

Pemulangan pekerja migran Indonesia non prosedural sebagai bentuk perlindungan hukum warga negara Indonesia = Non-Procedural repatriation of Indonesian migrant workers as a form of legal protection for Indonesian citizens

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Abstrak

Fenomena Pekerja Migran Indonesia non prosedural merupakan bentuk migrasi tenaga kerja secara ilegal dan berisiko membahayakan kemaslahatan hidupnya sehingga diperlukan suatu skema pemulangan pekerja migran Indonesia non prosedural sebagai bentuk perlindungan negara terhadap hak dasar warga negara Indonesia. Penelitian ini menggunakan metode doktrinal dan didukung data komparatif terkait skema pemulangan imigran ilegal di beberapa negara. Hasil penelitian menunjukkan bahwa fenomena pekerja migran Indonesia non prosedural terjadi pada saat pekerja migran Indonesia bermigrasi namun tidak sesuai prosedur administratif ataupun teknis yang berlaku. Perlindungan hukum bagi pekerja migran Indonesia diberikan sebelum, selama, dan setelah bekerja. Skema pemulangan pekerja migran Indonesia bermasalah telah diatur dalam Peraturan BNP2TKI Nomor 3 Tahun 2019 tentang Petunjuk Teknis Pelayanan Kepulangan Pekerja Migran Indonesia Bermasalah Sampai Ke Daerah Asal, namun dikarenakan status non proseduralnya, maka hal ini sulit untuk diterapkan dan berkenaan dengan yurisdiksi negara penempatan. Oleh sebab itu skema ideal dilaksanakan berdasarkan hak asasi manusia selaku warga negara Indonesia yang wajib dilindungi kepentingannya oleh negara, sehingga negara dapat memberikan layanan pendampingan pekerja migran Indonesia non prosedural dalam menjalani prosedur di negara penempatan dengan memperhatikan batasan-batasan melalui aspek sosial, kesehatan dan keselamatan, serta hak asasi manusia.The phenomenon of non-procedural Indonesian migrant workers is a form of migration that crosses country illegally and risking their life welfare. Therefore, the repatriation scheme for these non procedural workers is urgently needed as a form of protection for basic human rights. This research used doctrinal method and supported by comparison of data in several countries. The research results show non-procedural Indonesian migrant workers occurs because worker intend to migrate from one country to another without following administrative or technical procedures. Legal protection of Indonesian migrant workers is given before, during, and after work. The repatriation scheme for problematic Indonesian migrant workers is regulated in the Regulation of the National Agency for the Placement and Protection of Indonesian Migrant Workers Number 3 of 2019 about technical Instructions for the Return of Problematic Indonesian Migrant Workers to Their Origin. However, due to a lack of valid documents, the Indonesian government found it difficult to support non procedural migrant worker repatriation, because usually non procedural migrant violates the host country's immigration law. Therefore, the ideal scheme of repatriating non procedural Indonesian migrant workers performed based on their basic rights as Indonesian citizens that must be protected by the government. Government can provide accompaniment for non- procedural Indonesian migrant workers facing law sanctions in the host country while still considering social aspects, health and safety, as well as human rights.