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The Urgency of Resolving Indonesian Migrant Worker Cases through Restorative Justice Originated to The National Criminal Code

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Abstract: Indonesia has the fourth largest population in the world. With such a large population, some of the population seeks work abroad because the number of jobs in the country is inadequate. However, finding a job is not as smooth as imagined, but many of them become conflicts. Based on statistical data from the Ministry of Foreign Affairs, it was revealed that in the period from 2020 to March 2024, at least 3,703 Indonesian citizens (WNI) became victims of Online Scamming crimes, where around 40 percent of them were identified as victims of Human Trafficking (TPPO). Meanwhile, based on data from the Criminal Investigation Unit of the National Police Headquarters, throughout 2023, the Indonesian National Police (Polri) has handled 1,061 TPPO cases with a total of 3,363 victims. However, on the other hand, many Indonesian Migrant Workers who work abroad through placement agents need a solution that is felt to be humane to the victims. With the existence of Law No. 18 of 2017 concerning the Protection of Migrant Workers, there is no protection that can be directly felt by victims who directly feel the losses they experience. In Article 85 (a) Jo. Article 71 a which is only oriented towards punishment and fines for perpetrators of criminal acts whose benefits cannot be felt by the victim. Therefore, there needs to be a more effective solution through Restorative Justice, namely a solution that involves all parties, both the perpetrator, the victim and also the state as a forum to facilitate the agreed settlement so that the victim can feel direct and fast recovery from the perpetrator and by involving the state as a forum that bridges it so that if the Restorative settlement is not resolved by the parties, it can be prosecuted as a last resort. That the purpose of this study suggests a resolution of the conflict between labor supply agencies/corporations and victims of Indonesian Migrant Workers abroad based on Restorative Justice so that the impact of recovery can be felt directly by the victim. In this study, the researcher used the Empirical Juridical method, Juridical which was taken from library materials, legislation, written articles, both journals and articles related to Indonesian migrant workers. From an empirical perspective, the researcher took the researcher's experience in handling Indonesian migrant worker cases and interviews with senior prosecutors who had handled Indonesian Migrant Worker cases.

Keyword: Restorative Justice, Effective Resolution, Role of the Parties.

Abstrak: Indonesia merupakan negara dengan jumlah penduduk terbesar keempat di dunia. Dengan jumlah penduduk yang begitu besar, sebagian penduduk mencari pekerjaan di luar negeri karena jumlah lapangan pekerjaan di dalam negeri tidak memadai. Namun, mencari pekerjaan tidak semulus yang dibayangkan, bahkan tidak sedikit yang menjadi konflik. Berdasarkan data statistik Kementerian Luar Negeri, terungkap bahwa dalam kurun waktu tahun 2020 hingga Maret 2024, sedikitnya 3.703 Warga Negara Indonesia (WNI) menjadi korban kejahatan Penipuan Online, di mana sekitar 40 persen di antaranya teridentifikasi sebagai korban Tindak Pidana Perdagangan Orang (TPPO). Sementara itu, berdasarkan data Bareskrim Mabes Polri, sepanjang tahun 2023, Kepolisian Republik Indonesia (Polri) telah menangani 1.061 kasus TPPO dengan jumlah korban sebanyak 3.363 orang. Namun, di sisi lain, banyak Pekerja Migran Indonesia yang bekerja di luar negeri melalui agen penempatan membutuhkan solusi yang dirasa manusiawi bagi para korban. Dengan adanya UU No. 18 Tahun 2017 tentang Pelindungan Pekerja Migran, belum ada perlindungan yang dapat langsung dirasakan oleh korban yang secara langsung merasakan kerugian yang dialaminya. Dalam Pasal 85 (a) Jo. Pasal 71 a yang hanya berorientasi pada pemidanaan dan denda bagi pelaku tindak pidana yang manfaatnya tidak dapat dirasakan oleh korban. Oleh karena itu, perlu adanya penyelesaian yang lebih efektif melalui Keadilan Restoratif, yaitu penyelesaian yang melibatkan semua pihak, baik pelaku, korban dan juga negara sebagai wadah untuk memfasilitasi penyelesaian yang telah disepakati agar korban dapat merasakan pemulihan secara langsung dan cepat dari pelaku dan dengan melibatkan negara sebagai wadah yang menjembatani sehingga apabila penyelesaian secara Restoratif tersebut tidak terselesaikan oleh para pihak, maka dapat dilakukan penuntutan sebagai upaya terakhir. Bahwa tujuan dari penelitian ini menyarankan penyelesaian konflik antara PJTKI/Perusahaan dengan korban Pekerja Migran Indonesia di luar negeri berdasarkan Restorative Justice sehingga dampak pemulihan dapat dirasakan langsung oleh korban. Dalam penelitian ini, peneliti menggunakan metode Yuridis Empiris, Yuridis yang diambil dari bahan kepustakaan, peraturan perundang-undangan, artikel-artikel tertulis, baik jurnal maupun artikel yang berkaitan dengan pekerja migran Indonesia. Dari segi empiris, peneliti mengambil pengalaman peneliti dalam menangani kasus-kasus buruh migran Indonesia dan wawancara dengan jaksa senior yang pernah menangani kasus-kasus buruh migran Indonesia.

