

MIGRANT WORKERS AND THE PROTECTION OF THEIR HUMAN RIGHTS

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Isu hak asasi manusia bagi para pekerja TKI dewasa ini sangat mengemuka. Berbagai kasus Nunukan, penganiayaan dan pemerkosaan, serta pemulangan TKI menunjukkan bahwa perlindungan terhadap nasib dan hak-hak dasar mereka kurang mendapat perhatian secara memadai. Dengan latar belakang tadi, tulisan ini mencoba mengungkapkan berbagai instrumen hukum perlindungan pekerja asing (migrant workers) dan berbagai kesulitan dalam tataran implementasinya. Kegagalan kebijakan perlindungan HAM bagi pekerja ini bersumber dari aspek institusional, sosial serta dimensi ekonomi. Atas dasar berbagai kegagalan tadi, tulisan ini menawarkan beberapa langkah konkrit yang diharapkan dapat memperbaiki nasib dan kondisi para pekerja (TKI).

Prologue

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Human rights issue is now becoming significant concerns of not only government in developed and developing countries, but also international organization and local NGOs. Unfortunately, proper attentions are given to "conventional" segment of people such as women and children, minority groups, and maybe, poor people, while human rights for migrants, are less-appropriately analyzed. Based on that reason, the main purpose of this paper is to elaborate the policy and practice of migrant's human rights so that it is likely to formulate a better treatment for migrants as human being.

In order to achieve the above purpose, this paper will focus and examine the following three questions:

1) *Peneliti pada LAN dan Dosen STIA LAN Bandung*

Are there any provisions on the protection of migrants' HR on international conventions? If there are, what is actually the HR of migrants?

How is the practice / implementation of migrants' HR principles / rules? What factors caused the problems?

What kind of policies is needed to improve the protection of migrants' HR in the future? Also, what can be contributed by national and international organizations for better atmospheres for migrants?

General Features of Workers

The concept "migrant" covers all people who move from one country to another and therefore, reluctant to be a subject of human right violations. It includes stateless persons, married women (nationality), refugees, individuals who are not nationals of the country in which they live, and workers. All of them require protection of their human rights. Due to the broad meaning of migrant, however, this paper will concentrate mainly on migrant workers.

According to UN Population Division (2002), around 175 million people currently residing in a country other than where they were born, with most living in Europe (56 million), Asia (50 million), and Northern America (41 million). Unfortunately, they have often perceived as able to work long hours for low pay and to have limited possibilities to demand benefits or other protections. Most severely, migrants are commonly and deliberately associated in news media coverage, by politicians and in popular discourse with crime, trafficking, drugs, disease, AIDS, and other social ills

(Taran, 2000). In short, every migrant is undoubtedly vulnerable to the violation of human rights, either from state actors or non-state actors.

For most of Indonesian workers, International Labor Day, May 1, couldn't be a celebration time. It's more honestly to be a time of contemplation and commemoration for millions of workers whose rights and destinies are hardly becoming better, it is a condolence day.

Evi Mariani in her article titled *Abuses against migrant workers still rampant* (*The Jakarta Post*, May 01, 2003), for example, reminds us to the one of acute social problems encountered by doomed people in Indonesia: *poverty of workers!*. Many ways have been done by the poor to go out of poverty, and many risks have been taken. But still, they remain poor. Evi's investigation illustrates how poor people build their dream of earning loads of money by acquiring job abroad as migrant workers (TKIs). Ironically, what they obtain is nothing except exploitation and any other suffering treatments.

Then, the problem has inevitably been shifted. It is not only a matter of poverty or social dilemma, but politically, it is a human rights violation. It is not a private issue anymore, but it becomes a broadly public concern. Indeed, human rights issue is becoming significant concerns of not only government in developed and developing countries, but also international organization and local NGOs. That's the reason why the protection of migrant workers' human right ought to be one of highly prioritized agendas in the near future.

Legal Provision and Principles of Universal Migrant's Human Rights

Actually, there are lots of legal provisions concerning human rights of migrant workers. The most important provision here is *"International Convention on the Protection of the Rights of All Migrant Workers and*

Members of Their Families", which is adopted by UN General Assembly resolution No. 45/158 of December 18, 1990, as presented in the following Table.

Similarly, ILO (1975) proclaims that migrant workers should be granted an equal opportunity and treatment, particularly in the following aspects:

Table 1. Migrant's HR according to International Convention 1990	
Dimensions	Items of Rights
Significance and Condition of Work	<ul style="list-style-type: none"> • <i>Right to work and receive equal wages / pay for equal work</i> • Right to freedom from forced labor • Right to protection during pregnancy from work proven to be harmful. • <i>Right to safe working conditions and a clean and safe working environment.</i> • Right to reasonable limitation of working hours, rest leisure
Access to social services	<ul style="list-style-type: none"> • Right to a standard of living adequate for the health and well being of the migrant worker and his or her family. • Right of children of migrant workers to education
Legal & Political Matters	<ul style="list-style-type: none"> • Right to freedom from discrimination based on race, national / ethnic origin, sex, religion or any other status. • Right to equality before the law and equal protection of the law. • Right to protection against arbitrary expulsion • <i>Right to freedom of association and to join a trade / labor union.</i>
Family relations	<ul style="list-style-type: none"> • Right to protection for the child from economic exploitation and from any work that may be hazardous to his or her well being and development. • Right to reunification.
Miscellaneous	<ul style="list-style-type: none"> • Right to return home if the migrant wishes. • Right to freedom of sexual harassment in the workplace. • Right to protection during pregnancy from work proven to be harmful.

