



## Evaluating “Duty of Care” as Instrument to Protect Indonesian Migrant Workers

Ariyanto Nugroho; Surwandono Surwandono; Ali Maksum

Ariyanto Nugroho, Surwandono Surwandono, Ali Maksum

Master of International Relations, Universitas Muhammadiyah Yogyakarta, Indonesia

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### **Abstract**

Parade of diplomacy does by Indonesian government, need more attention today – context with complexity of things happened in this triple disruption era. One thing that needed to be evaluated today and rarely discussed is protection towards Indonesian migrant workers. We evaluate that Indonesian government has regulation that derives the topic, but seems to be still artificial. It is in Official Documents from the Directorate of Protection of Indonesian Citizens, as well as Minister of Foreign Affairs Regulation (Permenlu) No. 5 of 2018. There are so many things that should be evaluated so far as well as to be improved. We used post-positivist paradigm as method to deconstruct and reconstruct the case. We also used the paradigm of “Duty of Care”, a key notion from Leira and Graeger to analyze and evaluate what less and should be improved towards these regulations for better protection towards Indonesian migrant workers abroad. So far the result found, is that Indonesian government regulation still so far from constructively adopt "Duty of Care" paradigm. Then we want to discussed that Indonesia needs this substantive and progressive breakthrough, so soon. This evaluation will be put protection towards Indonesian migrant workers, cosmopolitan and post-modernist.

**Keywords:** *Protection Diplomacy; Indonesian Migrant Workers; Duty of Care; Post-Modernism*

### **Introduction**

Duty of Care, is a discourse that has begun to resonate in the context of protecting International Migrant Workers, in various countries, especially the West. Countries such as the United States, Canada, China, Britain, France, and Germany have begun to develop regulations to support and protect migrant workers from these countries (Migrant Workers Network, 2022). Indonesia is not left behind in developing this regulation, although the author mentions that it is still far from significant.

As is known, the presence of Indonesian citizens abroad is very large. Those who work as migrant workers alone reach 9 million people (Natalia, 2021), if you add those with illegal status, it will reach 13-15 million people (Warsito, 2021). On the one hand, the existence of this migrant workers will increase the flow of foreign exchange. However, with the risk of many legal and social problems that must be experienced by Indonesian citizens abroad, especially those who are illegal.

Data from BP2MI in 2022 shows that there were complaints of violence experienced by Indonesian migrant workers: 47 times in Saudi Arabia, 28 times in Malaysia, 20 times in Taiwan, 14 times in Hong Kong, and 10 times in the United Arab Emirates (BP2MI, 2022). Data on the return of troubled Indonesian Migrant Workers also occurred as many as 30,661 people, from 201,779 returning in 2021 or 15.1% (Nola, 2021). Not to mention those who have received violence from international terrorist organizations, such as in Somalia and Mindanao. The condition of international terrorism, also mentions that more than 6,000 million Indonesian diaspora are affiliated with terrorism. (Mahmodin, 2020). Data from the Ministry of Foreign Affairs in 2021 also shows that 5.9 million Indonesian citizens are not known to be abroad (Raharjo, 2021). Most of them are trafficking survivors, which cannot be handled significantly yet.

This phenomenon leads into question: why while contemporary global is prosper any problem like this still occurring? To answer that question we need to deconstruct and reconstruct regulations from subject countries. This is really important, because regulations from United Nations (UN) is apparently weak to resolute problem of international migrant workers as recipient countries do not ratify the covenant. Reconstruction over regulations from Indonesian government also derives as shortcut towards resolution towards this problem. How we mean to analyzed, deconstruct, reconstruct, and building resolution towards this problem in the context Duty of Care is what we discuss later. This will eclectically become post-modernist and cosmopolitan resolution.

### **Critical Literature Review**

There are several writings that the authors found on the discourse of Indonesian migrant workers protection. An interesting thing is that there are only 5 journals that the authors found related to Indonesian migrant workers protection. No related books found. The first article is, "Integrated Legal Protection Efforts for Indonesian Migrant Workers" by Luthvi Febryka Nola. This paper tells a lot about how many Government Regulations and Regional Regulations are ineffective in the context of protecting Indonesian migrant workers because of the many biases and incapacity of the state apparatus. She mentioned that every year since the last 5 years, there have been thousands of troubled Indonesian migrant workers who return home.

