

## **Legal Analysis Of Judge's Decision On The Imposition Of Criminal Sanctions For Placement of Illegal Indonesian Migrant Workers Study Of Decision NO. 107/PID.SUS/2024/PN RHL**

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### **Abstract**

*The method used in this study is normative legal research, namely research on problems by looking at the sources of applicable regulations related to the title of Legal Analysis of Judge's Decisions Regarding the Imposition of Criminal Sanctions for the Placement of Illegal Indonesian Migrant Workers Study of Decision No. 107 / PID.SUS / 2024 / PN RHL. The legal policy stipulated in this decision is based on Article 81 of Law of the Republic of Indonesia Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, as well as other relevant laws and regulations, so that the results of the decision try and determine that the defendant has been proven legally and convincingly guilty of committing the crime of "An individual who carries out the placement of Indonesian Migrant Workers". Sentencing the defendants to a criminal sentence, therefore, with imprisonment for 8 (eight) months each. In the theory of punishment, it must be guided by the basic values (grund norm) of the law itself which contain elements of justice, usefulness, and legal certainty. According to the author, in decision No. 107/PID.SUS/2024/PN RHL already contains an element of justice, because the judge does not favor one party and the punishment for the perpetrators of the crime is in accordance with the laws and regulations. The element of benefit is that the sentence imposed can have a deterrent effect on perpetrators of crimes who place Indonesian Migrant Illegal Workers illegally, also as an appeal to prospective Indonesian Migrant Illegal Workers to be more careful in choosing a company that places Indonesian Migrant Illegal Workers.*

**Keywords:** *Legal Analysis, Judge's Decision, Sentencing, Criminal Sanctions, Placement, Illegal Workers, Indonesian Migrants*

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## **INTRODUCTION**

Illegal Placement of Indonesian Migrant Workers is a non-procedural placement that includes all criminal acts committed by individuals/corporations/legal entities against Indonesian Migrant Workers that result in the potential for human trafficking, exploitation, victims of violence, arbitrariness, crimes against human dignity, and other treatment that violates human rights (Rodríguez, Velastequí, 2019).

The placement of illegal migrant workers has grown rapidly like a business and adapted to the labor market (Kiki et al., 2021). Preventive measures require a comprehensive strategy starting from before departure or placement. The development of human trafficking crimes (TPPO), such as the placement of illegal migrant workers, does not occur in a vacuum. The cause is the economic gap that makes it difficult for people to access jobs. People are then tempted by jobs that only offer attractive salaries abroad (Mahardika, 2020).

That one example of a case that occurred in the jurisdiction of Rokan Hilir Regency is that Defendant I Hendri Avialdi alias Hendri Bin Rusli (deceased) together with Defendant II Ahmad Muhajir alias Geleng, on Wednesday, January 3, 2024 at approximately 03.00 WIB or at least at another time in January 2024 or at least at another time in 2024, at Jalan Lingkar Bundaran Kepenghuluan Panipahan Darat, Pasir Limau Kapas District, Rokan Hilir Regency or at least at another place that is still included in the jurisdiction of the Rokan Hilir District Court, who has the authority to examine and try this case, "those who do, who order to do and

who participate in doing the act, Carrying out the Act Individuals are prohibited from carrying out the placement of Indonesian Migrant Workers, ". the act was carried out by the defendant in the following manner Starting on Wednesday, January 3, 2024 at around 00.30 WIB, Head of Criminal Investigation Unit of Panipahan Police, BRIPKA RAHMAD ILYAS, received information from the public that could be trusted that there would be an illegal migrant worker who was about to leave Pasir Limau Kapas District, Rokan Hilir Regency to Malaysia, where the migrant worker came from North Sumatra province to Pasir Limau Kapas District, after receiving this information, Head of Criminal Investigation Unit of Panipahan Police reported the information to Panipahan Police Chief AKP Heppy Yendri, after reporting to Panipahan Police Chief, Head of Criminal Investigation Unit of Panipahan Police and Panipahan Police Criminal Investigation Unit conducted a series of investigations into the information, Then on Wednesday, January 3, 2024 at around 04.00 WIB, at the Panipahan Roundabout, Defendant Hendri Avinaldi alias Hendri Bin Rusli was stopped by members of the Panipahan Police then asked Defendant Hendri Avinaldi alias Hendri Bin Rusli is related to the departure of illegal Indonesian migrant workers(McCauley, 2021) .

