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Resolution of Defects of Dispute in Indonesian Migrant Worker Placement Agreements (Study at BP3MI Jakarta)

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Abstract: This research discusses the resolution of non-performance disputes in agreements to place Indonesian migrant workers at BP3MI Jakarta, especially the cases of PMI Watini and PT. Main Independent Success. Through normative juridical research and qualitative analysis, BP3MI Jakarta is proven to have an important role in handling disputes and providing legal protection for Indonesian migrant workers. The results show that mediation was successful in resolving the PMI Watini dispute with a refund of fees and a certificate of debt repayment. This research also links the findings with previous research, and suggests evaluating the effectiveness of BP3MI dispute resolution in various regions, analyzing PMI protection policies, international comparative studies, research on the role of stakeholders, other cases of default, developing a monitoring system, and evaluating social and economic impacts.

Keyword: Default, Migration, BP3MI, P3MI

INTRODUCTION

Indonesian Migrant Workers (PMI), based on the provisions of Article 1 point 2 of Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers (UU PPMI) states that: "Every Indonesian citizen who will, is or has done work and received wages outside the territory of the Republic of Indonesia"(Article 1 Number 2 Law of the Republic of Indonesia Number 18 of 2017 Concerning Protection of Indonesian Migrant Workers., n.d.). Based on data from the Indonesian Migrant Worker Protection Agency (BP2MI), PMI placements in 2021 were recorded at 72,624 people, consisting of 16,809 PMI in the formal sector and 55,815 PMI in the informal sector. In 2022, this number will increase to 200,761 people, with 115,944 PMI in the formal sector and 84,817 PMI in the informal sector, showing an increase of 59% in the formal sector and 52% in the informal sector compared to 2021 (BP2MI, 2022).

The placement of PMI abroad is an effort to realize equal rights and opportunities for workers in obtaining decent work and income, by paying attention to the dignity of human rights, legal protection, as well as equal employment opportunities and the provision of workers according to national needs (S Soedarjadi, 2008). PMI is also considered a foreign exchange

hero for the Indonesian economy, so the government really needs to protect them. One of the realizations is the establishment of the Indonesian Migrant Worker Protection Service Center (BP3MI). Apart from that, the government is collaborating with the Indonesian Migrant Worker Placement Company (P3MI) to monitor the recruitment, placement and contract expiry processes. P3MI must be a limited liability company to obtain clear legality.

However, protection against PMI has not been fully implemented properly. Many PMI experience unfair treatment from employers, agencies in their placement countries, and P3MI as an agency in Indonesia. This is proven by BP3MI data regarding the number of complaints: 1,811 complaints in 2020, 1,700 complaints in 2021, and 1,987 complaints in 2022, showing an increase of 16.8% (BP2MI, 2022).

BP3MI DKI Jakarta, as an extension of BP3MI, has the authority to resolve problems experienced by CP3MI, such as defaults in placement agreements. Default is a failure to fulfill the achievements required in the agreement, as explained in Article 1238 of the Civil Code (Sholikah, Zhahrul, 2015). The types of default experienced by PMI include unpaid salaries, failure to leave, work not in accordance with the agreement, acts of violence, illness, human trafficking, and overcharging.

PMI can complain to BP3MI Jakarta through the Crisis Center, either online (telephone or email) or offline (face to face). BP3MI Jakarta can protect PMI before, during and after work in accordance with Law no. 18 of 2017. Settlement of PMI reports/complaints by BP3MI Jakarta can run smoothly if the parties concerned agree to find a solution.

An example of a PMI settlement/complaint case by BP3MI is the case of a PMI named Watini who experienced payment of placement fees exceeding the stipulated fee structure. After reporting to BP3MI Jakarta, mediation was carried out between PMI and P3MI, and finally PT. SMU agreed to return the placement fee of 10 million to Watini. BP3MI Jakarta's role in handling default disputes shows the state's success in protecting PMI who work abroad. The author will examine in more depth the defaults handled by BP3MI Jakarta and the protection efforts provided to PMI, especially in placement agreements, to create a sense of security and peace. Based on this background, this research will be aimed at answering the identification of problems in the form of disputes over defaults in worker agreements under the authority of BP3MI Jakarta and the process of resolving defaults in placement agreements for Indonesian migrant workers implemented by BP3MI Jakarta.

