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# Title Legal Principles of Contracts in Employment Contracts for Indonesian Migrant Workers Abroad

**Ida Surya**
Fakultas Hukum Ilmu Politik dan Ilmu Sosial, Unversitas Mataram

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**Abstract**
*The legal principles of agreements in employment agreements for Indonesian migrant workers (TKI) abroad aim to determine the application of legal principles of agreements in the placement of Indonesian migrant workers (PMI) abroad, and entering into employment agreements with people we do not know as well as the factors that cause violations of employment agreements for the placement of TKI abroad. This research is normative research, namely legal research conducted by examining library materials or in other words using secondary data, namely laws and regulations, Ministerial decisions, legal theories and expert opinions. The results of the research on the application of legal principles of agreements in the placement of Indonesian migrant workers (PMI) abroad have not been implemented properly. Coercion, fraud and abuse of circumstances occur in the placement of PMI abroad caused by the economic, social, educational or psychological conditions of the prospective PMI in the employment agreement which results in the service user in this case through the PMI placement company being more dominant in determining the terms and conditions of the employment agreement. This kind of agreement is known as Adhesie Contracten. This agreement condition is possible considering that the Civil Code does not adhere to the principle of Justuta Pretitum, so there are no requirements that require the creation of a balance between the achievements of both parties, as a result many PMI are required to carry out work that is identical to the 4Ds, namely Dirdy (dirty), and Gerous (dangerous), Demand (demand), and Death (death) which usually occurs in a closed (domestic) work environment. Factors that violate the law against TKI who are abroad are caused by, among other things, the structure of the labor market in Indonesia.*



***Corresponding Author:***
**Ida Surya**
Fakultas Hukum Ilmu Politik dan Ilmu Sosial, Unversitas Mataram
Email : idasuryafhisipunram@gmail.com

## 1. INTRODUCTION

The situation and conditions of Indonesian migrant workers have not changed significantly since 1998. The government's paradigm, which still views migrant workers as commodities, has directly or indirectly increased the opportunities for all parties, including government officials, to profit from sending workers abroad. The lack of a humanitarian dimension has led to a continued increase in human rights violations experienced by Indonesian migrant workers.

Labor protection for Indonesian migrant workers abroad has only stopped at rhetoric. According to data, in 2024 Indonesia faced various violations such as financial exploitation and fraud, with losses reaching more than 1.7 billion rupiah, as well as problems related to human trafficking. Violations also include the inability to access justice due to weak case handling at the government level, as well as the suboptimal implementation of the Law on

the Protection of Indonesian Migrant Workers (UUPPMI). In addition, there are cases of denial of basic rights and inaccurate delivery of information regarding elections that are detrimental to Indonesian migrant workers. The problems experienced by migrant workers can be classified into three stages: pre-departure, post-arrival, and re-integration. In the pre-departure stage, migrant workers were found to experience quite high levels of identity fraud, salary issues, and job placement.

Reporting through both print and electronic media on migrant worker issues related to the high level of violence experienced by migrant workers tends to be vulnerable to trafficking processes, in particular the trafficking of women, children and human organs. Indonesian migrant workers often change employers due to collusion between employers and the agencies where Indonesian migrant workers are placed, making it difficult to track the whereabouts of a migrant worker based on the employer's name listed on the passport of the migrant worker shelter, in reality, migrant workers are used as sex slaves. It is truly sad that on the one hand, the number of migrant worker placements per year continues to increase while on the other hand, legal protection from the Ministry of Manpower and Transmigration is not optimal. By 2024, a total of approximately 297 thousand Indonesian migrant workers (PMI) were placed abroad, with the main destination countries being Hong Kong, Taiwan, Malaysia and Saudi Arabia. Most placements are concentrated in positions as domestic workers (housemaids) and nurses (caregivers). BP2MI has also launched a KUR financing program for PMI placement to support prospective migrant workers to reduce dependence on high-risk information loans. By the end of 2024, there were approximately 296,970 Indonesian migrant workers who had been successfully placed, an increase of 8.40% compared to the previous year.

