rights of the Child: 1990	Signature: 1990 Ratification / Accession: 1992	✓
Opposition to conflict in 2002: Optional conflict	Signature: 2001 Ratification / Accession: 2008	✓
Optional protocol to the convention on child rights, child prostitution and child pornography: 2002	Signature: 2000 Ratification / Accession: 2002	
Optional Protocol to the Convention on the Rights of the Child on a communications procedure: 2014	Signature: NA Ratification / Accession: NA	
International Convention on the Protection of Migrant Workers and Members of Their Families: 2003	Signature: NA Ratification / Accession: NA	
International Convention for the Protection of All Persons from Enforced Disappearance: 2010	Signature: NA Ratification / Accession: NA	
Convention on the Rights of Persons with Disabilities: 2008	Signature: 2007 Ratification / Accession: 2008	
Optional Protocol to the Convention on the Rights of Persons with Disabilities: 2008	Signature: NA Ratification / Accession: NA	

The data was obtained from the official website of OHCHR, from the data structurally Hong Kong has not ratified the International Convention on the Protection of Migrant Workers and Members of Their Families. But that does not mean that Hong Kong can do what they want. As a member of the ILO and the United Nations, the Hong Kong must respect the basic principles of human rights that humans carry from birth including the right to work wherever they work, regardless of gender.

## The Problem Indonesian Migrant Workers in Hong Kong

At present there are many policies issued by the Indonesian government to migrant

workers. The policy aims to protect Indonesian migrant workers both domestically and abroad. As far as 2016 to 2018 the number of complaints from Indonesian migrant workers based on their country of placement is 6,826 complaints which are divided into several countries as follows:<sup>1</sup>

**Table 4: Complaints Based on Placement Countries 2016, 2017 and 2018 periods (up to November)**

NO	Country of destination	2016		2017		Number of Problems 2018											
		Jan-Nov	Jan-Nov	Jan	Feb	Mar	April	May	Jun	Jul	Aug	Sep	Oct	Nov	Total		
1	Malaysia	1.414	1.625	375	276	378	187	76	70	196	156	291	542	330	2.877		
2	Saudi Arabia	1.084	856	62	38	40	35	14	12	14	38	53	44	36	385		
3	Taiwan	424	611	37	28	37	34	11	6	19	13	21	26	15	247		
4	UAE	291	194	9	10	13	12	8	3	7	2	28	20	7	119		
5	Singapore	193	168	12	18	13	8	4	2	4	4	13	8	4	90		
6	Hong Kong	189	102	11	8	14	10	5	1	3	9	8	7	19	95		
7	Numbers	3595	3556								3814						
	TOTAL										10965						

From the BNP2TKI data, it can be said that the level of complaints of Indonesian migrant workers working abroad at the end of 2018 has increased overall. In this case the author only took a number of samples of the country which became the favorite destination of Indonesian citizens to work. Throughout 2017 complaints decreased (-39 difference), but in 2018 complaints received by BPN2TKI experienced an increase as described above. This shows that the issue regarding the protection provided by the government still has not reached its intended goal. New regulations relating to the protection of migrant workers reflected in Law number 18 of 2017 are still not effective. However, if we examine more deeply, Hong Kong has improved towards a better direction, from the total amount presented by

1 Source from data BNT2TKI Development and Information Research Center for 2016, 1717 and 2018 (up to November)

BNP2TKI from 2016 to 2018 which has decreased complaints regarding problems faced by Indonesian migrant workers in Hong Kong-China. This illustrates that the regulation of guaranteeing protection for Indonesian migrant workers in Hong Kong and several other countries continues to progress. The data on complaints from Indonesian migrant workers based on the types of problems affecting Indonesian migrant workers in the periods of 2016, 2017 and 2018 (up to November) will be described below:

**Table 5: Number of Complaints on Indonesian Migrant Workers Based on Problems 2016, 2017 and 2018 periods (up to November)<sup>2</sup>**

