



## The Implementation of Legal Protection for Migrant Workers in Indonesia

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### ABSTRACT

Indonesia as a country with a large population causes an increase in the number of workers that is not accompanied by the availability of jobs. So that many workers migrate to get workers, one of which is abroad. Migrant workers who are abroad need legal protection to avoid violations of the law such as physical violence, sexual harassment, unpaid wages, and many others. For this reason, the Indonesian government has formed Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers as an effort to protect its citizens. This study uses qualitative methods and data collection using literature studies. The data used are in the form of journals, proceedings, books, and other related literature that support the problems discussed in this study.

### 1. Introduction

Currently, Indonesia is still considered to be underdeveloped. This situation has led to several problems, one of which is related to the population size. The population in Indonesia increases significantly every year, affecting the labor market. Due to the limited number of job opportunities, this increase in the workforce cannot be distributed effectively. As a result, unemployment rises, which is an additional issue. Job seekers migrate due to the high unemployment rate in Indonesia, whether relocating within the country or abroad.

Legal protection for Indonesian workers working abroad needs to receive deep attention and implementation because the placement of Indonesian Migrant Workers (PMI) to work outside the territory of the Unitary State of the Republic of Indonesia is one of Indonesia's goals, as stated in the fourth paragraph of the 1945 Constitution's Preamble: "...encompassing the entire Indonesian nation and all the Indonesian homeland, advancing the general welfare, educating the nation's life, and participating in the maintenance of world order based on eternal peace and social justice." The nation's objectives are the state's responsibility to provide protection for its citizens, both within the territory of the Unitary State of the Republic of Indonesia and those outside its borders (in other countries) (Lahaling, Hijrah, Riza, Bachri, & Ilyas, 2015).

Indonesian citizens working to fulfill their needs and develop their lives by migrating to other countries is part of their nature as humans who always want changes in their lives. Basically, humans try to work to fulfill their basic needs. Indonesian Migrant Workers choose the right to work in utilizing their power or potential to produce services or goods for employers/users/employers who are rewarded with wages as a result of the work produced by Indonesian Migrant Workers (PMI) to meet the needs of employees and their families. Workers as Indonesian citizens have the right to obtain fair and humane employment and welfare. Article 27 Section (2) of the 1945 Constitution (hereinafter referred to as the 1945 Constitution) guarantees this kind of protection under the constitution. Every citizen has the right to work and a decent livelihood for humanity, according to Article 27 Section 2. This includes the rights of Indonesian Migrant Workers (PMI) in the field of employment and a decent livelihood. This also means that there is a guarantee of protection for PMI and their families when working in other countries. Such protection should be felt and enjoyed by Indonesian Migrant Workers (PMI) and their families in other countries (placement countries). The regulation of protection as an Indonesian citizen has been explained in the explanation of the Protection of Indonesian Citizens. In accordance with Law Number 26/2006 on Citizenship, the Government is obliged to provide maximum protection to every Indonesian citizen, including those working abroad, in times of need, both at home and abroad (Kristiadi, Yulio, Subekti, & Raharjo, 2022).

An example of a case of torture of Indonesian Migrant Workers (PMI) abroad is Sumiati Binti Salam Mustapa, a 23-year-old woman who took a job as a PMI at Saudi Arabia in 2010. Her employer slit her mouth during torture. Sumiati required intensive hospitalization due to severe injuries to her legs, face, and entire body. Sumiati was not a legal migrant worker

but illegally entered Saudi Arabia and was subjected to torture. Thus, the government needs to work harder to protect migrant workers because of the many problems that arise. Previous government policies, according to Law Number 39/2004 on the Placement and Protection of Indonesian Migrant Workers Abroad, did not seem to support migrant workers and instead harmed their interests abroad. This was due to the large number of unresolved cases, which led the Indonesian government to be criticized for not being proactive in protecting Indonesian workers abroad physically, financially, and especially legally (especially the issue of migrant workers in Malaysia). As such, Law Number 18/2017 on the Protection of Indonesian Migrant Workers was enacted on November 22, 2017. This law mandates strict legal supervision and protection for migrant workers before, during, and after employment (Karamoy, Deicy N, Paseki, & Tantri, 2022).

