

LEGAL PROTECTION FOR INDONESIAN MIGRANT WORKERS ABROAD BASED ON LAW NUMBER 18 OF 2017 CONCERNING PROTECTION OF INDONESIAN MIGRANT WORKERS

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Article history:

Received: June 2024

Revised: June 2024

Accepted: June 2024

ABSTRACT The enthusiasm of Indonesian migrant workers to go abroad is caused by two factors. The first factor is the limited employment in the country. The second factor is the potential for foreign exchange earnings for the country. The problem is how Law Number 18 of 2017 concerning the Protection of Migrant Workers provides protection and how the mechanism for Indonesian migrant workers abroad to report their cases to the crisis center-bnp2tki. The purpose of this paper is to provide an understanding to Indonesian migrant workers abroad about their rights to obtain legal protection and to understand the mechanism for Indonesian migrant workers abroad to report their cases to the crisis center-bnp2tki. The method used is the method used in the implementation of International Community Service III in Malaysia in the form of legal counseling using online and offline methods. In order to get an overview of the desired future conditions, a relevant theory is used, namely the migration theory. The main results presented in this activity are that Law Number 18 of 2017 has provided protection not only legal protection, but also includes protection for prospective Indonesian migrant workers or Indonesian migrant workers including administrative protection and technical protection; protection during work; protection after work; legal protection, social protection, economic protection. In addition, the mechanism for Indonesian migrant workers abroad to report their cases to the crisis center-bnp2tki was also presented. A complete understanding of this mechanism will provide benefits or positive values for Indonesian migrant workers abroad. The first conclusion is that the state has committed to providing protection to Indonesian migrant workers from the start as prospective migrant workers. The protection provided is not only limited to legal protection. Second, there is a mechanism for Indonesian migrant workers abroad to report their cases to the crisis center-bnp2tki. Understanding this mechanism is also important to avoid illegal Indonesian workers. The recommendation given is the need for continued international community service activities like this to help provide a complete understanding for Indonesian migrant workers abroad about their rights and obligations.

KEYWORDS: *Legal protection; Indonesian migrant workers; Indonesian Migrant Worker Protection Law.*

1. INTRODUCTION

The state guarantees the rights, opportunities, and protection to every Indonesian citizen without discrimination to obtain decent work and income according to their expertise, skills, talents, interests, and abilities. The guarantee by the state is given to every Indonesian citizen both domestically and Indonesian citizens abroad to obtain decent work and income. The increase in Indonesian migrant workers abroad is caused by two factors. The first factor is the limited employment in the country, making sending workers abroad still considered a solution to improving people's welfare. The second factor is the potential for foreign exchange earnings for the country. Migrant workers have an important role in the economic growth of countries sending and receiving workers. Simulations provided by the World Bank Report Migration to Opportunity explain that a 10% increase in low-skilled migrant workers can increase gross domestic product (GDP) by 1.1%. (Yandri & Putra, 2023) However, the large contribution of Indonesian Migrant Workers in supporting economic growth is not comparable to the protection they receive in the user country. On the other hand, there are malpractices that are often carried out by labor sending agents, namely falsifying documents, high-cost monopolies, incomplete contracts, recruitment without valid permits to the recruitment of underage workers.

Conditions like this are certainly not in line with the provisions of Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which mandates: Every citizen has the right to work and a decent living for humanity. The right to work and a decent living for humanity is granted by the state to Indonesian citizens who work domestically and abroad. Indonesian citizens who work abroad are referred to as Indonesian migrant workers, namely every Indonesian citizen who will, is, or has done work for wages outside the territory of the Republic of Indonesia. The formulation of this article provides the meaning that at every stage of Indonesian migrant workers starting from the stage before working, currently doing work, or having done work, it is mandatory for the state to provide protection.

