
The Legal Protection of Illegal Indonesian Worker in Malaysia

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Abstract

This research examines the legal protection provided for illegal Indonesian workers in Malaysia and the obstacles to perform it. Malaysia are the largest number compared to another country in Asia in receiving migrant workers from Indonesia. In total there are 73.178 migrant workers. A large number of Indonesian migrant workers is caused by the lack of jobs vacancy in the country, so citizens look for a job abroad.

The requirements to become Indonesian migrant workers are not easy, therefore many of them went abroad illegally. Illegal Indonesian workers often get inhuman treatment. Indonesian government should protect every citizen, even though they are illegal workers, since they are still Indonesian citizen. This paper is based on normative-empirical legal research with the data obtained from interviews, as well as from secondary sources provided in laws governing these matters, journals or from trusted sites of internet. The results of this study show that: first, the Law No. 18 of 2017 on Protection of Migrant Worker does not differentiate the protection for illegal and legal Indonesian migrant workers. Second, there are two obstacles faced by the Indonesian government: lack of data regarding the illegal Indonesian workers and lack of state budget to handle the protection of illegal Indonesian workers.

Keyword: illegal Indonesian workers; legal protection; workers

1. Introduction

It is recorded that from January until November 2019 there have been 245.209 Indonesian migrant workers being placed in several countries. There are 73.178 Indonesian migrant workers in Malaysia, 73.086 workers in Taiwan, 56.636 workers in Hong Kong and 17.676 workers in Singapore.¹ It means Indonesian foreign workers in Malaysia are the largest number compared to those of other countries. A large number of Indonesian migrant workers is triggered by lack of job vacancies provided in the country, so the people look for a job abroad as solution for survival.²

Badan Pusat Statistik Indonesia (Indonesia Central Bureau of Statistic) noted that the unemployment rate in February 2019 was 5.0 per cent or around 13.376.700 out of 276 million people.³ High unemployment rate is the main reason for Indonesian workers

¹ BNP2TKI, "Statistik Perlindungan dan Penempatan", <http://www.bnp2tki.go.id/statistik-penempatan>, Accessed on December 14th 2019 at 16.07 p.m.

² Rizky Dian Bareta dan Budi Ispriyarso, "Politik Hukum Perlindungan Tenaga Kerja Indonesia Fase Purna Bekerja." *Kanun Jurnal Ilmu Hukum*, Vol. 20 No.1, 2018 p. 164.

³ Iwan Supriyatna dan Achmad Fauzi, Suara.com, 2019, "Data BPS: Angka Pengangguran Turun ke Level 5,01 Persen", <https://www.suara.com/bisnis/2019/05/06/133435/data-bps-angka-pengangguran-turun-ke-level-501-persen>, Accessed on May 7th 2019 at 10.08 a.m.

to choose to work abroad.⁴ Good employment and high income are the main attraction of Indonesian workers to migrate.⁵ Based on Article 1 the Law No 18 of 2017 on Protection of Indonesian Migrant Workers stated that Indonesian migrant workers mean any Indonesian citizen who will work, currently works, or has worked for wage outside the territory of the Republic of Indonesia.

A jobseeker who wants to be migrant worker should fill the application to the District, City or Government Institutions which related to manpower. According to Article 6 the Law No.18 of 2017 on Protection of Indonesian Migrant Workers, registration of job seekers is carried out by Ministerial Regulations. Actually, to become Indonesian workers is not easy. In the Article 5 the Law No. 18 of 2017 on Protection of Indonesian Migrant Workers, there are several requirements that must be met such as the minimum age of eighteen years old, having the competency, physically and mentally healthy, being registered and having a social security membership number, and possessing the required documents. Due to the difficulty of the terms and conditions and completing the documents, some of the Indonesian citizens did short cut by leaving Indonesia without considering the risks, so they went abroad illegally or follow non-procedural way.⁶

Illegal Indonesian workers often get inhumane treatment.⁷ Besides not being given a proper place to live, they also do not get proper food allowance.⁸ There is no health insurance and life insurance, so if they are sick or die, there is no guarantee of the cost of treatment and repatriation of the dead body to Indonesia.

