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## LEGAL POLITICS OF PROVIDING SOCIAL SECURITY FOR INDONESIAN MIGRANT WORKERS BASED ON THE CONCEPT OF CARE ETHICS

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### KEYWORDS

Ethics of Care, Social  
Security, Migrant  
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### ABSTRACT

This study aims to analyze how the legal politics of social security for Indonesian migrant workers is reviewed based on the concept of ethics of care, this research method uses the Normative Research method with a literature approach, the results of the study show that the provision of social security for Indonesian migrant workers has been carried out by the government in recent political legal developments, but on the one hand social security is only given to the extent of implementing public policy, The regulation of providing social security to Indonesian migrant workers is still considered not to provide social security, especially for the families of migrant workers in terms of social policy if in the future they, namely migrant workers, experience illness, unpaid salaries, to experience slavery, in the study of feminism theory there is criticism based on the concept of ethics of care where the need for the government in this case not only carries out its obligations in terms of public policy, but also in terms of social policy, especially social security for the family resilience of Indonesian migrant workers. The concept of ethics of care in providing social security for the families of migrant workers needs to be applied to the formation of a future policy by the government as mandated by Pancasila, namely in realizing social justice and welfare together (Social Welfare).

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### INTRODUCTION

Human rights are rights that are given by humans since they were born, this is given because of their dignity as human beings (Donnelly, 2013). The understanding that human rights are an absolute right inherent in the nature and existence of humans (inherent dignity) which must be respected, upheld, and protected or protected by the state, government, and law, as well as by everyone, which implies that the rights of an absolute nature cannot be revoked (inalienable), cannot be overridden (interrogable) and are not allowed to be violated by anyone.

Protection and fulfillment of human rights is a form of action that needs to be prioritized in doing or implementing something so that there is no violation of human rights, this is also contained in international law regarding the standardization of human rights known as the 1948 UDHR, In this case respect for human rights, the state as a party and the main subject in international law to provide protection, The 1948 UDHR has outlined 30 human rights that need to be used as a guideline and realized by a country in producing policies, one of which is the right to social security, emphasizing that all people are entitled to social security for the

implementation of economic, social and cultural rights.

As in the formation of a policy by a state, there is a role of legal politics in it which is an official policy line on what laws will be enforced, either by making new laws, or by replacing old laws in order to achieve state goals, if seen, the realm of policy making aims to realize and give birth to a public policy, so it can also be said that legal politics touches the most substantial things in a country, namely legislation. based on the description above, as for the background of the author to raise this research topic regarding Protection *Pekerja Migran Indonesia* (PMI).

Protection of Indonesian Migrant Workers working abroad is something that needs to be of particular concern to the government in providing fulfillment of their human rights, starting from providing protection based on a clear legal umbrella, access to the law itself, realization of protection and provision of social security (Bareta & Ispriyarso, 2018).

The idea of implementing ethics in various fields is the development of the human mindset of its needs in an ethics (Azizah et al., 2023). This also gives birth to a perspective that ethics has a different view from the concept of human rights, because ethics in solving a problematic uses a moral approach rather than the concept of human rights which only uses a standard rule-based approach.

In this research paper, the author will focus on the legal politics of social security for Indonesian migrant workers in terms of the concept of ethics of care theory concept which is one part of the study of feminism theory, the vulnerability of Indonesian migrant workers abroad in working there needs to be an element of providing clear social security by the Indonesian government, as there is a great opportunity for the vulnerability of work accidents during work, the government's efforts in providing social security in its development to date have provided protection for migrant workers who will work abroad, This can be traced to the establishment of several social security regulations in regulations relating to migrant workers which aim to protect the rights of migrant workers as a form of state responsibility to protect workers, but on the other hand, social security for the families of migrant workers is not obtained by them when migrant workers working abroad in this case are faced with cases such as experiencing illness, unpaid salaries to experience slavery during work (Huang et al., 2024).

As previous research conducted by Naili Azizah, Annis Muannisa, and Nurokhmah in her journal entitled "shows that the concept of ethics of care initiated by Carol for the protection of women workers in the company needs to be in this case the company re-conceptualizes human rights from a woman's point of view to overcome masculinity in the distribution of rights so that the company can feel the fate of its workers.