Previous Research

To support the data needed in writing this scientific research, the author uses several previous studies that are relevant to the topic that the author raises to serve as a reference. The first research with the title "Defaults in Indonesian migrant worker placement agreements (a research at PT. Anugerah Diantas Medan branch) (Hidayah, 2022). This journal discusses forms of default committed by prospective Indonesian migrant workers, such as running away or getting another job during the pre-placement period. The factor causing default is the inability of prospective migrant workers to face difficult choices. Default resolution is carried out through deliberation, with legal consequences in the form of compensation. This journal has similarities with the author's research, namely discussing forms of default experienced or committed by Indonesian migrant workers in placement agreements agreed with P3MI (Agency).

Likewise with the title "Legal protection of placement agreements between Indonesian migrant workers (PMI) and Indonesian Migrant Worker Placement Companies (P3MI) in the perspective of the Civil Code and Law Number 18 of 2017 concerning PMI protection" (Topan

Hadi Sucipto, Agnes Pasaribu, 2022). This journal discusses the implementation of PMI candidate placement agreements with P3MI from the perspective of the Civil Code. Without a copy of the agreement document, prospective PMIs do not understand their rights and obligations, making P3MI more dominant. Government protection according to Law no. 18 of 2017 is still lacking, the state must actively solve problems and provide the best solutions. Legal protection for PMI is the state's obligation in accordance with the 1945 Constitution (Mita Noveria et al., 2020). This protection has been stated in the Preamble to the 1945 Constitution and is regulated in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. These regulations include presidential regulations, BP2MI head regulations, regulations from the minister of labor and transmigration, government regulations, as well as ILO and UN conventions regarding migrant workers (Wahyudi, 2019).

METHOD

The author uses a type of normative juridical research, namely legal research where the research is based on research on library materials and secondary data as a basis for research by conducting searches on literature and regulations that are related to the problem to be researched (Nanda Dwi Rizkia and Hardi Fardiansyah, 2023). The problem approach that researchers use in legal research uses 2 (two) approaches, namely: the statutory approach. This legislative approach is carried out by reviewing all statutory regulations and legal provisions that are in accordance with the research (Soekanto, 2001). This research approach was carried out to review in more depth the regulations related to Indonesian Migrant Workers. This approach also applies a way of analyzing regulations and rules related to a legal issue (Marzuki, 2013).

The second approach, namely the case approach. This approach is carried out by examining cases related to the legal issues being faced. The case used in this research is a case that has been handled by BP3MI Jakarta regarding the Watini (PMI) default dispute with PT. Main Mandiri Success (P3MI). In this research, the writer will describe the dispute resolution process carried out by BP3MI Jakarta. This research uses secondary data with qualitative data processing methods (Solikin, 2019).

The secondary data used to solve problems consists of; Primary legal materials are the main legal materials, as authoritative legal materials, namely legal materials that have authority. Primary legal materials include statutory regulations and all official documents that contain legal provisions (Suardita, 2017). The primary legal materials in this research are Law of the Republic of Indonesia Number 18 of 2017 concerning Protection of Indonesian Migrant Workers, Government Regulation (PP) Number 59 of 2021 concerning Implementation of Protection of Indonesian Migrant Workers, the Civil Code and other related regulations. PMI protection in the event of a Placement Agreement Default. Secondary Legal Materials consist of: legal materials that provide explanations of primary legal materials obtained from literature studies in the form of literature, scientific articles related to research problems. Tertiary legal materials consist of: legal dictionary, large Indonesian dictionary, and legal encyclopedia (Nasution, 2023).

The data collection technique that the author will use is library research. Literature study is a type of research carried out by collecting materials that are related to the author's research from legal journals, books and the author himself. The literature study was carried out in order to obtain information that has a theoretical nature so that the author's future research will have a strong theoretical basis as a scientific work. The data in this research is based on books and journals that are relevant for the author's research (Moto, 2019). The data analysis technique that the author uses in this research to answer the problem formulation is qualitative analysis or descriptive qualitative. Qualitative analysis is a method of data analysis by interpreting legal materials which is carried out by emphasizing detailed and comprehensive descriptions and

then the data is then examined in a structured manner and studied as a whole. In this research, researchers analyze and describe the dispute resolution process for Indonesian Migrant Workers (PMI) in accordance with relevant laws.

