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Can be Indonesian Workers Abroad Register Their Marriage in Malaysia?

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Abstract: One of Indonesia border with abroad is Malaysia, exactly in Sarawak, Kuching Malaysia and Kalimantan Barat. There are many reasons why Indonesian Workers Abroad were very interested to get their own job in Malaysia. One of them because of the geographical condition. But, it had made a problem was Indonesian Workers Abroad who married in Malaysia did not have their own official *Married Certificate*. The purpose of the study that would be answered is to analyze the urgency of Indonesian Workers Abroad Marriage Registration in Malaysia. This research is a qualitative research with an unstructured legal research method. The data were collected through library research for Indonesian Laws, electronic documents and electronic references. The data was analyzed by interpretation and legal construction to produce legal argumentation to answer the issue related to the urgency of Indonesian Workers Abroad marriage registration in Malaysia through logical and systemic legal reasoning. The study found that "Its bath Nikah" can be the solution in order to give the legal protection for married couples and their children, but it is limited for Islam Religion only. And it deny equality before the law for other religions. For the future study, it needs more comprehensive analysis and give a model of ruling for Indonesian Workers Abroad, not only for Indonesian Workers Abroad in Malaysia but in other country also.

Keyword: marriage, Indonesian Workers Abroad, register

A. INTRODUCTION

The law essentially serves as a guide for people's live, so the applicable law in the community can be efficient. Legal empowerment is actually a process of maximizing the legal capacity to generate results and benefits in accordance with predetermined objectives, functioning optimally "facilities" that have been legitimated in the rules/laws. Thus, the concept of legal empowerment is closer to giving the maximum opportunity to legal subjects to obtain their rights in accordance with the laws and regulations.

The decline of the legal state system by Indonesia, resulted in the life of many Indonesian people participated by the Government in the fields of politics, economy, social, culture. That is the reason why Government intervened citizens marriages. Marriage recording is a form of government or state intervention to protect and ensure the social rights fulfillment of every citizen, especially married couples, and children born of the marriage.

Marriage is a legal act between two parties, as ruled by Indonesian Marriage Law of 1974 gave legal act in the *Akte Nikah/Buku Nikah* recording document form, which can be used to obtain their rights, like to get their children Birth Certificate registration in the Office of Population and Civil Registry.

Indonesian Marriage Law of 1974 applies to every Indonesian citizen, both living in Indonesia and domiciling in abroad, including Indonesian Workers Abroad. Based on

Indonesia Placement and Protection of Indonesian Workers Abroad Law of 2004 [1], Indonesian Workers Abroad is every Indonesia citizen which fulfill the requirements to work abroad in work relation for certain period of time and receive the earn.

For the past recent years, based on the Data on Placement and Protection of Indonesian Workers Abroad, Malaysia is in the first position as the most targeted country for Indonesian Workers Abroad (BNP2TKI, 2013; BNP2TKI, 2014; BNP2TKI, 2015; BNP2TKI, 2016; BNP2TKI, 2017). As some of cities in Indonesia get direct cross border with other country, such as West Kalimantan with Malaysia. This geographical condition takes an important part in the migration of Indonesian Workers Abroad.

The migration of Indonesian workers to Malaysia have existed for a long period of time [7]:

"This can be further underlined by the fact that in 1982 when Malaysian Deputy Prime Minister (Datuk Musa Hitam) made an official visit to Jakarta for negotiations regarding a "Supply of Workers Agreement" with Indonesia, he mentioned that his grandmother was a Bugis born in Ujung Pandang, South Sulawesi (Anon., 1982).

The important thing here is that there are long-standing and strong social networks linking Malaysia and Indonesia. The political boundaries separating the two nations are a function of colonization and separate peoples who share the same culture,

language and religion. These historical linkages and cultural homogeneity have played an important role in facilitating population movement from Indonesia to Malaysia. The purpose of the study is to analyze the urgency of Indonesian Workers Abroad Marriage Registration in Malaysia.

