

Criminological Phenomenon of Illegal Placement of Indonesian Migrant Workers in Sanggau Regency

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Abstract: This article seeks to analyze the phenomenon of crimes against Indonesian Workers and Migrants as one of the contributions to the State in protecting its citizens. Looking at real-life conditions, it is known that crimes against workers and migrants have occurred in Indonesia, including the Sanggau Regency. The occurrence of this crime is inseparable from the use by perpetrators to benefit from the ignorance of victims, which is contrary to their dignity and human rights. The condition of victims who are pressed for economic needs also contributes to a reciprocal relationship between perpetrators and victims to be involved in Indonesian Illegal Migrant Workers and results in criminal acts of protection of labor and migrant workers. This study aims to determine the factors of the occurrence of illegal placement of Indonesian migrant workers based on criminological analysis. The method used is field research, explanatory with qualitative data collection using interviews, observations, and legal opinions that are processed descriptively with qualitative analysis. The results show the occurrence of illegal placement of Indonesian migrant workers due to weaknesses in juridical aspects that tend to be convoluted and require costs and the pragmatic thinking of the victims.

Keywords : Criminologist; Illegal Placement of Workers; Migrant

1. Introduction

Employment and unemployment are one of many problems in Indonesia that until now have not been resolved and even tend to give birth to complex derivative problems because they are cross-country. This problem is increasing daily, requiring the State to immediately find a solution to overcome it as a form of implementing the mandate of the Constitution of the Republic of Indonesia 1945. One of the efforts made by the Government to reduce unemployment in Indonesia is to create a program to send migrant workers abroad.¹ According to PMI placement and protection data, until 2019, the number of PMI was 21,358 people. Meanwhile, data released by the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI) shows that the largest placement of Indonesian Migrant Workers in the Southeast Asian region includes Malaysia, Singapore, Brunei Darussalam, and Thailand, which are placed in various sectors such as plantations, Domestic Assistants, shipping and so on.²

Being a migrant worker abroad is one option that can benefit both parties, both from the Government because it will reduce unemployment and from the worker side because the

¹ Hukum et al., "Jurist-Diction."

² Syamsiah et al., "Permasalahan Pekerja Migran Indonesia Pada Kawasan Perbatasan Indonesia-Malaysia Di Kabupaten Sambas Kalimantan Barat."

quality of life offered abroad is higher.³ So, for now, Working as a migrant worker abroad is one form of work that is quite a in demand and encourages many Indonesian citizens to migrate abroad as Indonesian Workers (TKI).⁴ This, on the one hand, is Indeed very beneficial because it is seen to reduce the unemployment rate in Indonesia and will increase the country's foreign exchange, but on the other hand, the program also contributes to causing new problems in the field of Indonesian employment, especially in terms of illegal implementation, placement and protection of migrant workers abroad⁵

One example can be seen in the case that occurred around 2015 experienced by Mariance, a migrant worker from East Nusa Tenggara who was persecuted by her employer in Malaysia where she worked. In another case, a migrant worker from West Nusa Tenggara Sumiyati was brutally abused by her employer in Saudi Arabia in 2010. Who was then burned alive and her body left on the floor of the house.⁶ Then, especially in the West Kalimantan region, the problem of migrant workers is the placement of illegal migrant workers which tends to increase from 2016 to 2019. These cases show that although normatively, the State of Indonesia has Law Number 18 of 2017 to protect migrant workers, it is not enough to provide protection to Indonesian migrant workers abroad.

Problems related to the criminal act of protecting Indonesian migrant workers have attracted quite a lot of attention from researchers to conduct research as a form of contribution to the State in overcoming the problems of migrant workers. One was carried out by Fatimah Lay Fadillah Ely, who focused on research about the regulation of migrant workers and State responsibilities submitted to TATOHI Journal of Legal Sciences Vol 2, No 2 (2022): 122 – 129.⁷ The results of this study show that basically, the protection of migrant workers is a joint responsibility internationally because there are several regulations governing the protection of migrant workers, including conventions Maritime Labour Convention in 2016, ILO Convention number 188 on *Work in Fishing Convention* and so on and on the other hand the results of the study show that in principle that is based on the principle of Passive Nationality, the State has jurisdiction to provide protection to its citizens who are victims of crimes committed by foreigners abroad.