RESULTS AND DISCUSSION

1. Dispute of default in employee agreements under the authority of BP3MI Jakarta

The case of PMI named Watini which was handled by BP3MI started with a breach of contract committed by PT. Sukses Mandiri Utama or SMU as P3MI regarding the employment agreement signed by PMI Watini and the Chin House Employment agency as a worker provider in Hong Kong 9 November 2022. This act of breach of contract occurs when there is a breach of contract, namely failure to fulfill one's commitments based on the terms of the agreement due to negligence. If the objectives (rights and obligations) are not achieved, the issue can be submitted to the district court or resolved through the procedure established in the text of the contract, which regulates the parties to the agreement. This action was filed under the Indonesian Civil Procedure Law as a breach of contract or claim for compensation (Elsi Safitri and Taupiqqurrahman, 2024).

In the employment agreement between PMI Watini and the Chin House Employment agency, it is expressly stated in Article 8 that the employer will be responsible for all costs and expenses incurred in relation to PMI's departure from their place of origin to their entry into Hong Kong. This provision covers travel costs, visas, and various other expenses necessary to ensure PMI can arrive in Hong Kong safely and on time, where plane tickets are included in the costs borne by the employer (Sari, 2021), and at the end of article 8 it states that if PMI has paid the costs for departure to Hong Kong, the employer must immediately reimburse PMI for the costs in full with the amount paid by PMI based on the request and production of a receipt or documentary evidence of the payment in question.

In the case of PMI Watini, on November 24 2022, PMI Watini applied for a loan from Toyo Finance through PT SMU for the costs of the departure process to Hong Kong which will be paid in installments through salary deductions for 6 months starting from working in Hong Kong. Next, PMI Watini departed for Hong Kong on December 4 to start work.

However, after working for several months, PMI Watini felt that the payment of the placement fee installments exceeded the cost structure stipulated in the agreement between PMI Watini and PT SMU, which based on the employment agreement should not require salary cuts because in Article 8 of the employment agreement it was stated that all costs The process for PMI's departure to Hong Kong is borne by the employer, so that work placement costs should not be borne by PMI, which causes dissatisfaction and injustice for PMI Watini, who feels that their rights have been violated based on the terms of the agreed agreement (Fregy Andhika Perkasa et al., 2024).

2. The process of resolving defaults in the Indonesian migrant worker placement agreement carried out by BP3MI Jakarta

After feeling the loss and objecting to the placement fee payment installments which exceeded the fee structure, PMI Watini filed a complaint with the BP3MI Jakarta Protection Officer via WhatsApp on the steps; April 14 2023. PMI Watini reported that PT SMU's salary deductions for job placement costs were too large and did not match the facts, including plane tickets that had been paid for by the employer, passports that had been made by PMI Watini from 2019, as well as documents that had been prepared by PMI Watini was charged back to PMI Watini through salary deductions. Where the complaint made by PMI Watini was accompanied by a demand for a refund or cessation of discounted fees.

After receiving a complaint from PMI Watini, BP3MI immediately processed the complaint and summoned the Main Director of PT SMU to clarify PMI Watini's problem at the DKI Jakarta Provincial BP3MI UPT Office on May 3 2023. In the call, PT SMU was

represented by the marketing staff. Hong Kong, where in the meeting PT SMU through its representatives stated: 1) PMI Watini's demand not to continue with the 5th and 6th month salary cuts is currently being discussed; 2) PMI Watini documents have been returned to the branch office; and 3) The demand for 10 million rupiah is being discussed, because PT SMU has never asked PMI Watini for money.

Furthermore, BP3MI and representatives of PT SMU met again on May 9 2023, where in the meeting PT SMU through its statement stated: 1) Regarding PMI Watini's salary deductions for the 5th and 6th months which were asked to be stopped, the agency will provide assistance to ask the employer to return the amount of 3000 HKD for ticket costs paid to Toyo Finance and for the 6th month, it will be borne and paid by PT SMU; and 2) PMI Watini's documents have been returned to the PT SMU branch office in Lampung, PMI Watini is invited to collect them.