History records the practice of worker protection through several labor laws that have been in effect, including some that are colonial products, placing workers in a less advantageous position in labor placement services and industrial relations systems that emphasize differences in status and interests so that they are considered no longer in accordance with current needs and future demands. (Republik Indonesia, n.d.-c)

Several laws and regulations that are considered no longer in accordance with current needs and future demands include: Ordinance on the Mobilization of Indonesians to Work Outside Indonesia (Staatsblad 1887 No.8); Ordinance dated December 17, 1925 Regulations on the Restriction of Child Labor and Night Work for Women (Republik Indonesia, 1926b); Ordinance of

1926 Regulations Concerning the Work of Children and Young People on Ships (Republik Indonesia, 1926c); Ordinance dated May 4, 1936 on the Ordinance to Regulate Activities for Seeking Prospective Workers (Republik Indonesia, 1926a); Ordinance on the Repatriation of Workers Accepted or Deployed from Outside Indonesia (Republic of Indonesia, n.d.-b); Law Number 3 of 1958 on the Placement of Foreign Workers (Republik Indonesia, n.d.-b), The above laws and regulations and several other laws and regulations contained in the explanation of Law Number 13 of 2003 on Manpower but not mentioned in this paper are deemed necessary to be revoked and replaced with a new law.

The new law is Law Number 13 of 2003 on Manpower. The issuance of this law, in addition to revoking provisions that are no longer in accordance with the demands and developments of the times, is also to accommodate very fundamental changes in all aspects of the life of the Indonesian nation with the beginning of the reform era in 1998. Since the existing laws and regulations in the field of employment have not been adequately, firmly and in detail regulated and the mandate of Law Number 13 of 2003 concerning Manpower which states that the placement of Indonesian workers abroad is regulated by law. Then Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad was issued. Then in 2017 this law was revoked and declared invalid with the issuance of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers.

The description above leads to two problems related to the aspect of protection for Indonesian migrant workers abroad, namely: first, How is the protection for Indonesian migrant workers abroad based on Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers? Second. How is the mechanism for Indonesian migrant workers abroad to report to the BNP2TKI crisis center as an institution authorized to handle cases experienced by Indonesian migrant workers abroad.

2. METHOD

The method used in organizing the International Community Service (PKM) III in Malaysia is in the form of legal counseling. This activity uses a hybrid method, namely online and offline. In addition, theoretically, in order to get an overview of the conditions of protection for Indonesian migrant workers in the future, more optimal efforts are made to identify the problems that occur. Therefore, in writing this community service paper, we used a relevant theory, namely migration theory.

The speakers in presenting their papers were divided into two groups. First, speakers who use online methods. Second, speakers who use offline methods. The author in this online legal

counseling activity together with other speakers from the Faculty of Law, Jakarta Islamic University, presented their papers in turns.

Online legal counseling is a legal counseling system without direct face-to-face meetings by utilizing internet communication and technology and is carried out online. While offline legal counseling is a legal counseling system by means of direct face-to-face meetings.



Figure 1. The speakers from Jakarta Islamic University were presenting papers online.

The International Community Service III activity involved 190 lecturers, students, and education staff from 82 universities spread from Sabang to Merauke. The picture below shows the speakers from various universities presenting their papers.



Figure 2. Speakers from various Universities

Meanwhile, 24 Doctoral Program (S3) students of the Faculty of Medicine, Universitas Airlangga Surabaya took part in the International PKM III by providing counseling, demonstrations and health check-up services by specialist doctors. This program was chaired by UNAIR S3 program lecturer Dr. Reny I'tishom, M.Si as the head of the delegation. Participants in the International PKM III activity were 113 migrant workers, consisting of 106 Indonesian Migrant Workers (PMI) and 7 Foreign Migrant Workers (PMA).

The implementation of the International Community Service III activity was held on Sunday, May 26, 2024 at the Indonesian School Kuala Lumpur (SIKL) with the theme "Empowering Migrant Workers in Malaysia: A Multidisciplinary Capacity Building Approach and Medical Examination". This activity is the result of cooperation between 82 universities in Indonesia facilitated by the NGO SHARING, with international institutions in Malaysia, namely the Special Branch Management of Nadhiatul Ulama (PCINU) Malaysia, the Indonesian Student Association (PPI) of Sultan Idris Education University (UPSI), the Embassy of the Republic of Indonesia (KBRI) Kuala Lumpur and the Indonesian School Kuala Lumpur (SIKL). The resource persons are seen in the picture below taking a group photo.



