

Unraveling Corruption Practices in Placement of Migrant Domestic Workers Abroad

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Abstract

The government of Indonesia is not serious to resolve the issue of the protection of migrant workers. The Supreme Audit Agency (BPK) Republik Indonesia (RI) has provided comprehensive recommendations in the examination report of placement and protection performance of migrant workers. BPK issued a report that the placement of workers abroad is not fully supported by the policy intact, comprehensive, and transparent to protect the basic rights of workers, and equal opportunities for all stakeholders. It is also not supported by the integrated system and the allocation of adequate resources to improve the quality of the placement and protection of migrant workers abroad. BPK also explicitly highlights that recruitment of workers is not yet supported by good and transparent process so there is no certainty, justice, and the protection of migrant workers.

Keywords: Corruption, Placement, Migrant Domestic Workers, BPK (The Supreme Audit Agency).

Introduction

Corruption in the field of migrant domestic worker placement starts from the recruitment process. Collusion between the bureaucracy and the supplier company becomes a chain key of migrant domestic worker policy. But the most corruptive thing is the placement of high

officials based solely on political interests and not on the capabilities and expertise. Ruyati's beheading asserts another reality of "migrant politics" behind what has been delivered by the public officials of this country. No exception to what has been delivered by the President SBY (Susilo Bambang Yudhoyono-ed) on the protection of migrant workers heard by people around the world. In a series of ILO-100 or ILC (International Labor Conference) trials, very convincingly President said that the conditions of Indonesian migrant workers have been respected and their rights are protected. This is because Indonesia already has regulations and institutions that protect foreign exchange heroes (see *presidensby.info*, June 15, 2011). The President's speech indicates as if there is no serious problem faced by Indonesian migrant workers. The 100th ILC (International Labor Conference) was organized by the ILO on June 3 to 18, 2011 in Geneva producing the adoption of ILO Convention No. 189 concerning decent work for domestic workers. This Convention is the first international instrument that gives legitimacy and legal recognition of domestic workers (PRT stands for *Pembantu Rumah Tangga*) as workers whose rights must be guaranteed by law. The Convention is also to address problems of domestic workers who constantly suffer from discrimination and systematic violations of human rights during the work.

The problems of migrant workers hitherto have invisible edges, never a priority to be completed thoroughly and completely. That the government of Indonesia is not serious to resolve the issue of the protection of migrant workers is seen in the handling pattern that is always partial, sporadic and ad hoc although the Supreme Audit Agency (BPK) Republik Indonesia (RI) has provided comprehensive recommendations in the examination report of placement and protection performance of migrant workers in the second half of 2010. In March of 2011, the BPK issued a report that for the public it was not so surprising, since many problems so far at least have shown lack of commitment and performance of Indonesian

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Human Resource Ministry and BNP2TKI in providing protection and services for migrant workers. Here is an excerpt from the conclusion of BPK RI about the performance of Indonesian Manpower Ministry and BNP2TKI; “that the placement of workers abroad is not fully supported by the policy intact, comprehensive, and transparent to protect the basic rights of workers, and equal opportunities for all stakeholders. It is also not supported by the integrated system and the allocation of adequate resources to improve the quality of the placement and protection of migrant workers abroad.” BPK also explicitly highlights that recruitment of workers is not yet supported by good and transparent process so there is no certainty, justice, and the protection of migrant workers (see *bpk.co.id*).

Politics and Corruption of Power

Corruption of power is corruption practices based on policy spending budget yet the results for the protection of migrant workers are not significant. Corruption of power can be really seen in the form of products of the corrupt policies, power abuse, facilitating corruption and allowing the corrupt practices continue to occur. Among the forms of corrupt policy, the example can be seen in the Presidential Decree when forming Task Force (*Satgas*) handling cases of Indonesian citizens/migrant workers facing the death penalty abroad through Presidential Decree No. 17 of 2011 on July 7, 2011 (see *presidenri.go.id*), which drew criticism. This policy is clearly a reactive attitude of the Indonesian government for the execution of Ruyati beheaded in Saudi Arabia. The results of the investigation of Migrant CARE with Ruyati’s family, KontraS, Wahid Institute and Alimat in Saudi Arabia on 12-20 August 2011 prove that the death sentence for Ruyati is a result of the negligence of the government that does not provide maximum legal assistance, including not providing lawyers for Ruyati. After being cornered the government finally admitted it. Migrant CARE has been strongly questioned the effectiveness of the Task Force, considering the composition of the members comprising the retired public officials, although there are also officials who are still active. Apart from the composition of its membership, the main tasks and functions of the Task Force are in the issue of country of placement of the migrant

