

LEGAL PROTECTION POLICY FOR INDONESIAN OVERSEAS EMPLOYMENTS (IOE) AS THE VICTIMS OF HUMAN TRAFFICKING IN SYRIA

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ABSTRACT

Indonesia is one of many countries with the most amount of sending IOE to Middle-east countries. According to the research data, due to the factors faced by IOE, the government adjusts moratorium policy to countries in middle-east, one of those is Syria. Since armed conflict has become hotter, moratorium policy begins to apply and every IOE sent after this policy has been applied are considered as the victims of human trafficking. Moratorium itself is one of legal protection done by Indonesian government to protect IOE in Syria. The simmering conflict in Syria makes Indonesia starts to repatriate IOE, but it is burdened with the amounts of remaining IOE living in Syria, because IOE who have gone illegally do not have formal documents registered in Indonesian Embassy in Syria. One of many reasons why there are still many IOE working in Syria pascamoratorium is because Syria government never admits the existence of moratorium. Many illegal agents also lure by using one stop service so many IOE are easily interested in working overseas without thinking the risk if they work in Syria. Legal protection for IOE is done through many ways besides the policy that is made by government, some of them are through government commitment which will crack down the officers involving in releasing IOE to overseas unprocedurally, the government will also prevent it by tightening the process of making passport, The Ministry of Foreign Affairs continuously campaigns in the remoted area to aware the society, form the Unit of Unprocedural IOE Prevention, strengthen to synergize the ministry/department related to this issue, One Stop Service (OSS) in the area, and form Productive Migrant Village. However, the amounts of protections given by government will not work well without supports and helps from many sides.

Keywords : IOE; Moratorium, Protection.

Introduction

1. Background

Syria Arab Republic or as known as Syria is a country which is located in Middle East, with Turkey in the north, Iraq in the east, Middle Sea in the east, and Jordan in the south. Its' capital city is Damascus (Source: wikipedia.org). Syria is a country that becomes a destination for sending Indonesian Overseas Employment (IOE). Before armed conflict, according to BNP2TKI years 2011 there are for about 30.000 IOE who have been working in Syria, but lately, the amount of IOE decreases and becomes 8000 people (Source: Bbc.com). Since the conflict has begun in 2012 until now, Indonesian Embassy at Damascus has repatriated their people to come back to Indonesia in many groups and it is still continuing til now. The director of Social Protection and Department of Ministry of Foreign Affairs, Lalu Muhammad Iqbal in pers conference in Jakarta, Tuesday, 29 of March 2016, stated there are still 1.100 people in Syria due to the illegal migration (Source: Benarnews.org).

Many IOE in Syria are also feared to join Tran-national ISIS organization, because many IOE who are lost, their occupation are not known and they are believed to join ISIS, but it is estimated that those who join ISIS for sure are from formal and independent IOE. Independent IOE can freely go and handle visa without monitoring from government, so they get less attention. Government is also said to less tightening the permission for people who will go abroad.

Besides its relation to ISIS, many IOE also have to face many problems while working in Syria, many IOE are deported due to the armed conflict happening in the military crisis. Actually, on 5 of September 2011, since the conflict was begun in Syria, Indonesia Government applied the moratorium of sending IOE/Original Rule of Houshold to Syria. With applying this moratorium, IOE who were sent to Syria were considered as the victims of human trafficking wince they are sent trough illegal or unprocedural ways. Indonesian Embassy in Damascus has handled TPPO cases for about 153 cases whose details per year are 1 (2012), 26 (2013), 16 (2014), 85 (2015) and 25 cases til April 2016 (Source: Antaranews.com). The bad luck is also facing IEO, including geting no salaries and sexual harrasment, at first, they are offered with big salaries to work, but then they are sent to Syria, not to countries promised before. Taking IOE who got bad treatments from their bosses home is hard to be done by Indonesian Embassy since there are 5 requirements in doing so, they are: pasport, ticket, iqomah (residence permit), exit permit and finishing all problems and rights with the boss. IOE in Syria are difficult to go home because there are original passport but fake with adding name in order to be able to enter Arab States. The agents at Malaysia, who sent IOE to Syria, added names since to enter Arab countries needs at least two names. For instance, IOE whose name is Sumiyati is then added and became Sumiyati binti Hendito. In Syria imigration database, the written name is Hendito.