When looking at the reality that befalls Indonesian migrant workers, the question arises about the legal protection of Indonesian migrant workers so far, if examined from the perspective of contract law, whether the principles of contract law have been applied in the placement of Indonesian migrant workers abroad. The problems that befall Indonesian migrant workers are not only related to foreign exchange issues but also concern the dignity and honor of the Indonesian nation in the eyes of the international community. Law Number 18 of 2017 is concerning the protection of Indonesian Migrant Workers. This law aims to guarantee the fulfillment of human rights, legal, economic, and social protection for Indonesian migrant workers (PMI) and their families. This law also strengthens the role of the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI), which is now the Indonesian Immigrant Workers (BP2MI). The agency that plays a role in sending Indonesian migrant workers (TKI) officially is the Indonesian Migrant Worker Protection Agency through Indonesian migrant worker placement companies (P3MI) which were formerly known as PMI placement companies. BP2MI is a government agency responsible for the placement and protection of Indonesian migrant workers, while P3MI/PJTKI is a business entity that has obtained government permission to recruit, train, and manage documents for Indonesian migrant workers to go abroad and facilitate the placement of Indonesian migrant workers in the destination country.

The problems faced by Indonesian migrant workers abroad include a lack of legal protection, inhumane treatment, unpaid wages, work not in accordance with the agreement, and difficulties in communication with the Indonesian Embassy. These problems are exacerbated by a lack of supervision, incomplete documentation, and the large number of illegal migrant workers who are vulnerable to human trafficking and exploitation. The unfavorable conditions in terms of education, economy, social, and psychology mean that Indonesian migrant workers have no choice but to sign the work agreement. The result is fraud and extortion against Indonesian migrant workers or Indonesian migrant workers carried out by brokers and labor supply companies upon departure, wage deductions,

violence, and inadequate work from the side of service users are often experienced by Indonesian migrant workers (PMI).

Formulation of the Problem

1. What are the legal principles of agreements applied in employment agreements for Indonesian migrant workers (PMI) abroad?
2. Is it valid for Indonesian Migrant Workers (PMI) to enter into work agreements with unknown people (Recruitment)?

Writing purpose

1. To understand the legal principles of agreements applied in employment agreements for Indonesian migrant workers (PMI) abroad.
2. To find out the validity of the work agreement, Indonesian migrant workers (PMI) enter into a work agreement with people we don't know (Recruitment).

## 2. RESEARCH METHOD

The research used in this study is normative legal research, which examines law as a norm within statutory regulations. Soejono Soekanto argues that normative research is legal research conducted by examining library materials, or in other words, using secondary data. Normative research, also known as doctrinal research, uses only secondary data, namely laws, regulations, ministerial decrees, legal theory, and expert opinions.

The approaches used are the statutory approach, which examines laws and regulations related to the issues discussed. The conceptual approach, which examines concepts or expert perspectives related to the issues discussed, is a conceptual approach. The types and sources of legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials.

The technique of collecting legal materials through structured interviews using question guides during the interview uses a dialogical interpretation approach, namely a dialogue between the researcher and the research subject to capture subjective and objective meanings to explore not only things known or experienced by the research subject, but also things hidden in the information sources. The collection of legal materials is carried out by inventorying and then classifying them according to the main issues discussed in the material. After the legal materials are collected, the classification is then analyzed descriptively and analytically with deductive and inductive thinking syllogisms. Legal materials are analyzed by systematically presenting unclear legal provisions using analogical reasoning and acontrario reasoning.

## 3. DISCUSSION

According to Article 1313 of the Civil Code, agreement is defined as an act by which one or more persons bind themselves to another person. This definition is considered unclear and too broad. This definition only refers to a unilateral agreement. This is evident from the formulation of the sentence that occurs between one or more persons binding themselves to one or another person. Considering this weakness, J. Satrio proposed that the formulation be changed to "or" where both parties bind themselves to each other. It is said to be too broad because the formulation of "an act" when viewed from the legal scheme, legal events arising from human actions/actions include both the actions of other legal subjects, for example: onrechtmatigedaad and zaakwaarming. Suaru zaakwaaeneming is an obligation that arises from the management of another person's interests that is not based on agreement.

While onrechmatigedaad can indeed arise due to the actions of people and as a result an agreement arises in which one person is bound to provide a certain performance (compensation) to another person who is harmed. A marriage agreement in family or

marriage law based on the agreement formulation of Article 1313 of the Civil Code can be classified as an agreement. The word act in the formulation of the agreement as mentioned in Article 1313 of the Civil Code is more appropriate if replaced with the word legal act / legal action considering that in an agreement the legal consequences that arise are indeed desired by the parties and in it there is also an agreement which is a characteristic of an agreement (Article 1320 of the Civil Code) which cannot have ponrechmatigedaad and zaak waarneming. Subekti defines a contract as an event where someone promises to another person.