Then approximately 30 (thirty) minutes later gradually came the person who was the Defendant Hendri Avinaldi alias Hendri Bin Rusli did not know the Indonesian citizen who at that time was also stopped by the Panipahan Police every time the Police asked "WHERE ARE YOU GOING" and answered "TO MALAYSIA" until 10 (ten) Indonesian citizens and 11 (eleven) Foreign Citizens were gathered. Then at approximately 07.00 WIB we were taken to the Panipahan Police to be registered and at that time the Defendant Hendri Avinaldi alias Hendri Bin Rusli knew that the Defendant II AHMAD MUHAJIR alias GELENG was also secured by the Panipahan Police as the captain of the ship who was going to Malaysia.

That the costs or expenses incurred by Indonesian Migrant Workers and Rohingya Ethnic Group to leave for Malaysia illegally vary from Rp. 4,500,000,- (four million five hundred thousand) to Rp. 5,500,000,- (five million five hundred thousand) and the money was handed over by the Illegal Migrant Workers to Mr. JOHAN (DPO).

Based on the description that has been presented above, it is important to conduct a study on the Legal Analysis Of Judge's Decision On The Imposition Of Criminal Sanctions For Placement Of Illegal Indonesian Migrant Workers Study Of Decision NO. 107/PID.SUS/2024/PN RHL

## **RESEARCH METHODS**

This study uses a normative legal research method. Normative legal research is researching law from an internal perspective with the object of research being legal norms. In other words, legal research that places law as a building of a norm system. The norm system in question is regarding the principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). This study uses a legislative approach and a conceptual approach . The legislative approach is used to get an overview of the Judge's Decision On The Imposing Of Criminal Sanctions For The Placement Of Indonesian Migrant Illegal Workers Study Of Decision nO. 107/PID.SUS/2024/PN RHL

## **RESULT AND DISCUSSION**

### **1. Position of the Case in the Judge's Decision Regarding the Imposition of Criminal Sanctions for the Placement of Illegal Indonesian Migrant Workers Study of Decision NO 107/PID.SUS/2024/PN RHL**

Starting on Wednesday, January 3, 2024 at around 00.30 WIB, Head of Criminal Investigation Unit of Panipahan Police, BRIPKA RAHMAD ILYAS, received information from the public that could be trusted that there would be an illegal migrant worker departure who was about to depart from Pasir Limau Kapas District, Rokan Hilir Regency to Malaysia, where the migrant worker came from North Sumatra province to Pasir Limau Kapas District, after receiving this information, Head of Criminal Investigation Unit of Panipahan Police reported the information to Panipahan Police Chief AKP HEPPY YENDRI, after reporting to Panipahan Police Chief, Head of Criminal Investigation Unit of Panipahan Police and Panipahan Police Criminal Investigation Unit conducted a series of investigations into the information, Then on Wednesday, January 3, 2024 at around 04.00 WIB, at the Panipahan Roundabout, Defendant Hendri Avinaldi alias Hendri Bin Rusli was stopped by members of the Panipahan Police then asked Defendant Hendri Avinaldi alias Hendri Bin Rusli:

