

The Urgency of Legal Protection For Indonesian Illegal Migrant Workers From the perspective of Sharia Economic Law

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Abstract

This study examines the legal protection of illegal Indonesian migrant workers, who are considered both as lawbreakers and victims of exploitation, in the context of compliance with Indonesian migrant worker and immigration laws and the protection of human rights based on Islamic law. Using normative legal research, the study analyses the imbalance between Law No. 18/2017, which limits protection for migrant workers who have legal documents, and the 1990

CMW Convention and the 2000 Palermo Protocol, which guaranty the basic rights, regardless of the legal status. The results of the study reveal that the pros and cons regarding illegal procedural Indonesian migrant workers are in substance to the violation of the law. From an Islamic law perspective, this issue needs to be addressed and a solution sought by updating Law Number 18 of 2017 so that there is no difference between official and unofficial Indonesian migrant workers. This is in line with the maqashid syari'ah in Islamic law, the 1990 CMW Convention and the 2000 Palermo Protocol.

Keywords

Legal; Legal Protection; Illegal Indonesian Migrant Workers.

I. Introduction

The rapid growth of the global economy increasingly depends on the presence of migrant workers. However, the fulfillment of rights and the provision of legal and social protection by the state are still lacking, especially in Taiwan.¹ The movement of Indonesian migrant workers to various countries has become a major focus in efforts to improve the formulation of migration policies among the public.²

Migrant workers contribute to the Indonesian economy, both through the money they send to the home (remittances) and by

¹ Bachtiar Dwi Kurniawan, "Muhammadiyah 's Advocacy : Empowerment and Policy Protection for Indonesian Migrant Workers in Taiwan," *Analisa: Journal of Social Science and Religion* 10, no. July (2025): 20–40, <https://doi.org/https://doi.org/10.18784/analisa.v10i1.3028>.

² Aceng Asnawi Rohani, Anne Gunawati, and Dede Agus, "The Role of the Indonesian Government in the Legal Protection of Indonesian Migrant Workers," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 23, no. 3 (2024): 1–15, [https://doi.org/23\(3\):2918–33](https://doi.org/23(3):2918–33). doi:10.31941/pj.v23i3.5058.

reducing unemployment.³ However, this certainly carries serious risks such as vulnerability, exploitation, and isolation. Although migration has a major impact on the economy, there are still loopholes. This is evident in the large number of cases of visa abuse and the use of brokers, which have resulted in the repatriation of Indonesian migrant workers.

In practice, Indonesian migrant workers (PMI) who work abroad illegally can be sent abroad in various ways, one of which is through individuals or brokers. These parties do not have the authority or official permission to place workers, but they still send PMI abroad by charging a fee for the trip. This situation means that PMI who depart illegally through brokers are often viewed and potentially classified as victims of human trafficking. However, this determination must be based on the fulfillment of the elements of human trafficking as stipulated in Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Trafficking in Persons (TPPO). Categorizing the illegal departure of migrant workers through brokers as human trafficking is not a simple matter, given that brokers are individuals. This situation creates a blurring of norms that could potentially lead to legal uncertainty, particularly in the process of law enforcement against migrant workers who are illegally dispatched through brokers.⁴

Resolving this issue requires support from various parties, including civil society organizations.⁵ Indonesia is one of the countries in Southeast Asia that supplies migrant workers to various countries.⁶ Indonesian citizens working abroad face a variety of legal and social

³ and Melanie Morten Bryan, Gharad, "The Aggregate Productivity Effects of Internal Migration: Evidence from Indonesia," *Journal of Political Economy* 125, no. 7 (2017): 2229–68, <https://doi.org/doi:10.3386/w23540>.

⁴ Moh Romli and Devi Rahayu, "Perlindungan Bagi Pekerja Migran Indonesia Non-Prosedural Terhadap Tindakan Perdagangan Manusia," *Jurnal Simbur Cahaya* 31, no. 1 (2024): 172–87, <https://doi.org/https://doi.org/10.28946/sc.v31i1.3494>.

⁵ Taichung City Government, *Friendly Taichung, Happy Migrant Workers* (Taichung: Taichung City Government, 2022).

⁶ Brian J. Hall et al., "Structural Validation of The Patient Health Questionnaire-9 (PHQ-9) among Filipina and Indonesian Female Migrant Domestic Workers in Macao: STRUCTURAL VALIDATION OF PHQ-9," *Psychiatry Research* 295, no. November (2021): 1–7, <https://doi.org/10.1016/j.psychres.2020.113575>.

issues. Overseas employment opportunities must be balanced with optimal protection. To that end, the World Bank recommends that Indonesia integrate migrant workers into the formal sector as a means of ensuring adequate protection for Indonesian migrant workers.⁷ One of the World Bank's recommendations is to cut regulations and bureaucracy at the pre-departure stage.⁸

