

LEGAL PROTECTION OF INDONESIAN MIGRANT WORKERS

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Abstract

Article 4 of Law Number 13 of 2003 concerning Manpower explains the existence of equal employment opportunities and the provision of labor as well as protection of labor in an effort to create welfare for himself and his family. Work is a necessity for workers to get wages that are in accordance with their wishes. Indonesian Migrant Workers (PMI) are workers who do work by leaving their own country or leaving Indonesia to earn a decent wage to meet the needs of life both for themselves and their families.

The purpose of the study is to examine and analyze the factors causing the increase in migrant workers preferring to work abroad and analyze the protection of Indonesian migrant workers.

Keywords: welfare, Indonesian migrant workers, employment, wages.

I. INTRODUCTION

The era of globalization, especially due to advances in communication and transportation technology requires various countries to study these problems intensively.¹ Information that enters a country not only through internal interaction, but unpreventably has and will continue to occur interaction, interconnection and interdependence (interface) between nations.²

Human rights, which are universally defined as those rights which are inherent in our nature and without which we cannot live as human being, have been fought for a very long time.³ Even today it is still ongoing, with various dimensions of problems arising from the various spectrum of interpretations associated with it.⁴

Human rights are rights that are a gift from Allah S.W.T., rights possessed by humans from the womb to the grave, which must be protected by law and get legal certainty protected by the

¹ Dahlman, C. (2007). Technology, globalization, and international competitiveness: Challenges for developing countries. *Industrial development for the 21st century: Sustainable development perspectives*, 29-83.

² Muladi, *Hukum dan Hak Asasi Manusia, dalam Kumpulan Esai Guna menghormati Prof.Dr.Sri Soemantri Martosoewignjo,S.H., (Kedaulatan Rakyat Hak Asasi Manusia dan Negara Hukum)*, Jakarta, Gaya Media Pratama, 1996, Hlm.113.

³ Perry, M. J. (1998). *The idea of human rights: Four inquiries*. Oxford University Press, USA.

⁴ *Ibid*, Hlm. 114.

constitution in all its implementation activities including Indonesian Migrant Workers who work to earn wages in other people's countries due to limited work.⁵

In this regard, people in their lives need work to meet the needs of life and the survival of themselves and their families. Work is an important factor in human life and has important meanings and benefits that are needed, with the work of a worker will have meaning in the community, have useful activities, interact with others, and be able to fulfill wishes and ideals for himself and his family.

Work obtained by a person is a human right regulated in the constitution of the Unitary State of the Republic of Indonesia as stated in Articles 27, 28, and Article 33 of the 1945 Constitution that everyone has an equal position in law and government and has the right to get a job to meet the needs of a decent life and has the right to work with fair and wise treatment in the implementation of labor relations to meet economic needs by family principles, and strengthened by Article 4 of Law Number 13 of 2003 concerning Manpower, so that the objectives of the Unitary State of the Republic of Indonesia in the Preamble to the 1945 Constitution Paragraph 4 can be achieved.

Based on this, it can be understood that, the Government has the duty and responsibility to prepare the Citizens of the Republic by taking into account the right of citizens to work and get work while providing employment as mandated in the constitution, in order to achieve the needs of a decent life for workers and their families.⁶ Jobs obtained and required by citizens are duties of the government and are a human right. However, the reality of employment is very limited so that human rights as citizens have not been fulfilled by the government.⁷

Thus, to fulfill legal protection and legal certainty for Indonesian Migrant workers working outside Indonesian territory, the Government must make various efforts to make it happen.⁸ Legal Protection and Legal Certainty for Indonesian Migrant Workers by implementing laws and regulations, including by implementing the Law. Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, which was previously regulated in the Law. Number 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad.

The enactment of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers which was passed on October 25, 2017 by the House of Representatives gave new hope and very high aspirations to realize legal protection and legal certainty for Indonesian Migrant Workers as a huge contributor of foreign exchange to the country. The authority of the Government and the very large role in this law gives great hope for the creation of legal protection and legal certainty for Indonesian Migrant Workers (PMI) can be done from the beginning before work, working and after work so that the service sending company for work to Migrant Workers is really supervised from the region to the Center, and the company is only as a placement provider.⁹

⁵ Hugo, G. (1995). International labor migration and the family: some observations from Indonesia. *Asian and Pacific Migration Journal*, 4(2-3), 273-301.