Kata Kunci: Keadilan Restoratif, Penyelesaian yang Efektif, Peran Para Pihak.

INTRODUCTION

Indonesia in establishing its nation has a long history so that the formation of Pancasila as the foundation of the Indonesian state which is considered as the foundation of the state and the nation's outlook on life has a function as a unifier of diverse national life, has a very large influence on the Indonesian nation because the Pancasila Philosophy describes the diversity of tribes, religions, regional languages, regions, customs, cultural habits, and skin colors that make Pancasila a symbol of agreement in uniting these things. Pancasila is a characteristic of the Indonesian nation that prioritizes deliberation in all aspects of life based on justice and humanity for all its citizens. In the context of a welfare state, the Unitary State of the Republic of Indonesia is responsible for realizing general welfare as mandated by the Constitution. The 1945 Constitution of the Republic of Indonesia (UUD 1945), especially the opening paragraph four, which reads "protecting all Indonesian people, advancing general welfare, improving the life of the nation and participating in implementing world order." In essence, the law is formed to realize the goals of the state, including public welfare. In addition to realizing welfare for its citizens, the state also has an obligation to protect citizens wherever they are without exception for Indonesian migrant workers abroad who need

attention from the state because they are often victims of human trafficking, exploitation, or other conflicts experienced by Indonesian migrant workers abroad. Constitutionally, the state has regulated protection for Indonesian Migrant Workers (PMI) in the 1945 Constitution, namely in Article 27 paragraph (2) which states that: "every citizen has the right to work and a decent living for humanity", therefore protection for PMI is very urgent to be carried out for the safety of every Indonesian citizen. In 2017 Law No. 18 of 2017 concerning PMI was issued where Indonesian migrant workers have the right to work in accordance with the work agreement, but there are still problems that exist, namely where workers are employed as online scammers plus salaries that are not appropriate which result in losses experienced by Indonesian migrant workers abroad, however in Article 85 paragraph for violators of the company or agent is subject to imprisonment of only 5 (five) years and a fine of Rp. 5,000,000,000,000.00 and if this is done by an individual in accordance with Article 81 Jo Article 69 the maximum imprisonment is 10 (ten) years and a maximum fine of Rp. 5,000,000,000,000.00. This study will discuss how the protection of Indonesian migrant workers is based on the Law on the Protection of Indonesian Migrant Workers and how the company / agent is responsible for Indonesian Migrant Worker Victims working abroad using the concept of Restorative Justice which prioritizes deliberation on the losses experienced by victims with agents / companies that distribute overseas workers facilitated by the State (either investigators, BP2MI or related institutions). In discussing this problem, a theory is needed to integrate solutions to existing problems using the Restorative Justice theory from Kevin I. Minor and JT Morrison which states that Restorative Justice is a response to criminal acts by trying to restore the losses suffered by victims with the aim of peace and peace between the parties and the theory of dignified Justice from Prof. Dr. Prasetyo where Pancasila has two elements of justice, namely formal justice, namely justice in law and spiritual justice, namely divine justice that humanizes humans. This study has a research objective, analyzing whether the role of the Indonesian Migrant Workers Law has fulfilled the sense of justice for victims who have suffered losses and how the RJ concept is effective in humanizing Indonesian Migrant Worker victims abroad. Legal research must be the result of original thinking to examine the elements of novelty and paradigmatic changes of the times. That as a comparison, this research will be compared with previous research, including research from Elviandri and Ali Ismail Shaleh in 2022 which discusses analyzing the role of BP2MI in protecting PMI in Central Java Province as well as analyzing the obstacles faced by BP2MI in PMI Protection during the New Normal in Central Java Province. Research conducted by M. Yusuf Samad et al in 2023, which in essence this research is to determine the triggering factors for the practice of PMI-NP, prevention efforts and handling, and alternative solutions using a strategic intelligence approach. The research conducted by Waluyo and Dona Budi Kharisma in their research on the strategic role of Village Government in protecting PMI includes information services, data verification, recording, facilitation of administrative requirements, monitoring of departures and returns, and empowerment of migrant workers and their family members.

METHOD

This research uses an Empirical Juridical approach method. Empirical juridical is research that is conducted empirically or directly analyzes cases handled by researchers.