Regarding protection policies, Indonesian Migrant Workers (PMI) are expected to address, resolve, and overcome the issues that have long plagued Indonesian society, the Indonesian government, and PMI specifically. However, in practice, the government has yet to provide optimal protection to PMI working abroad, particularly those who are injured. Current legislation is insufficient to address the existing problems faced by PMI. This legal research is crucial to examine how the rights of Indonesian Migrant Workers (TKI) are protected abroad. Considering that the state is required to enhance public welfare and protect everyone, which fundamentally means safeguarding them from poverty and insecurity, there is a possibility that the state must defend legally employed migrant workers working overseas. The issue of public welfare remains unresolved and continues to be the government's responsibility.

The government has not made sufficient efforts to improve public welfare since Indonesia was established in 1945. Although poverty rates have decreased since Indonesia's founding in 1945, the government has not done enough to improve the welfare of its citizens. Poverty remains an unresolved social issue. Unemployment is closely related to a country's poverty level. Poverty continues to be a social problem that cannot be solved; the level of poverty in one country correlates with poverty levels in other countries, and the level of poverty in a country is correlated with poverty levels in other countries. The lack of job opportunities and employment prospects is one of the variables contributing to increasing poverty rates in a country. Due to limited job prospects, a competitive labor market, and high wage opportunities abroad.

Any citizen who can provide goods or services that meet personal or communal needs is considered a laborer. In Indonesia, labor is a valuable resource and an important component of the economic system. Low or no job prospects correlate with high levels of unemployment.

Labor flexibility is inseparable from the government's efforts to provide employment opportunities, with the aim of reducing the number of unemployed. One of the ways the government seeks to reduce poverty is by increasing employment. In accordance with Article 31 of Law Number 13 of 2003 concerning Manpower of the Republic of Indonesia, which states that every Indonesian citizen has the same rights and opportunities to choose, accept, or refuse employment and to seek a livelihood both domestically and abroad. In the end, this makes Indonesia the country with the largest labor force in Asia and even the world. (Nainggolan & Partogi, 2016)

It is undeniable that the various problems faced by migrant workers are influenced by the high level of labor force participation in the country. The media often reports on the mistreatment that Indonesian foreign workers often experience at the hands of their employers, which can even result in death. Indonesia as a fundamental state is obliged to defend the lives of its citizens and any bloodshed. Of course, protecting Indonesia as a whole means protecting its entire population, both domestically and internationally. However, governments often fail to provide adequate protection for legitimate foreign workers. Human trafficking, forced labor, acts of violence, unlawful detention, crimes against human dignity, and other human rights violations often afflict migrant workers.

## **2. Method**

This research is a type of descriptive qualitative research that uses qualitative research techniques and uses library research methods to collect information from books, journals, and other sources that do not include books. The approach used is a juridical approach, to protect the rights of Indonesian migrant workers, the Job Creation Law and the Indonesian Migrant Workers Protection Law are used.

## **3. Main Heading of the Analysis or Results**

### **3.1. Current Conditions of Migrant Workers in Indonesia**

If a country cannot provide jobs with decent wages, the number of migrant workers around the world will continue to increase. Meanwhile,

there are still many job opportunities in other countries (receiving countries) that provide higher wages than in the sending or origin countries of migrant workers.

The increasing number of migrant workers is not only due to the lack of decent-paying jobs in the home country, but also to the pending domestic development struggles in the home country. Citizens caught up in armed conflicts in Afghanistan, Myanmar, Iraq, Iran, Somalia and other countries are forced to migrate in search of a better life. In addition, there is a link between financial globalization and global migration. Not only do large differences between rich countries attract people from poorer countries to take higher paying jobs than in their home countries due to the differences between rich and poor countries, as well as the lack of job prospects in their home countries. However, market access for migrant workers is more restrictive than the circulation of goods and services. (Junaidi, Muhammad, & Khikmah, 2024)

Many countries and regional organizations restrict the flow of migrant workers. For example, the United States Free Trade Agreement (NAFTA) imposes very harsh rules on the travel of migrant workers from Mexico to the United States. Indonesia only allows migrant workers with skills that Indonesia does not have to participate in services trade.

