

## CHAPTER I

### INTRODUCTION

#### A. Background

Work has a very important meaning in human life that everyone in need of work. Job can be interpreted as one's source of income to fulfill their own life necessities as well as their families. Can also be interpreted as a medium to actualize themselves so that a person could feels his life to be more valuable for themselves, their families and the environment. Therefore, the right to work is a fundamental right that is inherent in a person that must be upheld and respected.

Indonesia is the world's fourth-most-populous country with an estimated total population of over 252 million people.<sup>1</sup> Moreover, the country has a young population as around half of the total population is below the age of 30 years. Combined, these two features imply that Indonesia currently contains a large labour force (see figure one).<sup>2</sup>

Figure 1 Indonesia Labour Force (2010 – 2014)

	2010	2011	2012	2013	2014
Labor Force	116,527,546	119,399,375	120,320,000	120,170,000	121,870,000
- Working	108,207,767	111,281,744	113,010,000	112,760,000	114,630,000
- Unemployed	8,319,779	8,117,631	7,310,000	7,410,000	7,240,000

Source: World Bank and Statistics Indonesia

<sup>1</sup> Wikipedia, *Indonesia*, <https://en.wikipedia.org/wiki/Indonesia>, Retrieved on July 08, 2015.

<sup>2</sup> Indonesia Investments, *Unemployment in Indonesia*, <http://www.indonesia-investments.com/finance/macroeconomic-indicators/unemployment/item255>, Retrieved on July 08, 2015.

The practice of sending workers abroad for the first time occurred on the year 1890 during the Dutch colonization. At that time, the Dutch government sent contract workers to Suriname, which was now a sovereign state on the northeastern Atlantic coast of South America, former colonized by the Dutch. Until the independence of Indonesia till now, the practice of sending workers is still carried out even to other countries like Southeast and East Asia and the Middle East, and others. As a result, the increasing labour demand made Indonesia Government to establish the labour migration policy so as to promote the sending of Indonesian worker overseas.

Indonesia has several laws to protect Indonesian citizen who work abroad which is under the provisions of Article 27 verse (2) Constitution of 1945:

*“Every Citizen shall have the right to work and decent living for humane livelihood.”*

Article 28D verse (2):

*“Every person shall have the right to work and to receive fair and proper remuneration and treatment in employment.”*

Law no. 39/2004 concerning the Placement and Protection of Indonesian Workers Abroad is the main statutory instrument related to social protection for Indonesian overseas migrant workers. The law sets out legal provisions related to placement procedures, such as pre-placement training pre-departure health examinations, and financing,

worker protection, dispute settlement, supervision of placement and protection activities for Indonesia overseas labour migrants.

Other provisions and regulations including Presidential Instruction No. 6/2006 on Reforming the System of Placement and Protection of Indonesian Migrant Workers. This instruction regulates details action designed to make changes in terms of migrant placement services, quality improvement for placement of labour migrants, and strengthening the function of Indonesian representatives in providing protection to Indonesian labour migrant (INPRES 2006); Presidential Regulation No. 81/2006 on the National Authority for the Placement and Protection of Indonesian Overseas Workers (BNP2TKI). This regulation's mission is to improve security, protection and empowerment of overseas labour migrants<sup>3</sup>; Regulation No. 28/2007 on the establishment of an Overseas Labour Market Agency (BKLN). This regulation, stemming from BNP2TKI, considers the obligation of employment agencies to provide protection for prospective Indonesian migrant workers and pre-placement training.<sup>4</sup>

Indonesia is the second largest in sending workers overseas after the Philippines.<sup>5</sup>Based on the data from the National Authority for the

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<sup>3</sup> Mahidol Migration Center, Institute for Population and Social Research, Mahidol University, *Migrant Workers', Right to Social Protection in ASEAN: Case Study of Indonesia, Phillipines, Singapore and Thailand (Data from BNP2TKI 1999)*, available on <http://www.ilo.org>, Retrieved on July 09, 2015.

<sup>4</sup> *Ibid.*

<sup>5</sup> Tita Naovalitha, *Perlindungan Sosial Buruh Migran Perempuan*, (Jakarta: 2-3 Mei 2006), pg. 64.

Placement and Protection of Indonesian Overseas Worker (BNP2TKI), on average 563,262 Indonesian migrants worked abroad each year during the period 2007 to October 2014. The majority of the Indonesian migrants work in Southeast and East Asia and the Middle East, and the top five destinations from January to October 2014 are<sup>6</sup> as shown in Figure 2:

Figure 2 Placements of Indonesian Labour Migrants by Major Destination Country in 2014

NO	NEGARA	S.D 31 Oktober 2014
1	MALAYSIA	107,085
2	TAIWAN	68,874
3	SAUDI ARABIA	38,104
4	HONG KONG	30,208
5	SINGAPORE	25,601
6	UNITED ARAB EMIRATES	15,276
7	OMAN	15,035
8	KOREA SELATAN	9,623
9	BRUNEI DARUSSALAM	9,298
10	UNITED STATES	7,839

Source: BNP2TKI (National Authority for the Placement and Protection of Indonesian Overseas Worker)

Figure 3 Placements of Indonesian Labour Migrants by Gender

Gender	1996		2000		2004		2007	
	Total	%	Total	%	Total	%	Total	%
Men	228,337	44	137,949	32	84,075	22	152,887	22
Women	288,832	56	297,273	68	296,615	78	543,859	78
Total	517,169	100	435,222	100	380,690	100	696,746	100

