



Guarantee of Constitutional Rights for Legal Protection of Indonesian Migrant Workers in Brebes Regency

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Abstract

Indonesian migrant workers (PMI) are an important part of contributing to the country's economic development. However, the constitutional rights of migrant workers are often neglected and adequate legal protection is often not met. Brebes Regency, as one of the areas that sends many migrant workers, requires strong guarantees to protect the constitutional rights of migrant workers. The research aims to determine the form of constitutional rights to legal protection in Brebes Regency and the Brebes Regency Government's efforts to provide constitutional rights in the form of legal protection to migrant workers. This research is *empirical juridical research* with a conceptual and statutory approach. The research results show that *First* ; There are four factors that cause why migrant workers have not maximally received their constitutional rights to legal protection in Brebes Regency, namely : There are no special regional regulations in Brebes Regency, there is no complete database of workers in Brebes Regency, lack of budget, there is no Unit Team. Duties (Task Force) in Brebes Regency. *Second*: There are various efforts made by the Brebes Regency Government to provide constitutional rights in the form of legal protection to migrant workers, such as: The Brebes Regency Government is trying as quickly as possible to create or ratify the latest Regional Regulations. Propose a budget to support legal protection. Immediately create a task force team to provide legal protection for Indonesian migrant workers in Brebes Regency, trying to improve services to increase legal protection in Brebes Regency.

Keywords : Constitutional Rights; Legal Protection; Migrant Workers

Introduction

Working as Indonesian Migrant Workers (PMI) or Indonesian Workers has become commonplace, especially in rural areas. This is generally caused by the lack of employment opportunities in the local area. In Central Java Province, especially Brebes Regency, public interest in going to become Indonesian Migrant Workers abroad is still very high. In Brebes

Regency itself, according to data obtained from the Brebes Regency Central Statistics Agency, the number of Indonesian Migrant Workers or Indonesian Workers from 2020-2022, namely in 2020 there were 2,301 people, in 2021 there were 572 people and in 2022 there were 2,296 people.¹This indicates that Brebes Regency is known as a pocket for immigrant workers. With many people from Brebes district still interested in becoming Indonesian Migrant Workers abroad, the government is trying to provide employment opportunities for its people with the aim of a more decent life.²

Indonesian migrant workers cannot be separated from legal protection. It is very necessary to protect migrant workers because the workers are Indonesians who need to be protected by applicable law.³Citizen protection is directly related to the protection and guarantee of citizens' constitutional rights. That "*Everyone has the right to be treated fairly and with respect and is entitled to legal protection* ." as stated in paragraph (1) of article 28D. Likewise with basic rights as citizens wherever they work, whether they have the status of citizens of different countries or the status of citizens of the same country. As stated in Article 28D Paragraph 3 of the 1945 Constitution of the Republic of Indonesia: "*Every citizen has the right to work and receive compensation and fair and decent treatment in employment relationships*" so that they can live in accordance with their humanity.

Based on Article 27 paragraph (2) of the Constitution of the Republic of Indonesia "*every Indonesian citizen has the right to work and a living that is worthy of humanity*" so that worker protection for Indonesian migrant workers is a crucial aspect for workers .⁴Workers need human rights and legal protection for this reason. Inherent and guaranteed by the Bill of Rights are human rights a. Protection of workers' rights, such as the right to a living wage, protection of workers' health and safety at work, paid leave and sick leave, freedom of association, and the right to resign or strike, is guaranteed by Law No. 13 of 2003 concerning Employment .⁵

Article 6 Law no. 18 of 2017 recognizes the need to protect Indonesia's migrant workforce by outlining the basic protections and obligations of every worker in the country.

¹ Brebes Regency Central Statistics Agency , report from data supporting applications (2022).

²<https://www.kompas86.com/ Hukum /komisi-perlindungan-tki-di-brebes-mandul/> downloaded November 8 2022.

³ Muhammad Sadi Is, Sobani, "Employment Law in Indonesia", (Jakarta: Kencana, 2020), p. 96.