Indonesian foreign workers who are not yet accommodated by strict legal regulations. The migration of Indonesian migrant workers (PMI) abroad is better known for illegal immigrants entering from border routes that take advantage of geographical boundaries, such as Sarawak-Malaysia. Malaysia has the highest number of migrant workers in Southeast Asia, with the majority (50.9%) coming from Indonesia. The National Agency for the Placement and Protection of Indonesian Migrant Workers has made various efforts to strengthen protection for PMI in the form of simplifying placement services to facilitate the licensing and pre-departure processes by implementing a One-Stop Integrated Service policy in 2015. Migrant worker practices have various indicators that interact with each other, creating disputes on both sides of the border.⁹

The high number of illegal migrant workers departing through unofficial channels is a crucial issue and a challenge in the management of migration in Indonesia.¹⁰ This creates a dilemma: on the one hand,

⁷ W.-K Suu, ND, Tien, H. Th., Nhan, D. Th. Th., Pan, Sh.-H., & Wong, "Impact of Foreign Ownership and Foreign Bank Presence on Liquidity Risk: Evidence from Viet Nam," *Advances in Decision Sciences* 27, no. December (2019): 23–44, <https://doi.org/https://doi.org/10.47654/v27y2023i1p23-44>.

⁸ Charanpal S Bal and Wayne Palmer, "Indonesia and Circular Labor Migration : Governance, Remittances and Multi-Directional Flows," *Asian and Pacific Migration Journal* 29, no. 1 (2020): 3–11, <https://doi.org/10.1177/0117196820925729>.

⁹ Abdullah Khoso, Shanthi Thambiah, and Hanafi Hussin, "Emotion, Space and Society Social Practices of Pakistani Migrant Workers in Malaysia : Conserving and Transforming Transnational Affect," *Emotion, Space and Society* 37, no. October (2020): 1–9, <https://doi.org/10.1016/j.emospa.2020.100742>.

¹⁰ P. Lokahita, P. D., Kawarizmi, I. G., Adriana, A. S., Wahyudin, Y. A., Husni, V., Studi and I. Internasional, H., Hukum, F., Sosial, I., & Politik, "Pelaksanaan Pengabdian Masyarakat Guna Peningkatan Kesejahteraan Pekerja Migran

they are violating immigration laws, while on the other hand, they are vulnerable to various forms of crime. By sending workers abroad, the Indonesian government can reduce unemployment while increasing foreign exchange reserves.¹¹

In various countries, migrant workers are the basis for economic growth and development.¹² Indonesian migrant workers are dubbed foreign exchange heroes because they contribute to remittances and expand employment opportunities.¹³ However, there have been cases of undocumented migrant workers and some departures that did not follow proper procedures, making them vulnerable to human trafficking.¹⁴ Migrant workers are particularly affected by this practice.¹⁵ In addition, the continued existence of recruiters posing as Indonesian Migrant Worker Placement Company (P3MI) or individuals for placements that do not comply with regulations, as well as the culture or perception of communities in some areas that take pride in being

Indonesia Melalui Sosialisasi Migrasi Aman,” in *Proceeding Seminar Nasional Komunikasi Pengabdian Kepada Masyarakat*, 2024, 137–148.

¹¹ Adnan Hamid, *Kebijakan Ketenagakerjaan Bagi Pekerja Migran (Tinjauan Undang-Undang No 18 Tahun 2017 Tentang Perlindungan Pekerja Migran Indonesia)*, Cet. 1 (Jakarta: Fakultas Hukum Universitas Pancasila, 2018).

¹² M. N. Noor, N. M., & Shaker, “International Journal of Intercultural Relations,” *International Journal of Intercultural Relations*, no. 57 (2017): 19–29, <https://doi.org/https://doi.org/10.1016/j.ijintrel.2017.01.004>.

¹³ Brian J. Hall et al., “Structural Validation of The Patient Health Questionnaire-9 (PHQ-9) among Filipina and Indonesian Female Migrant Domestic Workers in Macao: STRUCTURAL VALIDATION OF PHQ-9,” *Psychiatry Research* 295 (January 2021): 1–7, <https://doi.org/10.1016/J.PSYCHRES.2020.113575>.

¹⁴ Nicolas Lainez, “Geoforum Debt, Trafficking and Safe Migration : The Brokered Mobility of Vietnamese Sex Workers to Singapore,” *Geoforum*, no. June 2019 (2020): 1–10, <https://doi.org/10.1016/j.geoforum.2020.01.021>; Benni Yusriza, “The Political Economy of Unfree Labor and the State: An Indonesian Case Study,” *Asian and Pacific Migration Journal* 29, no. 1 (2020), <https://doi.org/10.1177/0117196820925656>.