Source: BNP2TKI (National Authority for the Placement and Protection of Indonesian Overseas Worker) (2007)

As illustrated in Figure 3, the majority of Indonesian labour migrants are women, as a result of increased demand for migrant labour in domestic and manufacturing sectors. Migrant workers from Indonesia

<sup>6</sup> BNP2TKI, *Indeks Statistik Penempatan*, [www.bnp2tki.go.id/stat\\_penempatan/indeks](http://www.bnp2tki.go.id/stat_penempatan/indeks). Retrieved on July 05, 2015.

make an important economic contribution to their countries in the amount of foreign remittances sent home. According to the Bank of Indonesia, remittances from Indonesian workers abroad reached US \$6.6 billion in 2008.

As the migrant workers receiving country, does Hong Kong SAR as the destination country of Indonesian workers have laws to protect migrant workers in Hong Kong SAR?

Chapter 57 of the laws of Hong Kong SAR, The Employment Ordinance is the main piece of legislation governing conditions of employment in Hong Kong SAR. Under the Employment Ordinance migrant workers are covered by, and protected by the same laws that protect local workers. These laws regulate working conditions for all workers in Hong Kong SAR, regardless of place of work or country of origin. It governs the payment of wages, the termination of employment contracts and the operation of employment agencies. The law provides statutory holidays with pay, sick leave, maternity protection, rest days, paid annual leave and employment protection for employees.

Both Indonesia and Hong Kong SAR are the United Nations member countries, Indonesia officially became the 60<sup>th</sup> member of the United Nation on 28 September 1950, and Hong Kong has joined in United Nation on 1 July 1997. The aims of the United Nations are to maintain international peace and security, to foster worldwide cooperation in solving economic, social, cultural and humanitarian problems, to

promote human rights and fundamental freedom for the people of the worlds, and many more.

On 16 December 1966, United Nations held a General Assembly regarding a multilateral treaty called the International Covenant on Economic, Social and Cultural Rights (hereinafter called as ICESCR). The purpose of this multilateral treaty is to make its parties commits to recognize the right of all peoples to self-determination, including the right to "freely determine their political status", pursue their economic, social and cultural goals, and manage and dispose of their own resources. As of July 2015, the Covenant has 70 signatories and 164 parties.<sup>7</sup>

Indonesia and Hong Kong is two of the countries that ratify this multilateral treaty. Hong Kong ratified ICESCR on 1 July 1997, while Indonesia ratified ICESCR by adopting it onto Act. No. 11 Year 2005 about Ratification of International Covenant on Economic, Social and Cultural Rights. In global perspective, countries that had signed and ratified ICESCR are seen as a country that respects economic, social and cultural rights of individuals. Beside both also ratified the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter called as CEDAW), which defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination, as well as the International Labour Organization (ILO) Convention No. 29 on Forced Labour.

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<sup>7</sup> United Nations, *UN Treaty Collection: International Covenant on Economic, Social and Cultural Rights*, (United Nations: 2012).

The regulations and laws of Hong Kong and Indonesia states, and the regulations of United Nations concerning on protecting rights of migrant workers have set the protection of migrant workers but there are still many cases of Indonesian migrant workers' right violations in Hong Kong. The abuse begins with the international recruitment racket, with false promises of high salaries and forced participation in draconian "training" programs. This tracks workers into debt bondage with fees and deposits, while they are housed in barracks-like facilities and subjected to verbal abuse to break them in. Many young workers are pressured to sign contracts they don't understand. Violations faced by workers include excessive working hours, denial of rest days and holidays, forging of documents, excessive agency fees, misrepresentation by agencies, placement with employers that have violated the rights of previous workers and more.

Based on the elaboration above, we can see that there are still many acts of abuse that the migrant workers especially women encountered in Hong Kong SAR. Therefore, the title of this research is **"The Reviews of Migrant Workers Right in Indonesia and Hong Kong SAR (Legal Study of Indonesian Migrant Women Workers Abuse in Hong Kong SAR)".**

## **B. Research Questions**

The researcher has identified some core problems based on the background of the research above. The research questions are as follows:

1. Has the Law no. 39/2004 concerning the Placement and Protection of Indonesian Workers Abroad been effective on protecting the rights of its migrant workers abroad?
2. Have the regulations in Hong Kong SAR as receiving country of foreign migrant workers been effective on protecting the rights of foreign migrant workers in its territory?

### **C. Research Objectives and Benefits**

#### **Research Objectives:**

The purposes of this research are:

1. To analyze the effectiveness of Law no. 39/2004 concerning the Placement and Protection of Indonesian Workers Abroad on protecting the rights of its migrant workers abroad.
2. To analyze the effectiveness of the regulations in Hong Kong SAR as receiving country of foreign migrant workers on protecting the rights of foreign migrant workers in its territory.

#### **Research Benefits:**

The benefits of this research are:

1. To the readers in understanding the Law no. 39/2004 concerning the Placement and Protection of Indonesian Workers Abroad on protecting the rights of its migrant workers abroad.
2. To the readers in understanding the regulations in Hong Kong SAR as receiving country of foreign migrant workers on protecting the rights of foreign migrant workers in its territory.