⁴See the 1945 Constitution of the Republic of Indonesia

⁵See Law Number 13 of 2003 concerning Employment



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The freedom to travel in search of work and choose the job that best suits a person's skills and interests and the opportunity for continuing education and professional development. employment, Obtain accurate details about the job market, the placement process, and working conditions outside the office, receive courteous and competent assistance before, during, and after work hours, Practice the faith by praying as desired, Get compensation commensurate with the salary level applicable in the country of deployment, or as agreed in a bilateral or multilateral work agreement. Get legal assistance and representation if you have experienced behavior that could be considered degrading, both in Indonesia and in the country of final destination. obtain the right to communicate, the right to travel with the main passport while working abroad, and the right to join or form an organization in the country of placement in accordance with the laws and regulations in force in that country .⁶Protecting the safety of Indonesian returning migrant workers upon their return to their country of origin, Employment Contracts for Migrant Workers from Indonesia.

According to the Constitution of the Republic of Indonesia, all citizens are obliged to respect constitutional rights. The right to be protected by law means that all citizens, including migrant workers from Indonesia, can feel safe knowing that they are protected by law. However, based on the facts in the field, the author sees that the guarantee of constitutional rights to legal protection has not been maximally given to migrant workers from Brebes Regency. In the absence of current regional regulations aimed at protecting migrant workers in Brebes Regency without supervision, this is evidenced by the existence of several migrant workers who experience difficulties during their work placement. including working beyond the agreed working hours without additional compensation or without pay for up to five months. Where migrant workers in Brebes Regency feel a lack of legal protection.

workers are given the same constitutional protection as citizens working abroad. However, migrant workers in Brebes Regency have not received guaranteed constitutional rights as stated in the 1945 Constitution of the Republic of Indonesia and Article 6 of Law Number 18 of 2017 concerning the protection of Indonesian migrant workers and Brebes

⁶See Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers.

Regional Regulation Number 3 of 2012 concerning Registration Services and Indonesian Labor Inspection. However, in reality, what is happening in the field is that ensuring the constitutional right to legal protection for prospective migrant workers or migrant workers has not been maximally fulfilled due to the existence of regional regulations that have not been updated. Based on the facts, it is necessary to study further how the Brebes Regency Government will take steps to guarantee the constitutional rights of legal protection that should be provided by migrant workers .

Method

The method for this type of research is empirical juridical. The main data in this research is information from migrant workers, the Department of Industry and Employment and related departments in Brebes Regency. In this research, two approaches are used, namely the statutory approach which is the approach used to look at legal regulations related to guaranteeing constitutional rights to legal protection for migrant workers in Brebesdi Regency and the conceptual approach which is the approach used in research to find out a phenomenon that more comprehensive what is happening in the field related to guaranteeing constitutional rights to legal protection for migrant workers in Brebes Regency.

Discussion

The Reality of Migrant Workers in Brebes Regency

Brebes Regency is called a pocket for migrant workers because many residents leave to look for work elsewhere. The population of Brebes Regency will be 1,992,685 people in 2022, with the highest population density in Kersana District. Many residents look for work in the agricultural, trade and factory sectors, with the majority having a high school education or equivalent. However, many have only completed elementary school, limiting their employment options. Due to difficult economic conditions, many citizens are looking for work abroad. Data from the Brebes Regency Industry and Employment Service shows that in 2020, there were 2,301 PMI from Brebes Regency who worked in various countries. This number continues to increase, indicating the high interest of the people of Brebes to work abroad. The majority of PMI work as household members in various countries such as Hong Kong , South Korea and Malaysia.



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In 2021, as many as 572 people from Brebes left Indonesia to work abroad, with the majority in Hong Kong, Japan and Singapore. In 2022, the number of departing PMIs will increase to 2,296 people, with the main destinations being Hong Kong, South Korea and Singapore. In 2023, the number of PMI from Brebes working abroad will reach 5,282 people. This data shows that Brebes Regency has a high level of migration, with many residents looking for work abroad to improve their economic conditions.