No	Problems	2016		2017		Number of Problems in 2018											
		Jan	Nov	Jan	Nov	Jan	Feb	Mar	April	May	Jun	Jul	Aug	Sep	Oct	Nov	Total
1	Unpaid Wages	441	411	37	28	29	20	7	8	10	8	17	25	13	202		
2	Violence by The Employer	75	65	6	3	8	3	2	1	0	0	0	6	2	31		
3	Human Trafficking	54	71	1	0	2	0	0	0	2	14	3	4	3	29		
4	Workers in Detain of Authority	53	56	4	3	3	1	30	0	13	0	0	2	2	58		
5	Loss of Contact	233	160	11	13	18	4	7	3	3	7	11	18	3	98		
6	Escape from Employers	42	57	2	13	0	0	1	1	0	0	0	0	0	18		
7	Not Allowed to return home despite the expire of the contract	114	42	3	7	2	1	2	2	4	1	1	2	0	25		
8	Unlawful reduction of wages	107	139	9	8	6	21	2	0	4	2	7	3	3	65		
9	Jobs are not compliant to the regulations	170	131	7	6	6	5	1	1	1	5	16	2	6	56		
8	Others																
9	Numbers	1289	1132								578						
<b>TOTAL</b>																	

This amount is data recorded by BNP2TKI based on incoming reports so that the numbers could be greater than the data with problems that had not been reported to the government. Whereas the number of Indonesian migrant workers with problems in their own country is not recorded in detail by the Ministry of Foreign Affairs or BNP2TKI because all domestic violations are resolved by the Police of the Republic of Indonesia and treated as civil and criminal violations in cases others.

## Factors that Cause Weak Legal Protection of Indonesian Migrant Workers

In this analysis, the author tries to further elaborate the problem that causes why the protection of Indonesian migrant workers abroad is still weak. In short, according

<sup>2</sup> Source from BNT2TKI Development and Information Research Center for 2016, 1717 and 2018 (up to November)

to the author why the protection of Indonesian migrant workers abroad is said to be weak first, the author continues previous studies that the protection of Indonesian migrant workers abroad is still weak. The second is that there are still many cases experienced by Indonesian migrant workers abroad. Conversely, if the number of cases is low or none at all, it can be concluded that the protection of migrant workers abroad is good. With this analogy and the reality of the data already present in the previous chapters, it clearly shows that the protection of our Indonesian migrant workers is still weak. The case intended in this case is violations committed either intentionally or systemically by any party to Indonesian migrant workers. The violation certainly includes all activities that start from the beginning of departure to full placement which include persecution, unpaid salaries, documented and other problems that have been described previously in this study. Next is said to be weak because of the high number of violation cases, the protection of migrant workers in Indonesia is said to be weak because it has Law 18/2017 which is considered to be still less effective in overcoming the problems faced by Indonesian migrant workers abroad, especially the problems that position Indonesian migrant workers face the law.

The weak protection of migrant workers is not only due to the weakness of the Indonesian Migrant Workers Protection Act but other supporting factors such as policies involving other stakeholders who function as actors in implementing this protection. Other factors, such as the performance of related actors, certainly greatly influence this protection. So with the weak protection, the authors argue that first, the implementation of Law No. 18 of 2017 needs to be reviewed, secondly, coordination between related stakeholders and thirdly, the Indonesian government's policies that are still reactive.

The period of placement intended here is the period of employment of Indonesian migrant workers while they are working abroad both in the formal sector and in the informal sector. Indeed, in terms of treatment both these formal and informal sectors have the same position before the law. However, their implementations there are very significant differences from these two sectors. This difference can be seen from the time of work and gender. In the formal sector workers are more dominated by male migrant workers who work on road, bridge, building and other infrastructure projects. Whereas in the informal sector is more dominated by female migrant workers who work as domestic workers, babysitter and parent-sitter. In this

paper the author is more inclined towards Indonesian migrant workers who work in the informal sector, because considering the large number of Indonesian migrant workers who work in the informal sector in Hong Kong-China.

