

Legal Protection of Indonesian Migrant Worker Children Rights: A Human Right Perspective

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Abstract

In effort to protect the Indonesian migrant workers, the States should understand what migrant worker' rights and responsibilities. In fact, more than half of migrant workers are women, most are breadwinner, where they abandoned their children and raised by their family. Hence, the child phenomenon of migrant workers who abandoned requires professional caregivers. The results indicate that the fulfillment of the basic rights of the Indonesian migrant workers children who abandoned by their parents to abroad have not been met optimally, whether the right to survival, to education and to health. The research is recommended ought to Indonesia as one of the second most migrant workers origin States after the Philippines, and South Sulawesi as one of the largest contributors of migrant workers should be the basis for the Indonesian government and the community in policy development and implementation as well as strategies related to migrant workers and the fulfillment of the basic rights of migrant child children who abandoned to grow and develop optimally.

Keywords: Children, Human Right, Legal Protection, Migrant Worker

1. Introduction

In the Preamble of the 1945 Constitution of the Republic of Indonesia, one of the goals of a State is to protect the entire Indonesian nation, to promote the common prosperity and to educate the life of the nation, based on social justice. Human rights as a fundamental right and essentially it is inherently human nature, universal and lasting were also protected, respected and defended by the State of the Republic of Indonesia, hence the protection of human rights, including the rights of all migrant workers and their families need to be improved.

Indonesia has a huge of migrant workers and ranked significantly in Asia, the second after the Philippines. For the period 2013-2017, a total of 1.714.047 peoples leave Indonesia to work as Indonesian migrant workers. The number, approximately 1.5 million Indonesian migrant workers working abroad are women and majority they work in the domestic sector as migrant domestic workers. While, their education is low mostly Senior High School (40.5%) and Elementary School (30.17%). Data on migrant workers in the world fluctuate, mainly due to the high demand for Indonesian labor and abundant service employment.

The majority of women migrant workers with low education have cause vulnerability to the practice of human rights violations, for example *trafficking*, violence against domestic workers, death penalty, etc.¹ In addition, the magnitude of migrant workers, especially women to some supplier countries is not balanced by existing protection. It is still seen as a commodity to meet market demand and not as an overseas Indonesian worker who must be protected.²

In effort to protect the Indonesian migrant workers, the States should understand what migrant worker' rights and responsibilities for protection purposes to be well implemented and also prosperity for Indonesian migrant workers and their families.³ In fact, more than half of migrant workers are women, most are breadwinner, where they abandoned their children and raised by fathers, grandmothers, uncles or aunts,⁴ it will raise concerns about the deficits of care experienced by children and they hope that this will lead to a renegotiation of patriarchal culture and a more egalitarian gender division of domestic work and nursing work. Hence, the child phenomenon of migrant workers who abandoned requires professional caregivers.

The perspective of child is still rarely used in migration studies. The children are often seen as passive parties who do not need to be involved in the decision-making process, including when parents decide to work abroad and leave for a long time. Generally, abroad working is seen as a favorable condition for children because the potential for strengthening the economic conditions obtained (*remittance*) as migrant worker and automatically correlates to the improvement of child welfare.⁵

¹ Anis Hidayah, 2016, *Metodologi Penyusunan Laporan: Kajian dan Analisis Instrumen/Kebijakan Migrasi yang Ada di Indonesia*, Migrant Care, Pages. 7-8.

² Ana Sabhana Azmy, 2011, *Negara dan Buruh Migran Perempuan, Kebijakan Perlindungan Buruh Migran Perempuan Indonesia Masa Pemerintahan Susilo Bambang Yudhoyono 2004-2010 (Studi Terhadap Perlindungan Buruh Migran Perempuan Indonesia di Malaysia)*, A Thesis of the Faculty of Social and Political Sciences, Jakarta, Page 2

³ Marwati Riza, 2009, *Perlindungan Hukum Pekerja Migran Indonesia di Luar Negeri*, AS Publishing, Makassar: Page 3.