Another thing that make Indonesian Embassy in Damascus hard to taking home IOE is because their passports are different from the ID card they have. it is due to the passport which is made directly by agent, IOE who will go never complete their documents for passport submission. In other words, they only receive the passports as they are. Actually, the government unilaterally stated the moratorium and stopping IOE to Syria, and said that IOE who are still sent were considered as the victims of Human Trafficking. But, since there is no agreement between both countries in the form of international agreement related to sending

labor, it causes importance asymmetry between two countries. So the effect of it is Syria government does not want to give exit permit for those who become the victims of human trafficking, because according to Syria government, they are legal employments, sent by original passport, made visa, and residence permit by agents or their bosses in Syria. Indonesian Government has spent much costs to take them back but the act of sending IOE to Syria is still done illegally. Many IOE go without formal contract, procedure and skill, hence why many cases related to IOE are heard by the society recently.

Many pathetic happenings towards IOE and their safety from armed conflict in Syria make government to work harder to find the solution of problems in Syria. One of many solutions given by Indonesian Government is applying moratorium and stopping IOE from entering to Syria and also using act no 39 year 2004 about residence and safety of IOE abroad. But the main problem faced by IOE is not because there is no policy which rules and save them, but it is how the monitoring and commitment from government to give the policy and protect IOE.

2. Research Question

How is the legal protection for Indonesian Overseas Employments who become the victims of human trafficking in Syria?

REVIEW OF RELATED LITERATURE

1. Protection Policy of IOE

Moratorium policy and stopping IOE to come in the area of armed conflict (Syria) are supposed to protect IOE from any danger that will affect them in that country by forwarding protection aspect towards the dignity, safety, and health for IOE. As a policy and or programme that involve citizens, so, as well as constitutional mandate, the government has a very big responsibility.

Placing IOE in Syria has to refer to act no 39 year 2004, which is correspondent in chapter 5 and 6 a government has obligation to : *first*, guarantee to fulfill rights of IOE, whether it is related to their placements or they go independently; *second*, monitor the placement of IOE; *third*, form and carry systematic information in placeng IOE overseas; *forth*, do diplomatic attempt to fulfill rights and legal protection of IOE optimally in the destined country; *fifth*, give full protection to IOE before their arrival, placement, and pasca-placement. But, with the existence of one sided moratorium done by Indonesian government, automatically there will be no sending IOE to that country for their safety and IOE who have been working are considered as the victim of human trafficking. In other words, IOE who are still sent by agents are those whoa are nonprocedural and illegal.

2. Legal protection of IOE

Satjipto Rahardjo stated what is meant by legal protection is there is attempt to protect one's rights by localizing a power to act for the sake of his/her rights (Rahardjo, 1983:121). Legal protection is an act or an attempt to protect society from arbitrary act done by authority which is not appropriate to the law, to create dicipline and serenity so that human beings can enjoy their rights as human kind (Setiono, 2004:03).

Referring to the act no 3 year 2013, IOE protection is all attempt to protect them in fulfilling their rights in accordance to the law; before, during, and after working. IOE protection is based on the act no 39 year 2004 about placement and protection of Indonesian Overseas Employements in abroad. Based on chapter 2 act no 39 year 2004, placing and protecting IOE are referred to allignment, equal rights, democracy, social justice, equal and gender equity, anti-discrimination, and anti-human trafficking.

Although pascamoratorium there are still many IOE sent to Syria, legal protection and responsibility towards them have to be done. Rules which give protection to IOE (during praplacement, placement, and pascaplacement) are included to companies that send IOE. Many rules about human trafficking has been made by government, but the ministry of labor and transmigration of Indonesia are still facing many problems on the field which involve IOE especially those who become victims of human trafficking in Syria.

Besides moratorium, there are other protections that can be done, they are:

- a. Preventive/educative protection
This kind of protection is made by making rules which protect Indonesian Overseas Employements, like:
 - Making acts about protection for IOE which are in conflict area like Syria.
 - Trying to form organization which monitors IOE and works together with Indonesian Embassy in Syria.
- b. Repressive or curative protection
 - Building crisis centre (especially in the destined countries for IOE and in Indonesia itself for Indonesian employements who face law problem, labor, and social culture, etc).
 - Engaging IOE in assurance programme which can cover all working risks in accordance with the kind of work.

RESEARCH METHOD

1. Research Method

Experiment Research method: is a method used to look for certain treatment influence.

Survey Research method: is used to get data from certain natural places (not artificial), but the writer runs treatment to collect data, for example by giving questionnaire, test, structured interview, etc.