workers, while their position is in this country. According to the Presidential Decree No. 17 of 2011, the main tasks of the Task Force are as follows: (1) Inventorying of the problems and cases of Indonesia Citizens/Migrant Workers abroad who are under death penalty; (2) Conducting advocacy and legal aid for Indonesian Citizens/Migrant Workers abroad who are undergoing the process of law, especially those facing the death penalty; (3) Evaluating the handling of legal cases of Indonesia Citizens/Migrant Workers, including adverse cases of Indonesian Migrant Workers in country of placement; (4) Providing recommendations to the President on the steps in completing and handling the legal cases of Indonesia Citizens/Migrant Workers in the country of placement.

The four main authorities given to the Task Force actually raise questions about the state budget allocated to the Task Force operational in Indonesia, while its main tasks and functions are in the country of placement. During 6 months of its working period, the state spent a lot of budget for travel and living costs abroad that are often performed by the Task Force. Meanwhile, the budget of Indonesian government representatives in foreign countries also was not reduced when the Task Force is formed. What had happened is a waste of the state budget with minimal results. The cases of migrant workers who are threatened



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with the death penalty continues to increase, while five cases of migrant domestic workers (Tuti Tursilawati, Siti Aminah, Darmawati, Siti Zaenab, and Siti Aminah) who received the death penalty in Saudi Arabia are unclear until now. And in an effort to lobby the government of Saudi Arabia for the release of five migrant domestic workers, the Task Force is still asking for outside help (outside the Task Force), that is the former president BJ Habibie, that also has not produced results. Some migrant domestic workers who had returned from Saudi Arabia who are free from the death penalty have always been claimed as the successful performance of the Task Force, whereas they came home because of having finished a prison sentence for 5-10 years, as Bayanah, Neneng, and Jamilah. And their freedom is not because of the performance of the Task Force, the Task Force only recorded the data of their return. Ironically, although many people see the ineffectiveness of Task Force performance, yet the President Susilo Bambang Yudhoyono (SBY) in Limited Cabinet Meeting of Political, Legal and Security Affairs, January 5, 2012 precisely expressed the need for the extension of working period of the Task Force of migrant workers for 6 months. And the president's decision is precisely justified by some members of the House of Representatives from Commission IX (in charge of Labor and Health) that should be able to control any policy that is not productive.

Similar policy is also made in 2004, the government set up Task Force of TKIB (Indonesian Troubled Migrant Workers) through Presidential Decree No. 106 of 2004. This Task Force has responsibility for troubled migrant workers returned from Malaysia due to deportation. In the term of budget politics, the Task Force is also contrary to the principle of efficiency of the budget, because the social ministry also has budget items for the repatriation or return of troubled migrant workers. Meanwhile, the abuse of power can be seen in the failure of state to protect migrant workers abroad, especially the majority of women migrant domestic workers. The President, with his power should be able to choose the people who deserve to lead the institution who have full responsibility for the protection of migrant workers, i.e. the Ministry of Human Resources and Transmigration and BNP2TKI. That authority, however, is not being used properly by choosing the people who do not

have the capability in the field. After the President issued Presidential Decree No. 81 of 2006 on the National Agency for the Placement and Protection of Migrant Workers (BNP2TKI), President Yudhoyono then appointed Moh Jumhur Hidayat as the head of BNP2TKI since January 11, 2007 through Presidential Decree No. 2/M/2007. As a public knowledge, the background of the appointment of him as the head of BNP2TKI has a more political nuances than his capacity in the field of protection of migrant workers. Jumhur Hidayat obviously does not have a track record in the field of protection of migrant workers, he is better known as an activist of a trade union, namely Gaspermindo. Due to the limited capacity, the policy made by the head of BNP2TKI is far from the protection aspect, such as the obligations of KTKLN (Migrant Worker Card) which later further disadvantage the migrant workers and policy of BNP2TKI which opened labor markets in areas of conflict such as Sudan. The failure of BNP2TKI as reported by BPK at the second half of 2011 is also the failure of SBY in appointing the leader of this institution.