In contract law, there are three principles known which are interrelated, namely:

1. The principle of consensualism

   With the principle of consensualism, a contract is said to have been born if there is an agreement or agreement of will between the parties who made the contract. This principle of consensualism is related to respect for human dignity, which means that when someone's word is put, that person's dignity as a human being is increased. The essence of the agreement is an offer that is accepted (welcomed) by the other party to the promise, which can come from both parties reciprocally.
2. The basis of his contractual strength

   The promise is binding as regulated in Article 1338 paragraph 1 of the Civil Code, however in an agreement the most important thing is its content because the content of an agreement is determined by the parties, so the person is actually bound by his own promise, the promise given to the other party in the agreement, so the person is bound not because he wants to, but because he gives his promise. This principle is the binding force of the agreement, this is not only a moral obligation, but also a legal obligation whose implementation must be obeyed.
3. Fundamentals of freedom of contract

   The principle of freedom of contract binds everyone to have the freedom to enter into a contract with anyone, determine the form of the contract, choose the law that applies to the contract in question. The basis of consensualism is related to legal consequences and the basis of freedom of contract is related to the content of the contract. The basis of freedom of contract is indeed a good and proper basis, but if the parties are not balanced, then this freedom of contract can result in a one-sided agreement that is felt to be too burdensome and inappropriate. The actual contract will exist if the parties in the contract have an economic and social balance. The existence of an economic or psychological advantage on one of the parties is more dominant in determining the terms and conditions of the agreement, as is often seen in standard agreements, so that the other parties only have an agreement to accept or reject the agreement presented to them and therefore people refer to such an agreement as adhesion contracten.

Article 1320 of the Civil Code, which stipulates the valid conditions for an agreement even if the performance and contractual performance of both parties are not equal. Then came the existence of various restrictions on the freedom of contract and restrictions on the binding force of the agreement both through legislation and through the courts. More concretely, these restrictions are seen in the prohibition of the law on labor agreements between husband and wife (Article 1601 of the Civil Code), people are not permitted to agree on something regarding inheritance that has been opened (Article 1334 of the Civil Code). In Article 1338 paragraph 3 of the Civil Code, the Judge is given the power to supervise the implementation of an agreement so that the implementation does not violate propriety and justice, meaning the Judge has the power to deviate from the contents of the agreement. According to Setiawan, the principle of freedom of contract no longer appears

in its complete form. In countries that adhere to the Common Law system, many are implemented against this principle through legislation and judges' decisions.

There are several aspects of the agreement that will be used to discuss the recruitment of Indonesian migrant workers abroad, namely: The elements in an agreement can be grouped into several groups, namely:

a. Unsur Essensalia
b. Natural attack

An agreement is deemed not to have occurred if the following things occur, namely:

1. There is a mistake or confusion (dwaling
2. There is coercion (Dwang)
3. Existence of fraud (bedrog)
4. abuse of circumstances

According to doctrine and jurisdiction, it turns out that agreements containing such defects remain binding on the parties, only the party who feels that they have made a statement containing such defects can request the cancellation of the agreement.

The principle of pacta sund servanda, better known as the principle of the binding force of a contract, stipulates that if there is a consensus between the parties, the agreement creates a binding force as befits a law. The problem lies in creating a binding force as befits a law. The work placement agreements agreed upon by Indonesian migrant workers and the sending company often backfire, especially for Indonesian migrant workers. Service users often feel dissatisfied with the quality of the Indonesian migrant workers (PMI) they receive, even though they have already spent considerable money for it. On the other hand, PMI often feels disappointed with the treatment from the service user because it does not comply with the contents of the work placement agreement or employment agreement. In response to the above problem, before PMI signs the work placement agreement, the sending company should first inform them of the provisions and customs applicable in the destination country, because if the agreement has been signed by the PMI, they must comply with the contents of the agreement. The most important thing in an agreement is its content because the content of an agreement is determined by the parties, so people are actually bound by their own promises, promises given to other parties in the agreement, so that people are bound not because they want to, but because they give their promises. Promises are not only moral obligations but also legal obligations whose implementation must be obeyed. In addition to the reasons mentioned above, it is also necessary to know that the laws and regulations that are used as the basis for the act of employment agreements and work placement agreements between service users and Companies Sending PMI and PMI are the laws that apply in Indonesia.