There are so many problems faced by migrant workers during the placement period when compared to the pre-placement and post-placement periods. It is caused by the placement factor and the protection factor itself which is sometimes less than government supervision. There are a number of problems that are a problem abroad, but in this chapter the author will explain some of the problems that are very often faced by domestic workers abroad. Such inhumane treatment is like being a customer in every sending of Indonesian workers abroad every year.

Since 2016 there has been a decrease in complaints about cases of persecution, which is very significant in 2018. This decrease is certainly very dominated by the government's role in protecting migrant workers. Persecution by the employer is a criminal offense and must be reported so that the victim obtains justice. Minister of Finance Regulation Number: PER.14 / MEN / X / 2010 has provided a budget for funds and legal protection assistance for Indonesian Workers who work abroad. In accordance with article 24 which explains that to support the implementation of the duties of Citizenship Services including in handling Indonesian migrant workers abroad who are in real danger, war, neglected, accident, serious illness, loss of contact, victims of crime, victims of human trafficking, death, and need legal assistance, The Ministry of Foreign Affairs provides a budget for protection and countermeasures of Indonesian Citizens who have problems abroad (Article 24 Regulation of the Indonesian Minister of Manpower and Transmigration Number: PER.14 / MEN / X / 2010).

Persecution generally occurs in Indonesian migrant workers who are domestic servants. Indeed not all Indonesian migrant workers treated unfairly by its users. But there are many inhumane treatments that often occur. Such as torture, flogging of inadequate living facilities, ironing and all other inhumane acts.

Inhumane actions in general starting from the dissatisfaction of service users or in this case is the employer of the performance of migrant workers who are considered less professional. With the lack of professionalism possessed by migrant workers this results in the disappointment of the employer so

that he feels very disadvantaged. With the disadvantage of service users who have made payments but do not get good service, the resentment is often expressed verbally and physically to migrant workers who work for them. So it can be concluded that normally the violence committed by service users actually comes from the disappointment the feel towards the performance of Indonesian migrant workers.

As previously explained, sometimes the persecution is carried out by employers to migrant workers because of the lack of professionalism of Indonesian labor migrants at work. This phenomenon is very common considering that migrant workers sent are dominated by those with low education. So that the persecution could occur because of the internal problems of Indonesian migrant workers themselves. Internal problem means the ability possessed by migrant workers themselves. These problems generally these problems generally lies in language skills, understanding of the legal system, education and also the discipline of the migrant workers themselves. But of all these problems in general comes from one source of problems, namely education. Education is a factor that greatly determines the quality of a human resource. High and low levels of education will affect each individual in taking an action.

Generally, every individual who has received an education has a better ability and perspective compared to others who have never received an education. Education is basically classified according to formal and informal, but generally informal education is only seen in the abstract so it is very difficult to see the limits and levels of informal education. Whereas in formal education it can be easier to understand the limits of thought and actions and the capacity of each individual. Formal education is easier to understand because education has certain standards set by the state. So if this problem is returned, then the actual persecution does not only come from the employer's factor but also comes from the quality of the Indonesian migrant workers themselves.

Sexual harassment is an act that is forcibly carried out by an employer to female migrant workers who work abroad. Sexual harassment is dominated by Indonesian migrant workers who work in the informal sector as domestic servant and individual users. Policies that have been issued by the government, the defense of the fulfillment of the rights of Indonesian migrant workers is

carried out in the event that candidate of Indonesian migrant workers die, sick, and disable, accidents, fail to leave not because of the mistakes of the candidate of Indonesian migrant workers, physical violence and rape or sexual abuse, as reflected in "Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number: PER.14 / MEN / X / 2010 concerning the Placement and Protection of Indonesian Workers Abroad, Rape and Discrimination by employers is not in accordance with humanitarian norms so that it complies with Article 24 which explains that to support the implementation of Citizenship Services tasks, including the handling of Indonesian migrant workers abroad who are in real danger, war, neglected, accident, serious illness, loss of contact, victims of crime, victims of human trafficking, death and need of legal assistance, the Ministry of Foreign Affairs The country provides a budget for the protection and control of Indonesian citizens who have problems abroad (Article 24 Regulation of the Indonesian Minister of Manpower and Manpower and Transmigration Number: PER.14 / MEN / X / 2010).