The same mistake was also made by President SBY in appointing the Minister of Human Resources and Transmigration. There is no significant achievement of the Ministry of Human Resources and Transmigration under Muhaimin Iskandar in the protection of migrant workers. Therefore, it is not so strange when the more prominent thing in this ministry is the practice of corruption allegedly involving the helm of the Ministry, and not his performance. In addition, the appointment of a single consortium without a tender for migrant worker insurance by the relevant minister aggravates the problems of migrant workers. Finally, it seems reasonable if the appointment of the head of BNP2TKI and Muhaimin Iskandar as the minister of Human Resources and Transmigration of Indonesia is seen more as a rationing of power to those who have a high loyalty to his master. It is proven in the drama cabinet reshuffles in mid-October 2011 ago, Muhaimin Iskandar was not evaluated on his performance objectively, but has been sustained because of political coalitions. Likewise with BNP2TKI that showed to be not having any good performance of evaluation mechanism. Even for the tenure of the head of BNP2TKI which should be completed by January 11, 2012, until now there is no issue about tenure extension or

replacement from President SBY. The appointment of public officials should also be based on the terms of the principles of the election or appointment of public officials as provided for in article 7 of the UN Convention Against Corruption, 2003, "Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavor to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials: That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude" (see *kpk.go.id*).

Various policies that are not smart and assertive often give a gap and facilitate corruption in it. For example, overlaps and conflicts

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between the two institutions of the country, the Ministry of Indonesian Human Resources and Transmigration and BNP2TKI happened in a long time led to poor services and protections afforded to migrant workers by both institutions. This will not occur if the governance and administration of the government is performed properly. According to Article 48 of Presidential Regulation No. 81 of 2006

(see *presidenri.go.id*) about BNP2TKI; "At the start of this Presidential Regulation, the Directorate General of Foreign Employment (PPTKILN) Ministry of Manpower and Transmigration, as stipulated in Presidential Regulation No. 10 of 2005 on Unit of Organization and Tasks of Echelon 1 in State Ministries of Republik Indonesia as amended several times, the latest by Presidential Regulation No. 66 of 2006, is being erased". After BNP2TKI was established, the Directorate General of Foreign Employment Ministry of Human Resources and Transmigration was abolished, but the Directorate General for Development and Placement (Binapenta) which used to be the Director General of DG PPTKILN before, is reactivated. Activation of Director General of course leads to a double post and budget absorption for their equal tasks and functions as well as overlapping authority in the field of placement and protection of migrant workers.

As stated in Article 49 of Presidential Decree No. 81 of 2006 concerning BNP2TKI at the beginning of this Presidential Regulation, there are some provisions: (a) The task field of placement and protection of Indonesian Migrant Workers abroad is conducted by the Directorate General of Foreign Employment of Department of Manpower and Transmigration until the completion of the organization arrangement of BNP2TKI. (b) The Ministry of Human Resources and Transmigration within a maximum period of 6 (six) months submits all documents related to the execution of the task field of placement and protection of Indonesian migrant workers abroad to BNP2TKI. There are provisions for the regulation of the transition period of 6 months after the formation of BNP2TKI for managing institution, but the evidence suggests that up to 5 years BNP2TKI is formed, there are violations and abuses of the main tasks and functions. The main tasks and functions of BNP2TKI as defined in the Presidential Regulation No. 81 of 2006 to weigh (point b) is implementing the policy, but in many placement countries, precisely the head of BNP2TKI makes a variety of policies. Meanwhile the Ministry of Human Resources and Transmigration that reactivates Directorate General of Development and Placement (Binapenta) of migrant workers also continue to run the placement and protection of migrant workers and there is no coordination and synergy with BNP2TKI. Surprisingly, there is no attitude from President SBY to the situation and tends to ignore these serious problems.