Indonesia has a regulation on Labor Protection as stated in in Article 1 paragraph (5) the Law No. 18 of 2017 on Protection of Migrant Workers that protection of worker is all efforts to protect the interest of prospective worker or worker in accomplishing the compliance with his rights according to the law, either before employment, during employment, or other employment in legal aspect, social, and economic. Therefore, based on the data above, it can be said that Indonesia goverment should protect every citizen, even though they are illegal workers, since they are still Indonesian citizen.

Based on the background above, thus the author would like to conduct a research on legal protection of illegal Indonesian workers in Malaysia. There was a similar research had been conducted by Riri Anggriani with the title "Protection of Indonesian Irregular Migrant Workers in the Southeast Asia Region (In the Perspective of

⁴ *Ibid*

⁵ Hamdan Tri Atmaja dkk, "Model Pemberdayaan keluarga Tenaga Kerja Wanita (TKW) Indonesia Berbasis Arena Produksi Kultural Dalam Upaya Menciptakan Keluarga Mandiri Sejahtera di Propinsi Jawa Timur", *Fakultas Ilmu Sosial Universitas Negeri Semarang*, Semarang, 2014, p. 26-28.

⁶ BNP2TKI, "Kenapa TKI Non Prosedural Lebih Gampang dan Cepat Berangkat ke Luar Negeri ?", <http://www.bn2tki.go.id/read/9643/Kenapa-TKI-Non-Prosedural-Lebih-Gampang-dan-Cepat-Berangkat-ke-Luar-Negeri>, Accessed of on April 13th 2019 at 16.19 p.m.

⁷ Fatkhul Muin, "Perlindungan Hukum Terhadap Tenaga Kerja Indonesia" *Jurnal Cita Hukum* Vol. 3 No.1 Juni 2015. ISSN: 2356-1440. P. 19.

⁸ Kurnia Novianti, "Analisis Trend dan Dampak Pengiriman TKI: Kasus Dua Desa di Lombok Timur, Nusa Tenggara Barat" *Jurnal Kependudukan Indonesia* Vol. V, No.1, 2010, p. 34.

International Human Rights Law). In her writing, Riri discussed the protection of migrant workers in an International Human Rights perspective. However, this writing is different from Riri's because Riri focus on the issue from International Human Rights Law, while this article will look at the issue from Indonesia Labour Law perspective.

2. Method

This Research conducted in normative-empirical legal research with the juridical approach.⁹ The Juridical approach in this study is meant that the problem analysis is done by combining legal materials (secondary data) with primary data obtained by the field research (interview).¹⁰ This research used descriptive-qualitative analysis, so the researcher provided exposure to the subject and research object. Then, the researcher also conducted analysis and determined the relevant data or legal materials based on the data obtained from respondents and informants in written and spoken forms.

3. Result and Analysis

3.1. Types of Illegal Workers

There are several types of migrant workers who can be categorized as illegal Indonesian workers such as:

1. Non-procedural, the intention is Indonesian Workers whose departure process does not meet administrative requirements, or the departure is not through official institutions.
2. Overstay, meaning that Indonesian workers are remaining someplace longer than the allowed or wanted period. In traveling, exceeding happens on the off chance that you live in a remote nation longer than the time of remain legitimate for the visa. Overstay is categorized as a violation of the law, so there are various risks that follow. In Article 1 paragraph 1 of the Law Number 21 of 2007 concerning Eradication of the Criminal Act of Human Trafficking stated that there are various risks such as having to pay a fine, difficulty in making the same visa at another time, being detained, or even being deported.
3. Human Trafficking, In Article 1 paragraph 1 of the Law Number 21 of 2007 concerning Eradication of the Criminal Act of Human Trafficking clarifies that Human Trafficking is the demonstration of enlisting, shipping, gathering, sending, moving or tolerating somebody with the risk of viciousness, utilization of power, seizing, seizure, falsifying, misrepresentation and maltreatment of influence or defenseless position, entanglement of cash or installment or advantages, so the