⁴ In Kustini's finding, of 13 families of migrant workers researched is only one family of substitute mother is husband and elder son, the remaining 12 families entrust their children for wider families such as grandmother, grandfather, uncle, aunt, or others does not blood relation. Kustini, 2012, *Strategi Pengasuhan Anak Pada Keluarga Buruh Migran Perempuan*, Indonesia University, Faculty of Social and Political Sciences, Department of Sociology, Depok.

⁵ UN Women, 2013, *Valuing The Social Cost of Migration*, UN Women, Bangkok

The children of a migrant worker have a poor psychological condition compared to non-migrant. Psychological problems as experienced by the children of migrant workers includes emotional symptoms are irritable, behavioral problems that is problematic with peers, and hyperactive problems that cannot be silent, walk here and there, talkative. While psychologically the children of non-migrant workers said they are happier.¹

The basic rights of the child assert that the existence of parent is a primary factor for a child who is still in the age of growth.² It means, if the parents work abroad, the influence suffered by the child is certainly very big on the fulfillment of their basic rights as child of the migrant worker. Principally, all children in Indonesia are entitled to the same protection. Children as the next generation of the nation must grow and develop well, although one or both parents work in the abroad.

The 1945 Constitution and Act No. 35 of 2014 on Child Protection mandate that every child has the right to survival, growth and development and is entitled to protection from violence and discrimination. In order to ensure the fulfillment of the child's right, the State is obliged to fulfill, protect and respect the child rights. In social, there are millions of children from migrant workers abandoned by one or both parents abroad do not get optimal care, even among those displaced.

It should be remembered that any risks that can affect children are the full responsibility of both government as well as the society and law enforcement as a form of control and empathy to the problems of children.³ Therefore, it takes a certain way to accelerate the fulfillment of the basic rights of migrant workers children through the establishment of an ideal model or protection. The model will be developed into a model or form of child protection as a whole. Observing the phenomenon, the research issue is the ideal legal protection for the fulfillment of the basic rights of Indonesian migrant workers children based on Human Rights.

2. The Fulfillment of the Protection of the Basic Rights of Indonesian Migrant Workers Children

Principally, all children in Indonesia have the right to equal protection without discrimination. Therefore, as children in general, children of migrant workers should get the equal rights with other children. The child as the next generation must grow and develop well, even if their parents are working abroad, should the Government, the community and every caregiver who is given the responsibility should take maximum role in the family to continue to provide fulfillment for the protection of abandoned children's rights. Do not let migrant workers children who work abroad lose their affection and parental figure.

Every child is entitled to survival, growth and development and is entitled to protection from violence and discrimination as mandated in Article 28B of the 1945 Constitution of the Republic of Indonesia. The age of 0-12 years is an important period in the development of children. The process of child growth in this age group includes care, health, education and protection. Physical and socio-emotional development will also affect the children intellectual development in their entire lifetime. Therefore, the guarantee of health care, education, and child protection must be fulfilled as much as possible.

The migrant workers children left by their parents abroad are mostly under the age of five, some of whom are babies of 3, 4 months, 2 and 3 years old. Some children are left by mothers or fathers, and even both have 1 to 2 brothers/sisters. And they left by their parents in a relatively long time, even some who have 15 years until now have never met their mother and father.⁴ For more details, see the table below:

¹ Comparative studies entitled *Children Health and Migrant Parents in Southeast Asia (CHAMPSEA)*. www.ugm.ac.id.

² Lianny Sholihin, "Tindakan Kekerasan Terhadap Anak dalam Keluarga", *Jurnal Pendidikan Penabur* No. 3 Tahun III Desember 2004, Pages 138-139.

³ Ika Saimima, *Perlindungan Anak Terhadap Anak yang Berkonflik dengan Hukum*, *Jurnal Kajian Ilmiah Ubhara Jaya*, Vol. 9 No. 3 Tahun 2008, Lemlit Ubhara, Page 938.