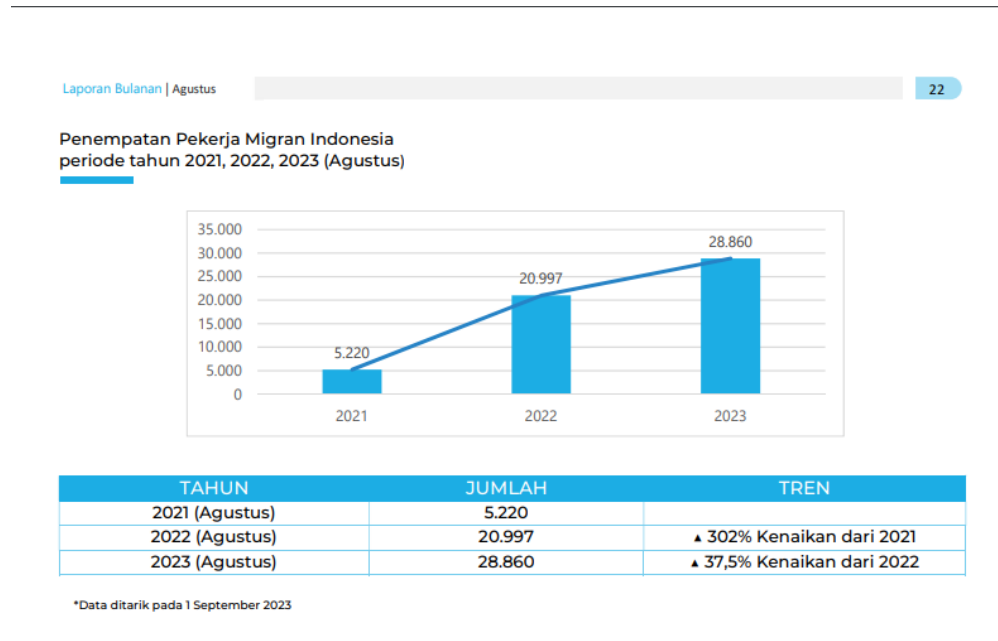
⁶ Kymlicka, W., & Norman, W. (1994). Return of the citizen: A survey of recent work on citizenship theory. *Ethics*, 104(2), 352-381.

⁷ FARIDA, E., & SAMEKTO, F. A. (2021). Strategies and Legal Protection for Undocumented Indonesian Migrant Workers. *International Journal of Pharmaceutical Research (09752366)*, 13(1).

⁸ Widyawati, Anis. "Legal Protection Model for Indonesian Migrant Workers." *JILS* 3 (2018): 291.

⁹ Izzati, N. R. (2019). New Direction of Indonesian Migrant Workers Protection through the Law Number 18 of 2017 and its Implementation Challenges. *PADJADJARAN JURNAL ILMU HUKUM (JOURNAL OF LAW)*, 6(1), 190-210.

The following is data on the placement of Indonesian Migrant workers as well as the number.¹⁰



Source : BP2MI, August 2023 Publication Report

Figure 1. Placement and Number of Indonesian Migrant Workers for the 2021, 2022, 2023 Period

From the data above, it was studied that from 2021 to 2023, there was an increase in the number of Indonesian Migrant Workers (PMI), namely in 2023 to reach 28,850 people, which means an increase of 37.5% from 2022. The proportion of jobs between the formal and informal sectors was fairly balanced until this August. The percentage of those sent to work in the formal sector is slightly higher, at 50.7% for formal and 50.3% for informal. As many as 63 percent of migrant workers in August 2023 will be women.¹¹

In addition, there are also data on complaints of Indonesian Migrant Workers for the 2023 period as follows.¹²

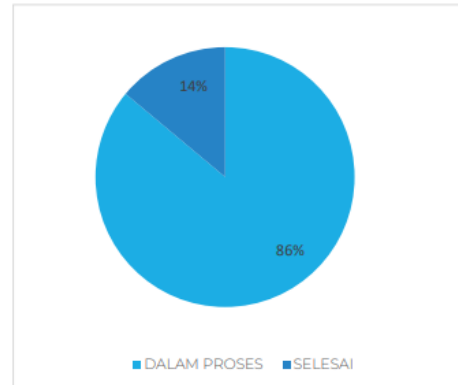
¹⁰https://bp2mi.go.id/uploads/statistik/images/data_11-09-2023_Laporan_Publikasi_Bulan_Agustus_2023_merged.pdf

