

Fulfill the Basic Rights of Indonesian Migrant Workers' Children in the Human Rights Perspective

Hijrah Lahaling¹

¹ Faculty of law, Ichsan University, Gorontalo-Indonesia, ijhomakassar@yahoo.co.id

ABSTRACT

The fulfillment of the basic rights of children of Indonesian Migrant Workers (PMI) left by their parents to grow and develop has not been optimally fulfilled either physically, mentally, psychologically, or socially. The right to fulfill the children of Indonesian migrant workers includes the right to survival, the right to education and the right to health. Neglect of the fulfillment of these rights is not yet fully in accordance with the 1945 Constitution of the Republic of Indonesia, Convention on the Rights of the Child, Law No. 6 of 2012, and Law No. 35 of 2014. This will certainly endanger the welfare and survival of PMI children in accordance with the principles of human rights. This research aims to formulate the fulfillment of the basic rights of children of Indonesian migrant workers in accordance with the principles of human rights.

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1. INTRODUCTION

The Republic of Indonesia, based on the Pancasila and the 1945 Constitution of the Republic of Indonesia, respects and upholds human dignity. Human Rights (hereinafter referred to as Human Rights) as basic rights that are inherently inherent in human beings, are universal and lasting, are also protected, respected, and maintained by the Republic of Indonesia, so that the protection of human rights, including the rights of all migrant workers and members of their families needs to be improved.

Indonesia is a country with a significant number of migrant workers and ranks significantly in Asia, which is second only to the Philippines. For the final period of 2017-2019 there are around 9 (nine) million people leaving Indonesia to work as Indonesian Migrant Workers (hereafter written PMI). 55 percent are in Malaysia, 13 percent in Saudi Arabia, 10 percent in China or Taipei, and the rest are scattered in other countries. PMI is dominated by women and the majority work in the domestic sector as Domestic Workers (PRT), oil palm plantation companies, and cafes or

restaurants. While their education is mostly junior high (40.5%) and elementary school (30.17%).

Around 80 percent of women become PMI abroad, with an average productive age ranging from 18-40 years. In that age range, it is closely related to the reproduction period, such as having a family and having children. This number has an impact on the large number of children left by mothers at an early age. Leaving children even babies without any guarantees of care. Most of their children are certain to lose their basic rights to get breast milk (ASI) whose value is not replaced by formula milk or even foreign exchange of whatever.¹

The fact that more than half of migrant workers are women, most are the main breadwinner mothers, where children are abandoned and cared for by fathers, grandmothers, uncles or aunts,² will raise concerns about the care deficit experienced by children and hope that this phenomenon will lead to renegotiation of patriarchal culture and a more egalitarian gender division related to domestic work and care work.

One of the children in this context is the child of PMI who is in a vulnerable condition so that it deserves special attention with the support of policy. On the other hand, fulfillment of basic rights and safety of migrant workers is specifically stated as one of the national development agendas. However, the current development policy does not pay special attention to families and children left by one or both of their parents going abroad.

The child perspective is still rarely used in migration studies. Children are often seen as passive parties who do not need to be involved in the decision making process, including when parents decide to work abroad and leave for long periods. Working abroad is generally seen as a favorable condition for children because of the potential for strengthening the economic conditions obtained (remittance) as migrant workers automatically correlating with improving child welfare.³

Separation from parents in a relatively long period of time causes various negative impacts that can interfere with child development. The absence of one parent prevents the family from optimally carrying out the role or function of socialization, discipline, providing support and meeting emotional needs and so on.⁴

The conditions of the lame migrant worker nuclear family structure include often neglected children and neglected basic rights such as the right to survival, right to

¹ Maria Ulfah Anshor. (2017). *Memutus Rantai Ketidakadilan Global Peduli Dalam Pengasuhan Anak Tenaga Kerja Indonesia (Studi Pengasuhan Anak TKI Perempuan di Pesantren di Indramayu)*, Yayasan Pustaka Obor Indonesia, Jakarta, p. 3.

² In Kustini's findings, of the 13 PMI families studied there was only one family whose adoptive mother was a husband with an older son, 12 other families entrusted the care of their children to a wider family such as grandmothers, grandparents, uncles, aunts, or other people who have no family relations. Kustini, 2012, *Childcare Strategies for Families of Women Migrant Workers*, Faculty of Social and Political Sciences, University of Indonesia, Sociology Study Program, Depok.

³ UN Women. (2013). *Menilai Biaya Sosial Migrasi, UN Women*, Bangkok

⁴ Pusat Penelitian Pengembangan Gender dan Anak (P3GA) Lembaga Penelitian dan pengabdian Kepada Masyarakat. (2013). *Éksplorasi Masalah Kesejahteraan dan Perlindungan Anak Pekerja Migran (Studi di Kabupaten Indramayu, Provinsi Jawa Barat)*, Sekretariat Utama BNP2TKI, Jakarta, p. 6.

education, right to health, loss of care, crisis of care by caregivers of grandmothers, aunts and even with people other. This is where the importance of the State is present to fulfill, respect and protect the basic rights of PMI children left by one or both parents.⁵

The Republic of Indonesia is a country based on the Pancasila and the 1945 Constitution of the Republic of Indonesia which respects and upholds human dignity and dignity, so that human rights including the rights of all migrant workers and their family members must be protected, respected, defended and must not be ignored, reduced or deprived of. by anyone.⁶

Indonesia as part of the international community respects, respects and upholds the principles and objectives of the Charter of the United Nations (hereinafter written by the United Nations) and the Universal Declaration of Human Rights (hereinafter written by the UDHR). The Government of the Republic of Indonesia signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families) on September 22, 2004 in New York. Then on April 12, 2012, the government ratified the International Convention through the Law of the Republic of Indonesia (RI Law) Number 6 of 2012 concerning the Ratification of the International Convention on the Rights of All Migrant Workers and Members of Their Families.