⁴ Interview with Ramlah, a counterpart of migrant workers from *Solidaritas Perempuan Anging Mammiri* as well as member of migrant workers family. Interview on 25 March 2017.

Table 1. Data of migrant workers children at study sites

No	Name	Age*	Caregiver	Long abandoned	Destination Country
1	Adam	4 yrs	Grandmother, aunt	3 yrs	Malaysia (Sabah)
2	Amanda	8 yrs	Grandmother	4 yrs	Malaysia (Serawak)
3	Zulfikri	4 yrs	Grandmother, brother/sister	2 yrs	Malaysia (Serawak)
4	Zulfikar	4 yrs	Grandmother, brother/sister	2 yrs	Malaysia (Serawak)
5	Zulkailah	11 yrs	Father	2 months	Malaysia (Sabah)
6	Ikram	8 yrs	Father	2 months	Malaysia (Sabah)
7	Asmila	7 yrs	Grandmother, aunt	6 yrs	Malaysia (Sabah)
8	Katelia	5 yrs	Grandmother, aunt	4 yrs	Malaysia (Sabah)
9	Riki	10 yrs	Aunt	10 yrs	Malaysia (Sabah)
10	Muh. Farid	8 yrs	Others	14 yrs	Malaysia (Sabah)
11	Sri Wahyuni	7 yrs	Mother	1 yrs	Malaysia (Serawak)
12	Yusril	9 yrs	Mother	3 yrs	Malaysia (Sabah)
13	Exal	3 yrs	Mother	4 yrs	Malaysia (Sabah)
14	Irda	2 yrs	Grandmother	10 yrs	Malaysia (Sabah)
15	Muh. Arif	3 yrs	Grandmother, aunt	15 yrs	Malaysia (Sabah)
16	Aimin	8 yrs	Aunt	1 yr	Malaysia (Sabah)
17	Aisyah	5 yrs	Aunt	1 yr	Malaysia (Sabah)

Note: * Age when they abandoned. Source: Primary data, edited (2017)

Based on the research findings, the length of migrant workers children abandoned by their parents is relatively very long at their very young age. The child who abandoned the longest is 15 years until now. It also indicates the country of destination of their mother or father is Malaysian precisely in Sabah and Sarawak. The interaction of migrant workers child with their parents is very limited, even between them having no contact with their parents, so that the relationship with their parents is cut off and no more communication since the child is abandoned until now.

Seeing this phenomenon illustrates that the migrant workers children who are abandoned by one or both parents do not get special protection from the government, local government, community and parents who are responsible for child protection. In addition, the neglect of the basic rights fulfillment of Indonesian migrant workers children is the love and attention of their parents. Of course it is very contrary to one of the sustainable development goals or SDGs.

Sustainable Development Goals (SDGs) is a global agenda where the implementation principle is “no one left behind”. In the context of Indonesia, which is almost a third of the population under 18 years, the principle is very important for the development of the nation. SDGs will not be fully achieved if there are children living in poverty, hunger and malnutrition, dying at birth or under 5 years of age for not receiving health services or getting preventable diseases, unable to complete education, married under 18, exploited economically, separated from their parents, and physical or psychological violence or living in fear.

Indonesia has ratified the *Convention on the Rights of the Child* (CRC) into legislation through Presidential Decree No. 36 of 1990 on the Ratification of the Convention on the Rights of the Child in 1989. Also, in its preamble the Convention on the Rights of the Child affirms, for reasons of immaturity physically and mentally, the child needs special protection and care, including proper legal protection, both before and after birth. This statement indicates that the child is a human being who needs the promotion and protection of human rights.

In addition, the UN has proclaimed that childhood requires special care and assistance. The family, as a basic group of society and the natural environment for the growth and well-being of all its members, especially children, should be given the necessary protection and assistance so that it can fully assume its responsibilities in society. The children, for the development and harmony fully of their personality, must grow in the family environment, in a climate of happiness, love and understanding.