The second article is, "Implementation of the Law on the Protection of Indonesian Migrant Workers as the Implementation of Good Governance in Labor Inspection" by Hot Jungjungan Simamora. This article also tells about the uncleanness and incompetence of the bureaucracy that is responsible for protecting Indonesian migrant workers. He said that bureaucratic reform in the relevant agencies was needed.

The third article is, "Protection of Indonesian Migrant Workers Abroad", by Satriyo Pringgo Sejati. This paper tells a very critical story about how weak regulations and the implementation of regulations by the bureaucracy have made Indonesian migrant workers protection far from optimal. It is further stated that there must be a humane bureaucratic reform for the protection of Indonesian migrant workers in the future.

The fourth article is, "Legal Protection of the Rights of Indonesian Migrant Workers in the Household Sector" by Amira Hasna Nabila. This paper talks a lot about illegal Indonesian migrant workers who do not receive legal protection, as well as brokers who are not responsible for this case. He wrote, there are many things that must be evaluated against the discourse on protecting Indonesian migrant workers, especially those that are illegal.

The fifth article is, "Legal Protection against Indonesian Migrant Workers", by Nur Hidayati. This article tells a lot about the weakness of the bureaucracy, the rise of brokers, and Indonesian migrant workers who are not affiliated with labor unions in the destination country. This causes them to become victims of exploitation who are unable to fight back.

Looking at the literature review, the author declares the novelty of this writing. The Duty of Care discussion has never been written in academic writings, especially regarding the protection of Indonesian migrant workers. The author hopes that this writing fulfills this very important discourse, to develop and resolve the problems that occur. That through the implementation of Duty of Care, and the seriousness of the bureaucracy to change, the writer hopes that this resolution will be optimal.

### **Theoretical Approach**

In compiling this writing, the author uses the concept of Duty of Care which is exposed in the writings of Haldvard Leira and Nina Graeger with the title "The Duty of Care in International Relations". Then the writings of Nina Graeger and Wrenn Yennie Lindgren with the title "The Duty of Care for Citizens Abroad: Security and Responsibility in the In Amenas and Fukushima Crises". Then Surwandono and Ariyanto Nugroho wrote with the title, "Evaluating the Diplomacy Policy for the Protection of Indonesian Citizens through the Duty of Care Paradigm".

This paper comprehensively describes the various problems that must be faced by the state in the framework of providing protection to its citizens in other countries. Including the writings of Surwandono and Ariyanto Nugroho, who evaluatively portray the Duty of Care paradigm in the case of the Indonesian meeting. There are 3 spectrums of Duty of Care, which the state can implement to protect its citizens abroad.

First, "Social Contract Care". This model is the basic theoretical basis of the protection of citizens. Citizens have given their rights to freedom to the state and have provided opportunities for the state to do a number of things that can protect their basic rights. In the context of international relations, the concrete form of efforts to provide protection is to build diplomatic relations with a number of countries, and on the basis of this relationship, the state can have a representative office that can facilitate the protection of citizens. In addition, the state has ratified a number of conventions protecting the rights of citizens so that the state will be bound to carry out what it agrees on legally and formally.

Second, "Intermediaries of Care". It is a further innovation from the state to provide protection to its citizens by inviting and funding private individuals or institutions to carry out a protective role for their citizens. This choice is a step from the state to be able to provide professional protection against the complaints of its citizens in a country. In the practice of international relations, the state will appoint a legal and security service company to provide legal protection to its citizens.

Third, "Extension of Care". Is a form of consular-based protection, where the state will mobilize protection by using official diplomats, or security forces such as the police and military to take legal actions in other countries. In the practice of international relations, the role of diplomats is carried out by officially recruiting local residents to become staff in a country's representative office. The presence of this local staff of diplomats allows the process of protecting the interests of citizens to be more efficient. Meanwhile, in the context of military and police involvement in protection, usually in an emergency situation where the partner country is in a position of instability and there is no guarantee of security for foreign residents in a country.

### **Discussion**

#### **Risks and Fragility**

Indonesia is one of the countries with the 5th largest diaspora population in the world, and the largest component of the Indonesian diaspora comes from Indonesian migrant workers circles. Unfortunately, Indonesian migrant workers largest job structure is in the 3D: dirty, dangerous and degrade categories.

In the last 8 years, there has been no significant decline in the number of complaints against Indonesian migrant workers every year. BP2MI data in the period 2013-2020 shows that there are 38,246 case complaints. Of these, 53% of case complaints actually occurred within the time span after the Indonesian Migrant Workers Law was passed (2017-2020). Meanwhile, before the Indonesian Migrant Workers Law was passed (2013-2016), 47% of recorded case complaints, (Migrant Workers Network, 2022). Even in the 2019 case, there was an extraordinary increase in the number of case complaints compared to the previous year, from 4,779 complaints to 9,377 complaints, (Migrant Workers Network, 2022). The types of cases that experienced the highest spike in cases included unpaid salaries, termination of employment before the work agreement period ended, and overstay.