The convention upholds the basic principles of upholding human rights of migrant workers, namely: 1) State Responsibility; 2) Non-Discrimination; 3) Similarities before the Law; and 4) Equality in Acceptance of Rights. In ratification of the international convention, not only provides protection for the rights of migrant workers themselves, but also protects all rights of migrant workers 'family members, including migrant workers' children.

Children are an inseparable part of human survival and the survival of a nation and state. In order to be able to take responsibility for the survival of the nation and state, every child needs to get the broadest opportunity to grow and develop optimally, physically, mentally, and socially. For this reason, it is necessary to protect efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights without discriminatory treatment.⁷

The state upholds human rights, including children's rights, which are marked by guarantees of protection and fulfillment of children's rights in the 1945 Constitution of the Republic of Indonesia and several provisions of national and international laws and regulations. This guarantee is strengthened through the ratification of an international convention on children's rights, namely the ratification of the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 concerning

⁵ The results of observations or observations of researchers since 2008 until now.

⁶ Abdul Maasba Magassing. (2016). Beberapa Catatan Mengenai Penerapan Pekerja Migran di Indonesia (Pengantar Makalah Diskusi). Dipresentasikan pada Seminar Net Input Regional untuk Penyusunan Laporan Awal Indonesia tentang pelaksanaan kerjasama Pekerja Migran "Kerjasama Kementerian Luar Negeri R.I dengan FH-UNHAS, Makassar, p. 7

⁷ Explanation of RI Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection.

Ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child).⁸

There are four points of recognition by the international community of the rights possessed by children, namely: (1) the right to children's survival (survival rights); (2) the right to protection (protection rights); (3) development rights; and (4) the right to participate (Participation rights).⁹

In addition, children's rights are also regulated in Article 2 through Article 14 of Law no. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, are:

1. The right to life, survival and development; and respect for children's opinions.
2. Child protection aims to ensure the fulfillment of children's rights so that they can live, grow, develop, and participate optimally, in accordance with human dignity and dignity, and get protection from violence and discrimination, for the realization of quality, noble, and qualified Indonesian children. and prosperous.
3. Every child has the right to be able to live, grow, develop, and participate properly, in accordance with human dignity and dignity, and get protection from violence and discrimination.
4. Every child has the right to a name as self-identity and citizenship status.
5. Every child has the right to worship according to their religion, thought, and expression according to their level of intelligence and age in the guidance of a parent or guardian.
6. Every child has the right to know his parents, raised and cared for by his own parents.
7. Every child has the right to receive health and social security services, according to their physical, mental, spiritual and social needs.
8. Every child has the right to education and teaching in the context of personal development and level of intelligence, according to their interests and talents.
9. Every child during the care of a parent, guardian, or any other party responsible for care, is entitled to protection from treatment: Discrimination; Exploitation, both economic and sexual; Abandonment; Cruelty, violence, and persecution; Injustice; and other mistreatment.
10. Every child has the right to be cared for by his own parents, unless there is a reason and / or legal rule that shows that separation is in the best interest of the child and is the last consideration. What is meant by "separation", includes separation due to divorce and other situations by not eliminating the relationship of the child with both parents, such as the child whose parents left abroad to work, the child whose parents are detained or imprisoned.

Some facts in daily life where the child of a migrant worker does not obtain his rights¹⁰, as guaranteed in the 1945 Constitution of the Republic of Indonesia and related laws and regulations are as follows:

⁸ Ibid

⁹ Convention on the Rights of the Child. The convention which consists of three parts and 54 September was adopted by General Assembly Resolution No. 44/25 on 20 November 1989 and took effect on 2 September 1990.

¹⁰ <http://dinamikahukum.th.unsoed.ac.id/index.php/JDH/article/view/14>. Accessed on September 27, 2016.

1. PMI children who have been left since the age of five, lose their right to be cared for and raised by their parents, even the children cannot get to know one or both parents who went to become migrant workers.
2. The right of growth and development and the right to health of the child are neglected, this can happen to children under the age of five who should still get breast milk from their mothers, instead left as migrant workers, and breast milk is replaced with formula milk.
3. The right to education of children left by one or both parents is not fulfilled. Even though the child is still in school, responsibilities that are only left to the grandmother, or aunt are not so optimal, because continuous supervision is relatively lacking.
4. In the case of parents leaving the country, at least they have not fulfilled the child's right to participate, namely their "unheard" desire, especially since many migrant workers leave when their children are young, where the children often ask the whereabouts of their father or mother and even both.
5. Violence and discrimination can be experienced by children who are in the care of a grandmother or aunt. For example, when aunt has biological children and at the same time caring for children left by her parents, can provide different treatment even if done unconsciously.

Based on the facts above, reflecting the basic rights of migrant worker children have not been fulfilled, including the right to participate, the right to think and expression, the right to obtain health services and social security, the right to education, the right to survival, the right to be heard and expressed his opinion, as well as the right to be raised and raised by his own parents.

Basic rights of the child emphasize that the existence of parents is a primary factor for children who are still in their infancy.¹¹ This means, if the parents work abroad, the influence of the child is certainly enormous on whether or not the basic rights of the child migrant worker are fulfilled.

All children in Indonesia in principle are entitled to the same protection. For this reason, like children in general, children of a PMI must actually get the same rights as other children. Children as the next generation of the nation must grow and develop well, even if one or both parents work abroad.