¹⁵ Katherine L Christ and Christine V Helliard, “Blockchain Technology and Modern Slavery: Reducing Deceptive Recruitment in Migrant Worker Populations,” *Journal of Business Research* 131, no. November 2020 (2021): 112–20, <https://doi.org/10.1016/j.jbusres.2021.03.065>.

migrant workers,¹⁶ are key factors influencing the effectiveness of protection efforts.¹⁷

Many Indonesian migrant workers are placed in positions that do not correspond to their work contracts, which reflects the failure of the Indonesian Migrant Worker Placement Company (P3MI) to fulfill its obligations. The P3MI plays a key role in ensuring that the placement of Indonesian migrant workers is in accordance with their employment contracts.¹⁸ The existence of an employment relationship is based on an employment agreement,¹⁹ which is binding on both parties.²⁰ Both formal and informal migrant workers in Indonesia face similar problems, such as excessive working hours, especially in Malaysia, where workers are under the control of Indonesian Migrant Worker Placement Companies and not directly from their employers.²¹

The high rate of migrant worker migration has prompted the Indonesian government to provide legal protection guarantees. One of the factors contributing to the large number of Indonesian migrant workers is the desire for a better standard of living.²² The active role of

¹⁶ Liputan6, “Profesi TKI Menjadi Pilihan Masyarakat OKI,” 2010.

¹⁷ Izza Mafruhah, Waridin Waridin, and Deden Dinar Iskandar, “Social Engineering Strategy of Entrepreneurship Behavior of Indonesian Migrant Workers During the Placement Period,” *International Journal of Economics and Business Administration* VII, no. 2 (2019): 50–60, <https://doi.org/DOI:10.35808/ijeba/214>.

¹⁸ Puspa Pasaribu and Eva Achjani Zulfa, “Akibat Hukum Identitas Palsu Dalam Akta Perjanjian Kredit Yang Melibatkan Pihak Ketiga Pemberi Jaminan,” *Jurnal USM Law Review* 4, no. 2 (2021): 535–46, <https://doi.org/https://doi.org/10.26623/julr.v4i2.4050>.

¹⁹ Hetiyasari Hetiyasari, “Pertanggungjawaban Hukum Bagi Perusahaan Atas Batalnya Perjanjian Kerja Waktu Tertentu Di Masa Pandemi Covid-19,” *Jurnal Usm Law Review* 5, no. 1 (2022): 331–41, <https://doi.org/10.26623/julr.v5i1.4807>.

²⁰ Ibid.

²¹ Rahayu Subekti Fakultas Divya Aviva Marsyaf, “Perlindungan Hukum Terhadap Pekerja Migran Indonesia,” *Jurnal Pendidikan Kewarganegaraan* 9, no. 1 (2021): 755–61, <https://doi.org/10.56370/jhlg.v6i5.852>.

²² Henny Natasha Rosalina and Lazarus Tri Setyawanta, “Perlindungan Hukum Terhadap Pekerja Migran Sektor Informal Dalam Perspektif Teori Bekerjanya Hukum Di Masyarakat,” *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (2020): 174–87, <https://doi.org/10.14710/jphi.v2i2.174-187>.

the government is essential in protecting and fulfilling the rights of migrant workers, as this aspect involves bilateral or multilateral relations between countries. This is as stipulated in Article 27 paragraph (2) of the 1945 Constitution.²³

Referring to Hans Kelsen's grundnorm legal theory, a fundamental legal norm is considered binding if it is derived from a higher norm. This norm is the constitution, which functions as the basic norm. Thus, legal norms are hierarchical within a legal system. In the context of protecting both illegal and legal Indonesian migrant workers, this is based on Article 28A of the 1945 Constitution.²⁴

In his book, Zainal Asikin explains that PMI status is not free. In this case, the employer has full authority over the PMI based on the agreement.²⁵ Indonesia, as one of the countries that supplies foreign workers, has agreed to sign agreements with several recipient countries such as Malaysia and Taiwan.²⁶ Indonesia has taken steps to provide protection to Indonesian Migrant Workers (PMI) abroad by establishing bilateral agreements with the destination countries.²⁷

Indonesia is a constitutional state (*rechtsstaat*) rather than a power state (*machtstaat*), in accordance with the preamble to the 1945 Constitution.²⁸ The government's role is not only as a regulator, but also as a supervisor, controller, and provider of legal protection for PMI.²⁹ The Indonesian government has sought to enact various

²³ Subiyanto, "Peran Negara Dalam Hubungan Tenaga Kerja Di Indonesia," *Jurnal Pendidikan Dan Kebudayaan* 17, no. 6 (2011): 709.

²⁴ Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Yogyakarta: Liberty, 2008).

²⁵ Zainal Asikin, *Dasar-Dasar Hukum Perburuhan* (Jakarta: PT. Raja Grafindo Persada, 2004).

²⁶ Ester Monalisa Tantri, Deicy N Karamoy, and Decky Paseki, "Perlindungan Hukum Terhadap Tenaga Kerja Indonesia Di Luar Negeri Menurut Undang-Undang Nomor 18 Tahun 2017," *Lex Privatum* 10, no. 3 (2022): 1–15.