Naturalistic/Qualitative Research method : is used to research in natural places, the research does not need treatment since the researcher is *emic* while collecting data, it is based on the view of data source, not from researcher's (Sugiyono, 2010:08).

This research focuses further on using Experiment Research method, it is by collecting the available data, and they are then used by the writer to look for certain influence. However, the view which the writer explains is still based on the data source.

2. Research Type

Method approach used in this research is juridical normative, it is a research which is deductively begun by analyzing chapters and rules which control the problems above. Researching law juridically means the research which is referred to available literature review or secondary data. Normative means the research which has purpose to get normative knowledge about relations of one rule to another in its practice.

In normative law research, secondary data are studied first, then primary data are studied on the field or towards their practice. This research will study the policy of legal protection for IOE who are abroad and find the model of legal protection for IOE in Syria which is an area of armed conflict and not to mention, IOE who are sent *pasca* Syria moratorium have been appointed as the victims of human trafficking.

3. Research Location

The research was done in the national department of BP3TKI in Central Java, DISNAKERTRANS (department of labor and transmigration) of Semarang.

4. Instruments for collecting, organizing, and analyzing data

1. Collecting Data

In effort to collect data for this research, the writer used two methods, they were:

Literature study was done by reading, writing, and quoting books, news and analyzing rules which were related to this research.

2. Organizing Data

The data collected were then organized and studied. Those data were organized through processes:

- a. Editing, re-checking collected data to know their completeness and clarity.
- b. Interpreting, connecting, comparing, and elaborating data and describing them, then getting the conclusion.
- c. Systemizing data, ordering and placing data in each main topics done systematically to ease the discussion.

3. Analyzing Data

In this step, the data collected were then analyzed qualitatively by describing the results in accordance with field study in the form of systematic explanation so that they had meaning and conclusion. This analysis result could be concluded inductively; thinking based on the general facts then getting specific conclusion and then this conclusion was submitted many suggestions.

RESULT AND DISCUSSION

Since war in Syria began, Indonesian Government applied moratorium about sending IOE to Syria which then went into permanent stopping. IOE who entered Syria after September 2011 were considered as the victims of human trafficking. All Indonesian Citizens in Syria since then were gradually sent home. Indonesia itself began to send IOE to Syria in 2006, but moratorium done by decree Dirjen Binapenta Ministry of labor and transmigration no. Decree 157/PPTK/VII/2011 9 of August 2011, counted from 5 September 2011. Since 26 May 2015 the government released decree of ministry of labor no 260 year 2015 about stopping and forbidding to place IOE individually in the countries of Middle East. Therefore, the representation of government still handled the extension of permission for IOE who had been working overseas.

After moratorium has been applied, it does not stop sending IOE, instead of the decrease, the amounts of sending IOE to Syria increase rapidly. Many sides continue to argue government to stop moratorium in sending Indonesian Overseas Employments (IOE) to Middle East because it is considered not to solve basic problem about IOE protection. Moratorium in sending housemaid to Middle East is only one sided policy and very reactive. Many IOE go abroad by using *umroh* visa, visiting family, and even cleaning service visa to hide their true purposes. After arriving to the destination, they work under someone or company who then rent their service as housemaids. It proves that moratorium is not so effective to protect IOE.

International Organization for Migration (IOM) wrote, on March 2005 to December 2014, the total of human trafficking happened in Indonesia reached 6.651 people. With this amount, Indonesia placed the first position with detail: women of child ages were 950 and women of adult ages were 4.888 people. Whereas the men of child ages were 166 and men of adult ages were 647 people (Source: Liputan6.com). In the police headquarter of Indonesia republic, in 2016 there were 194 people who became victims of human trafficking, with detail: 120 women, 21 men, and 53 children (Source: Republika.co.id).

Human trafficking case from Indonesia to Syria increased rapidly in 2016. The amount of the cases are estimated to keep increasing in spite of war condition if Syria does not approve to stop permanently sending IOE 2015 and Moratorium 2011 which were initiated by Indonesian government. According to Indonesian Embassy in Damascus, the amount of human trafficking from Indonesia to Syria increased quickly in 2016, more than years before, to 128 people. In 2015, human trafficking case total was 85 people. In 2014, human trafficking case total was 16 people. In 2013, human trafficking case total was 26 people and in 2012, human trafficking case total was 1 person (Source: Republika.co.id). Illegal IOE were not only in middle east countries, but also in Asian countries like Malaysia which has become destination for illegal workers for a long time. Based

on Migrant Care data, there were about 1,6 million illegal workers in Malaysia. This number was much higher than the total of illegal workers which was about 8000 people (Source: Benarnews.org).