Figure 3. Group photo documentation

3. RESULT AND DISCUSSION

3.1 Protection for Indonesian Migrant Workers Abroad Based on Law Number 18 of 2017 Concerning Protection of Indonesian Migrant Workers.

The Big Indonesian Dictionary (KBBI) VI Online defines protection as a place of shelter; things (actions and so on) to protect. In this context, it means things or actions to protect Indonesian migrant workers abroad. The state provides guarantees of rights, opportunities, and protection to every Indonesian citizen without discrimination to obtain decent work and income according to

their expertise, skills, talents, interests, and abilities. The guarantee by the state is given to every Indonesian citizen both domestically and Indonesian citizens abroad to obtain decent work and income. Indonesian citizens who work abroad or who are often referred to as migrants are the subject of this paper and also have the right to be protected by the state.

Normatively, regarding the rights of Indonesian migrant workers to receive protection, it is stipulated in the provisions of Article 6 paragraph (1) letter g: Every prospective Indonesian migrant worker or Indonesian migrant worker has the right to receive protection and legal assistance for actions that can degrade their dignity and honor in accordance with the provisions of laws and regulations in Indonesia and the destination country. Furthermore, the law also provides criteria for Indonesian migrant workers, this is intended to make it clear who can be categorized as an Indonesian migrant worker abroad. Article 4 paragraph (1) letter a determines that Indonesian migrant workers include Indonesian migrant workers who work for legal employers; letter b: Indonesian migrant workers who work for individual or household employers. Letter c: sailors, ship crews and fishing sailors.

Meanwhile, those who are not included in the category of Indonesian migrant workers are Indonesian citizens who are sent or employed by international bodies or by countries outside their territory to carry out official duties; students and training participants abroad; Indonesian citizens who are refugees or asylum seekers; investors; state civil servants or local employees who work at Representatives of the Republic of Indonesia; Indonesian citizens who work for institutions funded by the state budget and spending; Indonesian citizens who have independent businesses abroad.

Other aspects besides the rights of Indonesian migrant workers to obtain protection rights, this law also divides the protection of Indonesian migrant workers into several types of protection. First, protection for prospective Indonesian Migrant Workers or Indonesian Migrant Workers. Second, legal protection. Third, social protection. Fourth, economic protection. This protection is important to be provided by the state to prevent legal problems. (Widodo & Belgradoputra, 2019) Furthermore, international law also states that a country has an obligation to protect citizens of that country who live abroad. This term is in accordance with diplomatic protection where citizens wherever they are will receive protection from their country. "Action taken by a state against another state in respect of injury to the person or property of national caused by an internationally wrongful act or omission attributable to the latter state" is the concept of diplomatic protection. (Manurung & Sa'adah, 2020)