1945 Constitution of the Republic of Indonesia and Law No. 35 of 2014 concerning Child Protection mandates that, every child has the right to survival, growth and development and is entitled to protection from violence and discrimination. To guarantee the fulfillment of children's rights, the State is obliged to fulfill, protect and respect the rights of children. The social fact that there are millions of children from PMI who were abandoned by one or both of their parents abroad did not get optimal care, even among those displaced.

The problems of PMI children can develop into violations of law by children or children become victims of violence due to lack of supervision and protection. Keep in mind, that all risks that can affect children are the full responsibility of both the

¹¹ Lianny Sholihin, (2016). Aksi Kekerasan Terhadap Anak dalam Keluarga, Jurnal pendidikan Penabur No. 3 Tahun III Desember 2004, hlm. 138-139. Tersedia di <http://www.bpkpenabur.or.id>. diakses pada tanggal 26 September 2016.

government and society, which is supported by law enforcement as a form of control and empathy for the problems faced by children.¹² For this reason, the issues to be discussed in this study are: How is the fulfillment of the basic rights of children of Indonesian migrant workers in a human rights perspective?

2. METHOD

This research is a sociological (socio-juridical) research. In this study, law is not constructed as a norm system in the form of regulations and laws are constructed as a permanent community policy, institutionalized and socially legitimate. The behavior of the people studied is behavior that arises in relation to the existing norm system. The interaction appears as a form of community reaction that applies the provisions of positive legislation and can also be seen from the form of society in the form of actions affecting the formation of positive legal provisions. Sociological juridical research can be used to help improve the workings of the law in society.

Research sites were carried out in Makassar City, Gowa Regency and Bone Regency, South Sulawesi Province. Then Jakarta as the center of the Capital and Information Center. The reason for choosing Makassar City, Gowa Regency and Bone Regency of South Sulawesi Province is based on the accompanying report conducted by Solidaritas Perempuan Anging Mammiri (SP-AM) a non-governmental organization since 2008 that the number of Indonesian Migrant Workers leaving children in their hometown in Sulawesi Province South, especially in Makassar City, Gowa and Bone Regencies are quite large.

As for the population in this study consists of several parties involved: National Agency for Placement and Protection of Indonesian Migrant Workers (BNP2TKI), Service Centers for Placement and Protection of Indonesian Migrant Workers (BP3TKI), Indonesian Manpower Services Provider Companies or Private Indonesian Manpower Placement Implementers (PJTKI / PPTKIS) whose terminology has changed to become the Indonesian Migrant Worker Placement Company (P3MI), the City / District and Provincial Women's Empowerment and Child Protection Agency (PPPA), the City/District and Provincial Manpower and Transmigration Office (Dnakos) City/Regency and Province, Indonesian Child Protection Agency (LPAI), NGOs / NGOs that are concerned with the Issue of Migrant Workers and Children of Indonesian Migrant Workers.

The determination of the sample in this study are: Makassar BNP2TKI/BP3TKI, consisting of 3 (three) people, PMI Placement Company (P3MI) which is still active, as many as 3, Provincial/Municipal/District PPPA Service, consisting of 4 (people), City/District and Provincial Disnakertrans, consisting of 4 (four) persons, City/District and Provincial Social Affairs Offices, consisting of 4 (four) persons, Provincial LPA consisting of 2 (two) persons, Anging Mammiri Women's Solidarity consisting of 2 (two) people, the Children of Indonesian Migrant Workers consist of 30 (thirty) people

Data collection techniques are carried out with a literature study of legal materials, both primary legal materials, secondary legal materials, as well as tertiary legal materials and/or non-legal materials. Searching for legal materials is carried out by reading, seeing, listening and searching through the internet media. While empirical

¹² Ika Saimima. (2008). Perlindungan Anak Terhadap Anak yang Berkonflik dengan Hukum, Jurnal Kajian Ilmiah Ubhara Jaya, Vol. 9 No. 3 Tahun 2008, Lemlit Ubhara, p. 938

data collection techniques used interviews/interviews with respondents and observation or direct observation.

The types of data in this study are: Primary Data, namely data obtained directly from respondents through interviews/interviews. And Secondary data, namely data obtained through the study of documentation of primary legal materials, secondary legal materials, and tertiary legal materials. Then, the data collected both primary and secondary are analyzed using qualitative analysis obtained through interviews and will be used in answering and revealing something behind phenomena and reality.

3. RESULTS AND DISCUSSION

Fulfill the Basic Rights of Indonesian Migrant Workers' Children in the Human Rights Perspective

The Unitary State of the Republic of Indonesia guarantees the welfare of every citizen, including the protection of children's rights which constitute human rights. In Article 3 of Law Number 35 Year 2014 concerning Child Protection, it states that:

"Child protection aims to ensure the fulfillment of children's rights to live, grow, develop, and participate optimally in accordance with human dignity and dignity, and get protection from violence and discrimination, for the realization of quality, noble, and prosperous Indonesian children. "

In principle, all children in Indonesia have the right to get the same protection without discrimination. For this reason, like children in general, children from PMI should get the same rights as other children. Children as the next generation of the nation must grow and develop well, even though their parents work abroad, the Government, the community and each caregiver given the responsibility must take the maximum role in the family to continue to provide fulfillment for the protection of the rights of the children left behind. Do not let PMI children who work abroad lose the love and figures of parents.

Children are unique creatures who basically can carry out their own activities but their development is also very influenced by the environment in which they grow and develop. In fact, children cannot protect themselves from various types of actions that cause mental, physical, social harm in various areas of life and livelihood.¹³

Every child has the right to survival, growth and development, and is entitled to protection from violence and discrimination as mandated in Article 28B of the 1945 Constitution of the Republic of Indonesia. Age 0-12 is an important period in the development of children. The process of growth and development of children in this age group includes care activities, health, education, and protection. Physical and socio-emotional development will also affect children's intellectual development throughout their lifetime. Therefore, guarantees of health services, education and child protection must be fulfilled as much as possible.