The Officer of Social Protection Department and Indonesian Law Department of the Ministry of Foreign Affairs, Rahmat Hindiartha states there are many reasons why many IOE are still coming to Syria pasca-moratorium. First, Syria has never approved the existence of moratorium, and the demand of IOE in Syria is very high. So, many IOE who became victims of human trafficking still entered in Syria. According to Syria government itself, whoever comes to Syria, has Syria document, even though has no Indonesian document is considered as legal visitor, not the victim of human trafficking. Indonesia government cannot force Syria in international forum, because Syria is no longer one of international organization members, as well as international trade organizations. Second, many illegal agents lure IOE by one stop service by recruiting them directly from their place of origin, and prepare their documents. They often cause many problem especially making fake identity cards. So, the government does not have legal data of IOE who works overseas.

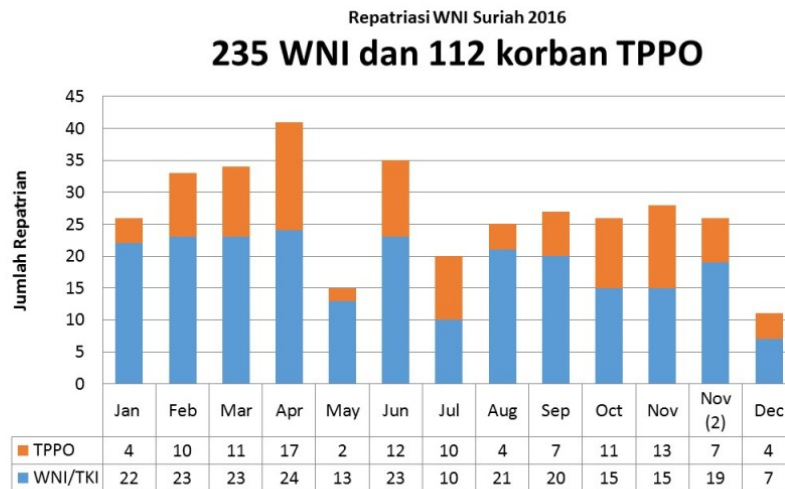
Besides the reasons above, there were 4 causes of unprocedural IOE. First, society's understanding about IOE placement and protection was low. Second, the information about labor market in home and abroad was limited. Third, the practice of brokers increased rapidly. The last, there was traditional migration practice (Source: Kemnaker.go.id).

Makhya Suminar, the implementors of protocol function and consul of Indonesian Embassy in Damascus to CNN Indonesia.com last month said in Indonesia, there were also problems in enforcing the law of moratorium; BNP2TKI could not run after troubled agency, uncooperative immigrants, police involvement. Indeed, Indonesian Embassy in Damascus has informed the culprits of human trafficking together with their routes to Indonesian authority. "Sending IOE to Syria was done by Bungawati and Iyad Masur/Mario in Kuala Lumpur. Regular route: Jakarta-Batam-Kuala Lumpur-Dubai-Abudhabi-Qatar-Oman-Damaskus. Whereas the new route is Jakarta-Batam-KL-Istanbul-Beirut-Damaskus," explained Maya. (Source: CNNIndonesia.com). Until now, Indonesia Embassy in Damascus has caught three names of human trafficking syndicates who worked individually. They were known to cooperate with foreign syndicates from Syria. According to her, those syndicates sent the victims with original documents whose data were falsified. They made original passports, but the information within was not right (Source: Republika.co.id).

Since the conflict broke out in Syria in 2012, repatriation programme in Syria is recorded for about 12.563 Indonesian Citizens. Many of them are victims of human trafficking (Source: Tempo.co). They are sent home after all their rights and problems with employers are done. Until January 2017 there are still many cases of human trafficking in Syria and repatriation is still done. The ministry of Foreign Affairs stated there are thousands of citizens in the middle of civil war in Syria. The spokesman Arrmanatha Nasir said those IOE were the victims of Human Trafficking. Indonesia itself has officially stopped sending IOE to Syria for a long time. We do not know the exact numbers since there is no detailed data for they come to Syria illegally (Source: Kumparan.com).

Data of Indonesian citizens in Syria (image: Doc. Indonesian Embassy Damascus).