The attachment of these rights explicitly indicates that the child has certain life characteristics. Every policy should always lead to the best interests of the child shall be primary consideration, as provided for in article 3 of the Convention on the Rights of the Child, which states that:

- 1) In all actions concerning children, whether committed by government or private social welfare institutions, courts, government authorities or legislative bodies, the best interests of children should be a primary consideration.
- 2) Member States undertake to ensure that the children will receive the necessary protection and care for their welfare, taking into account the rights and responsibilities of their parents, guardians or other individuals legally responsible for the child, and for this purpose take all appropriate legislative and administrative measures.
- 3) Member States shall ensure that the institutions, agencies and facilities responsible for the care or protection of children shall conform to the standards established by the competent authorities, particularly

in the areas of safety, health, and suitability of its officers, as well as competent oversight. In addition, the basic principles of child protection that are also stipulated in the Convention on the Rights of the Child include:

- a. Non-discrimination;
- b. The best interests of the child;
- c. The child survival and growth; and
- d. Appreciate child participation

Children are potentials and the next generation for the ideals of the nation' struggle have strategic roles, character and special traits, so it must be protected from all forms of inhumane treatment resulting in human rights violations. Therefore, in order that every child will be able to assume the responsibility, then they needs to get the widest opportunity to grow and develop optimally, whether physical, mental, and social, and morals, protection needs to be done and to realize welfare children with the guarantee of the fulfillment of their rights and the existence of the treatment without discrimination, especially to the Indonesia migrant workers children who abandoned by their in the abroad.

3. Right Protection for Survival

The child is a gift from God Almighty and entrusted with the parents, besides the child is the next generation of nation, who will be responsible for the existence of this nation in the future. As a wise country, it should be a warning to this nation, in order to keep its young generation out of all possible bad times. The guidance of the younger generation must always be carried out as well as possible for the sake of survival, growth and physical and mental development and social development.¹

Child protection from economic exploitation is part of the survival rights. This It means that the State as care taker to child protection and must be able to adopt a policy of juridical, social, and international cooperation in order to protect children' rights from economic exploitation. This, of course includes the harmonization of national law against international legal instruments governing the protection of children from economic exploitation.

Based on several policies governing the protection of the right to child survival, it is shown that every child, in particular the child of migrant workers, should be given special protection to protect from things that could endanger their well-being and survival because one or both parents working in abroad. Therefore, to fulfill the right protection of child survival, the roles and responsibilities of the State, government, local government, community, family, and parent or guardian towards the implementation of child protection are especially to the migrant workers children. Given the development of physical, metal and social of children is the responsibility of parents and family. Hence, the State is obliged to take appropriate steps to facilitate parents in carrying out these responsibilities. However, among migrant worker families, care, education and education responsibilities cannot be performed optimally by parents who choose migrating abroad to ensure the sustainability of family needs, therefore the responsibility is left to the nearest relatives, such as grandmother or aunt.

4. Right Protection for Education

Education is an asset of nation. It characterizes the character building of the nation. Quality education will instantly bring about the progress and civilization of the nation. Conversely, poor education will have negative implications for governance and the availability of intelligent public participation. The importance of the education, then the fulfillment of the right to education is a human right.²

The right to education provides an important means for the widespread fulfillment of human rights. This affirmation is important for the effort to build a collective awareness of the fulfillment of the right to education. The right to education is closely linked to civil and political rights and economic, social and cultural rights. The right to education is an empowerment rights. The right to education gives direct influence to the enjoyment and fulfillment of other rights. The fulfillment of the right to education is the fulfillment of human identity and dignity.³

Related to the equal distribution of educational opportunities without discrimination are also applies to the migrant workers children abandoned by mothers or fathers, and even both. In reality, however, there are a number of migrant workers children who are unable to continue their education or drop out of school, especially in primary and junior secondary education, with average children only in grade 2 and 4. It is caused by various factors including economic and socio-cultural. Economic factors are generally caused by poverty that affects the ability of parents to finance schools. While, socio-cultural factors are related to motivation of child for low school and lack of support from parents to motivates children.