Based on the description above, the fundamental research difference to this research is that this research is more focused on legal politics as *ius constituendum* in policy making and law formation by the Indonesian government in the future, underlying a policy in this case needs to be based not only on the formation of public policy alone, but the need to pay attention to the social side in this case is the provision of social security to Indonesian migrant workers, namely family resilience, which is currently still felt to have not given the full meaning of social security itself, therefore there needs to be an addition to the content/ content of the regulation of social security for Indonesian migrant workers by being reviewed based on the ethical theory of care.

The purpose of this research is to review the provision of social security to the families of migrant workers who are still not provided by the government, in this case reviewed based

on the concept of ethics of care theories, it needs to be an urgent of the government in realizing social justice and welfare Together, the benefit of this research itself is to provide recommendations, especially to the Indonesian government in forming a policy that is expected in the future not only to pay attention in terms of public policy, but also the need to pay attention in terms of social policy, this is based on the theory of feminism, namely the concept of ethics of care in this case is the provision of social security to the family resilience of migrant workers.

Based on the description above, it is appropriate for the Indonesian government to form a policy by considering the morality side not only in terms of the formation of public policy alone, but also the need for the formation of social policies based on the ethics of care in future legal political planning, in this case the provision of social security to the resilience of migrant workers' families, Therefore, from the above problems, this is the background for the author to compile the results of research (journal) entitled "The political law of providing social security for migrant workers based on the concept of ethics of care" while the focus of the problem formulation of this journal is related to how the political law of providing social security for Indonesian migrant workers is reviewed based on the concept of ethics of care.

## **METHOD RESEARCH**

The definition of method in this case is a guideline, namely how an expert / scientist in exploring, studying, and understanding the stages to be faced (Azizah et al., 2023), as based on the title of this research (Narbuko & Achmadi, 2005), the author in conducting and examining this paper research is to use the type of Normative juridical research (Normative law) which is by studying, The method of data collection in this legal research that the author uses is Literature Study which conducts a study of secondary data or which can also be referred to as a document study because the problem under study is closely related to Law In Books, which then the materials are analyzed qualitatively (Soemitro, 1990).

## **RESULTS AND DISCUSSION**

### **Legal Politics of Providing Social Security for Indonesian Migrant Workers**

Talking about migrant workers with problems that arise in this case is associated with issues regarding Human Rights (HAM), where the problems of Indonesian migrant workers are still many that have not yet been resolved by the Indonesian government, as efforts continue to be made by the Indonesian government in providing protection and fulfillment of the human rights of migrant workers, on the one hand also the provision of social security has been carried out as an effort to provide guarantees to migrant workers during, before and after work.

Political law in Indonesia in its development regarding the provision of social security can be traced has been previously regulated in several regulations, one of which is law number 39 of 2004 concerning the placement and protection of Indonesian workers abroad, the birth of the law in the era of president Megawati Soekarnoputri in several articles contained therein has provided rules regarding social security, as contained in article 26 paragraph 2 point e which reads "TKI has been included in the labor social security program and / or has an insurance policy, in another article also the provision of social security is broadly translated in article 55 of the third section regarding work agreements, social security for migrant workers can be obtained if the TKI has signed a work agreement (PK) before departure where the work

agreement is prepared by the implementer of the placement of private TKI, as for the provisions in the work agreement mentioned in article 55 paragraph 5, namely:

- a. User name and address
- b. Name and Address of the Migrant Worker
- c. Position or type of work of the migrant worker
- d. Rights and Obligations of the parties
- e. Working conditions and terms which include working hours, wages and payment procedures, rights to leave and rest time, facilities and social security and
- f. Term of employment agreement (Indonesia, 2004).

If you look at the article, the implementation of social security for migrant workers in the work agreement does not seem to be overly emphasized, the social security obtained is also not regulated in detail what social security will be obtained by migrant workers.

In its development, since the enactment of Law Number 39 of 2004 it is felt that it has not provided protection, guarantee and fulfillment of human rights by Indonesian workers (TKI) because the law emphasizes more on procedural arrangements only, therefore the birth of law number 18 of 2017 concerning the protection of Indonesian migrant workers (UUPMI) as a renewal and improvement of protection, Basically, the law on the protection of Indonesian migrant workers is a form of commitment from the ratification of the Convention on the Rights of migrant workers and members of their families, the birth of this law is a breath of fresh air for Indonesian workers, changing the name from Indonesian workers to Indonesian migrant workers as an effort to respect the PMI which aims to be more humanized existence and role.