The next research was conducted by Luthvi Febryka Nola, who focused on integrated legal protection efforts for Indonesian workers and submitted it to the journal NEGARA HUKUM: Vol. 7, No. 1, June 2016.⁸ The results of this study show that there are still various kinds of formulation deficiencies in terms of regulations that have an impact on the unclear form of protection that makes it difficult for law enforcement officials to overcome problems related to the protection of Indonesian migrant workers or TKI, and on the other hand, the results of this study show that there are still various formulations that do not have clarity of meaning (multi-interpretation) so that it also complicates the implementation protection of Indonesian migrant workers or migrant workers.

³ Rosalina and Setyawanta, "Perlindungan Hukum Terhadap Pekerja Migran Sektor Informal Dalam Perspektif Teori Bekerjanya Hukum Di Masyarakat."

⁴ Ratihtari and Parsa, "Perlindungan Hukum Terhadap Pekerja Migran Indonesia Di Luar Negeri."

⁵ Puanandini, " PENEGAKAN HUKUM TINDAK PIDANA PERDAGANGAN ORANG PEKERJA MIGRAN INDONESIA."

⁶ Ratihtari and Parsa, " Perlindungan Hukum Terhadap Pekerja Migran Indonesia Di Luar Negeri."

⁷ Lay et al., "Pengaturan Tentang Pekerja Migran Dan Tanggung Jawab Negara."

⁸ Nola, " Upaya Pelindungan Hukum Secara Terpadu Bagi Tenaga Kerja Indonesia (Tki)."

The last research is research conducted by Moh. Nizar focused on strengthening the role of the Government through legal protection for Indonesian migrant workers, which was submitted to the Journal of Sociology, Vol. 20, No. 2: 95-111 95.⁹ The results showed an increase in the strength of related institutions to protect Indonesian migrant workers after the amendment to Law Number 39 of 2004 with Law Number 18 of 2017.

The three studies above are samples to show that problems related to the protection of Indonesian migrant workers are currently quite attractive for researchers to conduct research. However, from existing research, it is known that most researchers are still focused on problems in regulatory aspects, both national and international regulations, and there has been no research focused on how the aspects behind legal phenomena occur in the problem of illegal placement of migrant workers.

Therefore, this study is here to fill the gap to complement existing research by questioning how factor causes the emergence of illegal placement of Indonesian migrant workers, especially in the Sanggau district, from a criminological perspective. So it is hoped that the presence of this research will also contribute to the next research to determine Efforts that can be made to prevent the occurrence of migrant worker problems from becoming more comprehensive, which include preventive, preemptive, and repressive efforts.

2. Method

Field research is used in this research that serves to see the law in a real sense and examine the legal work system in the community. This research is explanatory because the orientation of this research is to test a theory with the results of research in the field. Therefore, for the test to run well, the data used in this study are primary data obtained from interviews, observations, and the distribution of questionnaires to agencies and people involved or directly related to this problem. On the other hand, this study also uses secondary data from laws and regulations and literature related to the research focus, including phenomenological studies. The use of secondary data in this study serves as a measure and / or touchstone of data found in the field. The test is carried out using a descriptive approach combined with qualitative analysis, which is expected to produce an objective conclusion on the research situation.

3. Results and Discussion

3.1 Influential Factors in the Occurrence of Migrant Worker Crime in Indonesia, Especially Sanggau Regency

As biological beings, humans have natural needs that are carried from birth and must be met to maintain their lives. These types of needs certainly have levels or hierarchies so humans can determine the needs that must first be prioritized. In his theory of motivation, Maslow explains that there are five levels of basic human needs: physiological, safety, belongingness and love, esteem, and self-actualization.¹⁰ Thus, this positions physical needs as the primary human needs that must be met, including food.