Despite the decline in the number of case complaints in 2020, it is estimated that the number of cases experienced by Indonesian migrant workers remains high, especially in relation to the new vulnerabilities that have emerged during the COVID-19 pandemic. Not a few Indonesian migrant workers do not want to file their cases, or even do not have access to complaints at all during the COVID-19 pandemic. However, the Ministry of Foreign Affairs of the Republic of Indonesia noted that cases of Indonesian citizens, including Indonesian migrant workers handled by representatives of the Republic of Indonesia abroad, actually increased in 2020.

Furthermore, during 2020, there was a large and sudden flow of Indonesian migrant workers returning home. There are 3 sources of data for returning home during the COVID-19 pandemic. First, SISKOP2MI, which is integrated with SIMKIM, recorded at least 49,211 procedural return of Indonesian migrant workers. Second, the online return system from Indonesian representatives, and information from various parties, recorded 53,200 returning Indonesian migrant workers, the majority of which were non-procedural. Third, data from officers' reports from January 1 to April 24, 2020, which was carried out manually due to the massive flow of returning Indonesian migrant workers, recorded at least 75,424 returning Indonesian migrant workers, (Migrant Workers Network, 2022).

A survey conducted by Migrant Workers Network (MWN) and the International Human Rights Working Group (IHRWG) and the Indonesian Migrant Workers Union, April last year, showed that 54% of respondents to Indonesian migrant workers in Saudi Arabia were already unpaid and 34% were afraid to check their condition at a health facility because worried about being arrested by the security forces regarding their immigration status. (Migrant Workers Network, 2022). Respondents of Indonesian migrant workers who work in Singapore and Hong Kong, who mostly work in the household sector, generally still work and receive a monthly salary, only experiencing difficulties such as deprivation of vacation rights, depression, and unable to send money to Indonesia. Another survey conducted by MWN from December 2020 to February 2021 also showed that the majority of Indonesian migrant worker respondents said that the protection conditions remained the same and there were no significant changes. Many respondents to Indonesian migrant workers experienced problems during the COVID-19 pandemic, including difficulties in organizing, increasing workloads, cutting salaries, and having to work 7 days a week.

53.7% of the number of case complaints received by SBMI during 2020 came from female Indonesian migrant workers. Furthermore, 36% or most of the complaints were filed by Indonesian female migrant workers who work as domestic workers, (Migrant Workers Network, 2022). This data shows a certain pattern, namely that female Indonesian migrant workers, especially those working in the informal sector, are the most vulnerable group.

### **Duty of Care into Indonesian Migrant Workers Protection Policy**

In the context of the "Social Contract" model for the protection of Indonesian citizens, the Indonesian government has made a derivative regulation from the message in the opening of the 1945 Constitution concerning protecting all Indonesian peoples in the form of Minister of Foreign Affairs Regulation (Permenlu) No. 5 of 2018. This regulation regulates a number of instruments for the

protection of Indonesian citizens. Not only that, due to the large number of Indonesian citizens abroad who work as Indonesian migrant workers, the Indonesian government has also ratified the 1990 convention on the protection of migrant workers and their family members, and ratified it in Law no. 6 of 2012 concerning Ratification of the International Convention Concerning the Protection of the Rights of All Migrant Workers and members of their families.

At the level of opening representative offices of the Indonesian government abroad as part of the function of protecting Indonesian citizens, the Indonesian government has 131 Representatives worldwide which are divided into 94 embassies, 3 permanent missions, 30 consulates, and 4 offices. This means that Indonesia has representative offices in a number of partner countries as much as 70% of the total 193 UN members. This number is a very representative number to protect Indonesian citizens abroad if supported by adequate protection instruments.

What then becomes a problem is that many countries that are the destination of Indonesian migrant workers do not ratify the convention on the protection of migrant workers. A number of analyzes show that the level of legal, economic and social violations against Indonesian migrant workers is closely related to two important variables. First, it relates to the position of the country where Indonesian migrant workers works, whether it has ratified the convention on the protection of migrant workers or not. The more a country has not ratified the convention, the more likely that country is to ignore the civil rights of migrant workers (Kristiana 2020). This is related to the absence of legal products at the domestic level that will guarantee the protection of the civil rights of migrant workers systematically. The state does not have an obligation to fulfill a number of regulations mandated in conventions that have not been ratified.