RESULT AND DISCUSSION

Protection for Indonesian Migrant Workers based on the PMI Protection Law

The increasing crime of human trafficking in several countries, including Indonesia and other developing countries, has attracted the attention of the Indonesian Government as part of the nation and the international community. In the Crime of Human Trafficking we

can recognize three elements including: The first element is 'action', where human trafficking has several actions: recruitment, transportation, transfer, and harboring of people. The second element is 'means', where human trafficking includes coercion, fraud, or abuse of power. In addition, the third element is 'purpose' in the form of exploitation, such as exploitation of prostitution of others or other forms of sexual exploitation, forced labor or slavery services, or practices similar to slavery and the sale of organs. So it can be concluded that Human trafficking means the recruitment, transportation, transfer, harboring or receipt of people, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes at least exploitation, exploitation of prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, forced labor or organ removal. From the explanation above are forms of human trafficking methods where there is deception against people or Indonesian citizens, especially those whose purpose is to find decent work abroad by following the rules of either agents or individuals without any suspicion but are used by certain people or organizations for exploitation by ignoring the original agreement between workers and recruiting companies who should be employed according to the agreement but are deviated from with a span position because Indonesian migrant workers are already abroad. However, all victims or cases that occur in practice are subject to the Criminal Act of Human Trafficking without looking at the whole problem that arises is the existence of a misappropriation of work agreements, perhaps due to the existence of penalties in the Migrant Worker Protection Act which is too soft but can be cumulative with the TPPO Act. This is further strengthened based on statistical data from the Ministry of Foreign Affairs for the period 2020 to March 2024, the number of Indonesian citizens (WNI) who became victims of Online Scamming crimes was 3703, of which around 40 percent were identified as victims of Human Trafficking (TPPO). Indeed, the TPPO Law regulates restitution for victims, but it must go through a long court process that takes a long time, plus the desired restitution is not necessarily granted and if it is granted, considering the long trial process, there is a possibility that the suspect can transfer his assets. Therefore, it is important to have fair law enforcement as initiated by Prof. Prasetyo who stated that the measure of morality of a legal system is the existence of a dispute resolution mechanism that is not only easily accessible and entered by the community but must also be quite effective in resolving disputes. With the existence of a long law enforcement process, the benefits are not necessarily felt by the victim, namely the person who is most disadvantaged who should receive assistance, namely the restoration of the victim's rights for the losses experienced by the victim.

Individual accountability for Indonesian Migrant Worker Victims with fair Restorative Justice

From time to time, people's lives and behaviors experience developments and changes, both positive and negative, such as criminal behavior. Therefore, the government and law enforcement agencies must continue to find ways to prevent crime and prosecute perpetrators so that life becomes safe, peaceful, and calm. In the 1990s, this restorative justice system developed rapidly in European countries. As in the Netherlands, which also encourages the implementation of restorative justice as a form of case resolution. Although law enforcement was initially not interested in resolving the issue. The Restorative Justice system facilitates the participation of parties involved in the conflict and the surrounding community in an effort to resolve the issue and address the negative impacts of the conflict. The restorative justice program argues that parties involved in the conflict must actively participate in the conflict resolution process and demonstrate a desire to find a way out. This

method is considered a tool to encourage peaceful expression, foster gratitude for diversity, and enhance responsible community practices. Victims' requests in restorative justice cases are similar to those in conventional litigation. The results show that victims who are involved in the help process are more satisfied with how their cases are resolved. The restorative justice process allows people to feel heard, respected, and acknowledged during the courtroom, which in turn impacts their overall recovery rate. In contrast, victims in conventional justice cases often feel frustrated and disappointed because they are unable to communicate and receive support. On the other hand, we can see what RJ does not: meaningful engagement supported by respectful dialogue and a platform for the exchange of emotions and opinions. When such engagement is only superficial, the perpetrator and the victim may not benefit from RJ. However, some of the existing conflicts can be resolved with two, the first is a 'training pathway', where restorative ideas are disseminated through the expansion of training in restorative practices to various groups and departments, then embedded in the way of working, the second is to collect existing recovery initiatives into a more coherent organization, and use it to initiate further recovery services, both of these are important to use so that the resolution of conflicts between Indonesian Migrant Worker victims and Perpetrators so that apart from hearing from victims and perpetrators, mediators are also expected to be able to contribute to a just and sustainable resolution in accordance with the values that live in society.

CONCLUSION

That the settlement of Indonesian Migrant Worker victims who have problems abroad must be oriented towards a settlement that has a direct impact on the victim because the victim is the person who feels the most impact from the suspect's actions, therefore there needs to be a Restorative Justice (RJ) settlement, namely a restoration of the victim oriented to the values that live in Indonesian society (customary law) by prioritizing a humanitarian settlement so that the settlement that has so far been oriented towards the punishment and fines imposed on the suspect whose benefits are less felt by the victim, therefore with a settlement through RJ and guided by the National Criminal Code, it provides space for the settlement of Indonesian Migrant Worker victims with the Suspect to realize humanitarian justice in the midst of community life.

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