PMI children left by their parents abroad are mostly when they are under five years old (toddlers), even some of them are still babies at the age of 3 months, 4 months, 2 and 3 years. Some children are left by their mother or father, and even both have 1 to 2 siblings. And they have been left by their parents for a relatively long time, and some

¹³ Arhjayati Rahim. (2019). Diversion in the Form of Protection of Human Rights. *Musamus Law Review*, 1(2), 87-94 <https://doi.org/10.35724/mularev.v1i2.1126>

have not even met their mothers and fathers for 15 years.¹⁴ For more details, see the table below:

Table 1
Age of PMI child when his parents left abroad
Based on Name *, Age, Caregiver, Length of Death, and Country of Destination

No	Child's Name	Age when left	Caregiver	Long Left	Destination Country of Parents
1	Am	4 tahun	Grandmother	3	Malaysia
2	Aa	8 tahun	Grandmother	4	Malaysia
3	Zi	4 Bulan	Grandmother	2	Malaysia
4	Zr	4 Bulan	Grandmother	2	Malaysia
5	Zh	11 Thn	Father	2 Bulan	Malaysia
6	Im	8 Tahun	Father	2 Bulan	Malaysia
7	Aa	7 Tahun	Grandmother	6	Malaysia
8	Ka	5 Tahun	Grandmother	4	Malaysia
9	Ri	10 Thn	Aunty	10	Malaysia
10	MF	8 Tahun	Orang Lain	14	Malaysia
11	SW	7 Tahun	Mother	1	Malaysia
12	Yl	9 Tahun	Mother	3	Malaysia
13	El	3 Tahun	Mother	4	Malaysia
14	Ia	2 Tahun	Grandmother	10	Malaysia
15	MA	3 Bulan	Grandmother	15	Malaysia
16	An	8 Tahun	Aunty	1	Malaysia
17	Ah	5 Tahun	Aunty	1	Malaysia
18	Di	2 Tahun	Grandmother	8	Malaysia
19	Ai	5 Tahun	Grandmother	8	Malaysia
20	Hi	3 Tahun	Grandmother	4	Malaysia

¹⁴ The results of the interview with Ibu Ramlah, one of the Migrant Workers 'companions from Angar Mammiri Women's Solidarity as well as the Migrant Workers' families. The interview was held, on March 25 2017.

21	NM	1 Tahun	Grandmother	12	Malaysia
22	Di	5 Tahun	Uncle	8	Malaysia
23	RA	2 Tahun	Grandmother	9	Malaysia
24	Rn	5 Tahun	Grandmother	9	Malaysia
25	AS	1 Tahun	Mother	5	Malaysia
26	RA	2 Tahun	Aunty	7	Malaysia
27	Ha	1 Tahun	Grandmother	14	Malaysia
28	JS	5 Tahun	Grandmother	12	Malaysia
29	Ra	4 Tahun	Grandmother	10	Malaysia
30	Sm	11 Bln	Grandmother	5	Malaysia

Source: processed from primary data

* Child's name is initialed

The data obtained by the researcher based on the results of the interview above illustrate, that PMI children are abandoned by one or both parents, on average with a relatively small age. The age of the smallest or still a baby is Muh. Arif (3 months), Zulfikri and Zulfikar (4 months), Syam (11 months), then Herlina (1 year), Amelia Saputra (1 year), Nursyamei (1 year), Dwi (2 years), Irda (2 years), Reza Aryadi (2 Years), Rizka Amelia (2 Years), Exal (3 Years), Hariadi (3 Years), Adam (4 Years), Rama (4 Years), July S (5 Years), Katelia and Aisyah (5 years), Riswan (5 years), Addi (5 years), Didi (5 years), Asmila and Sri Wahyuni (7 years), Amanda, Ikram, and Aimin (8 years), Yusril (9 years), Riki (10 years), and Zulkailah (11 years).

From this description, the children who are left with the youngest age are 3 months old and the oldest is at 11 years old. The children are dominantly raised by grandmothers and some are raised by aunts. My grandmother and aunt became babysitters because both parents worked as PMI, while the children were raised by their biological father because their mothers worked as PMI, and there were also children who were raised by their biological mothers because their fathers worked as PMI. And there is one (1) child who is looked after by another person who is not a family member of both parents.

The duration of the children left either by the mother or father and even both are ranging from 1 year to 15 years. The length of time left from the age of the child left until now has entered 2018. The description is as follows: Zulkailah and Ikram (2 months to now) because her mother just left 2 months ago in 2018, Sri Wahyuni, Aimin, and Aisyah (1 Years to present), Zulfikri and Zulfikar (2 years to present), Adam and Yusril (3 years to present), Amanda, Katelia and Exal (4 years to present), Asmila (6 years to present), Riki and Irda (10 years to present), Muh Farid (14 years to present) and Muh. Arif (15 years to present).

From this description, the length of PMI children left by one or both parents is relatively very long in their young age. The child left the longest is Muh. Arif who has

reached 15 years until now, then Muh. Farid 14 years to the present, and PMI's children who have recently been abandoned have been for 2 months now. The data table also shows the recipient country that is the destination of the mother or father and even both are Malaysia, precisely in Sabah and in Sarawak.

PMI children who are left behind, first realize that their parents go abroad to become PMI on average when they are 6 years old, when they first enter school because they witness other children being delivered and picked up by their mother or father, and even there are those who realize it only when receiving a report card at school, where other children who are not PMI children are accompanied by their parents. While PMI children are only accompanied by their grandmother or aunt, not their biological parents.