²⁷ dkk Mita Noveria, *Perlindungan Pekerja Migran Indonesia, Kesepakatan Dan Implementasinya* (Jakarta: Yayasan Pustaka Obor Indonesia, 2020).

²⁸ Muhammad Junaidi and Khikmah Khikmah, "Perlindungan Hukum Dan Penempatan PMI Di Luar Negeri," *Jurnal Perspektif Ekonomi Darussalam* 4, no. 2 (2019): 231–48, <https://doi.org/https://doi.org/10.26623/julr.v7i1.8127>.

²⁹ Bambang Sadono Kadi Sukarna Alvian Octo Risty, Zaenal Arifin, "Harmonisasi Pengaturan Jabatan Tertentu Yang Dapat Diduduki Oleh Tenaga Kerja Asing

regulations ranging from laws to government regulations.³⁰ One of the Indonesian government's efforts to protect and guarantee legal protection for PMI is by establishing BP2MI (Indonesian Migrant Workers Protection Agency) as an institution tasked with and responsible for the livelihoods of PMI.

In terms of providing legal protection, the reality is still far from the ideal, and there is still a need for socialization of the rights and obligations of migrant workers. This can be seen in the implementation of Article 2 of the Minister of Manpower Regulation (Permenaker) Number 18 of 2018 concerning Social Security for Indonesian Migrant Workers, which has not been able to fulfill the principle of legal certainty.³¹

The government's efforts to provide employment opportunities and minimize unemployment rates include sending Indonesian workers to work abroad, although the protection provided remains severely lacking up to date.³² One of the problems often encountered by Indonesian migrant workers is the lack of legal protection provided by the Indonesian government in the country of placement. Indonesia often sends informal workers who tend to be unskilled with minimal education, so they tend to be placed in high-risk (difficult/demeaning), dirty, and dangerous jobs.³³

Kategori Pertambangan Dan Penggalian,” *Jurnal USM Law Review* 1 (2021): 414–330,

<https://doi.org/https://doi.org/http://dx.doi.org/10.26623/julr.v4i1.3230>.

³⁰ Dhanny Safitri and Ali Abdullah Wibisono, “Keamanan Manusia Pekerja Migran Indonesia: Ketidakamanan Dan Perlindungannya,” *Intermestic: Journal of International Studies* 7, no. 2 (2023): 741–69, <https://doi.org/10.24198/intermestic.v7n2.17>.

³¹ Rafiatun Shaliha, “Tinjauan Yuridis Perlindungan Hukum Jaminan Sosial Bagi Pekerja Migran Berdasarkan Undang–Undang Nomor 18 Tahun 2017 Tentang Perlindungan Pekerja Migran Indonesia,” *Indonesia Berdaya* 2022, no. 4 (2022): 389–96, <https://doi.org/https://doi.org/10.47679/ib.2023428>.

³² Aripin Putrawan, “Tanggung Jawab Perusahaan Yang Menempatkan Pekerja Migran Indonesia Untuk Kepentingan Perusahaan Sendiri Sebagai Pekerja Migran Indonesia Di Luar Negeri” (Universitas Mataram, 2018).

³³ Damasus Ndarujati, “Peran Kementerian Ketenagakerjaan Republik Indonesia Dalam Mengatasi Masalah Pekerja Migran Indonesia Di Taiwan,” *Jurnal Sosial*

One of the problems often encountered by Indonesian migrant workers is the lack of legal protection provided by the Indonesian government in the country of placement.³⁴ This study is expected to formulate a strong and responsive protection framework to ensure a safe and dignified future for legal and illegal Indonesian migrant workers (PMI). The need for a robust and adaptive protection system is increasingly urgent, which can be realized through strengthening regulations, improving the quality of training, expanding access to legal aid, and implementing more proactive consular diplomacy. The sustainability of PMI protection depends on Indonesia's commitment to establishing a safe, professional migration system based on human dignity for all citizens. In addition, public involvement is an important factor in ensuring that the revision of the law favors comprehensive protection and justice for all PMIs.

Limited job opportunities in Indonesia have prompted people to seek employment abroad, resulting in a surge in the number of Indonesian migrant workers.³⁵ However, not all of these aspirations have been fully realized. Conditions on the ground indicate that Indonesian migrant workers, both illegal and legal, working abroad in countries such as Malaysia, Brunei, Saudi Arabia, and others, face numerous problems ranging from unfair treatment by employers to torture.³⁶ In reality, Indonesian migrant workers often do not obtain jobs in accordance with their previous employment contracts, receive inadequate wages, and suffer arbitrary treatment by their employers.³⁷

Based on the data obtained, the number of illegal Indonesian migrant workers has shown a downward trend. BP2MI (Indonesian

Sains 1, no. 1 (2021): 17–29,
<https://doi.org/https://doi.org/10.26623/julr.v6i3.7568>.