- Access to vocational guidance and placement services;
- Access to vocational training and employment of their own choice;
- Advancement in accordance with their individual character, experience, ability and diligence;
- Security of employment, the provision of alternative employment, relief work and retraining;
- Remuneration for work of equal value;
- Conditions of work, including hours of work, rest periods, annual holidays with pay, as well as social security measures and welfare facilities and benefits provided in connection with employment;
- Membership of trade unions or exercise of trade union rights;
- Rights of full membership in any form of co-operative;
- Conditions of life, including housing and the benefits of social services and educational and health facilities.

In other provision such as "Protocol to Prevent, Suppress and Punish Trafficking in Persons" (UN, 2000), individuals or migrants are also given a right to protection against human trafficking.

Implementation of Migrant's Human Rights Convention

The main problem is that legal provisions provided by international organization (UN, ILO) are not in force. As a result, there is a huge gap between norms and implementations, between what are written in the regulation and what are done in the reality. Three cases are chosen here to illustrate such gap. Institutional, political, and social obstacles

may contribute to the problems (Matilla, 2000). From *institutional perspective*, the obstacle is the absence, non-application and non-recognition of the universal standards and norms in national law. Under *social obstacle*, there is a social exclusion as a result of residential segregation and concentration of migrants' housing in less favored urban areas. This situation causes disadvantages in access of public education, health care and employment. Meanwhile, in *economic aspect*, migrants tend to be under discrimination in access of employment, including the condition or environment of work.

Policy Actions Needed

Surely, there are unlimited efforts to improve the human rights protection of migrant workers. In this sense, Rodriguez (2000) provides a comprehensive report on the role of international organization, particularly UN, in promoting human rights of migrants. However, efforts should be done not only by international agents, but also individual state as well as by local organization (NGOs).

Therefore, in order to make a better policy and environment for migrant workers, the following actions are substantially required:

1. All states need to ratify relevant instruments of international law as well as enact national laws in accordance to the general principle of migrants' human right protection, particularly to extend human right standards.
2. International organizations (ILO, UN) need to strengthen global campaign on influencing states to ratify international conventions / protocols, on supporting such campaign by regional / local NGO,

and on adjusting their conventions based on the most current cases / situation.

3. Participation of migrants in trade / labor union needs to be encouraged as a means in overcoming their vulnerability and in maintaining dialogue with company owner or government agencies
4. Sending, transit, and receiving countries need to actively communicate and cooperate to tackle the problems of migrant workers.

However, implementation of universal

understanding on migrant's human right is not so easy. Some developed countries tend not to ratify international conventions or protocols since they have their own interests. There are rarely available data on why industrial countries are not willing to apply international conventions into national laws. This situation, however, could be solved through mutual understanding among countries and among institution related to migrant workers.

Migrant's Rights	Implementation
<p><i>Socioeconomic Rights:</i></p> <p>Right to work and receive equal wages / pay for equal work</p>	<p>Migrants are frequently the subjects to economic exploitation, in which payment is unequal to work load. In German for example, foreign-born households on average have lower incomes than German born households (Clark, 2001). In other case, some companies increase their production activities in the informal sector to places where legal requirements of pay and working conditions are not followed (Matilla, 2000).</p>
<p><i>Working Environment Rights:</i></p> <p>Right to safe working conditions and a clean and safe working environment</p>	<p>Migrant labors frequently fill the "three D jobs" (dirty, dangerous, difficult/degrading). More serious was the active and hostile categorization, stereotyping, scapegoating of migrants for domestic social and economic problems (Taran, 2000).</p>
<p><i>Political Rights:</i></p> <p>Right to freedom of association and to join a trade / labor union</p>	<p>Some states consider migrants' association as hostile and threat against public order (Matilla, 2000). International Confederation of Free Trade Unions (ICFTU) also demonstrates that it is very difficult to organize migrants into union to defend their interest and rights. Even when it is not considered illegal under national laws, organizing is easily intimidated and disrupted by the threat or deportation (Taran, 2000).</p> <p>Most severely, hundreds of migrants were not only viewed as potentially subversive, but also killed in the outbreaks of violence in the Middle East during the gulf war (Castles: 1993).</p>

Concluding Remarks

The number of workers (both domestic and migrant) has been increasing much faster than the growing of industrial capacity to absorb manpower. Consequently, the tendency of unemployment will also be mounting. In such a case, the phenomenon of illegal workers will be a common appearance as well as the violence of workers' human rights. Therefore, protection of workers' human rights is indeed a long and winding effort to achieve a more equal world order. In this sense, two preconditions are required: 1) a better commitment from policy holders from all countries involved in migrants workers issues, and 2) a comprehensive (inter-sectoral and multi stage) policy to improve the standard of life for workers worldwide, especially in developing countries like Indonesia.

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