The interaction of PMI children with their parents is very limited, even between them they do not have contact with their mother or father, so the relationship with their parents is cut off and there is no communication since the child was left until now, for example Muh. Farid, who had been left behind at the age of 8 years until now, has never communicated with his biological mother, even since he was born by his mother, he had never been met by his biological father who had left his mother since Farid was still in the womb. Another case with Zulfikri and Zulfikar, two twins who were left by their parents since they were 4 months old, and are currently being looked after by their grandmother and sister who were 8 years old at that time. The twins, who are still babies, have since never been left by their parents until now, they have never seen the faces of their parents, because their parents have never returned or communicated directly with their children.

There are also some PMI children, for example Irda, Riki and Sri Wahyuni, although they have never communicated directly with their parents while abroad, but information about their parents' news remains known to children through letters sent by their parents through Post Office services. Meanwhile, other children with the increasingly sophisticated electronic media namely; mobile phones (cellphones), making it easier for them to communicate directly with their parents via Video Calls.

Seeing this phenomenon, illustrates that PMI children left by one or both of their parents do not get special protection from the Government, Regional Government, Society, and Parents who are responsible for the protection of these children. In addition, neglect of the fulfillment of PMI children's basic rights in the form of love and attention from their parents. And of course this is not yet fully in line with one of the goals of sustainable development or SDGs.

The concept of Sustainable Development Goals, hereinafter referred to as SDGs or Sustainable Development goals is a global agenda where the principle of implementation is "no one left behind" or no one will be ignored. In the context of Indonesia, which is almost one third of the population under the age of 18 years, this principle is very important for nation building. The SDGs will not be fully achieved if there are still children who live in poverty, hunger and malnutrition, die at birth or under the age of 5 years (toddlers) because they do not get health services or are exposed to diseases that can be prevented from transmission, cannot complete education, married under the age of 18, economically exploited, separated from their parents, and experiencing physical or psychological violence or living in fear.

Indonesia has ratified the Convention on the Rights of the Child (CRC) into statutory regulations through Presidential Decree Number 36 of 1990 concerning the Ratification

of the Convention on the Rights of the Child in 1989. In the preamble to the Convention on the Rights of the Child it is confirmed, due to physical immaturity reasons and mentally, children need special protection and care, including proper legal protection, both before and after birth. This statement shows that children are human beings who need the promotion and protection of human rights. Therefore, every child especially the children of Indonesian migrant workers must get special protection and ensure that the State fulfills their basic rights.

In addition, the United Nations has proclaimed that childhood requires special care and assistance. The family, as the basic group of society and the natural environment for the growth and well-being of all its members, especially children, must be given the necessary protection and assistance so that it can fully assume its responsibilities in the community. Children, for the full development and harmony of their personality, must grow in a family environment, in a climate of happiness, love and understanding.

In the Convention on the Rights of the Child, there are four points of recognition by the international community of the rights possessed by children, viz

- a. The right to children's survival (survival rights)
Are rights which include the right to preserve and maintain life (the rights of life) and the right to obtain the highest standards of health and the best possible care (the rights to the highest standards of health and medical care attainable);
- b. The right to protection (protection rights)
Are children's rights in the Convention on the Rights of the Child which include protection from discrimination, acts of violence, and neglect for children who do not have a family;
- c. The right to growth and development (development rights)
Are the rights that include all forms of education (formal and informal) and the right to achieve an adequate standard of living for the physical, mental, spiritual, moral and social development of children;
- d. The right to participate (participation rights)
These are rights that include the right to express opinions in all matters affecting the child (the rights of a child to express his view in all matters affecting that child).

The inclusion of these rights explicitly shows that children have certain life characteristics. Every policy must always lead to the best interest of the child shall be primary consideration, as stipulated in article 3 of the Convention on the Rights of the Child, which states that:

- (1) In all actions involving children, whether carried out by government or private social welfare institutions, the courts, government authorities or legislative bodies, the best interests of the children must be a primary consideration.
- (2) Participating countries endeavor to ensure that children will receive protection and care as needed for their welfare, taking into account the rights and responsibilities of their parents, guardians or other individuals who are legally responsible for the child, and for this purpose, will take all appropriate legislative and administrative steps.
- (3) The participating countries will guarantee that the institutions, services and facilities responsible for the care or protection of children will conform to standards set by the authorities, especially in the areas of safety, health, in the number and suitability of the officers, and also the competent supervision.

In addition, the basic principles of child protection which are also regulated in the Convention on the Rights of the Child include:

- a. Non-Discrimination (Non-Discrimination);
- b. The Best of Interest of Child;
- c. Survival and Development of Children (Survival and Development of Child); and
- d. Respect for Children's Participation (Recognition for Free Expression)

In relation to the best interests of the child, then all actions concerning children carried out by the government, the community, the legislative body, and the judiciary, the best interests of the child must be the main consideration. Likewise, the survival and development of children, it is important that there is recognition and guarantee from the state for the survival and development of children, which is where every child has inherent rights to life. The children's development rights that need attention, namely the physical, mental, social, and spiritual development of the child.

Children are the budding, potential, and the younger generation to succeed the ideals of the nation's struggle, having a strategic role, characteristics and special traits, so they must be protected from all forms of inhuman treatment that result in human rights violations. Therefore, for each child to be able to assume these responsibilities, he needs to have the broadest opportunity to grow and develop optimally, both physically, mentally, and socially, and have good character, efforts must be made to protect and to realize prosperity children by providing guarantees for the fulfillment of their rights and the existence of treatment without discrimination, especially to PMI children who are abandoned by one or both of their parents abroad.