Food needs are one of the most crucial needs that must be met, but the problem lies in that for these needs to be owned, first must have money as legal tender obtained by justified means, one of which is wages for work. But on the other hand, the next problem is the

⁹ Moshinsky, "No Title بليب.""

¹⁰ Muazaroh and Subaidi, " Dalam Pemikiran Abraham Maslow."

limited employment in Indonesia which requires humans to work extra abroad so that their physical needs can still be met.¹¹

The condition of limited employment is one of the factors that encourage someone to migrate to other regions. On the other hand, economic factors also have an influence on the occurrence of a person's migration process.¹² The difference in wages is also one of the external factors that contribute to the migration process of someone as a migrant worker.¹³ So someone from an area with a low regional income will undoubtedly try to find a job in an area with a higher income. If a comparison is made related to the performance of competitiveness in the aspect of total trade between Indonesia, Malaysia, and Singapore, it is known that Indonesia ranked 4th in total trade in Southeast Asia in 2013 with a percentage of 14.70%. Singapore is in first position (31.19%), followed by Thailand (19.04%) and Malaysia (17.29%).¹⁴ On the other hand, if a comparison is made between Indonesia and Malaysia, it is known that Malaysia is one of the countries that quickly escaped from the economic crisis in 1997. Even today, as a *newly industrialized country*, Malaysia is experiencing an increase in development which automatically opens up many job opportunities in contrast to Indonesia, which currently can still be said to have not recovered from the crisis, which has an impact on unstable economic conditions when viewed from a macroeconomic perspective which results in low job opportunities.¹⁵

Malaysia is one of Indonesia's neighboring countries that have very close relations. This closeness occurs because of various things, both geographically located on the island of Borneo, which in this case is Indonesia, and culturally the same as Indonesia as a Malay cognate. Thus tending to position Malaysia as one of the destinations for Indonesian migrant workers, especially the people of Sanggau Regency. But on the other hand, these favorable conditions also open loopholes for irresponsible parties to commit criminal acts against migrant workers.

Sanggau Regency is one of the areas located in West Kalimantan province, which is directly adjacent to the State of Malaysia through PLBN Entikong. This certainly provides various kinds of impacts, both positive and negative, which raises the potential for criminal acts, one of which is the criminal act of migrant workers. Based on data obtained from the Entikong Police Station, it is known that there are several cases that occurred from 2016 to 2021, which are listed in the table below:

No	Year	Number of Cases
1	2016	2
2	2017	5
3	2018	4

¹¹ Hidayat, "Perlindungan Hak Tenaga Kerja Indonesia Di Taiwan Dan Malaysia Dalam Perspektif Hak Asasi Manusia."

¹² Easterlin, *Internal Migration in Developing Countries : A Survey*.

¹³ Hidayati, "The Process of Migration and Communication Technology Roles among Labor Migrants in Batam - Indonesia."

¹⁴ Farhan, "Perbandingan Daya Saing Indonesia Diantara Negara-Negara ASEAN."

¹⁵ Suradjji, "Penanganan Pekerja Migran Di Malaysia."

4	2019	7
5	2020	2
6	2021	0

From 2016 to 2019, there has been an increase in KASUS. Data obtained in 2019 stated that PMII cases were believed to occur in that year. However, in 2020 there was a drastic decline. This could be because, at that time, neighboring countries, Malaysia, had imposed a massive *lockdown* during the Covid-19 Pandemic, so there were not many repatriations of workers from Indonesia, so at that time, it was not possible for workers to enter.