On May 31 2023, Toyo Finance issued a statement letter that PMI Watini had paid all its debts and PMI Watini no longer had an obligation to pay Toyo Finance, which was then submitted to BP3MI to be attached as evidence. The process of resolving the dispute over default and excess cost deductions was completed on August 13 2023 when PMI Watini received 10 million rupiah by PT SMU in accordance with the demands of its complaint to BP3MI through a transfer followed by a statement letter made by PMI Watini stating that PMI Watini's problem was with PT SMU was declared to have been completed through mediation with mediator officers from BP3MI DKI Jakarta. Based on the case of resolving the dispute over the placement agreement for Indonesian migrant workers on behalf of Watini with PT. Sukses Mandiri Utama or SMU which is handled by BP3MI, PT. SMU has clearly defaulted on the work agreement it entered into with PMI Watini. Where default is a condition when one party fails to fulfill its agreement, this definition is in accordance with Article 1238 of the Civil Code which states:

"The debtor is declared in default by a warrant, or by a similar deed, or based on the strength of the agreement itself, that is, if this agreement results in the debtor being deemed to be in default by the expiration of the specified time (Article 1238 Civil Code., n.d.)."

This default is divided into two types, namely total default and partial default. Total default occurs when the debtor does not carry out what he has agreed to do, or does something that according to the agreement is not permitted. Meanwhile, partial default occurs when the debtor carries out his obligations, but not according to what was promised, or carries out his obligations but is late (Ramadhani, 2012). If we look at the elements contained in the default as in the following table:

Table 1. Elements Contained

No.	Element of Default	Explanation
1	Not fulfilling commitments or not carrying out what has been promised.	The party bound by the agreement does not carry out any actions or obligations agreed upon in the contract. A concrete example is if a service provider promises to complete a development project, but never starts the work. Failure to begin or complete the promised work constitutes a total breach of contract.
2	Carrying out promises but not according to what has been promised	The party bound by the agreement does carry out the actions or obligations that have been agreed upon, but the results or method of implementation do not comply with the specifications or standards set out in the contract. For example, a furniture maker agrees to make a table from teak wood, but what is given is a table made from other wood of lower quality. This kind of breach refers to a mismatch between what was promised and what was delivered.
3	Fulfilling promises but with delays.	The party bound by the agreement finally carries out its obligations, but not within the time period specified in the contract. For example, a contractor agrees to complete a house renovation within three months, but only completes it within five months. This delay may cause loss or

	inconvenience to other parties involved, and is often the basis for a claim for compensation or penalties
4	Doing something that should not be done according to the agreement This type of breach of contract occurs when the party bound by the agreement takes an action that is explicitly contrary to what was agreed upon. For example, in a property rental agreement, the landlord may prohibit the tenant from carrying out major renovations without approval. If the tenant continues to carry out the renovation without permission, then this is a breach of contract because the tenant is doing something that should not be done according to the terms of the agreement.

So PT SMU carried out the element of "doing something that should not have been done according to the agreement", where PT SMU charged for costs that it did not cover, including plane tickets departing for Hong Kong, making passports, and document processing. The purchase of flight tickets departing to Hong Kong for PMI Watini, as stated in Article 8 of the work agreement, is borne by the employer, and the preparation of passports and supporting documents has been financed and managed by PMI Watini itself, so that none of these expenses are borne and paid by PT SMU, which resulted in PT SMU not having the right to bill these costs to PMI Watini.

The complaint made by PMI Watini to BP3MI is very appropriate, because BP3MI is a service platform for PMI in carrying out the protection of Indonesian migrant workers, where BP3MI is a Technical Implementation Unit under the Indonesian Migrant Worker Protection Agency (BP2MI) which is expected to provide easy service for all parties relating to Indonesian migrant workers. BP2MI is a legal entity that is legally recognized by law as a body to provide protection for Indonesian migrant workers, as stated in Article 1 number 3 of Government Regulation Number 59 of 2021 concerning the Implementation of Protection for Indonesian Migrant Workers which reads:

"The Indonesian Migrant Worker Protection Agency, hereinafter abbreviated as BP2MI, is a non-ministerial government agency tasked with implementing policies in the service and protection of Indonesian Migrant Workers in an integrated manner (*Article 1 Number 3 Government Regulation Number 59 of 2021 Concerning Implementation of Protection of Indonesian Migrant Workers.*, n.d.)”.

Government Regulation Number 59 of 2021 is a follow-up regulation to Law Number 18 of 2017. BP3MI's resolution of disputes over non-compliance with employee agreements is carried out through non-litigation dispute resolution, namely mediation. BP3MI has a role as a mediator in mediating the dispute over non-compliance with the labor agreement between PMI Watini and PT SMU. The first step taken by BP3MI was to summon the President Director of PT SMU who was then represented by the marketing staff for the Hong Kong region. The use of mediation as a method of resolving disputes over non-performance of employee agreements is in accordance with the mandate of alternative dispute resolution procedures as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution in Article 1 number 10 which states:

"Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside of court by means of consultation, negotiation, mediation, conciliation or expert assessment (*Article 1 Number 10 of Law Number 30 of 1999 Concerning Arbitration and Alternative Dispute Resolution.*, n.d.)”.