⁹ Mukti Fajar ND & Yulianto Achmad, *Dualisme Penelitian Hukum Empiris & Normatif*. Yogyakarta. Pustaka Pelajar. 2016. p. 154

¹⁰ Bambang Waluyo, *Penelitian Hukum dalam Praktek*. Jakarta. Sinar Grafika. 2002. p.15

assent of the individual responsible for that individual is done inside the State or between States with the end goal of abuse or bringing about misuse.¹¹

The types of criminal human trafficking,¹² among others:

- a. People who move from their origin to somewhere else and afterward work in the new place for a generally changeless timeframe.
- b. Child Labor (both as activities and endeavored activities).
- c. Prostitution wrongdoing which is legitimately characterized as the clearance of sexual administrations which incorporates sexual acts not as much as fornication and sexual relations.
- d. Trafficking of Children through Adoption or Appointment of Children.
- e. Bondage under the appearance of Marriage and Bride Orders.
- f. Illegal organ transplantation.

3.2. The Protection of Illegal Indonesian Migrant Workers in Malaysia

The problems that arise in the placement country are issues related to human rights, so the sanctions contained in Article 79 the Law No. 18 of 2017, quite a lot in the form of criminal sanctions. Not even fulfilling the requirements for one of the specified documents is also a criminal offense. It is based on the fact that the document is the primary evidence that the worker in question has met the requirements for working abroad. If prospective Indonesian migrant workers do not meet one of the requirements, it is risky or illegal to work in the destination country, and then illegal to work in the country of placement. This condition makes Indonesian migrant workers vulnerable to inhuman treatment or not even getting their rights.¹³

Therefore, the prospective Indonesian migrant workers have to be aware on the importance of the data collection process and the fulfillment of requirements as migrant worker.¹⁴ So it will make the government more easily to handle the problems that occur from illegal migrant worker.

Every citizen has the right to work and a decent life for humanity as mentioned in Article 27 Paragraph 2 of the 1945 Constitution. So that it becomes a logical consequence that the Government of Indonesia must fulfill the rights of its citizens, including to meet the need for jobs for every citizen who is willing and able to work. In the perspective of positive law of Indonesia, Indonesian migrant workers have the right

¹¹ Abdul Rahman Prakoso dan Putri Ayu Nurmalinda, "Kebijakan Hukum Terhadap Tindak Pidana Perdagangan Orang", *Jurnal Fakultas Hukum Universitas Negeri Semarang*, Vol. 4 No. 1, 2018, p. 9.

¹² Wahyu Riadi, "Implementasi Pencegahan Perdagangan Orang ditinjau dari Perspektif Pertahanan Negara", *Jurnal Strategi Perang Semesta*, Vol. 3 No. 2, 2017, p. 24.

¹³ Soraya Taufik, Dewa Gede Rudy, I Made Dedy Priyanto, "Peran Dinas Tenaga Kerja dalam Mencegah Terjadinya Masalah TKI di Luar Negeri", *Jurnal Fakultas Hukum Universitas Udayana*, 2012, p. 4

¹⁴ *Ibid*, p. 5

to receive protection from the Government of Indonesia.¹⁵ As regulated in the Law No. 13 of 2003 concerning Manpower and the Law No. 18 of 2017 concerning Protection of Indonesian Migrant Workers, the law is expected to be able to protect all Indonesian migrant workers who work abroad. It is supported by the Minister of Manpower and Transmigration Regulation No. 14/Men/2010 concerning the Implementation of the Placement and Protection of Indonesian migrant workers abroad. However, the protection the government has not been able to cover all Indonesian migrant workers, especially illegal Indonesian migrant workers.

Protection of illegal Indonesian workers become more difficult because the Indonesian migrant workers are not registered procedurally. If they are not registered, they can not obtained their rights, one of which is insurance or social security. So when there are problems faced by Indonesian migrant workers in the destination country, then the problem cannot be covered by the insurance.