³⁴ Ibid.

³⁵ Henny Natasha Rosalina and Lazarus Tri Setyawant, “Perlindungan Hukum Terhadap Pekerja Migran Sektor Informal Dalam Perspektif Teori Bekerjanya Hukum Di Masyarakat,” *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (2020): 174–87, <https://doi.org/https://doi.org/10.14710/jphi.v2i2.174-187>.

³⁶ Bambang Widiyahseno, “Paradigma Baru Model Pelindungan Pekerja Migran Indonesia Dalam Perspektif Undang Undang RI Nomor 18 Tahun 2017,” *Jurnal Sosio Informa* 4, no. 3 (2018): 14.

³⁷ Ida Hanifah Lubis, *Pengantar Hukum Ketenagakerjaan Di Indonesia* (Jakarta: Ratu Jaya, 2016).

National Agency for the Placement and Protection of Indonesian Workers) noted a decline in 2022. However, the number of workers leaving illegally remains quite high.³⁸

Therefore, this research is urgently needed to examine changes in Indonesian migrant worker legislation. These regulations are expected to accommodate workers' protection through integrated services, thereby preventing illegal placement and providing economic, legal, and social protection. This research aims to uncover the gaps in labor migration regulations in providing job placement services and economic, legal, and social protection. This is in line with the constitutional mandate to provide Indonesian citizens with the rights to decent works.³⁹

II. Method

This study uses a qualitative approach. A qualitative approach seeks information that contains explanations covering various processes that take place in a particular environment or context, with sources in the form of in-depth descriptions that have a strong basis. This data enables a chronological and coherent understanding of an event. The descriptive qualitative approach is intended for researchers to present information as it is, in accordance with the actual conditions at the research site.⁴⁰

The type of research used is normative (normative juridical). Normative research is often known as doctrinal research, which

³⁸ Dodie Baltazar and Taher Abejo, "Analisis Yuridis Penanganan Pekerja Migran Non Migran Indonesia Kota Parepare," *At-Tanwir Law Review* 5, no. 1 (2025): 127–40, <https://doi.org/http://dx.doi.org/10.31314/atlarev.v5i1.4099>.

³⁹ Lilia Tightiz, "Towards Latency Bypass and Scalability Maintain in Digital Substation Communication Domain with IEC 62439-3 Based Network Architecture," *MDPI Journals*, 2022, 1–22, <https://doi.org/https://doi.org/10.3390/s22134916>.

⁴⁰ and Maria Montessori Etfita, Yulinda, "Student Character Building through Mentoring Activities at SMP Negeri 1 Solok Selatan," *JED (Jurnal Etika Demokrasi)* 6, no. 1 (2021): 12–22, <https://doi.org/doi:10.26618/jed.v6i1.4501>.

examines applicable legal norms.⁴¹ There are two sources and types of data used in this study, namely primary and secondary data sources. This study uses a qualitative approach to analyze regulations related to Indonesian migrant workers. The data sources used include secondary data, consisting of primary and secondary legal materials.⁴² These legal norms are analyzed to understand their meaning in legislation.⁴³

The primary data sources obtained come from laws and regulations and other legal regulations. While secondary data is obtained from references such as books, journals, literature reviews, and sources from documents (literature review).⁴⁴ About the research subject in detail.

III. A Comprehensive Analysis of Legal Protection for Indonesian Illegal Migrant Workers

The Indonesian state provides protection to its citizens as a manifestation of the constitution, in accordance with the 1945 Constitution, paragraph four.⁴⁵ Every prospective Indonesian migrant worker and Indonesian migrant worker is entitled to legal protection in

⁴¹ Roni Hantijo Soemitro, *Metodologi Penelitian Hukum Dan Jurimetri* (Jakarta: Ghalia Indonesia, 2018).

⁴² Yulianto Achmad and Mukti Fajar, *Dualisme Penelitian Hukum Normatif Dan Empiris* (Yogyakarta: Pustaka Pelajar, 2010).

⁴³ Johnny Ibrahim, *Teori Dan Metode Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006).

⁴⁴ Tri Andika, "Biodiplomacy: Efforts to Achieve Fairness in Cross-Border Genome Data Transfers," *The Indonesian Journal of International Clinical Legal Education* 7, no. 2 (2025): 283–312, <https://doi.org/https://doi.org/10.15294/iccle.v7i2.25771>.