Limitations in caregiving roles that affect education and parenting are also linked to the characteristics of

¹ Arif Gosita, 1989, *Masalah Perlindungan Anak*. Akademi Presindo, Jakarta, Page 35.

² Majda El Muhtaj, *op.cit.*, Page 162.

³ *Ibid*, Page 167.

grandmother as caregiver. The low level of education, the limited physical condition, the communication skills, and so on make children tend to spoil the grandchildren nurtured or less instill discipline to their grandchildren. The situation experienced by children of migrant workers abandoned by one or both parents described above shows that the Indonesian migrant workers children have not fulfilled their right to education as a whole and of course it also violates various policies related to the right to education of children.

5. Right Protection for Health

It becomes a consensus in the Indonesian constitution that the right to health is a fundamental right for human beings. The basic philosophy of guaranteeing the right to health as human rights is human dignity. Health problems are not independent; the field of health is closely related to other factors of human life. Political, economic, legal, social and cultural dimensions and education have a significant influence on the health quality of individuals and communities in a country. Talks about the right to health in principle cannot be separated from other basic human rights such as the right to education, political economy, social, and legal protection.¹

The fulfillment of the right to health for every citizen is a constitutional mandate that must be implemented by the State. The State has sought to fulfill this obligation through the implementation of the National Health Insurance system (hereinafter written JKN – *Jaminan Kesehatan Nasional*), through which the social insurance scheme, the government assists the payment of premiums for those belonging to the poor category in order to gain access to health.

Through the National Health Insurance System, every Indonesian citizen is given insurance for health care through the insurance system. Unfortunately, this system is still not applied to the Indonesian migrant workers and their children, since the enforcement of health protection for abroad citizens must include the country where the workforce is located. The absence of health insurance for these migrant workers is an injustice, because they are foreign exchange heroes who donate a very large remittance for the State.

Data from BNP2TKI shows that the remittance of the Indonesian migrant workers per 25 August 2016 has reached 62 trillion rupiah, a very significant amount for the State revenue and expenditure budget.² The large amount of remittances is not balanced with the health protection that Indonesian migrant worker family members get, one of them is migrant workers children.

The provisions of national law in some countries governing social security automatically exclude migrant workers from granting such guarantees given that they are not citizens. The existence of long duration of residence and certain documents is also an obstacle for recipient countries to provide social security to migrant workers even though they can be given the rights of other individuals.³

The International agreement between Indonesia and the recipient country of migrant workers should be used as a means to open the door so that the Indonesian government can extend a hand to its people working abroad to ensure their dignity and well-being as citizens. Likewise with family members who are left behind, among them are migrant workers children.

For example, Adam, who is 7 years old but until now he has not received the National Health Insurance, which is a Healthy Indonesia Card (hereinafter written KIS - *Kartu Indonesia Sehat*), both KIS is borne by the government and independent. According to the grandmother who cared for, Adam found it difficult to get a KIS because he did not have a birth certificate. While the requirements of family members to get KIS one of them is the Birth Certificate of the child. Furthermore Adam does not have a Birth Certificate because his parents do not have a family card, Adam's father working abroad has no identity such as ID card so it is difficult to take care of family card. And this certainly affects the future of Adam later and children who do not have a birth certificate is a violation of the right to the identity of children as regulated in Article 5 of Act No. 35 of 2014 on the Child Protection, "Every child has the right to a name as an identity and citizenship status."

As the picture of the situation experienced by the children of the Indonesian migrant workers, it shows that the State is not yet present to protect the right to its citizen health. Never let children, parents who become the Indonesian migrant workers have not protected their rights to health, do not get social security in the country where they work, let alone their children who are left in the country. Ideally, children should be left behind by their parents who become the Indonesian migrant worker, it is the responsibility of the State in this case the government, local government, community and related institutions for the fulfillment of the right to survival, the right to education, the right to health, and the right on child social security. This responsibility is charged to the State, so as not to become a layered burden of parents, especially mothers working abroad.