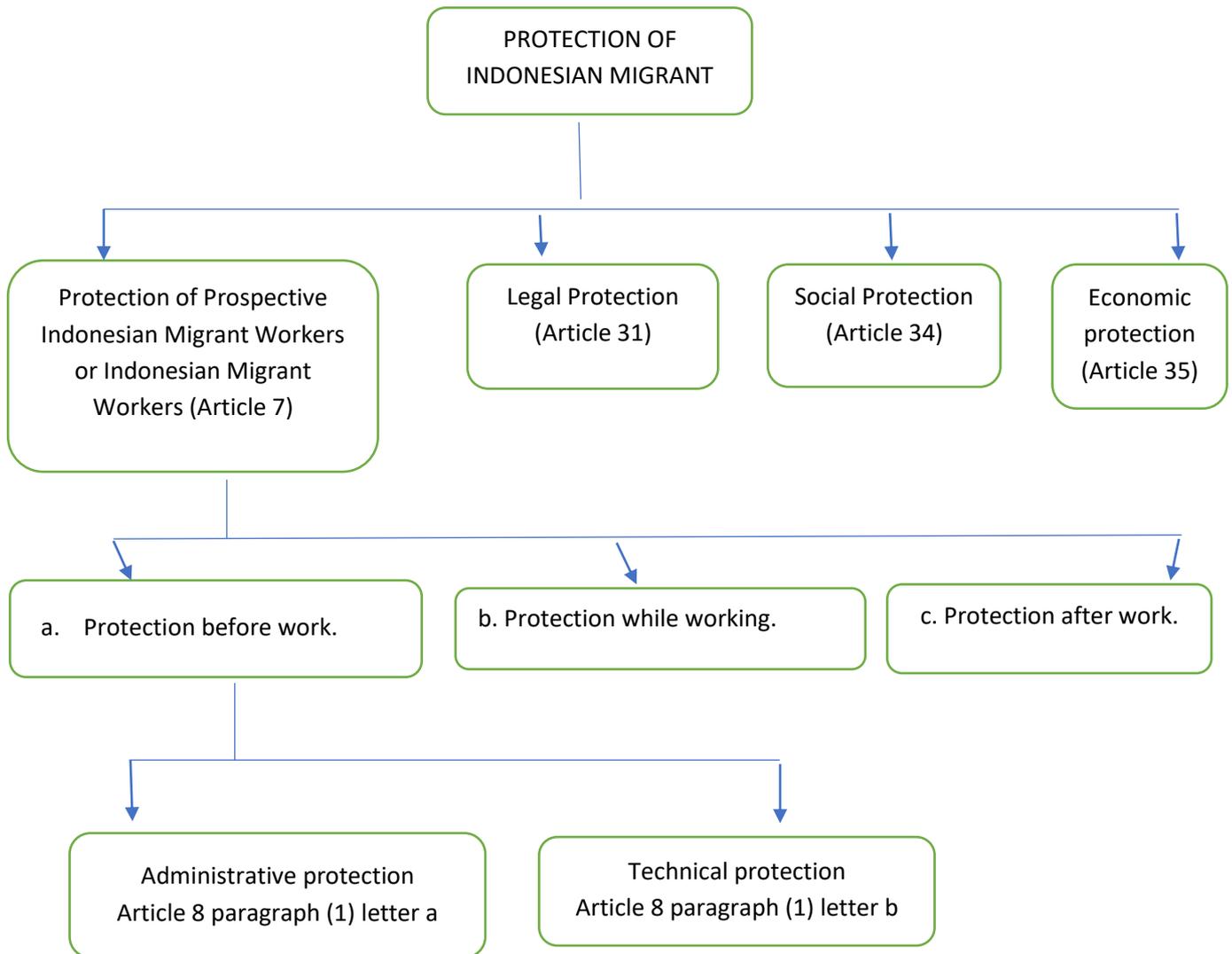
Protection for prospective Indonesian Migrant Workers or Indonesian Migrant Workers includes protection before working, protection during work, protection after working. Protection before working includes administrative protection and technical protection. Administrative

protection includes the completeness and validity of placement documents and determination of work conditions and requirements. Meanwhile, technical protection includes providing socialization and dissemination of information; improving the quality of Prospective Indonesian Migrant Workers through education and job training; Social Security; facilitating the fulfillment of the rights of Prospective Indonesian Migrant Workers; strengthening the role of functional job placement staff; placement services in one-stop integrated services for the placement and protection of Indonesian Migrant Workers; coaching and supervision. To realize the rights mentioned above, it is necessary for prospective Indonesian migrant workers to be aware of the requirements and obligations.

The provisions of Article 5 stipulate that every Indonesian migrant worker must meet 5 requirements, namely: be at least 18 years old; have competence; be physically and mentally healthy; be registered and have a social security membership number; have complete required documents. Meanwhile, their obligations are determined in the provisions of Article 6 paragraph (2) letter a. obey the laws and regulations both domestically and in the destination country of placement; b. respect the customs or habits that apply in the destination country of placement; c. obey and carry out their work in accordance with the Employment Agreement; d. report the arrival, presence, and return of Indonesian Migrant Workers to the Representative of the Republic of Indonesia in the destination country of placement.

The existence of administrative protection and technical protection shows the government's commitment to providing protection to Indonesian migrant workers starting before working. The table below shows the types of protection in Law Number 18 of 2017.