Second, the variables related to the number of Indonesian migrant workers are not in the illegal category, migrant workers who enter a country without going through official procedures and are registered in the migrant worker administration system (Rogozhina, 2020). The greater the number of illegal migrant workers, the greater the problems that are likely to be experienced by these migrant workers. This is related to the absence of strong legal access that can be provided by the receiving country, as well as the country where the migrant worker originates. Illegal migrant workers will be vulnerable to social, economic, legal and cultural exploitation, and will be slow to get guaranteed protection of civil rights.

In the context of Indonesian migrant workers, Saudi Arabia and Malaysia are two countries that have the criteria for the two variables above. Neither of them has ratified the 1990 convention on the protection of migrant workers and families, and so far there is no sign that the two will soon ratify the convention. The large number of illegal Indonesian migrant workers in Saudi Arabia is related to the opportunity to work in Saudi Arabia through a simple and easy umrah visa, and then they stay in Saudi Arabia illegally (Blanchi, 2017). Likewise, in Malaysia, illegal Indonesian migrant workers is related to the proximity of geographical access between Indonesia and Malaysia, so that many Indonesian citizens cross into Malaysia via the rat route and there are a number of agents who facilitate Indonesian to become migrant workers in Malaysia at low and flexible costs (Wahyudi, 2018).

This is where the importance of the Indonesian government to improve the quality of protection by using the "Intermediaries of Care" in the context Duty of Care model by involving a number of elements from private institutions, even financing it and recruiting Indonesian representative offices from local residents. Actually, Indonesia has an NGO that has a high concern for the issue of migrant workers, namely Migrant Care. This NGO is very critical to advocate against a number of violations and discrimination to migrant workers. However, in the context of the "Intermediaries of Care" model, NGO that have space and work permits based on international NGOs are needed. Migrant Care is still at the level of a national NGO in Indonesia, so protection services are still in the context of delivering opinions and protests, not yet providing intensive assistance where Indonesian migrant workers problems exist. It

is very important for the Indonesian government to encourage and facilitate Migrant Care to grow and develop into a strong international NGO.

The same applies, to the presence of local staff at the Indonesian Embassy. The government has placed local staff as an important part in protecting Indonesian citizens. Although it is undeniable, there is an unequal comparison between local Indonesian staff and foreign-based local staff. This is reflected in the recruitment information with Indonesian nationality with a very large number of seats and very different from the recruitment of local staff who come from the country where the representative is located. For example, in recruitment on June 7, 2021, the recruitment of local staff at the Indonesian Embassy in Seoul is only 1 person. This is different from the recruitment of Indonesian-based local staff in the revenue period per fiscal year 2022 with a higher number. In this context, it is important to increase the protection capacity of Indonesian citizens, the recruitment of local staff from foreigners where the Indonesian representative office is important. Local staff who come from local residents have a competitive value to build communication and socialization more quickly. The idea of Duty of Care based on “Intermediaries of Care” will be more productive and efficient.

What about protection against extraordinary cases where the presence of an “Extension of Care” model is the main pillar? Minister of Foreign Affairs Regulation (Permenlu) No. 5 concerning the Protection of Indonesian Citizens does not regulate much about this. Although in practice the Indonesian government carries out this role by coordinating with the military and police. In the process of evacuating political crises in the Arab Spring, Afghanistan, Ukraine and Iran, the Ministry of Foreign Affairs cooperates with cross-combat departments. Likewise, in the case of the evacuation of a number of Indonesian migrant workers and students in Wuhan at the beginning of the Covid-19 pandemic, the Ministry of Foreign Affairs also collaborated with a number of parties to provide protection through the evacuation method. But so many cases still need improvement.

## **Conclusion**

Despite so many problems occur in case of Indonesian migrant workers, we should not give up tackling the problems. It is true, that bureaucracy and corrupt apparatus lead problem of Indonesian migrant workers to be worsen. Irresponsible brokers of illegal Indonesian migrant workers, also worsen the context. So what writer sum up here is top down resolution, premises in government regulations. Not like other writings that sum up only in bottom up model, that simultaneously ineffective. Critics into government regulations is needed, a shortcut towards optimal resolution. That we need “Duty of Care”, to be implemented correctly and significantly. That we need agents from NGO to be strengthened and facilitated, to help government tackles the issue. Not instead bullied, and wrongly confronted.

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