These cases are divided into several forms, one of which is the placement of migrant workers by individuals. This is expressly regulated in the provisions of Article 69 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers with the formulation, "*Individuals are prohibited from carrying out the placement of Indonesian Migrant Workers.*" Thus, if this happens, it will be referred to as the placement of illegal migrant workers. Indeed, legally there is no clear definition related to the term illegal. In The *Contemporary English Indonesian Dictionary*, illegal means something that is not legal, prohibited, or contrary to the law. On the other hand, *Black's Law Dictionary* gives the meaning of illegal as "*forbidden by law, unlawful,*" which has the same meaning as prohibited by law or invalid¹⁶

With the formulation of the ban, the law automatically closes the way for individuals to place migrant workers abroad so that the placement of migrant workers abroad is only allowed for agencies, companies placing Indonesian migrant workers, or companies that place Indonesian migrant workers for the benefit of their own companies as referred to in Article 49. Therefore, as a manifestation of positivism, this must be obeyed as a form of obedience to the orders of the ruler.¹⁷ And if violated, this will be seen as illegal or contrary to legal provisions.¹⁸

In its implementation, although there are regulations that expressly prohibit the placement of migrant workers abroad by individuals, this is often ignored and tends to be violated.

Based on the results of interviews conducted on the samples and based on the results of the distribution of questionnaires to the respondents, it can be concluded that the respondents and samples are mostly only educated graduates of Junior High School (SMP) and High School (SMA), on the other hand, based on the results of interviews and the distribution of questionnaires showed that the respondents and samples were not aware of any regulations related to procedures regulated in the provisions of Law Number 18 of 2017. This shows that respondents and samples still have a low level of legal knowledge, thus positioning victims as *suitable targets*. In this case, the respondents are considered suitable targets. Fardilah Ariati explained that in the context of choosing a crime target, in this case,

¹⁶ 2010, "No 主観的健康感を中心とした在宅高齢者における健康関連指標に関する共分散構造分析Title."

¹⁷ Wau, Hutajulu, and Dwiyatmi, "Implikasi Positivisme Hukum Terkait Pengaturan Teknologi Finansial Di Indonesia."

¹⁸ Mudzalifah and Priyana, " Implikasi Regulasi Tindak Pidana Illegal Logging Terhadap Kelestarian Lingkungan Hidup Ditinjau Dalam Perspektif Hukum Lingkungan."

there are four elements that affect risk as a target of crime which in this case is often abbreviated as VIVA, namely value, inertia, visibility, and access.¹⁹

The low level of education and public awareness of the law that has not been well developed are considered to meet the elements contained in VIVA, which then increases the risk of respondents as victims or perpetrators of the crime of Illegal Placement of Migrant Workers. In addition, some people still experience a crisis of trust in the law and law enforcement officials. The public's understanding of the law is still very low, causing the actions they commit without them being included in the category of criminal acts or someone who knows about the incident does not report it as a result of low public trust in law enforcement officials and lack of public understanding of the act which should be protected by law.²⁰

On the other hand, based on these results, observational efforts were made to verify the statements of respondents, who stated that most of them came from underprivileged groups and experienced economic squeeze problems. From the observations found in the field, it can be concluded that the information submitted by the respondents is valid information, because, based on the observations found, it is known that most of the respondents live in remote villages with makeshift house buildings and the respondents are listed as people who receive assistance government so that the respondent's information can be recognized as correct. This condition shows that the respondent is in a state without a grip due to the economic squeeze as a result of social changes that occur resulting in respondents being in a state of *confusion* and feeling alienated from the surrounding environment and automatically positions respondents in a state of *anomie*.²¹

In general, referring to the history related to the presence of the *theory of Anomie*, it is known that *Anomie* is one of the theories that was born, grew, and developed based on social conditions as a result of the emergence of the Industrial Revolution to the Great Depression in France and Europe in the 1930s resulting in the deregulation of social traditions, effects for individuals and social institutions/society.

