

Socio-Legal Approaches To The Problems of Troubled Indonesian Overseas Workers In Tanjung Pinang City

**Rina Shahriyani Shahrullah
Junirmart Girsang
Suharyanto**

Postgraduate Study of Law
Universitas Internasional Batam
Email: rina@uib.ac.id

Abstract

Tanjung Pinang City is one of the transit areas for the Troubled Indonesian Overseas Workers (TKIB) who are deported from Malaysia and Singapore. As a transit area, a number of problems and challenges faced by TKIB and relevant stakeholders in Tanjung Pinang City. This research aims to investigate the problems of TKIB and relevant stakeholders in Tanjung Pinang City. This research adopts a socio-legal/empirical research method and all data was analyzed based on its content (a content analysis) by using the qualitative approach. The research found that the main hardship in tackling TKIB was related to the lack of funds to carry out the tasks and functions of the Task Force. This research argued that the House of Representative of Tanjung Pinang City (DPRD) did not have legal grounds to reject the allocation funds from the City Budget for the Task Force. This research concluded that the House of Representative of Tanjung Pinang city was not familiar Article 16 (6) of Presidential Regulation No.45 of 2013 regarding Coordination of Returning Indonesian Workers which permits the allocation of funds from the City Budget to fund all expenses carry out tasks of the Task Force.

Keywords: Presidential Regulation No.45 of 2013; Troubled Indonesian Overseas Workers; Tanjung Pinang.

Abstrak

Kota Tanjung Pinang merupakan salah satu daerah transit bagi Tenaga Kerja Indonesia Bermasalah/TKIB yang dideportasi dari Malaysia dan Singapura. Berbagai permasalahan dan tantangan dihadapi oleh TKIB, pemerintah Kota Tanjung Pinang dan pihak pihak terkait lainnya. Penelitian ini bertujuan untuk menginvestigasi berbagai permasalahan yang dihadapi oleh TKIB dan pemangku kepentingan di Kota Tanjung Pinang. Penelitian ini menggunakan metode penelitian empiris dimana seluruh datanya dianalisa menggunakan pendekatan analisa kualitatif. Hasil penelitian menunjukkan bahwa permasalahan utama dalam menangani permasalahan TKIB terkait dengan masalah pendanaan untuk melaksanakan tugas dan fungsi tim pelaksana. Penelitian ini juga menunjukkan bahwa DPRD belum memiliki dasar hukum untuk menolak anggaran yang diajukan dalam anggaran kota Tanjung Pinang sehingga dapat disimpulkan bahwa anggota DPRD Kota Tanjung Pinang belum memahami Peraturan Presiden Nomor 45 tahun 2013 ayat 16

(6) Terkait dengan Koordinasi Pemulangan TKIB yang dapat menggunakan dana dari anggaran pemerintah kota untuk membiayai keseluruhan pembiayaan yang diperlukan oleh tim pelaksana.

Kata Kunci: Perpres No.45 Tahun 2013; Tenaga Kerja Indonesia Bermasalah/TKIB; Tanjung Pinang.

Introduction

There are two types of Indonesian overseas workers. Those who go overseas to work with complete documents and through proper channels (via legal employment agencies) are categorized as “legal workers”. Those without complete documents and go overseas through improper channels fall within the category of “illegal workers”; thereby they are automatically referred to as “Troubled Indonesian Overseas Workers (hereinafter refer to as Tenaga Kerja Indonesia Bermasalah/TKIB)”. The term “Troubled Overseas Workers” is also frequently referred to as “Problematic Overseas Workers”. Indonesian overseas workers become TKIB since they face document problems such as the expiration of visas, passports and other related documents (Shahrullah, 2010).

According to the data of BNP2TKI, more than 10% of Indonesian overseas workers who have been deported to Indonesia are classified

as “Troubled Overseas Workers”.

The BNP2TKI reported that number of returning Indonesian overseas workers had decreased during the last five years. In 2010, the returning Indonesian overseas workers were 95,060. This number decreased to 72,194 in 2011 and dropped again to 47,620 in 2012. In 2013, 44,087 Indonesian overseas workers returned to Indonesia and 30,661 workers in 2014.

Due to its strategic geographical location, Tanjung Pinang City has become one of the transit areas for the deported TKIB from Malaysia and Singapore (Pramodharwardani, 2007). The BNP2TKI data stated that 13,082 TKIB were deported via Tanjung Pinang City from January – 30 September 2014. The Social and Manpower Office of Tanjung Pinang City as the leading sector in handling TKIB stated that the number of TKIB temporarily accommodated in Tanjung Pinang City tended to increase from 2012 to 2014. In 2012, 7,843

TKIB were handled by Social and Manpower Office of Tanjung Pinang City. This number dramatically increased in 2013 (19.634 TKIB) and also significantly increased to 14.402 TKIB from January - July 2014.