B. METHODOLOGY

This research is a qualitative research with an unstructured legal research method. The data were collected through library research for Indonesian Laws, electronic documents and electronic references. The data was analysed by interpretation and legal construction to produce legal argumentation to answer the issue related to the urgency of Indonesian Workers Abroad marriage registration in Malaysia through logical and systemic legal reasoning.

C. FINDINGS

3.1 The Essence of Learning Strategy West Kalimantan Society to be Indonesian Workers Abroad in Malaysia

The bulk of worker movement between Indonesia and Malaysia remains undetected by official statistics. There are two ways in which illegal migration from Indonesia to Malaysia occurs [7]. *Firstly*, migrants enter Malaysia legally, usually as tourists, then overstay and break the conditions of their entry by seeking and obtaining work. *Secondly*, migrants entered Malaysia without passing through legal channels.

Illegal entry is neither difficult nor excessively expensive. Much of the movement involves syndicates, recruiters and middlemen (*taikong*). All migration is a selective process and the nature and scale of its impact on origin and destination is influenced by the extent and nature of that selectivity.

There are a constellation of many forces which are causing the substantial population movement between Indonesia and Malaysia. In this section we will attempt to summarise these major determinants, some of which are common to the region as a whole while others are more specific to the Indonesia-Malaysia situation. One must begin with an examination of the contemporary labour market contexts in the two countries.

From the perspective of labour migration, the most important contrast between Indonesia and Malaysia lies in their perspective labour market situations. In Malaysia, there has been what has been described as a “labour famine”. Whereas In Indonesia, the labour market situation could hardly be more different than Malaysia’s.

The geographical position of a labour surplus economy with an adjoining situation characterized by significant sectoral labour shortages is obviously an important element in any explanation of labour migration from Indonesia to Malaysia. There appears to be a complex stepwise displacement process involving

migration. This indicates that in Malaysia, sectoral labour shortages are being created in unskilled, poorly paid, “dirty”, rural based industries.

There are huge differences between the wages which workers receive in Malaysia compared with their home area, despite differences in living costs. Then, there is considerable support for the simple neo-classical economics explanation of Indonesia-Malaysia labour migration as a means of allocating workers between high and low wage areas.

An important element in understanding the labour migration between Indonesia and Malaysia is the *institutionalization* of that movement and the growth of what has been referred to as an “immigration industry”. This has evolved as an important part of the network of social contacts and connections linking the two countries. This institutionalization of social contacts is a neglected aspects of the study of migration both within and between nations [7].

Those are some reasons why Indonesian Workers Abroad are very interesting to work in Malaysia. Beside of that, a part of Indonesia and Malaysia is getting direct cross border in Kalimantan Barat, Indonesia and Sarawak, Malaysia. West Kalimantan is a part of Indonesia.

West Kalimantan, one of the provinces borders directly with North Malaysia. Along with the regional autonomy progress [8], Kalimantan Barat Provinces (Kalimantan Barat) divided in fourteen Districts (diantaranya Sambas, Bengkayang, Landak, Pontianak, Sanggau, Ketapang, Sintang, Kapuas Hulu, Sekadau, Melawi, Kayong Utara, Kubu Raya, Kota Pontianak, dan Kota Sintang) and one hundred seventy four Sub-Districts [9].

Sub-Districts in West Kalimantan which borders on Malaysia spread out in five Districts are:

1. Sambas District, including Paloh and Sajingan Besar Sub-District,
2. Bengkayang District, including Jagoi Babang and Siding Sub-District,
3. Sanggau District, including Entikong and Sekayam Sub-District,
4. Sintang District, including Ketungau Hulu and Ketungau Tengah Sub-District;
5. Kapuas Hulu District, including Hulu Kapuas, Puring Kencana, Badau, Batang Lupar, Embaloh Hulu and Putussibau Utara Sub-District.