Another purpose of the establishment of this law is to emphasize a greater role for the government and also aims to reduce the role of the private sector in the protection of Indonesian migrant workers, one of which is in the scope of providing PMI social security. Talking about social security, this law has also been regulated in detail, namely in the fifth section regarding social security for Indonesian migrant workers, especially those regulated in article 29 which reads:

**Pasal 29**

1. In an effort to protect Indonesian Migrant Workers, the Central Government organizes Social Security for Indonesian Migrant Workers and their families.
2. The implementation of the Social Security program for Indonesian Migrant Workers and their families is part of the National Social Security System.
3. The implementation of Social Security as referred to in paragraph (1) is managed by the Social Security Organizing Agency.
4. For certain risks that are not covered by Social Security, the Employment Social Security Agency may cooperate with government or private institutions.
5. Further provisions regarding Social Security for Indonesian Migrant Workers are specifically regulated by Ministerial Regulation.

When viewed, the provision of social security to migrant workers is more specifically regulated clearly than the previous regulation, on the other hand, to protect the law of migrant workers, the law provides arrangements that migrant workers need to fulfill several conditions to work in the destination country of placement, one of which is that migrant workers need to have a

social security system and/or insurance that protects foreign workers, The regulation of the placement of social security organizers and the provision of social security to PMI is authorized by the ministry and agency, while the Ministry and the agency are the Ministry of Manpower and the agency in question is BPJS, Law Number 18 of 2017 in its enactment has also given birth to several implementing regulations as a support in carrying out the law, as for the implementing regulations consisting of:

- a. Regulation of the Minister of Manpower (Permenaker) Number 18 of 2018 concerning Social Security for Indonesian Migrant Workers. (Amended by Regulation of the Minister of Manpower of the Republic of Indonesia Number 4 of 2023 concerning Social Security for Indonesian Migrant Workers).
- b. Government Regulation (PP) No. 22 of 2022 concerning the placement and protection of Migrant Commercial Ship Crews and Migrant Fisheries Ship Crews.

Regarding the provision of social security for Indonesian Migrant Workers (PMI) is further regulated in the Ministerial Regulation (Permen) of Manpower of the Republic of Indonesia Number 18 of 2018 concerning Social Security for Indonesian Migrant Workers which has been amended by Permenaker Number 4 of 2023 concerning social security for migrant workers, in general, the scope of the PMI social security program presents 3 programs including compensation for Work Accident Insurance (JKK), Death Insurance (JKM), and Old Age Insurance (JHT) (Adha et al., 2020) In the new regulation there is also an increase in protection, if previously migrant workers who experience physical violence and rape only get care and treatment carried out by BPJS, in the new regulation they get financial assistance to prospective migrant workers or migrant workers who experience acts of physical violence and rape, as well as return ticket assistance to migrant workers who are placed not in accordance with the agreed work agreement.

Seeing the social security provided and regulated by the Permenaker, this is a very appropriate and good legal political step, but on the one hand the cases of migrant workers where they experience illness during the working period, unpaid salaries to experience acts of slavery during work have not been regulated, especially in this case the provision of social security to the families of migrant workers.

### **Social security for Indonesian migrant workers based on the concept of ethics of care**

Coined by Carol Gillian in 1982, this ethic emphasizes the importance of human relations, human relationships and rejects absolute, objective and universal approaches (Wuryandari, 2022). The ethics of care is one of the schools of moral philosophy which offers a moral approach as an action to protect, care for, heal and provide support, emphasizing the application of social care, the ethics of care is also a form of fighting for a just social order, the analysis of the ethics of care will be able to help a government in power how to make decisions and what types of policies to take, so as to understand how a policy can affect people who are in different situations (Hankivsky, 2014).

If it is related to the formation of a policy, it can be seen in 2 perspectives, namely the formation of public policy and social policy. the understanding of public policy is a policy that is formed relating to actions implemented by the government, it has an impact on the general

public, as for its scope such as the fields of taxation, labor law, agriculture, and eradication of corruption which aims to prosper the community (Cho et al., 2024).

Furthermore, regarding the definition of social policy, which is an effort that involves the formation of policies, principles, regulations and guidelines, which looks at how social policy is formed in an effort to overcome challenges such as economic and social, access to health services, globalization and gaps that arise in people's lives, as well as coverage such as in the fields of education, health, employment, and community services which also aim to improve people's welfare (Platt, 2021).