No	Group	Arrival date to Jakarta	Airline arrival to Jakarta	Repatriants		
				Citizens/IOE	Reported victims of HT	Total
1	270	26 January 2016	(EY 474)	22	4	26
2	271	23 February 2016	(QR 956 G)	23	10	33
3	272	29 March 2016	(QR 956 G)	26	11	35
4	273	26 April 2016	(MJ 603)	24	17	41
5	274	3 May 2016	(QR 956)	12	2	14
6	275	11 June 2016	(SV 816 Q)	23	12	35
7	276	24 July 2016	(SV 816 Q)	10	10	20
8	277	9 August 2016	(EY 472)	21	4	25
9	278	16 September 2016	(QR 956)	20	7	27
10	279	4 October 2016	(EY 474)	16	11	26
11	280	7 November 2016	(QR 954)	15	13	28
12	281	30 November 2016	(QR 954)	19	7	26
13	282	14 December 2016	(EK 368)	7	4	11
Total				235	112	347



Data of Indonesian citizens in Syria (image: Doc. Indonesian Embassy Damascus).

Kronologi Repatriasi WNI Suriah



Indonesian citizens repatriation from Syria (image: Doc. Indonesian Embassy in Damascus).

Government in trying to do repatriate does not work alone, but Syria government helps. Government through Indonesian embassy in Damascus also expresses grateful for the ease and help given by Syria government dealing with managing exit permit to repatriate Indonesian citizens to Indonesia since 2012. Indonesia and Syria held a meeting to share views, it was done as an effort of Indonesian embassy to present Indonesian importance to exit from the list of IOE sender to Syria, based on the first rule of Syria ministry no 81/2006 about building labor agency. This rule was then reaffirmed by the decree of Syria ministry of home affairs no /500/Q.N on 4 March 2012. Human trafficking by sending IOE needs more attention so that many cases involving Indonesian citizens do not increase. (Source: Kompas.com)

That repatriation program was one kind of legal protection for IOE. Besides, the government also made Letter of Agreement which was signed by seven departments/ministries, they were Ministry of Foreign Affairs, Ministry of Women's empowerment and Children's Protection, Ministry of Law and Human Rights, Social Ministry, Police of Indonesia Republic, Prosecutor of Indonesia Republic, and National Department of Indonesian Overseas Employments' Placement and Protection (BNP2TKI). Director of Protocol General and counselor of Ministry of Foreign Affairs, Andri Hadi, said the agreement was made to create the mechanism to handle nationally the victims of human trafficking so that the cases could be solved more optimally and to increase the prevention of human trafficking and the protection for the victims. Some things which became focus for government were data and information exchange, sending IOE home, and rehabilitating the victims (Source: Benarnews.org).

As prevention attempts, Ministry of Foreign Affairs also campaigned to aware the society in remoted areas so that the protection became maximum. According to some people, government program was not effective enough to handle human trafficking cases. It was because the government did not have certain data of human trafficking people, and the handling was limited to send the victims home only. Indeed, all victims should have rehabilitation for their psychology.

Legal protection for IOE was also done through many ways, they were government commitment that cracked down on officers, agency and many sides involving in sending IOE nonprocedural. That commitment is said in a meeting among the ministry of labor, the general directoral of immigration ministry and human right, the ministry of foreign affairs and BNP2TKI.

Besides that, the government also prevents to send IOE unprocedurally, through strengthening the process of making passport. Since January to 24 March 2017 Dirgen of immigration has refused to publish 1.789 passports. (Source: Liputan6.com). The government also formed Unit of Unprocedural IOE Prevention. The unit which was formed in 2014 consisted of Department of Labor and Transmigration, Immigration, Social Department, Health Department, Department of Population and Civil Registration, Department of Transportation, Police and NDIOEPP. Last year, the unit of Unprocedural IOE Prevention succeeded to stop 1.310 people. whereas in 2015, 1.584 people who were indicated ilegal could be prevented by the unit (Source: Kennaker.go.id).

The next attempt was by strengthening the synergy among the departments/ministries in the issue. Ministry of Labor, Ministry of Law and Human Rights, Police, Indonesia Army, Ministry of Foreign Affairs, Ministry of Religion, and BNP2TKI together worked to prevent unprocedural IOE. There were six steps to actualize the commitment. First was strengthening the synergy of all departments through writing the letter of agreement which would rule the obligation of all departments. Second was increasing all institution roles to socialize the procedure of sending IOE in their area. Third was tightening the process of making passport. Forth was upholding law and punishing all sides invovling in sending IOE unprocedurally to abroad. Fifth was strengthening the regulation to give law for prventing the hapening of unprocedural IOE. Sixth was cooperating in developing the system adn integration to support data and information exchange (Source: Kennaker.go.id).