The next policy can be seen in "Decree of the Minister of Manpower of the Republic of Indonesia No.260/2015 concerning Termination and Prohibition of the Placement of Indonesian Workers in individual Users in Middle Eastern Countries". As has been describe previously in above that the decision of minister aims to stop Placement of Indonesian Workers In Users Individuals in 19 countries - Middle Eastern countries among which are: Algeria, Saudi Arabia, Bahrain, Iraq, Kuwait, Lebanon, Libya, Morocco, Mauritania, Egypt, Oman, Palestine, Qatar, South Sudan, Syria, Tunisia, UAE, Yemen, and Jordan. Given these countries still adhere to the kafalah culture and have the highest rates of violence and sexual crimes.

Responding to the problem of sexual harassment has become a problem for countries that use the kafalah system like in the Middle East region. The Middle East region includes Algeria, Saudi Arabia, Bahrain, Iraq, Kuwait, Lebanon, Libya, Morocco, Mauritania, Egypt, Oman, Palestine, Qatar, South Sudan, Syria, Tunisia, UAE, Yemen, and Jordan are countries some people still adhere to kafalah culture. This kafalah culture that is very attached to its people still thinks that workers are slaves whose activities are regulated by employers, including having sex with their employers. This problem certainly gives very serious attention to both the Indonesian government as a sending country and the government of destination countries in 21

Middle Eastern countries in overcoming the problem of sexual harassment.

So far in the applicable law is generally the relationship between migrant workers and employers is a professional relationship between employees and service users as an employer. But in fact happened in the Middle East in particular and in other countries in general, the relations are not as professional as it is written in the agreement such as the relationship between employers and workers but as slaves and slave owners. The values of slavery are indeed very different from professional values between workers and service users in a professional manner. Workers are considered as slaves who have been bought and can be treated in accordance with the wishes of service users. So that with the status of slaves in some countries sometimes violations of human rights are not noticed anymore. The thing that is still very regrettable so far is the lack of a strong legal position by our migrant workers if they fight resistance against employers who treat them with less humane treatment. In the absence of sufficient self-defense by our migrant workers abroad, criminalization is sometimes very vulnerable and easy for service users to do for their workers.

Criminalized means that Indonesian migrant workers who work abroad receive ill-treatment both physically and legally. The purpose of the mistreatment is that Indonesian migrant workers are made objects as those who must be responsible for the problems faced by employers. Accusations that are not true and also false reports are carried out by the employer to the security forces in the country. With a weak legal position by Indonesian migrant workers of course this has a very negative impact on the survival of Indonesian migrant workers abroad. The legal position that is not strong can also be seen from the employer's full rights to kept document of migrant workers such as passports and other permits. Definition of Indonesian migrant workers which is criminalized is very broad. Until now the government is only able to carry out safeguards that are problem solving and have not carried out preventive protections.

## Conclusion

Based on the result of the exploration, collection, discussion and analysis of research data, then according to the main problem in this study it can be concluded that the condition of Indonesian migrant workers in Hong Kong is better than that in the other countries. the effectiveness and successfulness of the well-established legal system of Hong Kong's government, as one of the most intended countries by

Indonesian migrant workers, in providing protection and guaranteeing the rights of migrant workers.. As one of the placement country for Indonesian migrant workers, Hong Kong acknowledges domestic work as legal-protected job, so foreign workers in the household sector receive the same legal protection as local workers. Unlike Indonesian government, so far Indonesia still has no specific regulations to protect Indonesian workers or foreign workers in the household sector so that there are no people working in the household sector to get legal protection from their government. The legal protection system for workers in Hong Kong is well established and enforced. It means that the rights of domestic workers are excellently appreciated and guaranteed by law as the those of the other formal workers. This model of legal protection system of migrant workers is recommended to be adopted by the other countries especially Indonesia where the government is thriving to improve human rights issues positively.

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