Throughout 966 km’s long, with ±50 path ways connects 55 villages in West Kalimantan and 32 villages in Malaysia. This geographical condition impacts on the improvement of the numerous Indonesian Workers Abroad. Based on Survey of the National Labour Force shows that Malaysia is the largest number Indonesian Workers Abroad placement during seven years (2011-October 2017) as below:

Table 1. Indonesian Workers Abroad in Malaysia from Kalimantan Barat

No	Year	Placement in Malaysia	Placement from Kalimantan Barat
1	2011	134.266	1.689
2	2012	134.088	2.607
3	2013	150.248	10.091

4	2014	127.812	5.190
5	2015	97.621	2.231
6	2016	87.616	1.834
7	Oktober 2017	73.272	1.136
Total		804.923	24.778

Source: Pusat Penelitian dan Pengembangan Informasi BNP2TKI (BNP2TKI, 2013; BNP2TKI, 2014; BNP2TKI, 2015; BNP2TKI, 2016; BNP2TKI, 2017)

The result proves that there are numerous number of Indonesian Workers Abroad which come from Kalimantan Barat. It can not be denied that of course as a natural sense, Indonesian Workers Abroad will get married. The decision of when to marry has important consequences for men and women [10]. While marriage is considered a choice, laws regarding marriages often control various aspects of who marries, when people marry, partner choice and number of partners [10]. So, do with this research, Indonesian Workers Abroad decision to marry takes important part for this research. But, the research can not find the data about the reason of why the married is not been registered in Officers. It will be discussed in the next sub title.

3.2 Lack of Indonesian Law for Indonesian Workers Anroad Marriage

Related to Indonesian Workers Abroad protection, Indonesian Government has ruled by Indonesian Placement and Protection of Indonesian Workers Abroad Law of 2004. This Law consideration stated that state is duty to guarantee and protect human rights, which work both di dalam maupun di luar negeri based on equality before the law, social justice, kesetaraan and gender justice, anti-discrimination, and anti-human trafficking [1].

It then ruled by Article 8 [1], that every Indonesian Workers Abroad has the same rights and chance to:

1. Work abroad;
2. Obtain the right information about work market abroad and Indonesian Workers Abroad placement;
3. Obtain the same service and treatment in the placement abroad;
4. Obtain the freedom to take each religion, beleive, and chance to do worship in accordance with their religion and belies;
5. Obtain the wages based on prevailing standard wage in the destination country;
6. Obtain the rights, chance and same treatment as that obtained by other foreign workers in accordance with laws and regulation in the destination country;
7. Obtain legal guarantee in accordance with statutory regulations for acts which may undermine their dignity and rights and violations of the rights established in accordance with the laws and regulations during the placement abroad;
8. Obtain legal safety and security protection for return Indonesian Workers Abroad to the place of origin;
9. Obtain the original employment agreement.

Based on provisions above, no one of them mentions that Indonesian Workers Abroad have a rights to get marriage in their

placement. Surely, it such a prove of Government lack protection for Indonesian Workers Abroad, especially in Malaysia.

Whereas. As Indonesian Contitution has mentioned clearly that every citizen has the rights to marry, but this law is quiet lack of Indonesian Workers Abroad rights to marry in their destination country. Beside of that, as Malaysia is the top of destination country for Indonesian Workers Abroad, so Indonesian Government should be more pay attention on their rights as Indonesian citizen.

3.3 Itsbath Nikah is Marriage Registration Sollution

“Istbath Nikah” came from Arab Language, consist of two words, namely “Istbath” read “أَثَبْتُ نَيْبًا إِثْبَاتًا” means established, and “Nikah” read “نَكَحَ نِكَاحًا نِكَاحًا” means a strong agreement or *mitsaaqan ghaliizhan* to obey God’s command and it is a worship [11]. Now a days, “Istbath Nikah” is same with “Pengesahan Nikah” or marriage approval. “Istbath Nikah” it is like a win-win sollution for Indonesian Workers Abroad who wants to marry (citizen) and the Indonesian Government (state).