3.2 Types of protection based on the provisions of Law Number 18 of 2017.



Schema 1. Types of protection based on the provisions of Law Number 18 of 2017

Administrative protection as referred to in Law Number 18 of 2017 regulates several things, namely:

1. A placement cooperation agreement is a written agreement between an Indonesian Migrant Worker Placement Company and a business partner or employer that contains the rights and obligations of each party in the context of the placement and protection of Indonesian Migrant Workers in the country of placement. (Republik Indonesia, n.d.-c)
2. An Indonesian Migrant Worker placement agreement, hereinafter referred to as a placement agreement, is a written agreement between an Indonesian Migrant Worker placement agency and a Prospective Indonesian Migrant Worker that contains the rights and obligations of the parties in the context of the placement of Indonesian Migrant Workers in the destination

country of placement in accordance with the provisions of laws and regulations. (Republik Indonesia, n.d.-c)

3. An employment agreement is a written agreement between an Indonesian Migrant Worker and an Employer that contains the terms of employment, rights, and obligations of each party, as well as guarantees of safety and security during work in accordance with the provisions of laws and regulations. (Republik Indonesia, n.d.-c)

Protection during work includes data collection and registration by the labor attaché or appointed foreign service official; monitoring and evaluation of Employers, jobs, and working conditions; facilitating the fulfillment of the rights of Indonesian Migrant Workers; facilitating the settlement of employment cases; providing consular services; assistance, mediation, advocacy, and providing legal assistance in the form of facilitating legal services by the Central Government and/or Representatives of the Republic of Indonesia and guardianship in accordance with local state law; coaching for Indonesian Migrant Workers; and facilitating repatriation. The provision of protection for Indonesian migrant workers during work is carried out without taking over the criminal and/or civil responsibilities of Indonesian Migrant Workers and is carried out in accordance with the provisions of laws and regulations, the laws of the destination country of placement, and international law and customs.

Protection after work is carried out by the central government together with the regional government which includes facilitating return to the area of origin; resolving the rights of Indonesian migrant workers that have not been fulfilled; facilitating the management of sick and deceased Indonesian migrant workers; social rehabilitation and social reintegration; empowerment of Indonesian migrant workers and their families.

Legal protection for Indonesian migrant workers is related to the country where the Indonesian migrant workers work. Where Indonesian migrant workers can only work in destination countries that meet the requirements, namely: having laws and regulations that protect foreign workers; has a written agreement between the government of the destination country and the Government of the Republic of Indonesia; has a Social Security and/or insurance system that protects foreign workers. In addition, the central government has the authority to stop and/or prohibit the placement of Indonesian migrant workers for certain countries or certain positions abroad by considering: security; protection of human rights; equal employment opportunities; interests of the availability of labor in accordance with national needs. When the central government prohibits the placement of Indonesian Migrant Workers by considering the advice and considerations of the Representative of the Republic of Indonesia, ministries/institutions, Indonesian Migrant Worker Placement Companies and the community. Legal protection for

Indonesian Migrant Workers is provided by referring to the provisions of laws and regulations, the laws of the destination country, and international law and customs.

Social protection must be provided by the central government and regional governments in accordance with their authority to prospective Indonesian migrant workers and/or Indonesian migrant workers. Social protection is carried out through: improving the quality of education and job training through standardization of job training competencies; increasing the role of accreditation and certification institutions; provision of competent educators and trainers;. social reintegration through skills improvement services, both for Indonesian Migrant Workers and their families; protection policies for women and children; provision of Indonesian Migrant Worker Protection centers in the destination country.

Economic protection must be provided by the central government and regional governments in accordance with their authority to prospective Indonesian migrant workers and/or Indonesian migrant workers. Social protection is carried out through: remittance management by involving domestic banking institutions or non-bank financial institutions and the destination country; financial education so that Indonesian migrant workers and their families can manage the proceeds of remittances from abroad (remittances); entrepreneurship education.

The description of protection for Indonesian migrant workers abroad above has two objectives, namely: (Berkat Anugrah Kurnia Situmorang, et all, 2021).

1. Guaranteeing the fulfillment and enforcement of human rights as citizens and Indonesian Migrant Workers.
2. Guaranteeing legal, economic, and social protection for Indonesian Migrant Workers and their families.