Indonesian Migrant Workers is the term used to describe migrant workers employed in Indonesia. Since the 20th century, migrant workers have been sent abroad. Since the Second Five-Year Development Plan (Pelita II) in 1979, 83% of all migrant workers have been sent to Middle Eastern countries, with the majority working as domestic helpers. The government has taken several measures to improve the quality of the workforce and expand job opportunities in response to the increasing number of available jobs domestically. These policies can be implemented to address several employment issues in Indonesia, including:

The government is working to increase job opportunities by creating as many formal jobs as possible to address issues of unemployment and underemployment. This effort aims to provide opportunities for those who are uneducated or only have a junior high school education. However, this approach is not ideal for filling formal positions that require specific competencies.

In terms of placing Indonesian Migrant Workers abroad, the government must ensure that placements are carried out according to employment orders. However, there are issues from the pre-placement stage to the post-placement stage. The majority of migrant workers sent

abroad work in the informal sector, particularly low-educated domestic workers, which contributes to these problems. Poor domestic preparation, including the falsification of migrant workers' identities, exacerbates these issues. This situation indicates that workers have low quality, limited skills, and are highly vulnerable to mistreatment in the countries where they work. This suggests that the government needs to improve the welfare of workers who are not properly compensated.

The issue of job training is how the government can enhance the welfare of its citizens by transforming workers from less productive jobs into more productive ones. Improving the quality and competencies of employees is one way to achieve this goal. The government must support these efforts by providing institutions that can assist in enhancing the quality and skills of the workforce.

The issue with regulations is that protection for migrant workers is governed by approximately 41 different regulations in Indonesia. The lack of a unified regulatory framework leads to reduced dedication to enforcement, increasing the risk of regulatory gaps and causing inconsistencies, overlaps, and conflicts between different instruments. The low dedication and competency of human resources within the bureaucracy contribute to the limited understanding among officials and leaders in assisting citizens in achieving worker welfare. (Matompo & Sahim, 2022) As a result, the system responds to employment-related issues ineffectively. Domestic unemployment affects the decision to place Indonesian Migrant Workers (TKI) abroad. The government prioritizes the implementation of economic programs, leading to two main issues: first, the lack of protection for those seeking work abroad, and second, the low quality of the workforce, which diminishes the country's bargaining power compared to other nations. The low bargaining power of Indonesian workers impacts the quality of employment relationships and the level of welfare, including job positions, wages earned, and protection while working as migrant workers.

The issues related to domestic work impact the deployment of migrant workers abroad. The government prioritizes economic programs, which affects two main areas. First, there is a lack of protection for those who choose to work abroad. Second, the existing workforce often lacks the necessary qualifications, which reduces the country's bargaining position relative to other nations. The lack of negotiating power for Indonesian workers contributes to poor employment relationships and low welfare levels, including job positions, wages, and protection during their migration status (Septika, Churiya A, & Mualifin, 2024).



### **3.2. The Implementation of legal protection for migrant workers in Indonesia**

Indonesian citizens working abroad are referred to as Indonesian Migrant Workers (PMI) according to Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers as Travelers, specifically Article 4. Additionally, when discussing legal protection for Indonesian workers, it is important to clarify what is meant by “protection for Indonesian workers.” The following articles of the 1945 Constitution provide protection for laborers and workers:

- 1) Article 28D paragraph (1) of the 1945 Constitution states: “Everyone shall have the right to recognition, guarantee, protection, and certainty before the law as well as equal treatment under the law.”
- 2) Article 28D paragraph (2) of the 1945 Constitution states: “Everyone has the right to work and to receive fair and equitable compensation and treatment in employment relationships.”

"To ensure their safety, welfare, and rights while working abroad, Indonesian workers are subject to a number of regulations and provisions. The legal basis for the deployment of Indonesian labor abroad existed prior to the Employment Law, and it is regulated under the Law on the Deployment of Indonesian Labor for Work Abroad in Indonesia (Staatsblad Year 1887 Number 8), as well as various ministerial decrees and implementing regulations (Rachma & Sugiyono, 2023). However, these old regulations are no longer valid since the enactment of Law Number 13 of 2003. It would be advisable to create more detailed and precise regulations (Putrawan, 2018).