As a transit area for TKIB, a number of problems and challenges faced by TKIB and relevant stakeholders in Tanjung Pinang City. Hence, this research aims to examine the problems of TKIB in Tanjung Pinang City as well as to analyze the responses of stakeholders in Tanjung Pinang City in tackling the TKIB problems.

Legal Framework

Article 31 of the 1945 Constitution emphasizes that “Every worker has the same rights and opportunities to choose, get or change jobs and earn a decent income in inside or outside the country”. As the manifestation of the 1945 Constitution, the Indonesia Government passed Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad. In addition, a number of regulations relating to Indonesian overseas workers were also enacted, such as Presidential

Instruction No. 6 of 2006 on Reforming the System of Placement and Protection of Indonesian Migrant Workers, Presidential Regulation No.45 of 2013 regarding Coordination of Returning Indonesia Workers, Presidential Regulation No. 81 of 2006 on the National Authority for the Placement and Protection of Indonesian Overseas Workers, Presidential Decree No.106 of 2004 on the Establishment of Coordinating Team for Returning Indonesian Troubled Overseas Workers (TKIB) and their families from Malaysia, and Presidential Decree No. 8 of 2012 on Handling Indonesian Citizens and Indonesian Overseas Workers Threaten for Death Sentences.

Most of the laws and regulations above merely focus of the placement and protection of Indonesian overseas workers. The only legal instrument which can be relied by a transit area for TKIB is the Presidential Decree of Indonesia No.106 of 2004 on the Establishment of Coordinating Team for Returning Indonesian Troubled Overseas Workers (TKIB) and their families from Malaysia which was replaced by Presidential Regulation No.45 of 2013 regarding

the Coordination of Returning Indonesian Workers.

Article 2 of Presidential Regulation No.45 of 2013 regarding the Coordination of Returning Indonesian Workers stipulates that:

- (1) The scope of returning Indonesian Overseas Workers (TKI) covers to returning TKI from the debarkation point to their hometowns in a special situation.
- (2) Special situation as prescribed by verse (1) covers:
 - a. natural disaster, spread of sickness, war;
 - b. mass deportation; and/or
 - c. country of placement can no longer guarantee the safety of Indonesian Overseas Workers.
- (3) Deportation as prescribed by verse (2) letter b occurs because the said Indonesian Overseas Workers do not have working permits and/or valid documents to work, or work which is not in accordance with his/her working permits and/or valid documents.

Article 13 (1) of Presidential Regulation No.45 of 2013 regarding the Coordination of Returning Indonesian Workers states that: “Governor, Head of Regional Regency/-Mayor shall establish a task force to return Indonesian Overseas Workers to their respective hometowns”.

Article 16 of Presidential Regulation No.45 of 2013 regarding the Coordination of Returning Indone-

sian Workers states that:

- (1) All expenses needed to return Indonesian Overseas Workers from the debarkation point to their hometowns are derived from the State Budget (APBN) and the Regional Budget (APBD).
- (2) All expenses needed to carry out tasks of the Coordinating Team are derived from State Budget (APBN) according to the tasks and functions of Ministry/institution respectively.
- (3) All expenses needed to carry out tasks of the Task Force are derived from the Provincial, Regional Regency or City Budget.

Research Methods

This research adopts a socio-legal/empirical research method since the problems of TKIB constitute social phenomenon. A socio-legal research method requires the use of primary data which is collected through observations, interviews, questionnaires or focus group discussions (Amiruddin, 2004). The primary data in this research was collected through in-depth interviews by

authors at a number of institutions namely: TKIB Shelter on Jalan Transito Km.8 Tanjung Pinang City, Shelter and Trauma Center in Senggarang, Tanjung Pinang City, National Authority for the Placement and Protection of Indonesian Overseas Workers, Social and Manpower of Tanjung Pinang Government Office and Manpower and Transmigration Office of Riau Islands Office. Secondary data is also required by the socio-legal method to supplement the primary data. The secondary data used by this research is comprised of primary and secondary legal materials. Primary legal materials are the authorized materials consisting of legislation, official records or minutes in the making of legislation (Marzuki, 2005). The primary legal materials used by this research are the Presidential Regulation No.45 of 2013 regarding the Coordination of Returning Indonesian Workers. Secondary legal material explains the existing primary legal materials which consist of books, journals and research reports relevant to Indonesian overseas workers.

All data collected in this research

was analyzed based on its content (a content analysis) by using the qualitative approach. Qualitative research is especially effective in obtaining culturally specific information about the values, opinions, behaviors, and social context of particular populations, i.e. TKIB and relevant stakeholders in Tanjung Pinang City.