Emile Durkheim, in his book *The Division of Labor in Society* uses the term *anomie* to describe the State of "deregulation" in society, which is interpreted as disobeying the rules found in society so that other people and this situation cause deviations and differences in behavior. Furthermore, according to him, the *anomie* theory consists of three perspectives which man is social animal. Humans tending to live in colonies, and his/her survival dependent upon moral connections.²² So in this case, the economic squeeze experienced by respondents encourages respondents to immediately find solutions to escape the economic squeeze, one of which is to try to work as migrant worker abroad.

On the other hand, respondents' understanding of legal provisions related to migrant workers is not the only reason for this crime. The results showed that there were respondents who knew the regulations pertaining to the procedures that must be passed to work as migrant workers, but these regulations tended to be ignored by respondents. This was due to various things, one of which was a long and convoluted procedure, and the most basic was the

¹⁹ Ariati, "Korupsi Dalam Perspektif Routine Activities Theory."

²⁰ Abdul Munir, "REALITAS PENYIMPANGAN SOSIAL DALAM KONTEKS CYBER SEXUAL HARRASMENT PADA JEJARING SOSIAL LIVE STREAMING BIGO LIVE" Abdul Munir, M.Krim & Riki Harianto, S.Sos."

²¹ Syahra, "Anomie Di Tengah Perubahan Sosial."

²² Ismail and Ahmad, "Perilaku Anomie Siswa Di Sma Negeri 9 Makassar."

financing that would be charged to prospective migrant workers. So this is quite burdensome for respondents who expressed the answer "I don't have the money to pay for it. Therefore I want to work to earn money".

Referring to the Regulation of the Minister of Manpower and Transmigration of the Republic of Indonesia Number Per.14 / Men / X / 2010, it is known that there are several financing that will be charged to prospective migrant workers, among others, regulated in the provisions of Article 10 and the provisions of Article 45. If an assessment is carried out, this is indeed one of the weaknesses that contribute to the occurrence of illegal placement of migrant workers, even if it refers to the provisions of the 1945 Constitution in P origin 27 paragraph (2) of the 1945 Constitution which states that every citizen has the right to work and a decent life. Therefore, the financing should not be charged to prospective migrant workers because it is the State's obligation to guarantee the rights of its citizens to get a decent job and livelihood.

The occurrence of respondents' reluctance to comply with regulations by postulating that existing regulations tend to be convoluted and difficult shows that respondents also have an influence on the occurrence of this crime, while the influence given by respondents is an understanding that is pragmatic or interpreted as practical.²³ Pragmatic thinking is one of the ideas of the school of philosophy pioneered by many philosophical figures, one of which is Charles Sanders Pierce, who in this case is the originator of pragmatism, then William James, who in this case is considered the Father of Pragmatism because he succeeded in formulating the school of Pragmatism and the last is John Dewey as the propagator of modern pragmatism.

When examining the term pragmatic, it is known that Pragmatism has its Greek root, *pragmatikos*, which in the Latin language becomes *pragmaticus*. Literally, the term *Pragmaticus* means being competent and experienced in legal affairs, state matters, and a commercial context. The word in English became the word *pragmatic*, which means related to practical things.²⁴ This is as formulated by William James by stating that in principle, pragmatism can be described as an attitude of turning away from everything, principles, categories, and initial inevitability, to then turn to everything, results, consequences, and new facts.²⁵

In this phenomenon, the pragmatic view of respondents can be seen from the actions of respondents to find brokers who are considered to make it easier for them to work as migrant workers abroad and are reluctant to use official roads provided by the State. This can happen because the respondents are of the view that using brokers will increase the possibility of going as migrant workers because the brokers do not dispute the legal documents to work as migrant workers. So, in this case, the orientation of the respondents is not on how the process but the respondents focus on the results of being successful or able to work as migrant workers abroad so that such views are views that are in accordance with the characteristics of pragmatism as conveyed by George R. Knight (1982) in Wasitohadi which states that pragmatism has three characteristics, namely *first* focusing on things within the range of human sensory experience, *second* what is considered right is what is useful or functioning and *the third* It is that man is responsible for the values in society.²⁶

²³ Meiyani, " Penerapan Aliran Filsafat Pragmatisme."