Many of human rights abuses committed against migrant workers and their abandoned children is a reflection of the problem of migrant workers access to social security and protection across national borders, including the right protection to health. Social protection as a means of long-term protection for migrants is very

¹ Majda El Muhtaj, *op.cit*, Page. 153

²Source: BNP2TKI, *Remitansi TKI mencapai 62 Triliun*. Available online at: www.bnptki.go.id/read/11560/BNP2TKI:-Remitansi-TKI-Mencapai-Rp-62Triliun, accessed on 25 January 2017

³ Brian Opekin, et al., 2012, *Foundations of International Migration Law*, Cambridge University Press, New York, Page 124.

important, including old age guarantees to ensure that they benefit from access to their country social protection system when they return after years of generous economic contributions. Social protection issues should also address short-term issues, including the right to access to basic health care and health insurance, support for pregnant women migrants, and compensation for abandoned migrant families, especially child migrant workers.¹

Based on the universal principles underlying and recognized by each country, the protection of human rights becomes the binding provision of the State to exercise within the scope of its national jurisdiction. Therefore, human rights are directed and aimed at giving equal treatment to all mankind. In this law human values become an inherent value, thus considering the health aspect is an important element for the realization of human dignity, then if the State has an obligation to provide protection against human rights, including in the right to give decent health rights.

Public health is a pillar of a nation development. The degree and dignity of a nation will be measured by the extent to which social roles are played. It is clear that the low quality of health will be bad for the implementation of government wheels. This awareness is a manifestation of the commitment of all nations. Good health with ensured supra and health infrastructure is the most important part in achieving good health protection and services.²

In this case, Farid Anfasa Moelok,³ states that actually any interference, intervention, injustice, insubordination and whatever form that results in the disease of the human body, their psyche, natural and social environment, regulation and laws, and the injustices in the social management are violation of their rights, namely human rights. Hence, according to the author that to realize the right protection to survival, right to education, and right to health of migrant worker child who abandoned by one or both parents, needs an institutional support and law and regulation that can guarantee its implementation.

6. Conclusion

The fulfillment of the basic rights of the Indonesian migrant workers children who abandoned by their parents to abroad have not been met optimally, whether the right to survival, to education and to health. In addition, it has not met the expectations of the 1945 Constitution of the Republic of Indonesia, Act No. 6 of 2012 on the right protection of migrant workers and members of their families, and Act No. 35 of 2014 on the Child Protection. The rights to the survival of migrant worker children are psychically not getting the love, care and nurturing from their parents. The right to education, the Indonesian migrant workers children has no guarantee of higher education, where there are still children of migrant workers who drop out of school at the elementary school level. While, the right to health, the children of migrant workers has no guarantee of health, it is proved that there is no social security they have for example Healthy Indonesia Card. This is due to the Government' related institutional responsibilities do not focus on the welfare of children of migrant workers, and the implementation of existing policies is not maximized especially in the fulfillment of the basic rights of children of migrant workers.

The research is recommended ought to Indonesia as one of the second most migrant workers origin States after the Philippines, and South Sulawesi as one of the largest contributors of migrant workers should be the basis for the Indonesian government and the community in policy development and implementation as well as strategies related to migrant workers and the fulfillment of the basic rights of migrant child children who abandoned to grow and develop optimally.

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¹ Paola Pace, 2009, *Migration and the Right to Health: A Review of International Law*, IOM, Jenewa, Page 15

² Majda El Muhtaj, *op.cit.*, Page 157.

³ Farid Anfasa Moelok, *Pembangunan Berkelanjutan dalam Peningkatan Derajat Kesehatan Manusia*, (Paper) presented on BPHN Seminar, Denpasar, 23-28 June 2003.

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