Besides, the process of protecting Indonesian illegal migrant workers tends to be longer than the process of protecting Indonesian migrant workers who depart procedurally or legally. An example of a case that occurred with Indonesian migrant workers from Gunung Kidul, Yogyakarta, who was reported died in Malaysia at the end of December 2018. However, the data obtained by BP3TKI D.I. Yogyakarta is different from the data of Indonesian migrant workers, so the process of returning body tends to be more difficult as BP3TKI D.I. Yogyakarta must find the family and verify the identity of the body in the local civil registry, and this requires a 6-month process. While the time is limited considering the condition of the corpse, if left too long it will be rotten, and the hospital costs will also increase then, the Government of Indonesia in this case the Indonesian Embassy had decided to bury the body in Malaysia.¹⁶

In the Law No. 18 of 2017 of Protection of Migrant Workers, it is sated that there are 3 (three) kinds of protection, namely, before working protection, during working protection, and after working protection.

1. Before working protection

Protection before working protection is regulated in Article 8 of the Law No. 18 of 2017 of Protection of Migrant Workers. Before working, protection consists of administrative protection and technical protection. In ¹ Article 8 Paragraph 2 of the Law No. 18 of 2017 of Protection of Migrant Worker stated that administrative protection covers the culmination and legitimacy of position report and also cover the assurance of work conditions and terms of business. While technical protection as mentioned Article 8 Paragraph 3 of the Law No. 18 of 2017 of Protection of Migrant Worker covers socialization and scattering of data; quality improvement of prospective Indonesian

¹⁵ Triyan Febriyanto and Agus Taufiqur Rohman, *Perlindungan Hak-hak Tenaga Kerja Indonesia (TKI) yang Bekerja di Luar Negeri*, Fakultas Hukum Universitas Negeri Semarang, 2018, p.3.

¹⁶ Based on Interview, Sri Purwanti as a Staff of Protection Division, Wednesday, on August 28th, 2019, at Balai Pelayanan Penempatan dan Perlindungan Tenaga Kerja Indonesia, located in D.I.Yogyakarta,

migrant workers through instruction and employment preparing; government disability, encourage the satisfaction of prospective Indonesian migrant workers' privileges; job reinforcing for work specialist useful staff; arrangement administration in one-stop administration and assurance of Indonesian Migrant Workers; and training and supervision.

2. During working protection

Based on Article 21 Paragraph 2 of the Law No. 18 of 2017 of Protection of Migrant Worker stated during working assurance is led without assuming control over crook as well as common obligations of Indonesian Migrant Workers and directed as per enactment, the law in goal nation, just as International law and custom.

According to Article 21 Paragraph 1 of the Law No. 18 of 2017 of Protection of Migrant Worker the protection given by the government covers:

- a. Data accumulation and enlistment by work attache or designated remote issues official;
- b. Supervision and assessment on Employers, occupations, and work conditions;
- c. Facilitation of the satisfaction of privileges of Indonesian Migrant Workers;
- d. Facilitation of the settlement of work cases;
- e. Provision of consular administration;
- f. Assistance, reflection, advocacy, and legitimate help arrangement as supporter benefits by Central Government as well as Indonesian Missions just as guardianship as per the neighborhood State law;
- g. Development on Indonesian Migrant Workers; and
- h. Facilitation of repatriation.

3. After working protection

Based on Article 24 Paragraph 2 of the Law No. 18 of 2017 of Protection of Migrant Worker stated that after working protection is conducted by the Central Government along with the Local Governments and this kind of protection covers: assistance of the repatriation until the places where they grew up; settlement of privileges of Indonesian Migrant Workers that have not been satisfied; help the arrangement of Indonesian Migrant Workers who are debilitated and dead; social rehabilitation and social reintegration; and strengthening of Indonesian Migrant Workers and their families as mentioned Article 24 Paragraph 1 of the Law No. 18 of 2017 of Protection of Migrant Worker.