Every worker has the right and opportunity to choose, accept, or reject job offers and seek a livelihood both domestically and abroad, in accordance with Law Number 13 of 2003. Employee placement must be impartial, objective, transparent, free, and equitable without discrimination. Additionally, the experience, skills, and abilities of each member of the workforce should be considered, as well as their legal protection, human rights, and dignity. (Putrawan, 2018)

According to Article 34 of the Employment Law, there are legal requirements that must be fulfilled before exporting workers abroad. Additionally, it is the responsibility of the placement agency to ensure the safety of workers throughout the recruitment and placement process. Employers are obligated to protect the welfare, safety, and physical and emotional well-being of their workers.

Additionally, the labor placement agreement is expected to provide integrated services under a single labor placement system, which includes job seekers, placement agencies, and job placement mechanisms. The agencies responsible for labor placement include both private legal entities and government institutions. (Rosalina & Setyawanta, 2020). With this regulation in place, the rights of Indonesian workers employed abroad will be upheld and protected according to this agreement.

Legal acts are any actions taken by individuals that are intentional or voluntary and result in rights and obligations that can be legally enforced. A legal act can be unilateral, such as a donation or a will, or bilateral, such as an employment contract or a sales agreement. The relationship between two or more legal subjects is called a legal relationship (also referred to as 'rechtsbetrekkingen'). This relationship can be between individuals, between an individual and society, or between different segments of society itself.

Rights and obligations of one party are combined with those of the other party within this legal relationship. Private labor agencies are responsible for managing and dispatching Indonesian temporary workers abroad, in accordance with Law Number 39 of 2004 on the Placement and Protection of Indonesian Workers Abroad (PPTKILN). In this context, Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers prioritizes the private sector. The latest law, Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers, no longer mandates that Indonesian migrant workers travel abroad independently. It is not possible to separate PPTKIS from the formal licensing system. Law Number 39 of 2004 on the Placement and Protection of Indonesian Workers Abroad stipulates that for PPTKIS to register and place Indonesian workers, the Minister is legally required to issue a Temporary Indonesian Worker Placement Permit (SIPPTKI) (Situmorang, Kurunia, Marzuki, & Affan, 2021).

Human rights violations are closely related to violations of human dignity concerning the protection of society, particularly migrant workers working abroad. Migrant workers are not fully protected by the government of the country where they reside and work, as they are not citizens of that country. Therefore, the survival and well-being of migrant workers are heavily dependent on the level of protection provided by their home country's government.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, along with other international laws, provides a framework for protecting migrant



workers. The government must continually strive to protect migrant workers through the implementation of laws and other regulations.

In Indonesia, for migrant workers working abroad, the government offers two types of protection. *First*, the law can be used to protect migrant workers through exploratory and preventive measures. This includes enacting regulations governing migrant workers and their enforcement, signing bilateral or multilateral agreements that address housing and protection for migrant workers while they are employed, and promoting migrant worker organizations by establishing such entities outside their home country. *Second*, to address legal, employment, and socio-cultural issues in both sending and receiving countries, creative and reflective protective measures can be implemented. This can be achieved by establishing or enhancing organizations and enrolling migrant workers in insurance programs that, depending on the type of work they perform, cover all related expenses. Additionally, food should be provided during and after work by the government and relevant organization (Ma'ruf, 2024).

The placement and protection of Indonesian Migrant Workers (PMI) are regulated under Law Number 6 of 2023 concerning the Establishment of Government Regulations under Law Number 2 of 2022 on Job Creation. Through an analysis of the relevant articles, we can gain a deeper understanding of the policies implemented by the government to protect PMI. The following is a comprehensive analysis of these issues.

Article 84 paragraph 1 defines PMI (Indonesian Migrant Workers) as any Indonesian citizen working abroad who receives compensation for their labor. This definition encompasses all stages of employment, including preparation before departure, during the work period, and after completing their work. As stated, the protection of PMI includes safeguarding the interests of prospective PMI and their families, ensuring that their rights are upheld in legal, economic, and social terms. This aligns with the labor law theory formulated by M.G. Levenbach, who posited that labor law encompasses regulations related to employment relationships, preparation for such relationships, labor social security, and labor organizations. In the context of PMI, legal protection covers the entire process from pre-employment to post-employment, including training and suitable job placement (Asikin, 2008).