¹¹ *ibid*

¹² *ibid*

Pengaduan Pekerja Migran Indonesia Tahun 2023 (Agustus)
Berdasarkan Status Kasus

STATUS KASUS	JUMLAH	%
DALAM PROSES	148	86,05%
- Terima Pengaduan	51	29,65%
- Klarifikasi	33	19,19%
- Penentuan Unit Kerja oleh Pimpinan Klarifikator	3	1,74%
- Penugasan Klarifikator oleh Pimpinan	3	1,74%
- Penugasan Mediator oleh Pimpinan	0	0,00%
- Penugasan Validator oleh Pimpinan	49	28,49%
- Validasi	9	5,23%
SELESAI	24	13,95%
Jumlah	172	100,00%



*Data ditarik pada 1 September 2023

Source : BP2MI, August 2023 Publication Report

Figure 2. Indonesian Migrant Worker Complaints for the 2023 Period

The data above shows that there are still a lot of complaints of Indonesian Migrant Workers that have not been resolved which is as much as 86% and this threatens legal certainty for them. In connection with the data mentioned above, Indonesian Migrant Workers (PMI) who continue to increase in their development are very large, attention is needed from the Government to provide legal protection and legal certainty to Indonesian Migrant Workers who in fact do not get a decent job in Indonesia to meet their life needs to get a job and get a decent wage to meet the needs of themselves and their families for a better future good.¹³

Based on the explanation above, there is a problem formulation as follows:

1. Factors causing the increase in Indonesian Migrant Workers prefer to work abroad?
2. How is the legal protection of the existence of Indonesian Migrant Workers (PMI)?

The research methodology used is an empirical normative legal research method, which is a legal research that seeks to examine the application of positive laws used in society related to migrant workers. Empirical juridical research is a blend using secondary data and primary data. Secondary data is data derived from literature materials, while primary data is data obtained directly from research subjects. Data obtained from research are reviewed and analyzed descriptively.¹⁴

¹³ Soepadmo, N. R. (2020). Legal Protection for Indonesian Migrant Workers Who Commit Criminal Act Abroad Viewed from Legal Perspective in Indonesia. *Ann. Fac. Der. U. Extremadura*, 36, 797.

¹⁴ Negara, T. A. S. (2023). Normative Legal Research in Indonesia: Its Originis and Approaches. *Audito Comparative Law Journal (ACLJ)*, 4(1), 1-9.

II. RESULTS AND DISCUSSION

1. Factors Causing the Increase in Indonesian Migrant Workers Working Abroad.

Some things that are considered factors that cause Indonesian Migrant Workers (PMI) to look for work abroad include:

a. Limited Job Vacancies in Indonesia;

Limited and narrow job opportunities are the reasons prospective Migrant Workers and / or Migrant Workers choose to work abroad in the hope of improving the economy of themselves and their families and not becoming unemployed.¹⁵

In practice, the worker-employer relationship is a dependency relationship, but the dependency relationship is always one-sided. This is because industrial relations are power relations. In power relations there are those who rule and are mastered, there are those who rule and are ruled . Due to labor conditions that place labor supply and demand unbalanced, the gap is sharper. This subordination has made workers vulnerable to exploitation with all its modifications. Minor conditions are further strengthened by external factors such as political, economic and social conditions.¹⁶

b. Higher Wages in Other Countries

Ideal and good wage law must be applied in labor relations, must be based on the noble values of Pancasila so that the hope for the achievement of justice and legal certainty for the parties, especially for workers and employers / employers. To achieve justice and welfare for workers, it is prioritized to use, the Pancasila Industrial Relations System (HIP).