In the Law No. 18 of 2017 it is explained comprehensively all forms of protection provided by the Government of Indonesia both for the protection of Indonesian migrant workers and their families. Therefore the Government of Indonesia is obliged to protect Indonesian migrant workers from:

1. Human trafficking, trafficking is an action or activity to exploiting individuals or more, with or without the consent of the victim to gain benefits both material and immaterial.¹⁷ Human trafficking occurs when an available supply can meet market demand. This is certainly different from fair and voluntary transactions wherein both parties benefit. Human trafficking is synonymous with trafficking for exploitation through slavery, oppression, extortion, and physical acquisition.¹⁸
2. Slavery, slavery is a condition in which workers do not get rights, such as wages, leaves or potentially allow. The victims of slavery do not just lose all specialist over their workers, yet also over themselves including their character.¹⁹
3. Forced labor, forced labor can be understood as work that is automatically and under the threat of any punishment. It alludes to circumstances where people are forced to work using savagery or terrorizing, or by increasingly inconspicuous methods, for example controlled obligation, maintenance of recognizing papers or dangers of criticism to movement experts.²⁰ According to the ILO (International Labour Convention), forced or compulsory labor is all work or administration which is claimed from any individual under the risk of punishment and for which the individual has not offered oneself willfully.²¹
4. Violence and criminal acts, violence mean any unlawful demonstration, with or without the utilization of an instrument, against the physical and mental part of an individual that compromises the life or body or causes the hardship os such individual's opportunity. A criminal act is a demonstration committed by an individual that abuses a law and which is deserving of the legislature. Criminal acts are offenses against the open which are culpable. It very well may be any demonstration or oversight or ownership which represents a danger to people in general.²²
5. Discrimination or unfair treatment that violates Human Rights, Discrimination or unfair treatment in the working environment depends on specific biases and happens when a representative is a deal with negatively due to sex, sexuality, race,

¹⁷ Darwiansyah Minin, "The Strategy in Dealing with Trafficking in Indonesia", *Kanun Jurnal Ilmu Hukum* Vol. XIII No. 54, 2011, p. 22.

¹⁸ Ridwan Wahyudi, "Illegal Journey: The Indonesian Undocumented Migrant Workers to Malaysia", *Journal Faculty of Social Sciences and Humanities, Universiti Kebangsaan Malaysia, Bangi, Selangor, Malaysia* Vol. 25 No. 2, 2017, p. 25.

¹⁹ Endro Sulaksono, "The Patterns of Human Trafficking of Indonesian Migrant Workers: Case Study of the Riau Islands and Johor Borders Crossing", *Jurnal Sosiologi* Vol. 23, No. 2, 2018: 167-186, p. 175.

²⁰ Riri Anggriani, "Perlindungan Hukum Bagi Irregular Migrant Workers Indonesia di Kawasan Asia Tenggara (Dalam Perspektif Hukum HAM Internasional)", *Yuridika* Vol. 32 No.2 Mei 2017, p. 316.

²¹ ILO, "General Survey on the Fundamental Conventions concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization", <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>, Accesseed on September 14th, 2019 at 23.54 p.m.

²² Erniwati, "Kejahatan Kekerasan dalam Perspektif Kriminologi", *Jurnal Mizani* Vol. 25 No. 2, Agustus 2015, p. 109.

religion, pregnancy and maternity or incapacity.²³

Unfortunately, the protection of Illegal Indonesian workers cannot be appropriately implemented because Indonesian workers who work abroad, especially in Malaysia, many had deported before the Law No. 18 of 2017 concerning Protection of Indonesian Migrant Workers was enacted. Actually the protection of illegal Indonesian workers has not specifically regulated in Indonesia, but the Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers is used to protect the illegal migrant workers. The protection of illegal migrant workers is not solely the role of Central Government, but the local government has also played a significant role in managing and also protecting migrant workers since recruitment.²⁴

The protection provided by the government has not been able to fulfill the protection regulated in the Law No. 18 of 2017 concerning Protection of Indonesian Migrant Workers. However, the Government of Indonesia already provide some protection. If illegal Indonesian workers are involved in criminal things, the Indonesian government protects them by giving legal assistance.²⁵