⁴⁵ M. A. Rosanti, M. M. M. ., Charda, U. ., Nurcahyani, S., & Suharna, "Perlindungan Hukum Terhadap Pekerja Migran Indonesia Berdasarkan Peraturan Pemerintah Nomor 59 Tahun 2021: Studi Putusan Pengadilan Negeri Nomor 338/Pid.Sus/2021/PN.IDM," *EKOMA : Jurnal Ekonomi, Manajemen, Akuntansi* 3, no. 2 (2024): 787–794, <https://doi.org/https://doi.org/10.56799/ekoma.v3i2.2896>.

accordance with applicable laws and regulations regarding their rights and obligations.⁴⁶ Illegal migrant workers are workers who work outside Indonesia without official permission from the government, so they are legally considered to be violating the rules of both their country of origin and their destination country.⁴⁷ These illegal migrant workers did not go through the applicable legal licensing mechanisms, either in Indonesia or in their destination countries.⁴⁸

Illegal migrant workers are potentially victims of exploitation and human trafficking. This situation affects their access to legal protection and makes them reluctant to report to the Indonesian government for fear of deportation or criminal sanctions.⁴⁹ This opportunity is often exploited by individuals or syndicates who restrict workers' freedom of movement, force them to work overtime, and even threaten them with no pay at all. This treatment is far from humane, causing workers to face mental pressure and physical violence.⁵⁰ This is a serious violation of human rights because workers do not receive adequate legal protection in the country where they work. This situation poses a challenge for the authorities to prosecute the offenders, undermining the principle of legal certainty.⁵¹

⁴⁶ Adrian Sutedi, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009).

⁴⁷ A. N. A. Oktaviani, N. R. R., & Rivai, "Posisi Pekerja Migran Indonesia Ilegal (PMI) Asal Sulawesi Selatan Sebagai Pihak Sub-Altern Di Malaysia," *Jurnal Ilmiah Hubungan Internasional Fajar* 2, no. 2 (2024): 69–96, <https://doi.org/https://doi.org/10.47354/jihif.v2i2.786>.

⁴⁸ Sania Nizar Putri Ashari dan Koesmoyo Ponco Aji, "Evaluasi Pelaksanaan Sosialisasi Pencegahan PMI Non-Prosedural Dan Tindak Pidana Perdagangan Orang (DPPO) Di Desa Tambakrejo Kecamatan Gurah Kabupaten Kediri," *Jurnal Abdimas Imigrasi* 2, no. 1 (2021): 22.

⁴⁹ N. Harahap, L. H., Zarir, I., Fadil, M., Nasution, C. A., Siregar, M., Islam, U., & Sumatera, "Bentuk Perbudakan Modern Dari Tindak Pidana" 6, no. 3 (2024): 410–419.

⁵⁰ M. Ukhrowi, L. M., Karjaya, L. P., & Sood, "Dampak Pekerja Migran Ilegal Terhadap Meningkatnya Kasus Human Trafficking Di Pulau Lombok," *Indonesian Journal of Global Discourse* 2, no. 2 (2020): 17–32, <https://doi.org/https://doi.org/10.29303/ijgd.v2i2.19>.

⁵¹ H. N. Rustam, I., Sabilla, K. R., Rizki, K., & Estriani, "Kejahatan Lintas Negara Perdagangan Orang: Studi Kasus Pekerja Migran Asal Nusa Tenggara Barat," *Indonesian Perspective* 7, no. 1 (2022): 102–107, <https://doi.org/102-107>. <https://doi.org/10.14710/ip.v7i1.48597>.

Indonesia guarantees human rights through various legal instruments such as Pancasila, the 1945 Constitution Amendment, MPR Decree No. XVII/MPR/1988 on Human Rights, and various other regulations⁵². The existence of Indonesian migrant workers is an interesting issue. This situation has arisen due to the difficulty of finding work in Indonesia, which has led to a high level of enthusiasm for seeking employment abroad, even through illegal channels. As a result, according to data, around 4.5 million people working abroad are not registered.⁵³

The actions of Indonesian migrant workers that do not comply with official procedures constitute a violation of Law No. 6 of 2011 on Immigration. These actions result in them not receiving the legal protection they are entitled to under Law No. 18 of 2018 on the Protection of Indonesian Migrant Workers. As a result, their basic rights are often neglected, including the right to decent work, humane treatment, and occupational health and safety (OHS) protection⁵⁴. Illegal Indonesian migrant workers not only violate immigration laws, but also open the door to exploitative practices that violate human rights. Illegal migrant workers, some of whom come from economically disadvantaged backgrounds and cannot afford the administrative costs, let alone the complicated procedures.⁵⁵

⁵² Kusuma Haryanto, Tenang, Johannes Suhardjana, A. Komari A. Komari, Muhammad Fauzan, and Manunggal Wardaya, "Pengaturan Tentang Hak Asasi Manusia Berdasarkan Undang-Undang Dasar 1945 Sebelum Dan Setelah Amandemen," *Jurnal Dinamika Hukum* 8, no. 2 (2008): 136–44, <https://doi.org/https://doi.org/10.20884/1.jdh.2008.8.2.54>.

⁵³ M. R. Sandi, "Ada Sekitar 4,5 Juta PMI Ilegal, Mahfud MD Tegaskan Masalah TPPO Sangat Serius," SindoNews, 2023.

