

**THE PROTECTION OF INDONESIAN MIGRANT WORKERS IN MALAYSIA  
BY DIPLOMATIC AGENT BASED ON VIENNA CONVENTION 1961**

**THESIS**

**By:**

**CORRY CAROLINA SIAHAAN**

**04140243**

**SUBJECT: INTERNATIONAL LAW**



**LAW FACULTY  
ANDALAS UNIVERSITY  
PADANG  
2008**

**THE PROTECTION OF INDONESIAN MIGRANT WORKERS IN  
MALAYSIA BY DIPLOMATIC AGENT BASED ON VIENNA  
CONVENTION 1961**

(Corry Carolina Siahaan 04140243, Law Faculty Andalas University, P. 50,  
2008)

**ABSTRACT**

The placement of Indonesian Migrant Workers to other countries is one of the policies of Indonesian government to reduce the account of unemployment. Yet those workers give big contribution for the economic of state of Indonesia. In the other hand, the protection given to those workers is really minimum. Malaysia as one of the main purpose countries of those workers with the number of Indonesian Migrant Workers fluctuating from time to time often give unappropriate conduct by their employer in Malaysia even though they already pass through legal way. The important role of these Indonesian Migrant Workers must be balance with the duty from the diplomatic agent as the representative of Indonesian government as it mentions in article 3 point b Vienna Convention 1961 that to protect its interest and those of its nations, within the limits permitted by international law. From the article it is clearly became the role of the agent to give those protections in order to guarantee the rights of Indonesian Migrant Workers appropriately. The methodology of this research is juridical-normative research. Based on research it is concluded that Indonesian Migrant Workers must be protected by the diplomatic agent through diplomatic relations by Vienna Convention 1961 as its main law and Law No. 39 Year 2004 as the second law.

CHAPTER I  
INTRODUCTION

A. The Background

The continuous economy crisis and the account of unemployment increasing through 1997, make the economy of people become low. Half of the people try their fortune by become Indonesian Migrant Workers (In Indonesia we called it as TKI). With the main country in Asia Pasific are Brunei Darussalam, Hongkong, Malaysia, Singapore and Taiwan.<sup>1</sup> Malaysia is one of the main country of Indonesian Migrant Workers. There are approximately 220,000 Indonesian Migrant Workers in Malaysia, the number fluctuating marginally from time to time.<sup>2</sup> The way of Malaysia developed into a user-country for the services of Indonesian Migrant workers, cannot be separated from the social and cultural aspects that bind the two countries together. By comparison with Hongkong and Singapore, the standard salary range for migrant workers from Indonesia in Malaysia is the lowest, yet there has never been any shortage of Indonesian women who to work in the country. This may have a lot to do with the fact that these women that going to Malaysia is more like extending their comfort zone, rather than moving it. This is caused by the nearness and the sameness of language family with a good relationship between both country. And this is where the mismatch begins.

The employers in Malaysia do not necessarily regard the Indonesians as part of world. Many of these people employ the Indonesian women to work as Migrant because they are cheaper and generally more compliant than their Filipino

---

<sup>1</sup> - Tenaga Kerja dan Transmigrasi Republik Indonesia, 2002.  
<sup>2</sup> - Post, published on May 17<sup>th</sup> 2007



counterparts, who are known to be more confident about their skills, hence more self-assertive.

However, the relationship between them does not always harmonic. Various problems such as territory dispute in the border, smog, illegal logging and Indonesian Migrant Workers still a challenge for bilateral relationship between them that might be explode.<sup>3</sup>

The placement of Indonesian Migrant Workers has been started since The First Five-Year Plan until The Fourth Five-Year Plan. This is one of the government policies to reduces the account of unemployment in domestic. The issue of Indonesian Migrant Workers success in foreign push the Migrant Workers in Indonesia to compete one to another that result various way through legal way with the procedure based on law although illegal way by become Pendatang Asing Tanpa Izin (PATI).

Indonesian Migrant Workers as one of the sources of state foreign exchange gives big contribution for the state economy. The important role of these Indonesian Migrant Workers must be balanced with the duty from government to give a suitable protection in order to guarantee the rights of Indonesian Migrant Worker. One of the government duties is make regulation particularly in the sector of manpower for Migrant Workers abroad with the countries that become the destination of the Indonesian Migrant Workers.

The regulation may be in bilateral treaty or in Memorandum of Understanding (MoU)

MULTIK  
UPT PERPUSTAKAAN  
UNIVERSITAS ANDALAS

In the matter to make the product of law, government needs its agent (diplomatic agent) abroad. The duty of its diplomatic agent are do the combination of duty such as : representation, negotiation, observation, protection and reporting and also increase the

<sup>3</sup> Kompas, published on Augusts 31<sup>st</sup> 2007

friendship between sending state and receiving state.<sup>4</sup> Oppenheim said that there are only three main duties that have to do by the diplomatic agent, such as: negotiation, observation, and protection".<sup>5</sup>

One of the duties of the diplomatic agent is protection. Where the protection is not only given to protect the interest of the sending state in the receiving state yet to protect its citizen (Indonesian Migrant Workers) in receiving state such as property and their interests.

Another certain opinion said that diplomatic agent which is act as his diplomatic channels have two duties, such as:<sup>6</sup>

1. As the channel to the government of receiving state concern its government foreign politic and necessary clarification about his country to grow a good understanding and deep about his country.
2. As the channel to the government of his country concerns his government foreign politic of receiving state and report the affairs and the local development with the local information, clarification and analysis that can be used as a matter consideration in establish his state foreign policy.