It is in accordance with the provision in Article 7 [11] stated:

- (1) Perkawinan hanya dapat dibuktikan dengan Akta Nikah yang dibuat oleh Pegawai Pencatat Nikah.
- (2) Dalam hal perkawinan tidak dapat dibuktikan dengan Akta Nikah, dapat diajukan Istbath Nikahnya ke Pengadilan Agama.
- (3) Istbath Nikah yang dapat diajukan ke Pengadilan Agama terbatas mengenai hal-hal yang berkenaan dengan:
 - (a) Adanya perkawinan dalam rangka penyelesaian perceraian;
 - (b) Hilangnya Akta Nikah;
 - (c) Adanya keterangan tentang sah atau tidak sahnya salah satu syarat perkawinan;
 - (d) Adanya Perkawinan yang terjadi sebelum berlakunya Undang-Undang Nomor 1 Tahun 1974; and
 - (e) Perkawinan yang dilakukan oleh mereka yang tidak mempunyai halangan menurut Undang-Undang Nomor 1 Tahun 1974.
- (4) Yang berhak mengajukan permohonan Istbath Nikah ialah suami isteri, anak-anak mereka, wali nikah dan pihak yang berkepentingan dengan perkawinan itu.

Beside of that, Article 100 [12] stated:

“Adanya suatu perkawinan tidak dapat dibuktikan dengan cara lain daripada dengan akta pelaksanaan perkawinan itu yang didaftarkan dalam daftar-daftar Catatan Sipil, kecuali dalam hal-hal yang diatur dalam pasal-pasal berikut”.

It means that a marriage can be proven only by registered Marriage Certificate in Civil Registry. "Its bath Nikah", It is the implementation of Indonesian Government in protect Indonesian Workers Abroad citizen relationship. By doing "Its bath Nikah", a marriage couple can prove and get their official Akta Nikah (Married Letter).

Unfortunately, it only can be done by Islam Religion, because the requirements are:

1. the marriage proposed "Its bath Nikah" should be implemented according to Islamic Shari'a; and
2. there is no law remedy in Its bath Nikah case and polygamy without procedure.

Even though so, marriage registration must be done by married couples as stated by Article 2 paragraph 2 of Indonesian Marriage Law of 1974 [13]. Marriage registration will cause general benefit, it will give legal certainty related with husband/wife rights, the benefit of children and another effect of the marriage. Marriage conducts under supervision or in the face of *Pegawai Pencatat Nikah* (Marriage Register Officer) in Religious Affairs Office will get *Akta Nikah* as the evidence of the marriage.

Akta Nikah is authentic deed because *Akta Nikah* is made by and in the face of Marriage Register Officer as authorized official to do marriage recording based on set rules and in the place of the Officer doing his duty [14].

Based those laws, the existance of a marriage is only can be proven by registered Marriage Certificate. In other words, an unregistered marriage is deemed not to exist legally. Whereas, a legally marriage will cause legal consequences in the form of legal relationships, education and care, maintenance and legal action, the preservation of rights and his property [13]. And also, their childrean will get legal protection [11].

Related to children protection necessity providing, it has been stated clearly that states, governments, societies, families and parents are responsible in children protection [15]. That is why, marriage registration will also help for children protection by the state after the parent register their marriage to Marriage Register Officer.

D. CONCLUSION

As Malaysia is the top destination country for Indonesian Workers Abroad, especially Kalimantan Barat which borders with Sarawak (Kuching Malaysia), so Indonesian Government should give the legal protection for them through ruling Indonesian Workers Abroad to marry in their destination country. "Its bath Nikah" can be the sollution in order to give the legal protection for married couples and their children, but it is limited for Islam Religion only. And it deny equality before the law for other religions. For the future study, it needs more comprehensive analysis and give a model of ruling for Indonesian Workers Abroad, not only for Indonesian Workers Abroad in Malaysia but in other country also.

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