In addition to the objectives of protection, there are also principles for the protection of Indonesian migrant workers, namely: integration; equal rights; recognition of dignity and human rights; democracy; social justice; gender equality and justice; non-discrimination; anti-human trafficking; transparency; accountability; sustainable.

Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers seems to have many advantages in several aspects. Protection is not only from the legal aspect but also includes administrative protection and technical protection, social protection, economic protection. Even one of them is the aspect of protection that has been adopted from the international convention on the protection of the rights of all migrant workers and their family members through the ratification of Law Number 6 of 2012 concerning the Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. (Majelis Umum PBB, n.d.) The existence of these national and international regulations that provide

protection for Indonesian migrant workers, but in practice there are still problems and complaints that are submitted to the BP2MI crisis center. (Tantri et al., 2022).

3.3 Mechanism for Indonesian Migrant Workers Abroad Reporting to the Crisis Center- BNP2TKI.

The mechanism according to the Big Indonesian Dictionary (KBBI) VI Online is the way an organization (association and so on) works. In this context, it means the way the crisis center works to receive complaints from Indonesian migrant workers abroad and follow up on them to get a resolution. Labor migration is a global phenomenon, where millions of people seek better opportunities abroad to support themselves and their families (Renzaho, A. M., Nowson, C., & Saniotis, 2019).

Indonesia is one of the countries that sends its workforce abroad every year in large numbers. Efforts to get a better life often make Indonesian migrant workers face various risks or unpleasant consequences (disadvantageous, dangerous) so that they are vulnerable to their safety. Therefore, as an effort to provide protection for Indonesian migrant workers who experience various risks, a crisis center was formed. So that the community, prospective Indonesian migrant workers, Indonesian migrant workers (PMI), and families can report matters related to the problems of Indonesian migrant workers. To report problems of Indonesian migrant workers, you can come directly to the BP2MI / UPT BP2MI Provincial / Regency / City crisis center office. Or through the available media, namely (Birokrasi, n.d.):

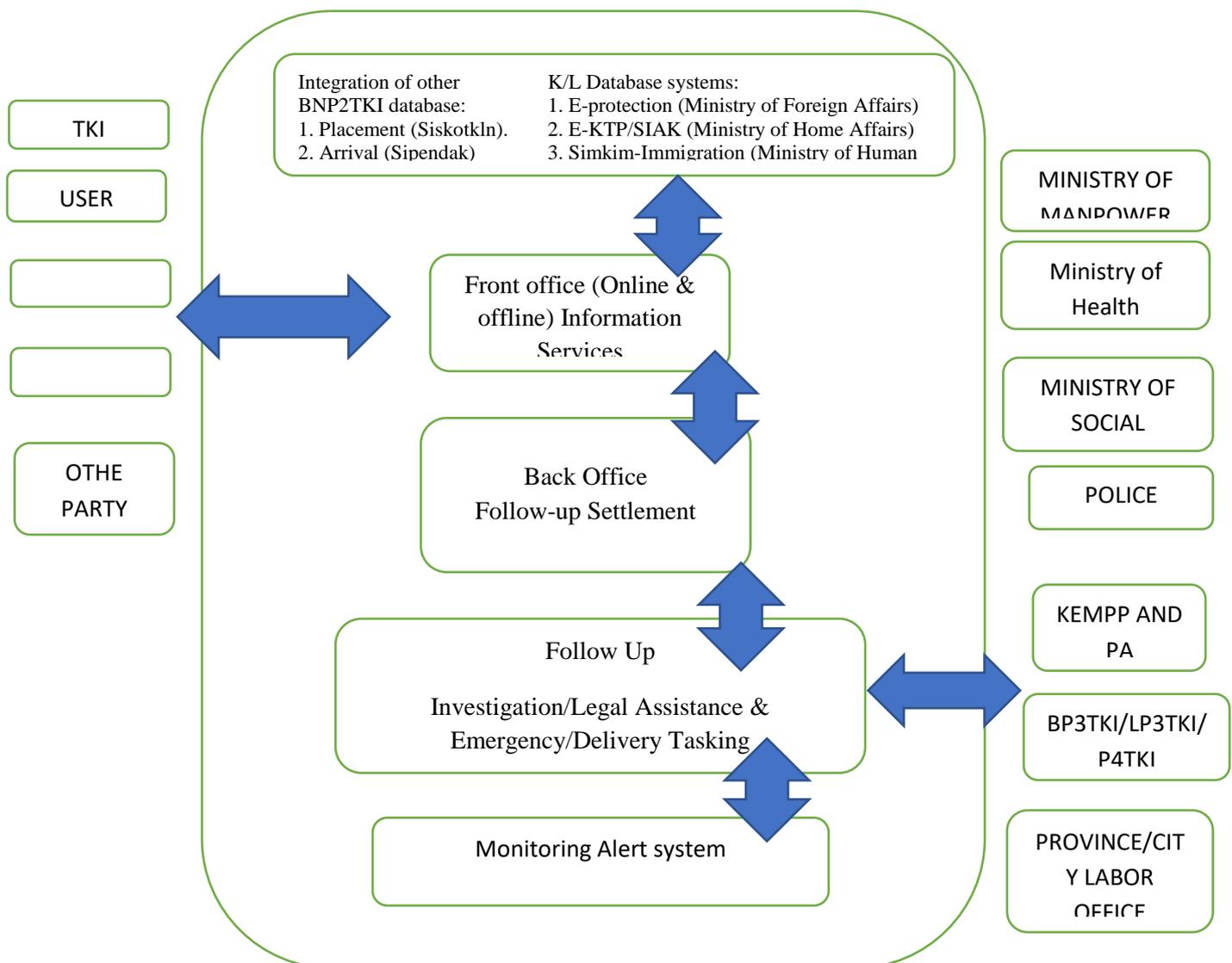
1. Domestic telephone that can be contacted is = 0 800 1000
2. Overseas telephone = +62 2129244800
3. Facebook = <https://www.facebook.com/bp2mi.ri>
4. Twitter = @bp2mi_ri
5. Instagram = @bp2mi_ri
6. Android application = e-complaint BNP2TKI
7. SP4N-LAPOR