3.1. Right to Survival

Children are a gift from God Almighty as a deposit entrusted to parents, besides children are the next generation of the nation, who will be responsible for the existence of this nation in the future. As a wise country, it should be used as a warning to this nation, so that it will always protect its young generation from all possible bad possibilities. Coaching young people must always be done as well as possible for the sake of survival, growth and physical and mental development and social development.

Maintaining the survival of children is the responsibility of parents, which should not be ignored. Article 45 of Law No. 1 of 1974 Principles of Marriage, stipulates that parents are required to care for and educate children who are not yet mature or cannot stand alone. Parents are the people who are first of all responsible for the realization of the welfare of children both spiritually, physically and socially. Children must be protected so that they do not become victims of anyone's actions (individuals or groups, private organizations or governments), directly or indirectly.¹⁵

Protection of children from economic exploitation is part of the right to survival (survival rights). This means that the country responsible for child protection must be able to take policies both legally, socially, and conduct international cooperation in order to protect children's rights from economic exploitation. This certainly includes the harmonization of national law on international legal instruments governing the protection of children from economic exploitation.

¹⁵ Arif Gosita. (1989). Masalah Perlindungan Anak. Akademi Presindo, Jakarta, p. 35.

With the absence of one or both parents, the impact on fulfilling the right to the survival of PMI children. Children will be physically, psychologically and socially disrupted. In general, the fulfillment of the basic needs of PMI children is physically met, including: the fulfillment of children's food, clothing, and shelter. Some PMI children even have electronic items at home such as color TVs, refrigerators and cellphones. These items are purchased from remittances sent by their parents. However, psychological and social needs of children are disturbed, PMI children lose the attention and affection of their parents.¹⁶

For example, experienced by Adam, Zulkailah, Asmila, Katelia, Sri Wahyuni, Yusril, Axel, and Irda, they are indeed physically fulfilled with adequate food, clothing, and shelter, even they can watch TV, play games and communicate via video Call with their parents, but psychologically, they still lose love and miss the attention of their parents. Like Adam, when communicating with his mother, he only said: "ma 'go home meq, longing".¹⁷ In addition, PMI children also experienced violence from their grandmothers or aunts who nurtured them. The violence in question is being pinched, beaten, shouted at, scolded, and not even rarely issued harsh words in front of PMI children.¹⁸

From this description, how PMI children feel do not get attention, do not get love, feel unprotected from those who care for him, even PMI children experience mental pressure, psychological pressure that can interfere with his soul and mind and certainly have an impact on the survival of PMI children, because there is no figure of one or both parents near them. And this, of course, is not yet fully in accordance with several policies governing the protection of the right to children's survival, namely Law no. 35 of 2015 concerning Child Protection Article 4, Convention on the Rights of the Child Article 6, Article 24 and Article 27, Law no. 39 of 1999 concerning Human Rights, Article 52 and Article 58, and Law Number 4 of 1979 concerning Child Welfare Article 1.

Based on several policies that regulate the protection of the right to the survival of children, it shows that every child, especially the children of migrant workers must get special protection to protect from things that can endanger their welfare and survival because one or both parents are Overseas to work.

To fulfill the protection of the right to the survival of children, the roles and responsibilities of the State, Government, Regional Government, Community, Family and Parents or Guardians are required for the implementation of Child Protection, especially for the children of migrant workers. Given the child's physical growth and development of mental-social aspects is the responsibility of parents and family. So that the State is obliged to take appropriate steps to facilitate parents in carrying out these responsibilities. However, among migrant workers' families, care, care and education responsibilities cannot be carried out optimally by parents who make the choice to migrate abroad to ensure continuity of family needs, so that responsibility is left to the immediate family, such as a grandmother or aunt.

¹⁶ Results of an interview with Ms. Ramlah, one of PMI's assistants in Makassar City, in March 2017

¹⁷ Direct observation of researchers when meeting with Adam in one of the former PMI homes. Namely Bau who is also the grandmother of Adam.

¹⁸ The results of the interview at the home of Mrs. Ida, one of the former Indonesian Migrant workers and currently as treasurer of Women Caring for Migrant Workers in Makassar City. In March 2017.

3.2. Right to Education

Education is a national asset. Education characterizes the nation's character building. Quality education will automatically give birth to the progress and civilization of the nation. Conversely, poor education will have negative implications for the running of the government and the availability of intelligent public participation. Once the importance of education exists, the fulfillment of the right to education is a human right (HAM).¹⁹

The right to education has been outlined as a constitutional right, as stipulated in the 1945 Constitution of the Republic of Indonesia in Article 31, which states that:

- a. Every citizen has the right to education
- b. Every citizen must attend basic education and the government must pay for it
- c. The government strives and organizes a national education system, which enhances faith and piety and noble character in order to educate the life of the nation, which is regulated by law.
- d. The state prioritizes the education budget of at least 20% of the state income and expenditure budget as well as from the regional income and expenditure budget to meet the needs of national education.
- e. The government advances science and technology by upholding the values of religion and national unity for the advancement of civilization and the welfare of humanity.

The right to education gives importance to efforts to fulfill human rights widely. This affirmation is important for efforts to build collective awareness of the fulfillment of the right to education. The right to education is closely related to civil and political rights and economic, social and cultural rights. The right to education is an empowering right. The right to education and to be effective have a direct influence on the enjoyment and fulfillment of other rights. Fulfillment of the right to education is the fulfillment of identity and human dignity.²⁰

In the 1945 Constitution of the Republic of Indonesia paragraph 4, emphasized that: "one of the objectives of the formation of the government of the State of Indonesia is to advance the general welfare and intellectual life of the nation", on this basis national education must be understood as an inseparable part of the effort to form the Indonesian State. National education is a basic element of national development that is capable of delivering dignity and prosperity for the people of Indonesia.