Judging from the process of resolving the breach of contract agreement between PMI Watini and PT SMU workers, BP3MI as the Indonesian migrant protection service agency carried out its work optimally and responded quickly, where the initial complaint made by PMI Watini on April 14 2023 was immediately processed by BP3MI. Not until 1 month after the complaint, BP3MI summoned the Director of PT SMU on May 3 2023 to ask for clarification

regarding PMI Watini's problem. On the other hand, PT SMU as P3MI which oversees PMI Watini followed the BP3MI summons and carried out cooperative mediation. Furthermore, BP3MI called back the representatives of PT SMU on May 9 2023 to ask for further clarification regarding the PMI Watini problem. Here, PT SMU took responsible steps by providing assistance to ask the employer to return the amount of 3000 HKD for ticket costs paid to Toyo Finance and payment of deductions. The salary for the 6th month will be borne and paid by PT SMU as is related to PMI Watini's demand for salary cuts for the 5th and 6th months which PMI Watini has asked to stop.

After the second meeting, the process of returning money from the employer in the amount of 3000 HKD for ticket costs paid to Toyo Finance and the process of fulfilling the demand of 10 million rupiah by PT SMU to PMI Watini was progressing slowly, where the payment to Toyo Finance was only completed on May 31 2024. After this was fulfilled One of PMI Watini's demands by PT SMU, PT SMU only needs to fulfill PMI Watini's other demands, namely payment of compensation of 10 million rupiah. The process of fulfilling this demand was only completed on August 13 2023 after PT SMU made a payment of 10 million rupiah via transfer to PMI Watini which was followed by a statement letter being made by PMI Watini stating that PMI Watini's problem with PT SMU was declared resolved through mediation with officers. mediator from BP3MI DKI Jakarta.

The fulfillment of the demand for 10 million rupiah by PT SMU to PMI Watini carries out the orders of the Civil Code Article 1239 which states:

"Every agreement to do something, or not to do something, must be resolved by providing compensation for costs, losses and interest, if the debtor does not fulfill his obligations (Article 1239 Civil Code., n.d.)."

The article states that the perpetrator of the default is obliged to pay compensation for not fulfilling his obligations as stated in the agreement he has agreed to, where in this case, PT SMU paid 10 million rupiah as compensation for not fulfilling his obligations in accordance with article 8 of the work agreement which states that All costs for PMI's departure process to Hong Kong are borne by the employer, so work placement costs should not be borne by PMI by P3MI.

CONCLUSION

Dispute of breach of contract in the labor agreement under the authority of BP3MI Jakarta in the case of PMI Watini and PT. The success of Mandiri Utama or SMU was caused by PT SMU carrying out one of the elements in breach of contract, namely the element of "doing something that should not have been done according to the agreement". PT SMU collects costs that it does not cover, which include departure plane tickets to Hong Kong, making passports, and document processing, where according to Article 8 of PMI Watini's work agreement with PT SMU, all costs for the process of PMI's departure to Hong Kong are covered. by the employer, and passport costs and document processing have been carried out by PMI Watini itself. The resolution of the breach of contract dispute in the labor agreement which is under the authority of BP3MI Jakarta in the case of PMI Watini with PT has a fast process from BP3MI, but it has a long process from PT SMU, especially regarding fulfilling the claim for compensation of 10 million rupiah which must be paid by PT SMU to PMI Watini, so that the dispute resolution process runs from PMI Watini's complaint on April 14 2023 to payment of compensation by PT SMU on August 13 2023. BP3MI's role as a Technical Implementation Unit under BP2MI is in line with expectations in providing easy services for workers Indonesian migrants who have problems in their profession and work environment

For further research, it would be good to evaluate the effectiveness of dispute resolution by BP3MI in various regions, analyze PMI protection policies, conduct international comparative studies, examine the role of stakeholders, investigate other cases of default handled by BP3MI, develop a more effective monitoring system, and evaluate the social impact

and economics of resolving default disputes against PMI and their families. It is hoped that this research can produce more effective solutions in protecting the rights of Indonesian migrant workers and improve BP3MI's performance in handling disputes.

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