⁵⁴ I. Situmorang, B. A. K., Marzuki, & Affan, "Perlindungan Hukum Terhadap Pekerja Migran Indonesia Informa Menurut Undang Undang Nomor 18 Tahun 2017 Tentang Perlindungan Pekerja Migran," *Jurnal Ilmiah Metadata* 3, no. 2 (2021): 669–693, <https://doi.org/https://doi.org/https://doi.org/10.10101/metadata.v3i2>.

⁵⁵ S. Yusitarani, "Analisis Yuridis Perlindungan Hukum Tenaga Migran Korban Perdagangan Manusia Oleh Pemerintah Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 24–37, <https://doi.org/https://doi.org/10.14710/jphi.v2i1.24-37>.

Indonesian migrant workers are Indonesian citizens who work abroad, whether currently, in the future, or after completing their work in exchange for wages⁵⁶. Work plays an important role in human life, as it is a source of income to meet primary, secondary, and tertiary needs. Therefore, the right to employment is a right that must be respected and protected, in accordance with Article 27 (2) of the 1945 Constitution.⁵⁷

In its development, regulations on Indonesian migrant workers are contained in legislation, namely Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad, which was amended by Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. However, despite these amendments, there are still essential shortcomings, namely the absence of law enforcement.⁵⁸ This law aims to protect the rights of Indonesian migrant workers from various forms of violence, exploitation, and human trafficking that often threaten them.⁵⁹

Although the government has attempted to enact comprehensive legislation, the reality on the ground often presents obstacles. For example, many migrant workers still use the services of brokers, workers misuse visas, and migrant workers do not comply with their employment agreements with employers or employers. Slow case handling due to the involvement of multiple ministries and agencies

⁵⁶ Rachel Silvey, Maria Cecilia Hwang, and Carolyn Areum Choi, "Serial Labor Migration : Precarity and Itinerancy among Filipino and Indonesian Domestic Workers," *International Migration Review* 53, no. 4 (2018): 1–29, <https://doi.org/10.1177/0197918318804769>.

⁵⁷ Dina Fauzhar Rahman, "Perlindungan Pekerja Migran Indonesia Ditinjau Dari Asas Kesetaraan Dan Keadilan Gender," *Indonesian State Law Review* 3, no. 2 (2021): 110–34, <https://doi.org/https://doi.org/10.15294/islrev.v3i2.23002>.

⁵⁸ Hamonangan Fernando, "Menjamin Hak Pekerja Migran Indonesia: Tinjauan Perlindungan Hukum Berdasarkan Undang-Undang No. 18 Tahun 2017," *Rewang Rencang: Jurnal Hukum Lex Generalis* 6, no. 2 (2025), <https://doi.org/https://doi.org/10.56370/jhlg.v6i5.852>.

⁵⁹ M. Solechan, Utami, T. R., & Azhar, "Upaya Meningkatkan Jaminan Perlindungan Pekerja Migran Indonesia," *Administrative Law & Governance Journal* 3, no. 1 (2020): 153–61, <https://doi.org/https://doi.org/10.14710/alj.v3i1.153-161>.

further complicates access to legal protection.⁶⁰ Law No. 18 of 2017 explicitly stipulates criminal sanctions for parties who illegally dispatch migrant workers. This provision is crucial in efforts to stop the illegal dispatch of migrant workers. In fact, in Law No. 18 of 2017, the government seems to differentiate between the status of legal and illegal migrant workers, so that there is a tendency for the state to deliberately not provide legal protection. Legal protection for migrant workers is implemented through three stages: pre-placement, placement, and post-placement. In the PPMI Law, legal protection for migrant workers, which was originally centralized, has become decentralized by involving the autonomy of local governments.⁶¹

Protection for migrant workers is also stipulated in the ILO convention ratified by the Indonesian government. This convention contains protection standards including the right to fair wages, protection, and various other rights. A comprehensive and synergistic approach is needed to optimally fulfil legal protection for migrant workers. These efforts include strengthening bilateral cooperation, enhancing the role of diplomatic representatives, and educating and socializing workers regarding their rights and obligations⁶². The Indonesian government has sought to cooperate bilaterally and multilaterally, including in destination countries such as Malaysia, to minimize the practice of sending Indonesian migrant workers and to strengthen legal protection for migrant workers. Maritime defense diplomacy and joint patrols in the Indonesia-Malaysia border region are the first steps toward preventing these illegal practices by sea.⁶³

⁶⁰ BP2MI, “Laporan Tahunan Perlindungan Pekerja Migran Indonesia Tahun 2024” (Semarang, 2024).

⁶¹ dan Abdul Kholiq Syafa’at Muwahid, “Perlindungan Hukum Terhadap Tenaga Kerja Wanita Ilegal Di Malaysia,” *Al-Jinayah: Jurnal Hukum Pidana Islam* 4, no. 1 (2018): 339–59, <https://doi.org/10.15642/aj.2018.4.2.339-359>.