Legal Protection for Indonesian Migrant Workers in Brebes Regency

Migrant workers from Indonesia, both legal and illegal, are still a major problem in Indonesia today. Even though some problems have been resolved, other problems continue to haunt Indonesian migrant workers abroad. Several problems, including unpaid wages, failure to go to work for migrant workers, human trafficking, non-compliance with employment contracts, violence by employers, depression, or health problems, emerged throughout the year, according to complaint data from the crisis center. BP2MI 2022, 2019-2021. mental and fake job opportunities . From January to April 2023, BP2MI received 592 complaints regarding placements from PMI. So far, the largest number of complaints (156) from Indonesian Migrant Workers came from Saudi Arabia, where they were placed as part of PMI. After that, there are Taiwan (95 complaints) and Hong Kong (91 complaints). Brebes Regency is the source of a number of problems related to PMI.

Based on data in the field with Nafiroh as Head of Human Resources, DisHum Kab. Brebes and obtained many testimonies from several Migrant Workers who were facing challenges. In 2021, 2022 and 2023, Brebes Regency PMI data shows that there are 20 legal problems involving Indonesian Migrant Workers. Unpaid salaries, refusal of leave for migrant workers, non-compliance with work contracts, and even deaths in the country where PMI work are problems that plague migrant workers from Brebes Regency. Brebes Regency, Indonesia, is home to a large number of migrant workers, many of whom are

undocumented and therefore not reported to the Brebes Regency Industry and Employment Service. Twenty (20) PMI Brebes Regency, Indonesia, experienced various kinds of difficulties.

Interviews with many Brebes Regency migrant workers provided data for this analysis. The migrant workers said they left by following all the rules and laws. The author found that some Brebes Regency migrant workers felt that they had not received the legal protection that the Brebes Regency Government was obliged to provide by law. To name a few :

1. One of the Brebes Regency migrant workers, Fani, who was interviewed by the author, is known to have worked in Malaysia as a domestic helper or household member, according to the terms of her work contract. However, when she worked or lived at her employer's home abroad, she had to do double duty as a housekeeper and shopkeeper for her boss. He was in charge of the building supplies shop his boss owned from 8 p.m. until 10 p.m. every night, with no rest time in between; after he finished work, he had to clean the whole house. This is unfair and contrary to the initial agreement. If the terms of the employment contract are not in accordance with the position, then the agreement is void. After waiting a while, he informed the company that employed him as a migrant worker from Indonesia, but he did not receive a reply.
2. Warni, a migrant worker from Brebes Regency, currently lives and works in Saudi Arabia, and the second interview the author conducted with her resulted in the fact that she works there as a Household Assistant (ART), in accordance with the terms of her agreement. When he works abroad, he follows his superiors' instructions. His salary was consistent and generous when he first started working, but it no longer remained the same as he got older, although he continued to perform his duties satisfactorily. During the first five (5) months of work, he did not receive wages. Because of this, he believes he became a victim of discrimination when his company failed to pay salaries according to the contract. He eventually told the company that sent him about the problem, but only made a deal with it instead of fixing it.
3. Dewi, a migrant worker from Brebes Regency, works in Malaysia as a Household Assistant (ART), according to the terms of her contract, as revealed in the three writers' conversations with her. He had worked at the company for 2 years, but needed to take time off due to personal problems. Migrant workers have the right to take leave, but their



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employers do not allow it even though their contracts clearly allow it. But in reality, he was not given leave until the end of the year. Violating his rights in this way angered him. He'd alerted the authorities, but now there was no way out. Eventually, he realized that he could not exercise his migrant worker rights while in another country. Even though it's deep Law Number 18 of 2017 has explained that migrant workers from Indonesia are given certain rights, including the right to take leave after being hired.