- Panipahan Police: YOU ARE THE ONE NAMED HENDRIK
- Defendant Hendri Avinaldi alias Hendri Bin Rusli: YES SIR
- Panipahan Police: TKI SHIP MECHANIC
- Defendant Hendri Avinaldi alias Hendri Bin Rusli: YES SIR
- Panipahan Police: WHERE IS THAT PERSON?
- Defendant Hendri Avinaldi alias Hendri Bin Rusli: IF THAT PERSON DOESN'T KNOW FOR SURE WHERE SIR IS, BUT CERTAINLY HE WAS HERE YESTERDAY
- Panipahan Police: WHAT IS UP?
- Defendant Hendri Avinaldi alias Hendri Bin Rusli: I DON'T KNOW ABOUT THAT

then approximately 30 (thirty) minutes later gradually came the person who the Defendant Hendri Avinaldi alias Hendri Bin Rusli did not know the Indonesian citizen who at that time was also stopped by the Panipahan Police every time the Police asked "WHERE ARE YOU GOING" and answered "To Malaysia" until 10 (ten) Indonesian citizens and 11 (eleven) Foreign Citizens were gathered. Then at approximately 07.00 WIB we were taken to the Panipahan Police to be registered and at that time the Defendant Hendri Avinaldi alias Hendri Bin Rusli knew that the Defendant II Ahmad Muhajir alias Geleng was also secured by the Panipahan Police as the captain of the ship who was going to Malaysia.

(Penerapan et al., 2020) That the costs or expenses incurred by Indonesian Migrant Workers and Rohingya Ethnic Group to depart for Malaysia illegally vary from Rp. 4,500,000,- (four million five hundred thousand) to Rp. 5,500,000,- (five million five hundred thousand) and the money was handed over by the Illegal Migrant Workers to Mr. Johan (DPO). That the role of Defendant I Hendri Avinaldi alias Hendri Bin Rusli as a mechanic who repairs the engine of the ship/wooden boat that will depart for Malaysia is:

On December 22, 2023, Defendant I Hendri Avinaldi alias Hendri Bin Rusli was given a salary of Rp1,000,000 (one million rupiah) which was previously in accordance with the agreement and the money had been received by Defendant I Hendri Avinaldi alias Hendri Bin Rusli. Then on January 1, 2024, Defendant I Hendri Avinaldi alias Hendri Bin Rusli should have received a salary of Rp1,000,000 (one million rupiah), (Rika Widianita, 2023) but it had not been paid to Defendant I Hendri Avinaldi alias Hendri Bin Rusli because Defendant I Hendri Avinaldi alias Hendri Bin Rusli would receive the money after Defendant I Hendri Avinaldi alias Hendri Bin Rusli returned to Batu Bara and according to the agreement would meet at the Simpang Kantor Pos Sungai Pirirng Sumut.

That the role of Defendant II Ahmad Muhajir alias Geleng as a cook and if anyone asks about who the Captain is then Defendant II Ahmad Muhajir alias Geleng is the Captain of the ship, at that time the agreement that Defendant II Ahmad Muhajir alias Geleng with Mr. Johan would be given wages/salary of Rp. 3,000,000 (three million rupiah), and until now Defendant II

Ahmad Muhajir alias Geleng has not received the wages/salary because he has not had time to leave and has been caught And according to the agreement with Mr. Johan that Defendant II Ahmad Muhajir alias Geleng's wages/salary will be received by Defendant II Ahmad Muhajir alias Geleng after returning from Malaysia

Based on the statement of Expert Fanny Wahyu Kurniawan, S.Kom who is a civil servant at BP3MI Riau (Head of BP3MI Riau) that Defendant I Hendri Avinaldi Alias Hendri Bin Rusli as a mechanic who repairs the ship and Defendant II Ahmad Muhajir Alias Geleng as a ship's captain or as a cook on the ship and Mr. Johan (DPO) as a recruiter and owner of the ship can be suspected of committing a crime of Protection of Indonesian Migrant Workers and/or Eradication of Criminal Acts of Human Trafficking according to Article 68 and Article 69 can be subject to criminal provisions according to Article 81 and Article 83 with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 15,000,000,000 (fifteen rupiah) and Article 2 of Law of the Republic of Indonesia Number 21 of 2007 Law on the Eradication of Criminal Acts of Human Trafficking with a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years and a fine at least Rp. 120,000,000.00 (one hundred and twenty million rupiah). The Defendant's Actions Are Regulated and Threatened with Criminal Penalties for Violating Article 81 in conjunction with Article 69 of the Republic of Indonesia Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers *in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code* .