Wages are a crucial issue in the field of labor and even if they are not professional in handling wages, it is not uncommon for potential disputes and to encourage strikes and/or protests. Wages are a fundamental issue in the field of labor and industrial relations. Therefore, wages are the top demand in various strikes and / or workers' protests / workers.¹⁷ In the general explanation of Government Regulation Number 78 of 2015 concerning Wages, wages are one of the most sensitive issues in the implementation of employment relations. Various parties involved look at wages from different sides. At the practical empirical level, the handling of wages not only concerns technical aspects and economic aspects, but also legal aspects that underlie and underlie how matters related to wages are carried out safely and correctly. Based on applicable laws and regulations. Therefore, to handle wages professionally absolutely requires a comprehensive understanding of these three aspects.¹⁸

With regard to Indonesian Migrant Workers, doing and looking for work outside Indonesia is the main reason to get a large salary or income so that they can meet the needs of

¹⁵ Uluwiyah, F. (2021). The Voice of Indonesian Migrant Workers Abroad: How is the Legal Assistance for Them?. *The Indonesian Journal of International Clinical Legal Education*, 3(3), 257-266.

¹⁶ Ari Hernawan dan Murti Pramuwardhani Dewi, “ Pemberangusan Serikat Pekerja Di Daerah Istimewa Yogyakarta”, *Yustisia Jurnal Hukum*, Edoso: 86 Mei – Agustus 2013 Tahun XXII ISSN 0852 – 0941, Web: <http://www.jurnal.hukum.uns.ac.id> e-mail: fhuns2uns.ac.id.

¹⁷ Oemar, H. (2020). Legal protection for foreign workers in Indonesia: Opportunities and challenges. *International Journal of Scientific Research and Management*, 8(11).

¹⁸ Abdul Khakim, “ *Pengupahan dalam Perspektif Hukum Ketenagakerjaan Indonesia:*”, Bandung, PT.CitraAditya Bakti, 2016, Hlm.1

life and the ideals expected by themselves and their families. The wages received by Indonesian Migrant Workers in reality are indeed greater than in Indonesia.

The wage system received by Indonesian Migrant Workers is adjusted to the Employment Agreement with the Company that provides employment and consideration with employers or employers in the destination country.

c. Limited HR skills for Indonesian Migrant Workers;

The word wealth was used by Smith in his book entitled *An Inquiry Into The Nature and Causes of The Wealth of Nation* (1776) which was popularly titled *The Welth of Nation*. Books that are almost 3 centuries old are still used as references for economics, political economy, economic sociology and social welfare science. In explaining the source of prosperity/welfare, Smith viewed labor and the division of labor as sources of prosperity. Smith paid great attention to the problem of the division of labor and investigated the meaning of the division of labor in economic life. In this book Smith for the first time explained the theory of the division of labour as the basis of mass production. The division of labor and the pursuit of interests individually encourage exchange and exchange encourages the division of labor, The intensive division of labor will be able to increase labor productivity. Finally, work productivity increases the prosperity of the nation.¹⁹ A large increase in the quantity of work as a consequence of the division of labor that allows three things, namely:

- 1). Upskilling of workers;
- 2). Time savings that are usually wasted due to moving from one type of work to another;
- 3). The invention of a large number of machines that simplify and shorten work, and that enable a worker to do the work of many people.²⁰

In relation to the ability of each human resource worker is different in doing a job, it is necessary to train and coach workers so that they can compete nationally and internationally. The ability and expertise of reliable human resources will have an impact on wages or salaries that are very high in accordance with the expectations of Indonesian workers so that they can compete with other countries internationally.²¹

d. Influence of Modernization, Technology, Ideology, Politics, Social, Culture, and Economy.

Human needs are increasingly changing day by day along with the times. Environmental and lifestyle factors as well as ideological, economic and political factors will have a major influence on the desire of increasing human needs. Indonesian Migrant Workers who leave

¹⁹ Mahfud, M. A., Wibawa, K. C. S., Lita Tyesta, A. L. W., & Saraswati, R. The Fulfillment of Rights to Citizenship for Migrant Worker Deportees in Nunukan District. *LAW REFORM*, 18(1), 1-15.

²⁰ Sugeng pujileksono, *Perundang-undangan Sosial dan Pekerjaan Sosial, Perspektif Pemenuhan Keadilan dan Kesejahteraan Sosial Masyarakat*”, Malang, Setara Pres, 2016, Hlm.2 – 3.