4. The results of the fourth interview the author conducted with Anggara, a migrant worker from Brebes Regency who works in Taiwan, revealed that he worked there as a crew member (ABK). The legal channel revealed his work there . In Taiwan, he fishes for a living. He said his boss treated him well when he first started working. But as time went by, his superiors on the fishing boat treated him increasingly erratically. He resented the cruel treatment he received from his employer and as a result found it difficult to concentrate on his work. His boss reprimanded him when he tried to leave early to go home. Finally he decided to run away and report the incident to the company that sent him, but he was instructed to be patient and the company in Indonesia never followed up. Because he couldn't stand it any longer, he boarded a ship bound for Indonesia and returned home. After that, he came home from work without any documents or payment .
5. The author's conversation with Rianah, a TKI from Brebes Regency, stated that she once got a job in Malaysia as a housemaid or ART. The only reason he worked, he told the author, was to clean his boss's house. Salary payments must be made on the 15th of each month according to the terms of the contract agreed by both parties. Salaries are paid every month according to the agreed basic salary. However, after 5 months there his salary was not paid in the 1 month he worked. Until finally he approached his boss and asked for a copy of his salary. However, instead of giving it to him, his master rebuked him; he then reported the incident to the company, but was again ordered to wait while the matter was reviewed. However, it wasn't processed until he returned home with cash from his previous paycheck. As a result, he believes that the rights of migrant workers are not being adequately fulfilled.

With the challenges that occur among migrant workers from Brebes Regency. Even though the Brebes Regency Government continues to implement PERDA No. 3 of 2012 concerning PMI Registration and Supervision Services, there is no institution that is able to meet the needs of TKI who develop into PMI. Brebes Regency's limited legal powers are the source of the latest disputes with migrant workers. In accordance with article 6 of Law no. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, where every PMI has rights and obligations as citizens that must be protected, and in accordance with Law no. 39 of 2004 concerning P2TK. Migrant Workers Abroad In an effort to defend the rights of migrant workers, including the right to obtain guaranteed legal protection in accordance with laws and regulations against activities that can deprive them of their livelihood, PMI has the right to obtain appropriate legal protection.

Migrant workers from Brebes Regency do not receive maximum legal protection based on what is currently in force. Protecting the interests of prospective Indonesian workers or migrant workers and their families in ensuring the full implementation of their rights and activities is the aim of Law no. 18 of 2017 concerning the protection of PMI as stated in article 1. The Indonesian government has the responsibility to protect the lives of migrant workers before, during and after work. Responsibility for ensuring the safety of Indonesian citizens working abroad is divided between the Central, provincial, city and regional governments, as well as local villages based on Law No. 18 of 2017.⁷

In accordance with Article 39 Chapter 5 of Law no. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, the government's obligations include monitoring the placement and safety of Indonesians working abroad. Policy changes to provide better protection for migrant workers can be made at all levels of government, from the national to the regional level. Protecting Indonesian migrant workers is the government's job, and the government must get assistance from the institutions responsible for doing this. To protect migrant workers so that they can continue to work and earn a living, the central government must work together with local governments and related institutions. earn a respectable living in the country where he works. Migrant workers from Brebes Regency have not received adequate protection for several reasons: First, the Brebes Regency Regional Regulation has not been revised. In terms of Regional Regulation Number 3 of 2012 (Perda Number 3)

⁷ See article 1 of Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers.



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concerning Registration and Supervision Services for Indonesian Workers, it is still used by the Brebes Regency Government. Regarding the protection of migrant workers in Brebes Regency, the regional government still relies on the old regional regulations. This means that the needs of migrant workers in Brebes Regency have not been fully met. Important as a legal framework in carrying out regional government issues and providing protection for PMI, regional regulations are also important to encourage the establishment of guaranteed protection for migrant workers in other countries. This results in ineffective supervision, chaotic legal protection policies (especially at the pre- and post-placement stages), and protection provisions that lack sanctions. Second, the lack of a database of Brebes Regency employees. Workers both inside and outside Brebes do not report to the Department of Labor and Employment every six months as required in the cards required to apply for work. This is a problem for the Brebes Regency Industry and Employment Service. But it fails to report it, despite the fact that it is important for reliable statistics. Apart from that, business actors who employ local residents from Brebes must record this fact. Unfortunately, they have not seen the report.