Considerations of Law No. 20 of 2003 concerning the National Education System (hereinafter the SISDIKNAS Law), expressly states that: "the national education system must be able to guarantee equal opportunity for education, improve the quality and relevance and efficiency of education management to face challenges in accordance with the changing demands of local, national, and globally so that it is necessary to carry out a planned, directed and continuous renewal of education ", on this basis national development policies in the field of education must be carried out in earnest.

Associated with equal distribution of educational opportunities without discrimination also applies to PMI children left behind by the mother or father, and even both. But in reality, there are a number of PMI children who are unable to continue their education

¹⁹ Majda El Muhtaj, op.cit., p. 162.

²⁰ *Ibid*, p. 167.

or drop out of school, especially in primary education and junior high schools, on average children only survive in grades 2 and 4 of elementary school. This is caused by various factors, including economic and socio-cultural factors. Economic factors are generally caused by poverty which affects the ability of parents to pay for school. While socio-cultural factors, caused by children's motivation for schooling is low and lack of support from parents to motivate children. And also the view that is still patriarchal, which considers children, especially girls, do not need to go to high school, it is enough just to be able to read and write.

This phenomenon is experienced by Amanda, Aimin, and Aisyah. Amanda, who since the age of 8 years (grade 2 elementary school) was abandoned by her parents abroad, now has to drop out of school when the child is in grade 4 or at the age of 10 years. Amanda dropped out of school on the grounds that the grandmother who cared for her had been ill and was currently blinded because of the age factor that was so old that she could no longer take care of and fulfill the rights to her grandchildren's education, eventually Amanda had to drop out of school because she had to care for her grandmother and her two younger siblings. twins and still small (Zulfikri and Zulfikar), besides that there are no more fees sent by Amanda's parents, Zulfikri and Zulfikar are also the reason for Amanda dropping out of school. Likewise, experienced by Aimin and Aisyah, the two siblings finally dropped out of school when Aimin was in grade 4 and her sister was Aisyah grade 2 in elementary school, the reason for their dropping out of school was that aside from the children's motivation to go to school, the grandmother as a caregiver was also unable to care for and care for the education of her two grandchildren and also the desire of her parents to dismiss her child from school and get her child to go to Malaysia to help her parents work in an oil palm plantation.

The situation experienced by PMI children left by one or both of the parents described above, shows that PMI children, have not fulfilled their rights to education as a whole and of course it also violates various policies related to the right to children's education namely : Universal Declaration of Human Rights (UDHR) Article 26, Convention on the Rights of the Child (CRC) Article 28 and Article 29, and Law no. 35 of 2014 concerning Child Protection, Article 9, Article 48, Article 49, and Article 50.

Limitations in carrying out parenting roles that affect education and parenting are also related to the characteristics of grandmothers as caregivers. The low level of education, physical limitations, limited communication skills, and so on makes grandmothers tend to spoil their grandchildren who care for or lack of instilling discipline in their grandchildren.

3.3. Right to Health

It is a consensus in the Indonesian constitution that the right to health is a fundamental right for humans. The basic philosophy of guaranteeing the right to health as a human right is human dignity. Health problems do not stand alone, the realm of health is closely related to other factors of human life. The political, economic, legal, social and cultural dimensions and education have a significant influence on the quality of the health of individuals and communities in a country. The discussion around the right to health in principle can not be separated from other basic human rights such as the right to education, political economy, social, and legal protection.²¹

²¹ Majda El Muhtaj, *op.cit*, p. 153

The right to health and social security are expressly regulated in the 1945 Constitution of the Republic of Indonesia, Article 28 H paragraph 1, paragraph 3, and Article 34:

Article 28 paragraph 1:

"Everyone has the right to live in physical and spiritual prosperity, to live, and to have a good and healthy living environment and the right to health services."

Article 28 paragraph 3:

"Everyone has the right to social security that enables his or her full development as a dignified human being."

Article 34:

- (1) The poor and neglected children are cared for by the state
- (2) The state develops a social security system for all people and empowers people who are weak and unable to comply with human dignity
- (3) The State is responsible for providing adequate health service facilities and public service facilities

The fulfillment of the right to health for every Indonesian citizen (WNI) is a constitutional mandate that must be implemented by the state. The state has endeavored to fulfill this obligation through the implementation of the National Health Insurance system (hereinafter written JKN), which through the government social insurance mechanism helps pay premiums for those who are in the poor category so that they get access to health.

Through JKN, every Indonesian citizen is guaranteed health services through the insurance system. Unfortunately, this system has not yet been applied to PMI and children left behind, bearing in mind the implementation of health protection for citizens abroad must include the country where the workforce is located. The lack of health insurance for PMI is an injustice. Because, they are foreign exchange heroes who contribute enormous remittances to the country.

Data from BNP2TKI shows that PMI remittances as of August 25, 2016 alone have reached 62 trillion Rupiahs, a very significant amount for the State Budget.²² The large amount of remittances is not balanced with the health protection obtained by family members of Indonesian migrant workers, one of whom is the child of a migrant worker.

National legal provisions in several countries that regulate social security automatically exclude migrant workers from granting such guarantees given that they are not citizens. The existence of conditions of residence and certain documents also become obstacles for the recipient country to provide social security to migrant workers even though they can be given other individual rights.²³

International agreements between Indonesia and PMI recipient countries should be used as a means to open doors so that the Indonesian government can reach out to its people who are working abroad to guarantee their dignity, dignity and welfare as

²² BNP2TKI, *Remitansi TKI mencapai 62 Triliun*, www.bnp2tki.go.id/read/11560/BNP2TKI:-Remitansi-TKI-Mencapai-Rp-62Triliun accessed January 25, 2017

²³ Ian Opeskin, et al., 2012, *Foundations of International Migration Law*, Cambridge University Press, New York, p. 124.

citizens. Likewise with family members left behind, including migrant worker children.