²⁴ Pangestutiani and Habibah, " Pragmatisme John Dewey dan Korelasinya Terhadap Ajaran Islam."

²⁵ Wasitohadi, "Pragmatisme, Humanisme Dan Implikasinya Bagi Dunia Pendidikan Di Indonesia."

²⁶ Wasitohadi.

On the other hand, referring to the results of interviews with individual actors placing migrant workers abroad, it can be seen the influence of *motivated offender* elements owned by perpetrators in carrying out their actions. In general, a *motivated offender* by Felson, is defined as a person or group who has intentions and plans and the ability to commit crimes.²⁷ On the other hand, *motivated offenders* also have the meaning of motivated actors.²⁸

In this case, according to the results of the interview, it is known that in carrying out his actions, the perpetrator first searches for potential victims through *Facebook* social media because the perpetrator usually finds prospective migrant workers from high posts on social media. Social media Facebook is one of the most frequently used media by victims, everyone who wants to work as a migrant worker always posts their wishes on social media, and this, over time, happens continuously so that new potential victims will replace victims who have departed. Finally, a pattern is formed that repeatedly occurs, which is then learned by the perpetrator by trying to build motivation in carrying out his activities as a reciprocal relationship that needs each other, namely, the victim needs work abroad. The perpetrator knows access to work abroad, so these things tend to benefit the perpetrator because the victim is unaware of his position. This will certainly make it very easy for the perpetrator because the perpetrator does not need to bother to find the victim, but in this case, the victim himself opens the way for my mop to carry out his actions.

Thus, in the occurrence of a phenomenon of illegal placement of migrant workers, it is known that there are several factors behind it, including juridical factors that are considered to tend to be convoluted and require costs, and other factors, in this case, are the influence of *Routine Activity Theory*, especially with technological facilities, it will certainly benefit the perpetrators more because of its *borderless* nature allows the perpetrator to find victims more easily without having to spend money and energy to get around.²⁹ On the other hand, with the exposure of potential victims on social media, *Facebook* also makes it easier for perpetrators to identify and target victims (*suitable targets*), makes it easier for perpetrators to identify weaknesses in guarding victims (*capable guardians*) which then makes perpetrators motivated to do their actions (*motivated offender*) In addition, the victim's thinking that tends to override the process and prioritize an orientation towards results also contributes to the occurrence of this crime because pragmatic thinking by victims is considered to make it easier for perpetrators to carry out their actions.

4. Conclusion

Regulation in a country is a very crucial aspect, especially for countries that embrace positivism, such as Indonesia. Therefore ideally, in the preparation of a regulation must consider various things so that the regulation is in accordance with the conditions of society, which leads to increased compliance with related regulations. In the problem of illegal placement of migrant workers in Indonesia, especially in the Sanggau district, it was found that regulations also influence a factor in the occurrence of illegal placement of migrant workers. This is because the existing regulations are considered quite difficult and burdensome for prospective migrant workers. This opens up opportunities for perpetrators of illegal placement of migrant workers to take advantage of existing loopholes motivated by mutual

²⁷ Rizki and Zaky, "Analisis Kriminologis Korban Cyber Fraud Pada Transaksi Game Online Melalui Steam."

²⁸ Lavinia, " Mengurangi Peluang Kejahatan Terorisme Terhadap Kepolisian Dengan Pendekatan Situational Crime Prevention (SCP)."

²⁹ Rizki and Zaky, "Analisis Kriminologis Korban Cyber Fraud Pada Transaksi Game Online Melalui Steam."

relationships, which becomes a unity as *Routine Activities Theory* which is then facilitated by pragmatic thinking by victims by leaving aside the process aspect to get legality and tends to orient their views to the outcome aspect of being able to work abroad as a migrant worker. Until related to the occurrence of illegal placement of migrant workers, regulations and internal factors of victims in the form of pragmatic thinking are factors behind the occurrence of illegal placement of migrant workers.

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