The Brebes Regency Government lacks information on how many people have worked and how many have not. Third, lack of budget. The budget plays an important role in facilitating the resolution of problems faced by migrant workers in Brebes Regency. Brebes Regency is experiencing internal problems in terms of protecting Indonesian migrant workers, such as a lack of budget for community engagement, counseling and training. Due to a lack of community involvement, individuals are often unaware of the legal steps they need to take before leaving for work elsewhere. Migrant workers in Brebes Regency still experience difficulties in providing legal protection. Fourth, a Task Force team has not yet been formed. This task force team or unit team is tasked with playing a major role in providing protection for migrant workers in the District. Brebes. The Migrant Worker Protection Task Force has been discussed but has not yet been formed by the Brebes Regency Government. Workers both at home and abroad will benefit from the formation of this task force, which will ensure safety. The local government, BP2MI, the Brebes Regency Employment Service, and

the police all came together to form this task force. Therefore, it will serve to protect migrant workers from Brebes Regency.

Analysis of the reasons why migrant workers do not receive maximum legal protection in Brebes Regency

Migrant workers from Brebes Regency, Indonesia, have not received the legal protection they deserve based on current standards. Protecting the interests of prospective Indonesian workers or migrant workers and their families who have made it happen, ensuring the full implementation of their rights and activities is the aim of Law no. 18 of 2017 concerning PMI protection as stated in article 1 point 5 of the Law.⁶⁰ The Indonesian government has a responsibility to protect the lives of migrant workers before, during and after work. Responsibility for ensuring the safety of Indonesian citizens working abroad is divided between Jakarta, provinces, cities and regions, and local villages based on Law No.18 of 2018.

In accordance with Article 39 Chapter 5 of Law no. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, the government's obligations include monitoring the placement and safety of Indonesians working abroad. Policy changes to provide better protection for migrant workers can be made at all levels of government, from the national to the regional level. Protecting Indonesian migrant workers is the government's job, and the government must get assistance from the institutions responsible for doing this. To protect migrant workers so that they too can continue to work and earn a living, the central government must collaborate with local governments and related institutions. earn a respectable living in the country where he works.



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Migrant workers from Brebes Regency do not receive adequate protection for several reasons:

1. Brebes Regency Regional Regulations Have Not Been Revised

In terms of Regional Regulation Number 3 of 2012 (Perda Number 3) concerning Registration and Supervision Services for Indonesian Workers, it is still used by the Brebes Regency Government. Regarding the protection of migrant workers in Brebes Regency, the regional government still relies on the old regional regulations. This means that the needs of migrant workers in Brebes Regency have not been fully met. Important as a legal framework in carrying out regional government issues and providing protection for PMI, regional regulations are also important to encourage the establishment of guaranteed protection for migrant workers in other countries. This results in ineffective supervision, chaotic legal protection policies (especially at the pre- and post-placement stages), and protection provisions that lack sanctions.

2. Lack of Brebes Regency Employee Database

Workers both inside and outside Brebes do not report to the Department of Labor and Employment every six months as required in the cards required to apply for work. This is a problem for the Brebes Regency Industry and Employment Service. But it fails to report it, despite the fact that it is important for reliable statistics. Apart from that, business actors who employ local residents from Brebes must record this fact. Unfortunately, they have not seen the report. Because of this, the Brebes Regency Government lacks information on how many people have worked and how many have not.

3. Limited Financial Resources

The budget plays an important role in facilitating the resolution of problems faced by migrant workers in Brebes Regency. Brebes Regency is experiencing internal problems in terms of protecting Indonesian migrant workers, such as a lack of funds for community engagement, counseling and training. Due to a lack of community involvement, individuals are often unaware of the legal steps they need to take before leaving for work elsewhere. Migrant workers in Brebes Regency still experience difficulties, among other things, due to limited funds .

4. Task Force Team Has Not Been Formed

task force team or unit team is tasked with playing a major role in providing protection for migrant workers in the District. Brebes. The Task Force for the Protection of Migrant Workers and Urban Workers has been discussed but has not yet been formed by the Brebes Regency Government. Workers both within and outside Neeri will benefit from the formation of this task force, which will ensure safety. The local government, BP2MI, the Brebes Regency Employment Service, and the police all came together to form this task force. Therefore, it will serve to protect employees.