For example, Adam, who is 7 years old but has not yet received a National Health Insurance, which is in the form of a Healthy Indonesia Card (hereinafter written KIS), both KIS is borne by the government and independently. According to the grandmother who took care of him, Adam had difficulty getting KIS because he did not have a birth certificate. While the requirements for family members to get KIS, one of which is a child birth certificate. Furthermore Adam did not have a Birth Certificate because his parents did not have a Family Card, Adam's father who worked abroad did not have an identity like a KTP so it was difficult to take care of the Family Card. And this certainly has an impact on the future of Adam and children who do not have birth certificates are violations of the rights to the child's identity as stipulated in Law No. 35 of 2014 concerning Child Protection Article 5, that:

"Every child has the right to a name as self-identity and citizenship status."

Likewise with experienced by Muh. Arif, PMI's son who left his parents since he was still 3 months. Muh. Arif, with the condition of being paralyzed since being born in the care of his grandmother because of his divorced parents, none of them wanted to take care of either his mother or father, and for 15 years Arif had not met his mother or father, each of whom had remarried. Arif, who has been unable to walk and talk, has not been fulfilled the right to his survival, the right to his education because he is not in school, nor does he get the right to his health. Arif did not have KIS, so what was done by the grandmother who took care of her when Arif was sick, only took her to the health center for treatment, did not take her to the hospital. And the cost of treatment is borne by her grandmother who works as a dishwasher in the houses of local residents.²⁴

Based on the description of the situation experienced by PMI children, shows that the State has not been present to protect the rights to the health of its citizens. Never mind children, parents who become PMI have not protected their rights to health, do not get social security in the country where they work, especially their children who are left in the country. Whereas, ideally, children who are abandoned by their parents who become PMI, are the responsibility of the State in this case the government, regional governments, communities and institutions related to the fulfillment of the right to survival, the right to education, the right to health, and the right to for child social security. This responsibility is borne by the State, so it does not become a layered burden on parents, especially mothers who work abroad.

The many cases of human rights neglect committed against PMI and their children left behind are a reflection of the problem of migrant workers' access to social security and social protection across national borders, including protection of the right to health. Social protection as a way to provide long-term protection for migrants is very important, including old age insurance to ensure that they benefit from access to the social protection system of their home countries when they return after years of making a large economic contribution. The issue of social protection should also involve short-term issues, including the right to access to basic health care and health

²⁴ The results of an interview with one of the caregivers, namely the grandmother of a PMI child whose parents left her, in March 2017.

insurance, support for pregnant migrant women, as well as compensation for migrant families left behind, especially PMI children.²⁵

Based on universal principles that underlie and are recognized by each country, the protection of human rights becomes a binding condition for the state to implement within the scope of its national jurisdiction. Human rights are therefore directed and aimed at giving equal treatment to all humanity. In this law, human values become inherent values, thus considering the health aspect is an important element for the realization of human dignity, then if the state has an obligation to provide protection for human rights, including providing rights to proper health.

Regarding the fulfillment of the protection of the right to child health, it is regulated in several policies including: the UDHR, Article 25 paragraph 1, the Convention on the Rights of the Child Article 24 and Article 26, Law no. 35 of 2014 concerning Child Protection Article 8, Article 44, Article 45 and Article 45B, and Law No. 18 of 2017 concerning Protection of Indonesian Migrant Workers Article 29.

Public health is a pillar of building a nation. The degree and dignity of a nation will be measured by the extent to which social roles are played. It is clear that the low quality of health will adversely affect the implementation of the wheels of government. This awareness is a form of commitment of all nation states. Good health with guaranteed supra devices and health infrastructure is the most important part in realizing protection and good health services.²⁶

With this understanding Farid Anfasa Moeloek²⁷, stressed that in fact any disturbance, intervention, injustice, indifference and any form that results in the inhumanity of the human body, its psyche, its natural environment and social environment, its regulations and laws, as well as injustice in the social management they receive, is a violation of their rights, namely human rights.

Based on this, according to the researcher, in order to realize the protection of the right to survival, the right to education, and the right to health of PMI children left by one or both parents, what is needed is institutional support and legislation that can guarantee its implementation.

4. CONCLUSION

Fulfillment of the basic rights of PMI children left by their parents to grow and develop, has not been optimally fulfilled both physical, mental, psychological, and social fulfillment. This can be proven by the lack of fulfillment of the right to survival, the right to education and the right to health. Neglect of the fulfillment of these rights is not yet fully in accordance with the 1945 Constitution of the Republic of Indonesia, Convention on the Rights of the Child, Law No. 6 of 2012, and Law No. 35 of 2014. This will certainly endanger the welfare and survival of PMI children in accordance with the principles of human rights. The non-fulfillment of the right to education as a whole is due to the limitations of caregivers in carrying out care roles that affect the development of PMI children's education. In addition, the State has not yet been present to protect the right to health of PMI children who have not been accommodated in their parents' health insurance.

²⁵ Paola Pace, 2009, *Migration and the Right to Health: A Review of International Law*, IOM, Jenewa, p. 15

²⁶ Majda El Muhtaj, *op.cit.*, p. 157.

²⁷ Farid Anfasa Moelok, *Pembangunan Berkelanjutan dalam Peningkatan Derajat Kesehatan Manusia*, makalah disampaikan pada Seminar BPHN, Denpasar, June 23-28, 2003.

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