²¹ Bakker, L., & Moniaga, S. (2010). The space between: Land claims and the law in Indonesia. *Asian Journal of Social Science*, 38(2), 187-203.

their homeland to work abroad are in fact the main consideration to obtain a decent wage and can be met by themselves and their families in order to obtain welfare.²²

2. Legal Protection of Indonesian Migrant Workers.

The concept of legal protection is one of the important things needed by humans to get protection of rights and obligations in order to achieve legal certainty of the dignity and dignity possessed by humans. Legal protection is the protection of dignity and dignity as well as recognition of human rights possessed by legal subjects within a country based on legal protection from arbitrariness.²³

Legal protection is carried out as a manifestation for the creation of justice and legal certainty in the implementation of the fulfillment of rights and obligations in accordance with the agreement, agreement, and justice can be fulfilled.

When man agrees on the existence of justice, then inevitably justice must color man's behavior and life in relation to his God, to fellow individuals, to society, to government, to nature, and to other God-created beings. Justice must be realized in all lines of life, and every human product must contain the values of justice, because in fact unfair behavior and products will give birth to imbalance, incompatibility that results in damage, both to oneself, humans themselves and the universe.

Thus, it can be studied that to provide legal protection for Indonesian Migrant Workers as contained in Law of the Republic of Indonesia Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers.

Protection of Indonesian Migrant Workers that must be considered are:

- a. Protection of the Fulfillment of Rights and Obligations before, during and after having an employment relationship;
- b. Protection against the provision of Insurance;
- c. Protection of prospective workers and/or Indonesian Migrant workers themselves and their families;
- d. Fulfillment of rights and obligations in Human Rights;
- e. Guarantee of legal certainty and legal protection of the economy and social of Indonesian migrant workers and their families;
- f. Protection of job placement to companies that channel them to full responsibility;
- g. Legal Protection and Legal certainty for administration in accordance with statutory provisions;
- h. And other legal protections for the benefit of prospective Migrant Workers and/or Indonesian Migrant Workers.

²² Tjitrawati, A. T., Tavip, M., & Romadhona, M. K. (2023). Integrative Social-Health Security For Indonesian Migrant Workers: Does Fully Covered And Protected?. *Malaysian Journal of Medicine & Health Sciences*, 19.

²³ Umu Hilmy dan Devi Rahayu, "Perlindungan Buruh Migran Indonesia", (Bab-Bab Tentang Hukum Perburuhan), Pustaka Larasan, Denpasar Bali, 2012, Hlm. 62.

e. CONCLUSIONS AND NEWNESS

The conclusions of the study are as follows::

1. Some of the factors that cause Indonesian Migrant Workers (PMI) to look for work abroad include:
 - a. Limited Job Vacancies in Indonesia because the Government has not been able to provide jobs as expected as statutory provisions that have not been fulfilled optimally;
 - b. The income or salary received is very small in Indonesia and each region is different and working abroad is higher in wages;
 - c. Limited skills possessed by human resources for different Indonesian Migrant workers;
 - d. Environmental and lifestyle factors as well as ideology, politics, economics, social and culture as well as technological developments affect the improvement of lifestyles and the needs and desires of a decent and prosperous and better life are very high.

2. Legal Protection for Indonesian Migrant Workers is:
 - a. Legal Protection for Indonesian Migrant Workers is to achieve the expected goals as stipulated in the laws and agreements that have been stipulated in the employment agreement for the implementation of employment relations before employment, work and after work;
 - b. Legal protection for prospective Migrant Workers and / or Indonesian Migrant Workers to provide legal certainty guarantees, fulfillment and enforcement and fulfillment of rights and obligations for workers themselves and their families;
 - c. Protection of Human Rights;
 - d. Legal protection of the economy, health, and social of Migrant Workers and Their Families;
 - e. Protection of Other Workers in accordance with applicable laws and regulations

f. REFERENCES

Buku dan Jurnal

- Abdul Khakim,” *Pengupahan dalam Perspektif Hukum Ketenagakerjaan Indonesia:*”, Bandung, PT.Citra Aditya Bakti, 2016.
- Ari Hernawan dan Murti Pramuwardhani Dewi, “ *Pemberangusan Serikat Pekerja Di Daerah Istimewa Yogyakarta*”, Yustisia Jurnal Hukum, Edoso: 86 Mei – Agustus 2013
- Bakker, L., & Moniaga, S. (2010). The space between: Land claims and the law in Indonesia. *Asian Journal of Social Science*, 38(2), 187-203.
- Dahlman, C. (2007). Technology, globalization, and international competitiveness: Challenges for developing countries. *Industrial development for the 21st century: Sustainable development perspectives*, 29-83.