Government efforts in Kab. Brebes in Guaranteeing the Legal Rights of Migrant Workers

The Indonesian government has an important role in ensuring the safety of Indonesian migrant workers. The legislation has been passed in response to the need to protect Indonesian migrant workers, so that government intervention can be seen and felt. Before, during, and after a worker's deployment, the government takes many precautions to ensure his or her safety. Bearing in mind the provisions of Article 1 number 5 of Law No.18 of 2017 concerning PMI Protection. Legal, economic, and social factors are all considered when planning for the safety of Indonesian migrant workers and their families before, during, and after their work.

According to the 1945 Constitution of the Republic of Indonesia, all citizens have the same rights, opportunities and protection to obtain satisfactory work and earn a living, both at home and abroad, in accordance with their knowledge, experience and interests. and unique skills. Ensure the safety of Indonesian workers traveling abroad. Based on Law No. 18 of 2017 concerning PMI Protection, several levels of government in Indonesia are responsible for different legal aspects. This highlights the importance of cooperation to protect Indonesian migrant workers.

At least in Brebes Regency, the local government has made efforts to protect the lives of migrant workers in the area.

The Brebes Regency Government seeks to ensure the safety of Indonesian migrant workers by doing the following:

1. The Brebes Regency Government must immediately pass laws and issue new regulations to ensure the safety of migrant workers in Brebes Regency. This is because the Brebes Regency Regional Regulations are outdated and lag behind national legislation. To the extent that the Brebes Regency Regional Regulations affect the safety of Brebes Regency residents when working abroad. Migrant workers in Brebes Regency benefit from this initiative, because this indicates the strengthening of the role and obligations of institutions in protecting migrant workers, something that many local communities anticipate. So, there is a special responsibility for governance at the city or district level which takes into account the social and economic needs of migrant families as well as the needs of migrants themselves.
2. To help finance the provision of legal protection for Indonesian migrant workers in Brebes Regency, the regional government has proposed a budget. Facilitate monthly outreach by the Department of Manpower and Industry (Dinperinaker) to prospective migrant workers or the community and village officials, as well as alleviate the difficulties experienced by migrant workers in Brebes Regency.
3. task force team will soon be formed by the Brebes Regency Government. Considering the many incidents and difficulties faced by migrant and urban workers in Brebes Regency. Many workers have been stranded abroad in recent years due to unclear work contracts. The Regional Government of Brebes Regency should immediately form a task force team to safeguard migrant workers in Brebes Regency and take the lead in building facilities to ensure safety.



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4. The One Stop Integrated Service (LTSA) in Brebes Regency and the Brebes Regency Employment and Industry Service is a forum where the public, in this case prospective Indonesian Migrant Workers, can report problems and get answers from the government. As part of their developmental oversight responsibilities, supervisors must verify that open job placements on the job market are legitimate.

The government has a responsibility to protect Indonesian temporary workers. The government, namely the Brebes Regency Government, pays great attention to prospective Indonesian migrant workers and Indonesian migrant workers from Brebes Regency.

Conclusion

Based on the results of the research and discussion that have been presented by the researcher, the researcher then provides the following conclusions: first, based on the results of the study and research that the researcher obtained, there are several factors that cause why migrant workers have not maximally received constitutional rights to legal protection in the Regency. Brebes, namely: there is no updated Regional Regulation in Brebes Regency, there is a lack of budget to provide outreach, counseling and training for Indonesian migrant workers in Brebes Regency, there is no complete database for both those working domestically and abroad, there has not been a task force for protect migrant workers in Brebes Regency. Secondly, there are various efforts made by the Brebes Regency Government to provide constitutional rights in the form of legal protection to migrant workers such as: The Brebes Regency Government is trying as quickly as possible to create or ratify the latest Regional Regulations, submit a budget

to support protection law, immediately create a task force team to provide legal protection for Indonesian migrant workers in Brebes Regency, trying to improve services to increase legal protection in the Regency for migrant workers.

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