(Rodríguez, Velastequí, 2019)In the indictment, the public prosecutor also stated that the defendant's actions were regulated and threatened with (Supriono, 2018)criminal penalties in violation of Article 83 in conjunction with Article 68 of the Republic of Indonesia Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code and the defendant's actions were regulated and threatened with criminal penalties in violation of Article 2 of the Republic of Indonesia Law Number 21 of 2007 concerning the eradication of the crime of human trafficking in conjunction with Article 55 Paragraph (1) 1 of the Criminal Code.

(Siahaan et al., 2023)After going through the trial examination mechanism at the Rokan Hilir District Court, the Public Prosecutor at the Rokan Hilir District Attorney's Office prosecuted the defendant so that the Panel of Judges at the Rokan Hilir District Court who examined and tried this case decided as follows:

### **Demands**

1. Stating that Defendant I Hendri Avialdi alias Hendri Bin Rusli together with Defendant II Ahmad Muhajir alias Geleng was proven legally and convincingly guilty of committing the crime " *those who committed, ordered the act to be committed and those who participated in the act, committed the act Every person is prohibited from carrying out activities that do not meet the requirements for Indonesian migrant workers*", as regulated and is subject to criminal penalties in the Second Indictment of the Public Prosecutor for Violating Article 83 In conjunction with Article 68 of the Republic of Indonesia Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers *Jo Article 55 Paragraph (1) 1st of the Criminal Code* .
2. Sentencing the defendant I Hendri Avialdi alias Hendri Bin Rusli together with defendant II Ahmad Muhajir alias Geleng with a prison sentence of **1 (One) Year** minus the detention that has been served and a fine of Rp. 500,000,000 (five hundred million rupiah) subsidiary to 3 (Three) months imprisonment with an order that the defendant remain in detention.
3. Stating evidence in the form of:
  - 1 (one) unit of OPPO A5s brand cellphone in red with IMEI number 864377043114872/864377043114864

- 1 (one) unit of OPPO A78 5G brand cellphone, black color with IMEI number 862581000943574/862581060943566  
(Confiscated For The State)
4. Charge the defendant with paying court costs of Rp. 2,000 (two thousand rupiah).

Then, regarding the Public Prosecutor's Demands, the Panel of Judges at the Rokan Hilir District Court issued a verdict as per the Rokan Hilir District Court Decision No. 107/Pid.B/2024/PN Rhl, the verdict of which reads:

To judge:

1. Declaring that Defendant I Hendri Avialdi alias Hendri Bin Rusli (deceased) and Defendant II Ahmad Muhajir alias Geleng above, have been proven legally and convincingly guilty of committing the crime of jointly carrying out placement that does not meet the requirements for Indonesian Migrant Workers as stated in the second indictment;
2. Sentencing the Defendants to 8 (eight) months imprisonment each;
3. Determine that the period of arrest and detention that the Defendants have undergone will be deducted in full from the sentence imposed;
4. Determine that the Defendants remain in detention;
5. Establishing evidence in the form of:
  - 1 (one) unit of OPPO A5s brand cellphone in red with IMEI number 864377043114872/864377043114864;
  - 1 (one) unit of OPPO A78 5G brand cellphone, black in color with IMEI number 862581000943574/862581060943566;
6. Charge the Defendants to pay court costs of Rp. 5,000.00 (five thousand rupiah) each.