Conventional Corruption

Conventional corruption is corruption practice that continues to occur and tends to be ignored and frequently practiced. Conventional corruption in the placement and protection of migrant workers is an old reality, such as lack of accountability and transparency in general and specifically in terms of placement fees, fund of the protection of migrant workers for 15 USD, insurance funds, and migrant worker terminal. It takes into the four following form of corruptions. *First*, No Accountability and Transparency: in point (3.8) audit reports of Supreme Audit Agency (BPK) in the second half of 2011 showed “the lack of clarity in policy and weakness in the placement and protection system of migrant workers placement systems provide



opportunities for deviation from the recruitment, training and medical testing, processing of documents, the placement process at destination countries to the return of migrant workers to their homeland. The complexity of the problem makes the effectiveness of the placement and protection of migrant workers abroad not achieved optimally". The above report confirms that the lack of transparency and accountability in the placement and protection of migrant workers is going in plenary, ranging from recruitment to the return of the migrant workers back to their homeland.

Second, Placement Fee (Cost Structure): based on the provisions of Law No. 39 of 2004 on the placement and protection of migrant workers (PPTKILN) in the State Gazette of the Republic of Indonesia in 2004 number 133 (see disnakertrans.kalselprov.go.id) of Article 76 paragraph (1 and 2) stated the financing of workers that: " (paragraph 1) the company's private placement of Indonesian workers (PPTKIS) can only charge a placement to the prospective migrants for cost components: identity document processing; health and psychological examinations; and training and certification of labor competencies (paragraph 2). The cost then fee referred to in paragraph (1) shall be further regulated in Ministry Regulation. The above provisions have slit for the authority

abuse of a public official who has the authority to make rules in detail about the cost of the placement. The charges not governed by this law precisely become the source of charges in the recruitment of the migrant workers, such as charges for brokers, PPTKIS cost, insurance premiums, and KTKLN. The practice of charges makes the cost of placement workers very expensive and leads the migrant workers systematically indebted because all the components of the fee are paid by the workers through payroll deduction mechanism.

Third, 15 USD Protection Fund: in many cases of Indonesian migrant workers abroad, particularly those with serious criminal offenses such as the threat of the death penalty, the right to legal aid is often not available, and the cliché reason from the government is the limited budget to hire a lawyer in the placement country. Though since long ago, the migrant workers have to pay dues-called protection fund for 15 USD for every prospective migrant who is leaving. Government Regulation No. 92 of 2000 on the fare of non-tax revenues (PNPB) (see portal.mahkamahkonstitusi.go.id) in effect at the Ministry of Human Resources and Transmigration requires each prospective worker to pay 15 USD. However the purpose or usefulness of such funds until now there is no accountability, although many parties insist, including the NGOs strongly to encourage audit and removal. Based on data placement BNP2TKI, protection from the year 2006-2011 funds of 550 billion dollars with the following details:

Table 1. Details of Migrant Workers Protection Fund per Year

Year	Number of Placements	Total Protection Fund (15 USD x number of placements)
2006	680,000 people	Rp. 102 Billion
2007	696,746 people	Rp. 104.5 Billion
2008	644,731 people	Rp. 96.7 Billion
2009	632,172 people	Rp. 94.8 Billion
2010	575,804 people	Rp. 86.3 Billion
2011, until October	438,474 people	Rp. 65.7 Billion
	Total	550 Billion

Source: BNP2TK

Fourth, Migrant Worker Insurance: to unravel migrant worker insurance corruption, there have been a lot of investigations and good reports from the civil society organizations such as ICW and Migrant CARE, as well as state agencies, such as BPK and review of KPPU, as well as media investigation coverage. As in *Majalah Tempo* issue 5 to 11 September 2011 No. 2740 which raised insurance corruption trail by tracing the plight of migrant worker insurance and found a series of irregularities. Half the workers insurance premium turned out to flow to a broker with a track record that is not clean. The appointment of an insurance company consortium was full with the issues of bribery and billions of rupiah deposit per month. But until now the tangled threads of corruption in the migrant worker insurance cannot be described. Based on Migrant CARE experience in assisting victims who take care of insurance claims, the regulation of insurance tends not implementative and the workers always face difficulties in claiming insurance. Insurance problem is not only on the bureaucracy of its disbursement, but also the legality of insurance legal entity which is also problematic. The result of KPPU evaluation on the government's policy on migrant worker insurance states the migrant worker insurance has not been proven to provide maximum benefits to the workers directly. This is due to the knowledge of the workers about the insurance products which is still low, so that the workers buy products that are not known and are difficult in claim-handling process. Since 1997-2010, the government has repeatedly changed its insurance-related policy, but until now there has been no evidence of significant improvement.