Research Findings and Analysis

Data of the National Authority for the Placement and Protection of Indonesian Overseas Workers (hereinafter refer to as BNP2TKI) from 1 January – 31 October 2014 reported that 107,085 Indonesian overseas workers (Tenaga Kerja Indonesia/TKI) worked in Malaysia. Malaysia has become the most popular destination of TKI followed by Taiwan (68,874), Saudi Arabia (38,104), Hong Kong (30,208) and Singapore (25,601). Yet, it does not mean Indonesian overseas workers stay overseas until the end of their working contracts. Many of them have to return to Indonesia prior to their completion of their contracts due to some reasons below.

Table 1. The Reasons to Return to Indonesia

No	Type of Reasons to Return	Percentage
1	Unpaid Salary	45.50%
2	Unsuitable Employer	16.26%
3	Sickness	11.42%
4	Over Workload	10.01%
5	Abuse/Physical Violence	9.93%
6	Sexual Harassment	3.99%
7	Uncomfortable Feeling	2.35%
8	Unsuitable Working Hours	0.16%

Source: *The Protection Bureau of Indonesian Citizens (Dit. Perlindungan WNI dan BHI)*.

Based on the interviews for this research, it was found the all types of reasons showed by Table 1 were experienced by TKIB in the shelters in Tanjung Pinang City.

Table 2. Reasons to Run Away from Employers

No.	Type of Cases	Respondents' Statements
1	Unpaid salary	My employer did not pay my salary for almost 11 months, so I returned to Indonesia (Maftiyah Marsihat, Aminah Salleh, Mia Bakon, Tumini).
2	Over workload	I worked as a domestic helper. When I was in Indonesia, my agent said that I only cleaned one house. When I arrived in Malaysia, my employer forced me to clean 2 houses. I was not able to do it, so I quitted my job and looked for a new job (Manisa Binti Bukari).
3	Uncomfortable feelings	My friend got a higher salary than mine although our type of work was similar. I moved to my friend's employer's house without telling my employer (Kornelia).
4	Sexual harassment	My employer was a bad person. He wanted to rape me several times, but I succeeded to run away. I was arrested and deported to Indonesia (Dina).
5	Abuse/physical violence	I was always tortured by my employers whenever I made mistakes even though they were just small mistakes. I was beaten and no food was given to me (Yumna).
6	Unsuitable working hours	I worked at my employer's house without resting. My employer frequently woke me up at 2 am to work (Somaene). I worked from morning to evening almost without stopping. I only stopped for about 15 or 20 minutes for lunch or dinner (Talina).

Source: *Interviews by Suharyanto*

Table 2 shows that most of respondents complained that the unpaid salary was their main problem in the destination country. This circumstance occurred because prior to their departure to the destination country, most of the workers were indebted to their agents. As a result, their salary was handed to their agent by the employers or deducted by the agents to pay the workers' debts. The respondents below expressed their experiences while they were in Malaysia.

Respondent 1 (Hamiyah): "I went to Malaysia by using 2 years working permit. My departure was organized by an agent in Indonesia. I worked as a domestic helper, but my one year salary had never been paid by my employer. When I asked my employer, she mentioned that my salary was deducted in order to pay my departure expenses. I was accompanied by a friend to inform this problem to the Indonesian Embassy in Malaysia, but there was no response at all. One of the officers at the Embassy said that there were many complaints similar to my complaint; therefore it was impossible to settle this problem because the Embassy had limited human resources and no funds for such a problem. Since I was arrested, tried, put in jail until I was deported to Indonesia, there was no Indonesia officer visiting or accompanying me".

A similar complaint was expressed by Nababan: "I was treated inhumanly in the prison and detention center. I was beaten, tortured and ordered to work until late at night. My situation was so bad in Malaysia. I worked as a gardener, but my salary was not paid for five months by my employer by reason that I was still indebted to my employer. My employer said that he had paid my agent (*taekong*). I had no place to complain. I was arrested when I went out to buy a land mower at the market. I presumed that my employer reported me to the police because he did not want to pay my salary".

Most of TKIB expressed that their salaries were not paid prior to their deportation to Indonesia. They questioned if the officers of Social and Manpower Office of Tanjung Pinang City who are in charge of handling TKIB could assist them. The respondent from the Social and Manpower Office of Tanjung Pinang City stated: "We do not have authority to assist TKIB who encountered problems relating to their unpaid salaries in Malaysia. We used to consult the problems to Police Officers, but according to them, it was impossible to resolve the problems because there were no strong evidences that such problems really occurred. In addition, TKIB could not become the key witnesses because they were

only in transit in Tanjung Pinang City”.