## **2. Legal Analysis Of Judge's Decision On The Imposition Of Criminal Sanctions For Placement Of Illegal Indonesian Migrant Workers Study Of Decision NO. 107/PID.SUS/2024/PN RHL;**

As has been explained in the consideration of the elements above based on the legal facts revealed in court, namely in connection with the statements of the Witnesses, the statements of the Defendants themselves, and in connection with the evidence in this case, the Defendants have legally and convincingly committed a criminal act that fulfills the elements of Article 81 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers in conjunction with Article 55 paragraph (1) 1 of the Criminal Code.

The imposition of criminal sentences on the Defendants is not intended as retribution for the Defendants' actions, but must be considered as an effort to foster and re-awaken awareness and as a lesson so that the Defendants can reflect on their wrong actions that violate the law and harm other parties, so that later the Defendants when they return to society will be individuals who are aware and obedient to the rules of law as good citizens, and therefore the imposition of criminal sentences according to the Panel of Judges is more focused on the preventive nature of the Defendants.

In addition, against the Defendants because it has been proven legally and convincingly to have committed a crime as regulated and threatened in Article 81 of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers in conjunction with Article 55 paragraph (1) Ke-1 of the Criminal Code, where the punishment is cumulative, namely in addition to imprisonment, a fine must also be imposed, then the Defendants should be sentenced to a fine and if the fine is not paid, it must be replaced with imprisonment. This is in accordance with Article 222 paragraph (1) of the Criminal Procedure Code which states that the Defendant must also be burdened with paying court costs. In this case, the Defendants have been subject to

legal arrest and detention, so based on Article 22 paragraph (4) of the Criminal Procedure Code and Article 33 paragraph (1) of the Criminal Code, the period of arrest and detention that has been served by the Defendants will be deducted in full from the sentence imposed. And because the Defendants were detained and the detention of the Defendants was based on sufficient reasons, and no reasons were found to divert, suspend or stop the detention of the Defendants, then based on the provisions of Article 193 paragraph (2) sub b of the Criminal Procedure Code it is necessary to determine that the Defendants remain in detention.

(Zakariya, 2022)The legal policy stipulated in this decision is based on Article 81 of Law of the Republic of Indonesia Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, as well as other relevant laws and regulations, so that the results of the decision to try and determine that the defendant has been proven legally and convincingly guilty of committing the crime of "An individual who places Indonesian Migrant Workers". Sentencing the defendants to a criminal sentence, therefore, with imprisonment for 8 (eight) months each . In the theory of punishment, it must be guided by the basic values (grund norm) of the law itself which contain elements of justice, usefulness, and legal certainty. According to the author, in decision No. 107 / PID.SUS / 2024 / PN RHL there is already an element of justice, because the judge does not side with either party and the punishment for the perpetrators of the crime is in accordance with the laws and regulations. The element of usefulness is that the sentence imposed can have a deterrent effect on perpetrators of crimes that place Indonesian Migrant Illegal Workers illegally, also as an appeal to prospective Indonesian Migrant Illegal Workers to be more careful in choosing a company to place Indonesian Migrant Illegal Workers

## CONCLUSION

The judge's decision in imposing criminal sanctions on perpetrators of illegal placement of Indonesian migrant workers is a reflection of the application of the law that aims to provide a deterrent effect and protect the rights of migrant workers. The legal analysis of this decision includes aspects of legal certainty, justice, and benefits for the parties concerned.

From the various decisions analyzed, it was found that the criminal sanctions imposed can vary depending on factors such as the level of guilt of the defendant, the impact caused, and the judge's considerations in interpreting applicable laws and regulations, such as Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers and the Criminal Code.

Although the law has regulated strict sanctions, there are still challenges in implementation, such as weak supervision and obstacles in law enforcement. Therefore, increased coordination is needed between the government, law enforcement officers, and other stakeholders to ensure that the judge's decision is able to reflect justice and provide maximum protection for Indonesian migrant workers.

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