In the work placement agreement, it is indeed regulated regarding the length of working hours for PMI, but it only applies to those who work in a domestic environment, this is not regulated and even though the length of working hours for PMI is regulated, it is not determined what time PMI must start work and what time PMI can end their work. This weakness is exploited by employers to exploit the energy owned by PMI. So, it often happens that PMI do not get the opportunity to carry out worship and rest. The actions of employers who underestimate the time of worship are contrary to human rights. In article 28 (1) of the 1945 Constitution. Therefore, the provisions on prayer times must be stated openly, especially to employers of different religions. Because there are many abuses that violate human nature. Where Muslim domestic workers feel unsafe working with non-Muslim employers and employers have failed to create a harmonious atmosphere with their work and even act beyond the limits of humanity. One thing to remember is that the Civil Code does not adhere to the principle of Justuta Pretium, so there is no requirement in the Civil Code that requires the creation of a balance between the achievements of both parties,

including between Indonesian migrant workers and service users in work placement agreements. This can be seen from Article 1320 of the Civil Code which stipulates the terms of the agreement so that the agreement remains valid, even if the achievements and counter-performance of both parties are not equal. The cases experienced by Indonesian migrant workers cannot be separated from the principle of freedom of contract itself. From this, the government then intervened through legislation to regulate the mechanism for placing Indonesian migrant workers abroad, including in this case the act of work placement agreements. However, it is unfortunate that behind the legislation, there are still many deviations and weaknesses.

Article 1320 of the Civil Code states that for an agreement to be valid, four conditions must be met, covering the subject and object of the agreement. These four conditions for an agreement to be valid are:

a. Agree those who bind themselves
b. Ability to make an agreement
c. A certain thing
d. A legitimate reason

The first and second conditions are conditions concerning the subject, while the third and fourth conditions are conditions concerning the object. An agreement that contains defects in its subject can be cancelled, while an agreement that is defective in terms of its object is void by law.

Regarding agreements and the birth of treaties, Mariam Darus Madarulzaman put forward several theories regarding the birth of these agreements, namely:

1. The will theory teaches that agreement occurs when the will of the receiving party is expressed.
2. The transmission theory teaches that agreement occurs when the expressed will is sent by the party receiving the offer.
3. The theory of knowledge teaches that the offeror should already know that his offer has been accepted.
4. Trust theory teaches that agreement occurs when the statement is desired, deemed appropriate, and accepted by the offeror.

According to doctrine and jurisprudence, it turns out that agreements that contain defects remain binding on the parties, only the party who feels that they have made a statement containing the defect can request the cancellation of the agreement. Ridwan KHairandy argues that understood as a meeting of reason, which has become a meeting of provisions, the meaning of agreement is a meeting of two or more reasons about something that has been done, or will be done. A reciprocal agreement to carry out an agreement itself requires an affer and acceptance by the parties. According to America, a Restatement Contract is a manifestation of the will to carry out a transaction that is carried out so that others know that agreement in the transaction is expected and that it will close the transaction. An offer is a statement regarding the conditions that the offeror (the party offering) wants to be binding if the offer is accepted by the afferee (the party receiving the offer).

Not all offers have legal consequences. According to Abduk Kadir Muhamad, there are several offers that are not legally considered offers, namely:

1. An invitation to serve only.
   This is an indication that a person is willing to negotiate, but does not wish to be bound by the terms stated.
2. Just a figment of the imagination or mere boasting
   In this case, someone who will pay serious attention, such as the brand listed on the package is not considered as a fixed offer.

3. Statement of will
   The statement of intent also does not mean to form a basis of agreement and is not an offer.
4. Just make an offer.
   A response to a request for information is not an offer of acceptance.

The second requirement for a valid agreement according to Article 1320 of the Civil Code is the capacity to enter into an agreement. Here, there is a confusion between the terms "agreement" and "contract." The terms "make an agreement" and "agreement" can be inferred to imply the presence of an element of intention (deliberately). This can be concluded to be appropriate for agreements that constitute legal acts. If this element is included as a valid element of an agreement, it cannot be applied to agreements arising from law. According to J. Satrio, the appropriate term to describe the second requirement for a valid agreement is the capacity to enter into an agreement.

The third requirement for a valid agreement is a specific thing. Article 1333 of the Civil Code states that an agreement must have a principal object (zaak) whose type can be determined. An agreement has a specific object, meaning that what is agreed upon is the rights and obligations of both parties. The object referred to in the agreement can at least be determined by type. J. Satrio concluded that what is meant by a specific thing in an agreement is the object of the agreement's performance. The content of the agreement's performance, or at least its type, can be determined.