Whereas in Vienna Convention 1961 about Diplomatic Relation furthermore in article 3(b) said that protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law.<sup>7</sup>

<sup>4</sup> Narsif, 2007, Hukum Diplomatik dan Konsuler (Buku I: Tentang Hubungan Diplomatik), Universitas Andalas, p. 51. (Continually called as Narsif' Buku I)

<sup>5</sup> *Ibid.*, p. 51

<sup>6</sup> *Ibid.*, p. 52

<sup>7</sup> Wasito, 1984, Konvensi-Konvensi Wina: Hubungan Diplomatik, Hubungan Konsuler dan Hukum Perjanjian/Traktat, Andi Offset, Yogyakarta, p. 3



## CHAPTER IV

### CLOSING REMARKS

#### A. Conclusion

- 1) That there are several actions can be done by the diplomatic agent as its role in protect Indonesian Migrant Workers in Malaysia, which is by execute the data collection precisely. The function of data collection is to know the number of Indonesian Migrant Workers worked in Malaysia also the delegation have to take a few steps to push the composed of bilateral agreement between both country. By having this agreement the delegation may have an interference in solve the issues of Indonesian Migrant Workers and the role of manpower attaché need to be increased or at least compose a special agent and consular particularly arranges the issues of Indonesian Migrant Workers in Malaysia in order to solve the cases happened to Indonesian Migrant Workers and the diplomatic agent may submit protest in the Diplomatic Note form to the government of Malaysia. The aim is to asking the responsible of the government of Malaysia to pay attention of the workers' destiny in Malaysia and take action against the employer or user who treats the workers without compunction.
- 2) That in giving the protection to Indonesian Migrant Workers in Malaysia, the delegation also faces some obstacles. The difficult in data collection of those Indonesian Migrant Workers in informal sector. This caused by their position or location which is dispersed. The other obstacle is no bilateral agreement between Indonesia and Malaysia particularly arrange the protection of Indonesian Migrant Workers between Indonesian government with Malaysia government (even

though another agreement already made in the MoU form by both country, the MoU can not give real protection for those workers) cause the movement space of the delegation of Indonesia become limited in the Vienna Convention 1961. Financial issues also become the obstacle. Which is come from delegation of the Republic of Indonesian in Malaysia and it is need a serious attention and prevention from other connected parties in the issues of placement of Indonesian Migrant Workers in Malaysia. The aim of this fund is to prepare an attorney services for accompany, protect, and defend their rights also prepare an appropriate place for them.

### **B. Suggestion**

1. In order to execute the main duty and function of protection and control of Indonesian Migrant Workers abroad as its nationals (as stated in Vienna Convention 1961 article 3 point bs), particularly in Malaysia, it is needed a corporate with other instances and related parties in father land then the main duty and function will be able to executed optimally.
2. Optimize the education and training also give the information about law and local cultural (Malaysia) then can keep the quality of Indonesian Migrant Workers therefore they might be ready for work also tested during work in Malaysia. By having the increasing of quality, then the placement of Indonesian Migrant Workers in Malaysia will not only just fill the informal sector (as Penata laksana Rumah Tangga or as House maid), but also fill another sector as medical staff, lecture, or teacher technical, etc. To have this aim, the potential of office of work training has to be more developed by having a modern good system of education.



## REFERENCE

- AK, Syahmin, 1998, *Hukum Diplomatik: Suatu Pengantar*, Armico Bandung, Bandung
- Asyhadie, Zaeni, 2007, *Hukum Kerja: Hukum Ketenagakerjaan Bidang Hubungan Kerja*, PT. RajaGrafindo Persada, Jakarta
- Aust, Anthony, 2005, *Handbook of International Law*, Cambridge, University Press, UK
- Brownlie, Ian, 1979, *Principles of Public International Law*, Oxford University Press, Third Edition
- Cassese, Antonio, 2005, *International Law (Second Edition)*, Oxford University Press, US
- Craig, J. Barker, 1996, *The Abuse of Diplomatic Privileges and Immunities (A Necessary Evil?)*, Ashgate, England
- Mauna, Boer, 2005, *Hukum Internasional: Pengertian, Peranan dan Fungsi dalam Era Dinamika Global*, P.T. Alumni, Bandung,
- Oppenheim, L., 1948, *International Law (Peace) A Treatise, volume 1*, Seventh edition Longmans, London-New York-Toronto
- Narsif, 2007, *Hukum Diplomatik dan Konsuler (Buku I: Tentang Hubungan Diplomatik)*, Universitas Andalas, Padang
- , 2007, *Hukum Diplomatik dan Konsuler (Buku II: Tentang Hubungan Konsuler)*, Universitas Andalas
- Sen. B., 1965, *A Diplomat's Handbook of International Law and Practice*, Martinus, The Hague
- Soedily, Hasan, 1997, *Kamus Inggris Indonesia*, P.T. Gramedia Pustaka Utama, Jakarta
- , 1997, *Kamus Inggris Indonesia*, P.T. Gramedia Pustaka Utama, Jakarta
- Sturke, J.G., 2004, *Pengantar Hukum Internasional : Edisi Kesepuluh (1)*, Sinar Grafika, Jakarta
- , *Pengantar Hukum Internasional : Edisi Kesepuluh (2)*, Sinar Grafika, Jakarta
- Suryo Suryokusumo, 2005, *Hukum Diplomatik: Teori dan Kasus*, P.T. Alumni Bandung