If illegal Indonesian workers are sentenced to death then the Indonesian government will negotiate with the government in the placement country so that the Indonesian migrant workers can be released from death penalty. One of the example is in the Siti Aisyah case, she had been accused in murdering Kim Jong Nam in Kuala Lumpur Airport and she was charged with capital punishment by the prosecutor. The Government of Indonesia did a diplomacy mean with the government of Malaysia, in the result the High Court of Selangor decided this case with unconditional release decision.²⁶ Other forms of protection such as if illegal Indonesian workers have immigration problems and are threatened with deportation, the government will bear the costs required if the illegal Indonesian workers do not have money.

Fortunately, there are non-governmental organization called as Migrant Care has a mechanism to prevent the citizens from becoming illegal migrant worker. It is known as the Village of Migrant Workers Care (DESBUMI) program. The program is expected to carry out tasks that can help in the service, protection, empowerment of prospective Indonesian migrant workers.²⁷

²³ Endro Sulaksono, "Disharmonisasi Hak Pekerja Migran di Wilayah Perbatasan Kejahatan Perdagangan Manusia di Luar Negeri", *Jurnal Keamanan Nasional* Vol. 2 No. 1, 2016, p. 177.

²⁴ Based on Interview, Ika Masruroh as Staff of Protection Division, Monday, on September 2nd, 2019, at Migrant Care Office, Located in South Jakarta.

²⁵ Based on Interview, Heni Widiastuti as a Staff of Protection Division, Wednesday, on August 28th, 2019, at Dinas Ketenagakerjaan dan Transmigrasi, located on D.I.Yogyakarta

²⁶ BBC, "Kim Jong-nam: Indonesian woman freed in murder case", <https://www.bbc.com/news/world-asia-47520443>, Accessed in September 26th, 2019 at 06.13 p.m.

²⁷ Based on Interview, Fitri Lestari as Staff of Protection Division, Monday, on September 2nd, 2019, at Migrant Care Office, Located in South Jakarta.

Desbumi has several forms of service in preventing Indonesian workers from leaving illegally,²⁸ including:

1. Information Services, DESBUMI formed Integrated Information Service Center (PPIT) which contained data on migrant workers of its citizens, information related to safe migration and DESBUMI activities. This information is available on the village website.
2. Document Management Services provides document services for prospective migrant workers, including Identity card, Family card, and certificate. This document will be the basis for making a valid passport based on the document.
3. Economic Empowerment Services for post-migrant workers, DESBUMI supports groups of former migrant workers who develop joint ventures.
4. Case Complaints Service, DESBUMI serves its citizens who are troubled migrant workers. Any problematic migrant worker can file a problem with DESBUMI.
5. Socialization socializes to its citizens about how to migrate safely.
6. Data Collection regularly records its citizens who become migrant workers abroad, including those who have returned to their villages.

The service provided by DESBUMI is very useful in preventing illegal Indonesian workers. This is evident from the case in Gerunung Village, Central Lombok, where before DESBUMI was created, recruiting of prospective Indonesian migrant workers were tended to be uncontrolled and lead to a non-process procedural. After the DESBUMI the village had data on the mobility of its citizens' migration, the village could monitor its citizens everywhere.

3.3. The Obstacles of the Government of Indonesia in Protecting Illegal Workers

To implement the Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers is not easy, there are many obstacles faced by the government to protect Indonesian Migrant Workers especially illegal Indonesian workers, such as:

1. There is no data from illegal Indonesian workers

Illegal Indonesian workers often do not provide valid data.²⁹ This is due to being able to expedite the illegal departure of Indonesian workers. In the absence of valid data, the Indonesian government has difficulty in being able to collect data and also provide protection against illegal Indonesian workers if at any time the illegal Indonesian workers encounter problems.³⁰

²⁸ Migrant Care, "DESBUMI, Desa Peduli Buruh Migran", <http://www.migrantcare.net/desbumi/>, Accessed on September 25th, 2019 at 23.09 p.m.