In addition to the reasons shown by Table 3, some deported

respondents stated that prior to their departure to the destination country they already fell into the category of TKIB because of the following reasons:

Table 3. Reasons for Deportation

No.	Reasons	Respondents' Statements
1.	Expiry of visa	The process of obtaining working visa is lengthy. Hence, they stayed in Malaysia and tried their luck even if their visas were expired.
2.	Entering Malaysia with a social visit visa	They got arrested by Malaysian Police (RELA), tried by the Malaysian court, put in a prison and deported to Indonesia.
3.	Conducting crimes	I stole in Malaysia and got arrested. I was tried in the court but no Indonesian representatives accompanied me during the trial. I was sentenced for 3 years and after the completion of my sentence, I was deported to Indonesia.
4.	Falsified documents	I went to Malaysia 3 years ago. I was still 15 years old. I went overseas through an agent. The agent made a new ID and passport for me. When I saw the ID, my age was 19 therefore I could go to Malaysia and worked as a domestic helper.

Source: Interviews by Suharyanto

- The government of Tanjung Pinang City has provided shelters and established a task force for TKIB as mandated by Article 13 (1) of Presidential Regulation No.45 of 2013 regarding the Coordination of Returning Indonesian Workers. Based on the observations at the shelters and Trauma Center in Tanjung Pinang, the processes of handling TKIB by the task forces are as follows:
- a. TKIB arrive in Tanjung Pinang from Malaysia on Wednesday or Thursday every week.
 - b. TKIB wait at the shelters between 7-10 days because PELNI (ship) which takes them to Jakarta arrives in Sri Bintan Pura Port of Tanjung Pinang only on Monday or Tuesday.
 - c. At the Tanjung Priok Port, Jakarta, TKIB is taken care by the TKIB task force of Jakarta.
 - d. The Jakarta task force arrang-

es the returns of TKIB to their home towns. All expenses are burdened by the Central Government under the National Budget (APBN).

These measures and processes of handling TKIB are still inadequate. The interviews below reveal a number of hardships faced by TKIB as well as the stakeholders dealing

Table 4. Non Legal Problems of TKIB in the Transit Area

No.	Problem	Descriptions	Remarks
1.	Budget constraint	No special budget for unexpected circumstances (e.g. giving birth or death of TKIB)	All unexpected expenses are burdened by officers dealing with TKIB. It is suggested that the Tanjung Pinang City Budget (APBD) allocates funds for the TKIB unexpected expenses. However, the House of Representatives of Tanjung Pinang City refuse to allocate budgets for unexpected expenses on the ground that TKIB expenses are derived from the national budget.
2.	Lack of facilities	No beds for male shelter, dirty toilet, lack of water supply.	
3.	No beneficial activities at shelters	No training, workshops or sharing information at shelters.	TKIB wishes to be trained with simple skills while waiting for their return to their home towns.

Source: Interviews by Suharyanto.

with TKIB.

The hardships in tackling the problems of TKIB are mostly related to the lack of funds provided to carry out the tasks and functions of the task force. It is the questioned whether the State Budget is the only source to finance the process of handling

TKIB. The answer is negative since by virtue of Article 16 (6) of Presidential Regulation No.45 of 2013 regarding the Coordination of Returning Indonesian Workers, it is clear that “all expenses needed to carry out tasks of the Task Force can be derived from the City Budget”.

Based on this provision, the House of Representative of Tanjung Pinang City (DPRD) does not have legal grounds to reject the allocation funds from the City Budget. It is apparent that the House of Representative of Tanjung Pinang City is not familiar with the Presidential Regulation No.45 of 2013 regarding the Coordination of Returning Indonesian Workers.

Conclusion

Tanjung Pinang City as the transit area for the Deported Indonesian Overseas Workers from Malaysia and Singapore has encountered a number of problems in handling TKIB. The main problem is related to the lack of funds to carry out the tasks and functions of the task force. Based on the interview, it is revealed that no special budget is provided for unexpected circumstances such as giving birth or death of TKIB. Hence, all unexpected expenses are burdened by officers dealing with TKIB (the task force). This circumstance has been communicated to the House of Representatives of Tanjung Pinang City. Yet, the response remains negative because the TKIB

expenses shall be derived from the national budget (APBN), not the Regional/City Budget (APBD).

The response of the House Representative is debatable since Article 16 (6) of Presidential Regulation No.45 of 2013 regarding the Coordination of Returning Indonesian Workers stipulates that “all expenses needed to carry out tasks of the Task Force can be derived from the Regional/City Budget”. By virtue of this provision, it can be concluded that the State Budget (APBN) is the only source to finance the process of handling TKIB. If this argument is correct, then the House of Representative of Tanjung Pinang City (DPRD) does not have legal grounds to refuse the allocation funds for TKIB which is derived from the City Budget (APBD). It can be further concluded that the refusal of the House of Representative of Tanjung Pinang City indicates that the House of Representatives members may not be familiar with the Presidential Regulation No.45 of 2013 regarding the Coordination of Returning Indonesian Workers.

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