

CHAPTER V

CONCLUSIONS, LIMITATIONS, AND RECOMMENDATIONS

A. Conclusions

After the elaboration and in-depth discussion in the above chapters, there are some conclusions that can be concluded to this research with the title of The Reviews of Migrant Workers Right in Indonesia and Hong Kong SAR (Legal Study of Indonesian Migrant Women Workers Abuse in Hong Kong SAR) as follows:

1. Indonesian legal provision in order to protect the rights of migrant workers while working abroad is regulated in Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad. In which there are several weaknesses of the Law no. 39 of 2004 both in terms of substance and implementation, such as:
(1) Article 35 point (d) the provisions concerning the minimum education requirements of prospective workers is Junior High School (SMP) graduates or equivalent. (2) There are no provisions in Law no. 39 of 2004 which mandated the government to make the international agreement as well as bilateral or multilateral which give the protection to the Indonesian migrant workers. (3) Ineffectiveness role of Private TKI Placement Agency (PPTKIS) Placement Agency is too broad (Article 34, 35, 42, 65, 67, 75, 82).

(4) In practice, many PPTKIS does not have the training unit of work. Based on thus result, regulations in Indonesia as a sending country of migrant worker haven't been quite effective in protecting the rights of it migrant workers who work abroad.

2. As the receiving country or destination country of TKI, Hong Kong SAR has set out a regulation in protecting workers right, including the foreign domestic helper, which is through the Chapter 57, the Employment Ordinance. Most of this Chapter 57 regarding the Employment Ordinance, the provisions of article regulates the rights of the workers more specific, such as the Minimum Allowable Wage (MAW), Rest Day, Statutory Holiday, Sickness Allowance, and Maternity Leave. However, there were also some weaknesses conditions set by the government that puts the worker in a vulnerable state, such as, (1) the New Condition of Stay or the so called "The Two-Week Rule. (2) The Live-in requirement for every domestic helper in Hong Kong SAR. (3) There is no general statutory provision limiting maximum daily working hours, limiting overtime hours or stipulating overtime pay, including for migrant domestic workers. This is not consistent with the Hong Kong government's obligations under international law. As the interview conducted by Asian Migrant Center to one TKI who had the abusive treatment since in the training center in

Indonesia, then in the placement agency in Hong Kong SAR, and during employment. As well as the the 24-year-old Erwiana Sulistyaningsih. As the cause of the Live-in requirement for every domestic helper in Hong Kong SAR. Based on the reasons above, the researchers concluded that the laws of the Hong Kong SAR itself has not been effective enough to provide protection against TKI working in Hong Kong SAR, and there were no MOU yet by Indonesia and Hong Kong SAR which made the TKI more vulnerable.

B. Limitations

This research may still be far from being perfect, particularly because:

1. The limitation of books and references the researcher can get regarding to this research.
2. The limitation of time for the researcher to do the research, because the research takes more time than the researcher thought it would be.
3. The limitation in preparing good and correct grammar in English.

C. Recommendation

Based on the result of research conducted by the researcher, the researcher gives some recommendations regarding to the title of this research, as follows:

1. For Indonesian Government:

- a. The Indonesian Government must empower the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) to ensure the full protection of migrant workers in the deployment process, ensuring that they are consistent with international human rights standards. Currently BNP2TKI is charged with the protection of migrant workers however their authority or willingness to do so have both not yet been proven.
- b. The Indonesian government must train and monitor officials to ensure the implementation and enforcement of regulations protecting migrant workers in Indonesia and abroad. To this end Indonesian consular officials need to begin to treat migrant domestic workers as citizens that have the right to protection and services from their government. This must include the provision of routine training, legal assistance and dissemination of information to migrant workers in the destination countries, including Hong Kong
- c. The Indonesian government must begin to strictly monitor the compliance of recruitment and placement agencies to. They must take action against those agencies that violate regulations, including revoking their business licenses and prohibiting them from being granted new licenses; this is crucial to prevent their future operation and continued exploitation of migrants.

d. The Indonesian government must update the current legislation with the following:

- A review of the role of the recruitment agency in preparing migrant workers for their deployment overseas, placing migrant workers, reducing the amount of fee charged by the agent, provide effective redress mechanisms in cases of violation of migrants' rights by the agents or the employers where the agents place the workers.
- The Indonesian governments' policies and practices are consistent with Hong Kong labor laws on agency fees and minimum wage. These policies should be enforced through sanctions against agency and consular officials charging illegal fees and rigorous audit of agencies.
- Strict policies to guarantee that agencies place Indonesian domestic workers in contracts that comply with the minimum wage requirement—offending agencies should be fully prosecuted and their licenses revoked.

e. The Indonesian government must negotiate bilateral agreements with all destination countries, including Hong Kong, that protect migrant workers throughout the migration process.

2. For Hong Kong SAR:

- a. The Hong Kong government must take more serious action to stop the rampant practice of underpayment of Indonesian migrant workers in Hong Kong. In particular, conducting routine spot inspections of employers' homes, stepping up inspections of agencies, blacklisting abusive employers, and revoking the licenses of violating agencies.
- b. The Hong Kong government must abolish the New Conditions of Stay, "2-week rule", and other discriminatory policies against MWs like Live-in Requirements,
- c. The Hong Kong government must negotiate bilateral agreements with all sending countries, including Indonesia, that protect migrant workers throughout the migration process.