²⁹ Sri Purwanti, *Op.Cit*

³⁰ Lalu Husni, "Perlindungan Hukum Terhadap Tenaga Kerja Indonesia di Luar Negeri", *Mimbar Hukum*, Vol. 23 No. 1, 2011, p. 154.

In the absence of data collection, this makes the Indonesian government sometimes too late to realize that Indonesian citizens who become Indonesian workers are affected. So that the handling given by the Indonesian government is also late.

2. The Lack of State Budget

The Government of Indonesia often faces obstacles when protecting illegal Indonesian workers, it is because Indonesian state budget is not enough to handle the protection of illegal Indonesian workers. One of the case is the process of returning the illegal Indonesian workers. When the illegal Indonesian worker deported. The deportation of illegal Indonesian worker needs money and is too expensive because the number of illegal Indonesian worker which caught by the official of Malaysia is too many. It was happen in March 2019, there are 161 illegal migrant workers was deported from Malaysia.³¹ Due to the number of illegal migrant workers, the process of deportating will cost a lot of money.

Another case is happen when Government of Indonesia tried to repatriated corpse from illegal migrant workers who dies in Malaysia. In example in the case of Sumhadi, an illegal Indonesian worker from Jamintoro, Sumber Baru District, died in Malaysia after undergoing treatment at a hospital in Malaysia for intestinal cancer. His body should be repatriated by the government of Jember Regency, but due to airline regulations, the corpse must remain in hospital in Malaysia before the corpse can be repatriated. To repatriate Sumhadi's body, the government of Jember experienced hospital administration problems, the cost of returning the body is very expensive.

The expensiveness of returning dead body it make the Government of Indonesia sometimes can not afford the cost of it. Besides of that there is issue of valid data from illegal Indonesian workers makes it difficult for the Indonesian government to return the bodies. Because of those issue the Government of Indonesia acts more selective in helping the process of returning the bodies of illegal Indonesian workers.³²

4. Conclusion and Suggestion

Based on the description in the finding and analysis, the author can conclude as follow:

1. Principally the Law No.18 of 2017 on Protection of Migrant Worker does not differentiate the protection given by the government to the legal and illegal migrant workers. The protection given by the government is same as the legal migrant worker. The protection consists of before, during, and after working protection. The protection to the illegal migrant worker has not been fully implemented yet by the

³¹ Muhammad Bunga Ashab, "161 TKI Nakal Kembali Dideportasi dari Malaysia", <https://news.okezone.com/read/2019/03/17/340/2031082/161-tki-nakal-kembali-dideportasi-dari-malaysia>, Accessed on May 7th 2019 at 10.54 a.m.

³² Ika Masruroh, *Op.Cit.*

Government of Indonesia. It is because most of the migrant workers in Malaysia left Indonesia before the law had been enacted. Fortunately the government through Migrant Care established DESBUMI in order to prevent the recruitment of illegal migrant worker in the level of village.

2. There are 2 (two) obstacles faced by the Government of Indonesia to implement the Law No 18 of 2017 on Protection of Migrant Worker in order to protect the illegal migrant worker of Indonesia. First, lack of data regarding the illegal migrant workers. Due of that the Government of Indonesia is hard to protect the migrant workers because the government does not know that the worker that going illegally is from Indonesia. Usually the government knows about it when the illegal migrant workers already face problems, so the protection from the government became late. Second, the lack of state budget to handle the protection of illegal Indonesian workers. The lack of state budget for example, make the process of returning the dead body is difficult, it is because of the cost is expensive. Not only that, it is because the illegal migrant workers do not have valid data regarding themselves, so the government does not know to whom the dead body of illegal migrant workers should be returned. Besides of that the deported illegal Indonesian worker is also expensive.

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Interview

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Interview with Ika Masruroh as Staff of Protection Division, Monday, on September 2nd, 2019, at Migrant Care Office, Located in South Jakarta.

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