Although both have the same goal, namely the welfare of society, there are fundamental differences between public policy (Public Policy) and social policy (Social Policy), as for the differences, namely the first social policy is more aimed at certain communities or groups, while public policy is more aimed at the general public, the second is that social policy is more focused on handling and resolving certain issues, such as racial, health, education and economic disparities, while public policy includes all government actions that affect the wider community (Alcock, 2022).

especially in public policy, regarding its formulation both from the formation to the effort to find an answer to the problem is always associated with the ethics of rights, as well as in terms of regulating and realizing a policy, because the formation of public policy is currently only based on rights-based legal political planning, so that in its development, the habit of looking for an answer to the problem is only based on the rules, As produced and advocated by the international human rights discourse, if it is associated with the importance of applying and incorporating the concept of ethics of care into public policies formed by the government, then the concept can answer, consider and explain a problem in a moral context that is often ignored or not even seen by human rights (Greenswag, 2019). The above description provides a fundamental difference between the ethics of rights and the ethics of care as shown in Table 1 below:

**Table 1**  
**Ethics of rights and ethics of care**

<b>Ethics of Care</b>	<b>Rights Ethics</b>
Individuals are interdependent	Separate individuals
Relationships in the form of attention and answer	Relationship is hierarchical or contractual
Caring is seen as a strength	Self-reliance is seen as a strength
The importance of interdependence and Interpersonal connections	The importance of autonomy and self-sufficiency
The needs of others are important	Other people's rights are important

(Adhariani et al., 2017)

When viewed in its development, the criticism of political planning for the formation of regulations in Indonesia in the political arena of law has been limited to only providing political planning based on the "ethics of rights" in the formation to the results of public policy, focusing and emphasizing solely the protection and provision in the context of "rights", This, when viewed from the study of feminism theory, requires the addition of new formulations that must

be contained and considered in the formation of regulations by the Indonesian government in the future, where it is necessary to see and consider the reality of conditions and issues that occur in society, the elements of morality and care, not only to the universal doctrines that apply.

The provision of social security for Indonesian Migrant Workers (PMI) if connected to the normative ethical theory, namely the Ethics of Care, the Indonesian government's efforts can be said to have been carried out in providing social security for PMI as mentioned above, but the social security is only given to the scope of Public Policy, This can be seen by the provision of PMI protection social security program assistance including pre-placement protection, placement period, and after placement of PMI, providing compensation for migrant workers who experience acts of physical violence and rape, to providing return ticket assistance for migrant workers who are placed not in accordance with the employment agreement, this is implemented and expertized by the insurance company, namely the Social Security Organizing Agency (BPJS).

On the other hand, regarding the provision of social security in terms of elements of social policy, especially in the realm of providing family resilience guarantees for migrant workers, it is still not specifically regulated, it is important to regulate where the role of the government needs to also be present to provide social security to the families of migrant workers in terms of social policy if in the future they, namely migrant workers, are faced with cases such as experiencing illness within the span of work which causes migrant workers to be unable to produce wages, not being paid and experiencing acts of slavery during work which are often experienced by Indonesian migrant workers (PMI) who work abroad, although in some cases not being paid to experience slavery experienced by Indonesian migrant workers who are not in accordance with procedural (Illegal), If the concept of ethics of care is implemented and made the basis of legal political planning by the government, then the presence of the government in providing social security for the family resilience of migrant workers has realized respect for human rights, as well as in terms of social justice as a hope in realizing social welfare as mandated in Pancasila.

## CONCLUSION

The political law of social security for Indonesian migrant workers to date pursued by the government has shown a better direction, but the provision of social security is only limited to several categories of insurance such as work accident insurance, old age insurance, and death insurance, on the one hand social security for the family resilience of migrant workers is still not regulated, considering that Indonesian migrant workers who become the backbone of the family if they experience illness, unpaid salaries, and experience slavery during the work of the PMI family do not get social security because it has not been regulated in the existing regulations, reviewed based on the concept of ethics of care, looking from the perspective of the formation of a policy so far the political planning of the formation of regulations in Indonesia has only focused on the ethical elements of rights alone and the ethics of care are still often put aside, this has become an urgency by the Indonesian government to regulate and implement the concept of ethics of care into the next draft of Political Law, so that in the future policies made by the Indonesian government can pay more attention to the morality side as an

effort to realize common welfare and social justice, especially in this case the provision of social security for the families of Indonesian migrant workers.

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