The completion time is 3 working days calculated from the receipt of the complaint until the complainant receives initial information on the follow-up to their complaint. This complaint process is free of charge. In addition, there are several required documents that must be completed when the community, prospective PMI, PMI, and family will report matters related to the problems of Indonesian migrant workers, namely:

1. Original / Photocopy of Passport.
2. Original / Photocopy of Working Visa
3. Original / Photocopy of Placement Agreement

4. Original / Photocopy of Employment Agreement
5. Original / Photocopy of E-KTP (Electronic ID card)
6. Original / Photocopy of Family Card
7. Original / Photocopy of Social Security Membership Card
8. Original / Photocopy of Marriage Certificate
9. Original Power of Attorney (for complainants accompanied by a legal representative)
10. Original / Photocopy of Death Certificate (for Prospective PMI/PMI who have died).

Fulfillment of all requirements will be continued with the next process as shown in the flowchart below.



Shema 2. Case complaint flow.

Source: <https://sippn.menpan.go.id/pelayanan-publik/1337/badan-perlindungan-pekerja-migran-indonesia/pelayanan-pengaduan-pmi-bermasalah-crisis-center?download=true>

Complaint data through the crisis center in 2021 amounted to 1,702 cases with the following details (Tantri et al., 2022)

Tabel 1. Case complaint data.

N0	CASE CATEGORY	NUMBER OF CASES
1	Indonesian migrant workers want to go home	508
2	Salary not paid	216
3	Death in destination country	173
4	TKI failed to depart	147
5	Job opportunity scam	68
6	Human trafficking	59
7	Etc	57
8	Communication Breakdown	52
9	Sick	49
10	Overstay	37
11	Death	30
12	Placement fee exceeds cost structure	30
13	Passport or other document retention by PPTKIS	28
14	TKI is sick/hospitalized	27
15	Illegal recruitment of prospective TKI	23
16	TKI in detention/detention process	19
17	Work not in accordance with PK	18
18	Not repatriated even though work contract is completed	14
19	Overseas insurance has not been paid	14
20	Debts between CTKI and PPTKIS	13
21	Violence from employer	12
22	Depression/mental illness	11
23	Salary deductions exceeding provisions	10
24	TKI has an accident	9
25	Accident	8
26	Other	71
	TOTAL	1.702

Data on the placement of Indonesian migrant workers abroad from 2019 to 2021 sourced from the BP2MI information data center at www.bp2mi.go.id are as follows (Tantri et al., 2022)

Tabel 2. Migrant worker placement data.