Protection towards IOE was also done continously through One Stop Service (OSS) in the area to repair the procedure of Indonesian Overseas Employements (IOE). OSS was formed to give the easiness and certainty in placing IOE. Ministry of Labor had also punished the company Private Executor of Indonesian Overseas Employment Placement (PEIOEP) which was proved to break the rule. There were 46 PEIOEP whose permission was revoked, 14 of them were because of sending IOE unprocedurally, 3 of them did not fulfill extension equirments, 2 PEIOEP involved with human trafficking, 23 of them did not extend their permission, and 4 PEIOEP resigned (Source: Kennaker.go.id).

Besides doing prevention and protection, Indonesia government also keeps trying to increase the productivity and welfare of people who become Indonesian Overseas Employements (IOE) abroad. One of the attempts was Productive Migrant Village which was meant for the villages with IOE. There were 4 main activities in this program. First was migration main service. Through migration main service, society or people who will work abroad could get the information and service in local village hall. The information are labor market, work guidance, information about working abroad and etc including arrangement of first documents. Second was productive attemp program. This activity was meant to help the IOE working abroad so that they have ability and interest to build productive works. With cooperating many sides, this program would be adjusted to local potention. Third was community parenting. With this program, IOE's children are taken care together by society in one leraning-teaching unit.the last was productive cooperative. This program was meant to strengthen productive works for a long time in the form of cooperation. To be informed, in 2017 there will be 100 villages which become productive migrant village in 50 regencies/cities and especially in East Nusa Tenggara there will be 20 productive migrant villages from 10 regencies/cities. Some of those regencies are locate in North Sumatra, Lampung, Banten, West Java, Central Java, East Java, West Borneo, East Nusa Tenggara, and West Nusa Tenggara (Source: Kennaker.go.id).

President Joko Widodo (Jokowi) plans to form department of placing and protecting IOE. This department will revise act no 39/2004 about placing and protecting Indonesian Overseas Employements in abroad. President Jokowi also gives instruction that the revision will only run under general norms only. Whereas the detailed things such as executor, organization structure, and others are mentioned in president decree, and to empower IOE protection, the president instructs government to form soon basic labors in contries where there are IOE. (Source: Liputan6.com). in the same time, BNP2TKI prevent bu socializing to the society so that they are not interested in sweet promises to get high salaries. (Source: Rappler.com)

CONCLUSION

Since war in Syria broke out, indonesian government applied moratorium on sending IOE to Syria. All IOE who entered Syria after September 2011 were considered as the victims of human trafficking. Since 26 May 2015 government hah published the decree of labor ministry no 260 yeart 2015 about stopping and forbiding IOE in many countries in the middle east area. After the moratorium was applied, sending IOE did not stop, even the amounts of sending them increased more. The Officer of Social Protection Department and Indonesian Law Department of the Ministry of Foreign Affair, Rahmat Hindiarta states there are many reasons why many IOE are still coming to Syria pasca-moratorium. First, Syria has never approved the existence of moratorium, and the demand of IOE in Syria is very high. Second, many illegal agents lure IOE by one stop service. Although repatriation programme is still be done, but due to the illegal sending of IOE to Syria, the end of this programme could not be decided. Legal protection for IOE was done through many ways, they are government commitment who cracks down the officials involving in sending IOE unprocedurally to abroad. Besides, the government also prevent IOE to go illegally through compounding in publishing passport. Ministry of Foreign Affairs contonously campaigns to aware the society in remoted area, forms Unit of Unprocedural IOE Prevention, strengthens the synergy among ministries/departments related to the issue, forms One Stop Service (OSS) to repair the procedure of Indonesian Overseas Employements (IOE), forms Productive Migrant Village.

Some efforts that were done and will be done by government showed serious intention to prevent sending Indonesian Overseas Employment (IOE) who become the victims of human trafficking thourgh some policies. However, there are some opinion which concluded the government has not actualized those policies.

SUGGESTION

The policies made by government, no matter how good they are, will not run well without support, help, and participation from many sides, so, to actualize all expectation, the roles from all sides are important. All sides are expected to actively help realizing the policies made by government

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