- Fajar Sugianto, *Economic Approach To LAW*, Jakarta, Prenadamedia Group, 2013.
- FARIDA, E., & SAMEKTO, F. A. (2021). Strategies and Legal Protection for Undocumented Indonesian Migrant Workers. *International Journal of Pharmaceutical Research (09752366)*, 13(1).
- Hugo, G. (1995). International labor migration and the family: some observations from Indonesia. *Asian and Pacific Migration Journal*, 4(2-3), 273-301
- Izzati, N. R. (2019). New Direction of Indonesian Migrant Workers Protection through the Law Number 18 of 2017 and its Implementation Challenges. *PADJADJARAN JURNAL ILMU HUKUM (JOURNAL OF LAW)*, 6(1), 190-210
- Kymlicka, W., & Norman, W. (1994). Return of the citizen: A survey of recent work on citizenship theory. *Ethics*, 104 (2), 352-381.
- Mahfud, M. A., Wibawa, K. C. S., Lita Tyesta, A. L. W., & Saraswati, R. The Fulfillment of Rights to Citizenship for Migrant Worker Deportees in Nunukan District. *LAW REFORM*, 18(1), 1-15.
- Muladi, *Hukum dan Hak Asasi Manusia, dalam Kumpulan Esai Guna menghormati Prof. Dr.Sri Soemantri Martosoewignjo,S.H., (Kedaulatan Rakyat Hak Asasi Manusia dan Negara Hukum)*, Jakarta, Gaya Media Pratama, 1996.
- Negara, T. A. S. (2023). Normative Legal Research in Indonesia: Its Originis and Approaches. *Audito Comparative Law Journal (ACLJ)*, 4(1), 1-9.
- Oemar, H. (2020). Legal protection for foreign workers in Indonesia: Opportunities and challenges. *International Journal of Scientific Research and Management*, 8(11).
- Soepadmo, N. R. (2020). Legal Protection for Indonesian Migrant Workers Who Commit Criminal Act Abroad Viewed from Legal Perspective in Indonesia. *Ann. Fac. Der. U. Extremadura*, 36, 797.
- Sugeng pujileksono, *Perundang-undangan Sosial dan Pekerjaan Sosial, Perspektif Pemenuhan Keadilan dan Kesejahteraan Sosial Masyarakat*”, Malang, Setara Press, 2016.
- Sukarno Aburaera,et.all., *Filsafat Hukum Teori dan Praktik*. Jakarta : Kencana, 2013.
- Tjitrawati, A. T., Tavip, M., & Romadhona, M. K. (2023). Integrative Social-Health Security For Indonesian Migrant Workers: Does Fully Covered And Protected?. *Malaysian Journal of Medicine & Health Sciences*, 19.
- Uluwiyah, F. (2021). The Voice of Indonesian Migrant Workers Abroad: How is the Legal Assistance for Them?. *The Indonesian Journal of International Clinical Legal Education*, 3(3), 257-266.

Umu Hilmy dan Devi Rahayu, “*Perlindungan Buruh Migran Indonesia*”, (*Bab-Bab Tentang Hukum Perburuhan*), Pustaka Larasan, Denpasar Bali, 2012.

Widyawati, Anis. "Legal Protection Model for Indonesian Migrant Workers." *JILS* 3 (2018): 291

Peraturan Perundang-Undangan

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Undang-Undang Nomor 13 Tahun 2003 tentang Ketenagakerjaan

Undang-Undang Nomor 18 tahun 2017 tentang Perlindungan Pekerja Migran Indonesia Nomor 39 Tahun 2004 tentang Penempatan dan Perlindungan tenaga Kerja Indonesia Ke Luar Negeri

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Tahun XXII ISSN 0852 – 0941, Web: <http://www.jurnal.hukum.uns.ac.id> e-mail: fhuns2uns.ac.id.

<https://lokadata.beritagar.id/chart/preview/jumlah-pekerja-migran-indonesia-pmi-januari-april-2018-1528393039>