Placement companies for PMI are required to hold a license in accordance with the authorization granted by the Central Government, as stipulated in Article 84 paragraph 2. This license is subject to specific standards, processes, and regulations, and it cannot be transferred to

other parties. This provision aims to ensure that placement companies have the necessary capability and credibility in managing the placement of PMI.

Tight supervision of placement companies is crucial to prevent harmful practices affecting PMI, such as fraud, identity falsification, and placement in unsuitable jobs. In labor law theory, this reflects efforts to protect workers' rights and ensure that they work in a safe and legally compliant environment.

Article 84 paragraph 3 states that the head office of the placement company is responsible for the actions of its branches involved in the placement of PMI. This provision ensures that the head office holds full accountability for all placement activities, including those conducted by its branches. Consequently, the company's accountability to PMI is maintained, providing PMI with assurance of protection from the company placing them.

This obligation is a crucial step to ensure that the data of placement companies remains current and accurate. Accurate and up-to-date data is essential for monitoring and managing PMI placements. Regular data updates enable the government to more effectively oversee placement company activities, identify issues early, and take necessary actions to prevent misuse and violations of PMI rights.

Effective oversight of PMI placement companies is a key element in protecting PMI rights. Up-to-date data allows the government to monitor in real-time the presence and conditions of PMI abroad. This includes checking whether PMI have been placed according to their employment contracts, whether they receive fair wages, and ensuring that their working environment is safe and meets established standards.

The obligation for placement companies to regularly update their data is not only important from an administrative perspective but also has direct implications for the protection of PMI. Accurate data assists the government in making informed decisions regarding the placement and protection of PMI. For instance, with up-to-date data, the government can identify countries or regions with poor records in treating PMI and implement stricter policies for placements in those areas. Furthermore, accurate data enables the government to track and monitor the working conditions of PMI, including their wages and working environment. This is crucial to ensure that PMI are not exploited and are working under humane and decent conditions.

According to David Ricardo's Theory of Normal Wages, wages are determined based on the cost of living of workers. However, this theory

was criticized by Lassalle through the Iron Law of Wages, which argues that workers must strive to overcome normal wages to achieve a decent standard of living. (Husni, 2001). In the context of PMI, this theory is relevant because the wages they receive abroad often do not correspond to the cost of living in the host country, and they frequently face inadequate working conditions.

Protection during employment, as outlined in Article 84 paragraph 1, encompasses all activities that ensure protection for PMI while they are abroad. This includes legal, economic, and social protection. The government must ensure that PMI receive health services, legal assistance, and other social rights while working abroad. For instance, PMI working as domestic helpers in Middle Eastern countries often face inhumane treatment and inadequate wages. The government must ensure they have access to legal assistance if issues arise and that they receive wages in accordance with applicable regulations.

Through the analysis of the provisions in Law No. 6 of 2023 and employment law theory, it can be concluded that protection for PMI is a crucial and complex aspect. The Indonesian government has made efforts to regulate and protect PMI through various legal provisions, but challenges remain in implementation. Further efforts are needed to ensure that PMI receive adequate protection, fair wages, and safe working conditions abroad. The government must also continue to monitor and manage PMI placements more effectively, as well as enhance the quality and competence of Indonesian labor to improve their bargaining power in the global job market.

#### **4. Conclusion**

The high unemployment rate in Indonesia forces job seekers to relocate, either domestically or internationally. Therefore, there is a need for laws that can protect the rights of Indonesian migrant workers relocating abroad. Indonesian migrant workers (PMI) have faced numerous violations of foreign labor laws, including physical abuse, sexual exploitation, unpaid wages, and other incidents. To protect Indonesian migrant workers abroad, the Indonesian government enacted Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. The government's efforts to enforce legal regulations and other restrictions to safeguard Indonesian migrant workers still require support.

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### **Regulations**

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