Table 2. Details of Insurance Fund Based on Placement Data per Year

Year	Number of Placement	Total Insurance (400 thousand x number of placement)	Specification
2006	680,000 people	Rp. 272 Billion	Permenakertrans No. 23/MEN/V/2006 - Monitoring of Migrant CARE showed that an insurance claim is not more than 20% - The workers find difficulty in handling claims - The cost to taking care of insurance is greater than that obtained from the insurance - Many workers are not provided with information about insurance
2007	696,746 people	Rp. 278.6 Billion	- Permenakertrans No. 20/MEN/X/2007 - Insurance claims no more than 20% - In the case, migrant workers require 1-2 years to claim insurance on the wages unpaid by the employer - Many workers who are not provided with information about insurance
2008	644,731 people	Rp. 257.8 Billion	Permenakertrans No. 23/MEN/XII/2008
2009	632,172 people	Rp. 252.8 Billion	No transparency
2010	575,804 people	Rp. 230.3 Billion	- Permenakertrans No. 07/MEN/V/2010 - The government has appointed 1 consortium of insurance as migrant worker insurance provider.

2011, until October	438,474 people	Rp. 438.4 Billion	Investigation of Majalah Tempo issue 5-11 September 2011 No. 2740 concerning migrant worker insurance corruption trail discovered a series of irregularities. Half the workers insurance premium turned out to flow to a broker with a track record that is not clean. The appointment of a consortium of insurance companies was full with the issues of bribery and billions of rupiah deposit per month.
Total	3,667,927 people	Rp. 1.729.9 trillion	Total insurance fund from 2006 to 2011 based on placement data of BNP2TKI

Source: BNP2TKI

Meanwhile the BPK audit results indicate that the implementation of migrant worker insurance has not provided a fair, certain and transparent protection. In detail, the following are the findings of BPK. (a) Ministry of Human Resources and Transmigration has not maintained a good insurance program, as mandated by Law No. 39 of 2004 Article 68 which requires PPTKIS include workers who will be sent overseas in insurance programs. (b) The appointment of nine insurance consortiums through the minister's decision of 2006 to 2009 which involved 48 insurance companies and eight insurance brokers, of which type and cost of coverage is set, creating unfair competition. The insurance consortiums did not compete to improve performance and service of the networks, but rather competing to provide premium discounts and to bargain the price of premium to PPTKIS. (c) The insurance consortium does not publicly report the production of insurance policies and claims either to the Ministry of Human Resources and Transmigration or to the public through the website. The website of insurance consortium that should be publicly accessible is often constrained technically. (d) Data production and progress of migrant workers are very difficult to access, there are even insurance consortium that intentionally hides production data and claims. (e) The existence of deliberate intent of PPTKIS that it does not include the migrant

workers in the insurance program, especially pre-placement insurance. For PPTKIS the less the cost of premiums paid, the better, although the cost of the premium is ultimately charged in full to workers through payroll deduction mechanism. (f) Liability of the consortium in solving the claims is often late and the status is unclear. Liability of insurance consortium in handling cases of migrant workers abroad often has unclear status as well.

Conclusion

Corruption is the face of the placement and protection of migrant workers, the practice has been going on for years and likely to be ignored. Collusion between government and the private sector so far also has become an integral part of the practice of corruption. A very real indication is the massive occurrence of violations of the basic rights of migrant workers. While private parties who have business in this field continue to gain financial benefits which are not offset by protective government regulations for migrant workers. Meanwhile the legislature is not maximizing its authority to supervise the government, because they are busy to spend the budget for things that are not substantive. The slit to corruption practice is wide open on the existing policy, it is not enough to end the practice with just a slogan or a resolution, but requires seriousness and courage to make changes. KPK should also be more progressive to eradicate corruption, not only in the political environment but also the corruption in the placement and protection of migrant workers that have harmed the lives of more than 6 million Indonesian migrant workers and the members of their families.

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