The fourth requirement for a valid agreement is the existence of a valid legal cause. The word cause, translated from the Dutch word orzaak or causa (Latin), does not mean something that states someone makes an agreement, but refers to the content of the agreement and the purpose of the agreement itself. For example, in a sales agreement, the content and purpose or cause is that one party desires ownership of an item, while the other party desires money. According to Article 1335 of the Civil Code, a cause is declared prohibited if it is contrary to law, morality, and public order. A cause is said to be contrary to law if the cause in the agreement in question is contrary to applicable law.

If an agreement has been implemented, then its purpose is achieved and the agreement is destroyed, meaning the termination of a legal relationship called an agreement. The implementation of the agreement that occurs exactly as envisioned by both parties at the time the agreement was formed in the Burgerlijk Wetboek is called betaling (payment), as if both parties all implementation of the agreement is in the form of a cash payment and is regulated in title IV Book III. This payment is the implementation of the agreement in the true sense, namely that with this payment the purpose of the agreement is achieved, it can be equated with payment, because the difference in rights lies in the unavailability of the party entitled to receive a payment, however, the receipt is considered by law to have occurred, so it can be said that the purpose of the agreement is achieved. In article 1382 KHUPerdata paragraph 1 it states that payment resulting in the release of the authorities can be made by anyone who has an interest in the payment, such as a friend in debt.

The validity of the employment agreement with people we do not know, namely the agreement made between PMI and the service user, actually never had an agreement, because in the letter of agreement for the placement of PMI abroad, the one acting as the service user is the private PMI placement implementer, whereas the implementation of the Private PMI placement only acts as a distribution agent, not as an employer, unless the implementation of the Private PMI placement is given a power of attorney by the service user to sign the employment agreement, so that based on Article 1320 of the Civil Code, this can be declared void because it is contrary to statutory regulations, if not, there has been an error or error (dwqling) in this agreement. The agreement that actually occurs is an agreement between the service user and the implementation of the Private TKI placement

implementer. There are two theories, namely the will theory and the delivery theory that apply in the agreement between the service user and the private PMI placement implementer. If it is linked to the will theory, then the agreement occurs when the service user sends a request in the form of a job order or letter of demand to the private PM placement implementer. If it is linked to the delivery theory, then the agreement occurs when the private PMI placement implementer provides an answer marked by the act of recruitment agreement between the two parties.

Coercion (dwang), fraud (bedrong) and abuse of circumstances (misbruik van de omstandegheden) also occur in a placement agreement between service users abroad and PMI. Evidence of coercion can be shown that when signing the work placement agreement, prospective PMI when signing the work placement agreement, prospective PMI is faced with two choices, first signing the work placement agreement even though there is no balance between the achievements and counter-achievements of both parties. Second signing the work placement agreement means the prospective PMI will lose all costs that have been incurred without any compensation from the implementing party; the Private PMI placement. This problem can be prevented if when making the work placement agreement between PMI and the implementing party of the Private PMI placement, both parties should be accompanied by a legal representative who is fully familiar with the regulations and laws of the country where the work placement agreement will be implemented by the receiving country.

## 4. CONCLUSION

Based on the description above, the following conclusions can be drawn:

1. The implementation of the legal principles of PMI work agreements abroad has not been carried out as expected. Coercion, fraud, and abuse of circumstances occur in PMI work agreements abroad. This is due to the weakness of the economic, social, educational or psychological conditions of the prospective PMI, in the work agreement resulting in the service user in this case through the implementation of the placement of Private PMI being more dominant in determining the terms and conditions of the agreement in the work agreement.
2. The agreement made between the Indonesian migrant worker and the service user actually never reached an agreement, because in the letter of agreement for the placement of Indonesian migrant workers abroad, the person acting as the service user is the implementation of the placement/private PMI company, even though the implementation of the private PMI placement is only a placement agent, not an employer. Therefore, based on Article 1320 of the Civil Code, it can be canceled because it does not fulfill the subjective elements of the requirements for a valid agreement. Coercion, fraud, and abuse of circumstances also occur in the creation of placement agreements between service users abroad and PMI. Evidence of coercion can be presented when signing the work placement agreement.

## 5. SUGGESTIONS

1. There needs to be regular government supervision of migrant workers working abroad to ensure the rights of Indonesian migrant workers are guaranteed and to prevent human rights (HAM) violations.
2. Each Indonesian migrant worker must be accompanied by a legal representative or lawyer so that the agreement is clear, including working hours, place of work and wages received.

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