YEAR 2019	YEAR 2020	YEAR 2021
277.489	113.436	72.642

Complaint data through the crisis center and data on the placement of Indonesian migrant workers abroad as mentioned above require a strategy and policy that can overcome the problems experienced by Indonesian migrant workers abroad. So that legal protection, administrative protection and technical protection, social protection, economic protection can be provided

optimally. The high number of Indonesian migrant workers abroad is caused by one strong factor, namely need and pressure. The need factor includes economic, social, cultural, psychological needs. On the previous page, the author mentioned the factors causing Indonesian migrant workers to go abroad are limited jobs in the country and the second factor, the potential for foreign exchange earnings for the country.

Ravenstein stated ten laws of population migration mentioned in the journal *Laws of Migration* (Yandri & Putra, 2023):

- a. People who migrate tend to choose the closest place to their area of origin.
- b. The dominant factor in migrating is the difficulty of getting a job and the possibility of getting a better job and income in another area with the assumption that the destination area has a higher utility value.
- c. News and invitations from relatives who have migrated before are very important information.
- d. Negative information from the destination area can reduce the intention to migrate.
- e. The level of urban influence is directly proportional to the level of migration.
- f. The higher the income level, the higher the frequency of migration.
- g. People who migrate tend to choose areas where they have friends or relatives.
- h. Migration is difficult to predict. This is because migration is mostly influenced by unexpected events.
- i. Marital status affects the amount of migration, people with unmarried status migrate more than those who are married.
- j. People with a higher educational background tend to migrate more than those with low education.

4. CONCLUSION

International Community Service Activities III are expected to increase understanding for Indonesian migrant workers abroad about their rights, namely getting protection not only legal protection, but also covering protection in other aspects as mentioned below.

- a. Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers divides the protection of Indonesian migrant workers into several types of protection. Namely, protection for prospective Indonesian migrant workers or Indonesian migrant workers includes administrative protection and technical protection; protection during work; protection after work; legal protection, social protection, economic protection. This shows the commitment of the state to provide protection to Indonesian migrant workers abroad starting from the stage of prospective Indonesian migrant workers. This shows the commitment of the Indonesian state to

protect all Indonesian people and all of Indonesia's territory as mandated in the opening of the Constitution of the Republic of Indonesia paragraph 4. Therefore, supervision and legal protection are needed. Supervision includes protection before work, during work, and after work. While legal protection includes administrative sanctions and criminal sanctions.

- b. The mechanism for Indonesian migrant workers abroad to report their cases to the crisis center-BNP2TKI through several stages and times and requires several important document requirements from Indonesian migrant workers. For this reason, the required documents must be fulfilled..

ACKNOWLEDGMENT

We would like to express our gratitude to the NGO SHARING, International Institutions in Malaysia, namely the Special Branch Management of Nadhiatul Ulama (PCINU) Malaysia, the Indonesian Student Association (PPI) of Sultan Idris Education University (UPSI), the Embassy of the Republic of Indonesia (KBRI) Kuala Lumpur and the Indonesian School Kuala Lumpur (SIKL); Rector of the Jakarta Islamic University Prof. Dr. Ir. Raihan, M.Si. and his staff, Dean of the Faculty of Law, Jakarta Islamic University Prof. Dr. Farhana, S.H.,M.H.,M.PdI. and his staff. Head of the Community Service Institute of the Jakarta Islamic University Mimin Mintarsih, S.H., M.H. and her staff. The speakers in the III international community service activity in Malaysia. To the parties that we cannot mention one by one who have helped make this activity a success without reducing our gratitude and respect.

CONFLICT OF INTERESTS

The author declares that there is no conflict of interest in the preparation of this paper which is the result of the III international community service activity held in Malaysia on Sunday, May 26, 2024.

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