⁶² Tiara Angelia and Asep Suherman, “Analisis Hukum Tentang Perlindungan Ham Bagi Pekerja Migran Indonesia Di Negara Tujuan,” *Jurnal Inovasi Hukum Dan Kebijakan* 5, no. 4 (2024): 269–86.

⁶³ Dian Mustika Intan, Irfan Harmain, and Ilhamda Fattah Kaloko, “Ambiguitas Status Hukum Pekerja Migran Ilegal Sebagai Pelanggaran Hukum Atau Korban Eksploitasi,” *Jurnal Hukum The Jurishe Juris* 9, no. 1 (2025): 161–73, <https://doi.org/10.56301/juris.v9i1.1577>.

Indonesia ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) through Law No. 6 of 2012.⁶⁴ This convention contains provisions for the enforcement of all rights stipulated therein, which apply to all migrant workers and their family members without discrimination or distinction, including with regard to legal status. This convention affirms that all migrant workers, including their family members, shall not be subjected to torture, cruel, inhuman, or degrading treatment.⁶⁵

This is due to growing concern over worker protection and safety, which represents a serious safety issue in the region⁶⁶. The surge in human trafficking cases in Southeast Asia, especially those involving migrant workers from Indonesia.⁶⁷ Indonesian migrant workers in Taiwan face various human rights issues, such as unfair treatment, restrictions on movement, and limited access to health services.⁶⁸ Indonesian citizens often prefer to work abroad, where they are promised higher wages, but with low skills.⁶⁹

Indonesia has regulations regarding the placement of migrant workers. Individuals are not permitted to place Indonesian migrant

⁶⁴ Hana Nur Efsari, "Perlindungan Hukum Irregular Migrant Workers Indonesia Dalam Prespektif Hak Asasi Manusia," *Jurnal Hukum & Pembangunan* 53, no. 4 (2023): 587–608, <https://doi.org/http://doi.org/10.21143/jhp.vol.53.no3>.

⁶⁵ D. J. Chandra, L. J., Massie, C. D., & Paseki, "Perlindungan Hukum Terhadap Pekerja Migran Indonesia Menurut Konvensi Internasional Tentang Hak-Hak Pekerja Migran Tahun 1990," *Jurnal Fakultas Hukum Unsrat Lex Privatum* 13, no. 1 (2024).

⁶⁶ AR Arifianto, "Sekuritisasi Migrasi Tenaga Kerja Transnasional: Kasus Malaysia Dan Indonesia," *Asian Polit. Policy* 2009, no. 4 (1AD): 613–30.

⁶⁷ Joseph Lelliott and Rebecca Miller, "The Nexus Between Corruption, Migrant Smuggling, and Human Trafficking in Southeast Asia," *Springer, Cham*, 2023, 195–215, https://doi.org/https://doi.org/10.1007/978-3-031-25748-3_11.

⁶⁸ Yuherina Gusman, "The Experience of Indonesian Migrant Workers in Taiwan during Covid-19 Pandemic: A 'Right - Based' Analysis," *Al-Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 10, no. 1 (2021): 1–10, <https://doi.org/https://doi.org/10.24252/ad.v10i1.21080>.

⁶⁹ Silvey, Hwang, and Choi, "Serial Labor Migration: Precarity and Itinerancy among Filipino and Indonesian Domestic Workers."

workers abroad without official documents, as this is against the law.⁷⁰ Undocumented Indonesian migrant workers are often vulnerable to human trafficking (criminal acts of human trafficking). In general, PMI can be classified into two categories, namely illegal non-procedural PMI and legal PMI who are victims of human trafficking.⁷¹ The data shows that some migrant workers who are sent abroad without valid documents can be classified as illegal migrant workers.⁷² Law enforcement against human trafficking crimes in Indonesia is considered suboptimal, leaving loopholes or weaknesses that can be exploited to commit crimes. Therefore, the government must be more responsive so that these loopholes are not exploited by irresponsible individuals.⁷³

The latest trend shows that a number of Indonesian migrant workers initially enter and reside in the destination country legally, but later become illegal immigrants because their employers extend their employment contracts. This is exacerbated by workers who do not report contract extensions. This pattern is very different from the system that has been known so far, namely (1) entering legally but then without official permission, (2) entering and working illegally without going through legal procedures.⁷⁴ Indonesian migrant workers play a major role in supporting family welfare and are a source of foreign exchange

⁷⁰ Intan, Harmain, and Kaloko, “Ambiguitas Status Hukum Pekerja Migran Ilegal Sebagai Pelanggaran Hukum Atau Korban Eksploitasi.”

⁷¹ Y. Adiningsih, “Perlindungan Hukum Terhadap Pekerja Migran Ilegal Perempuan Dan Anak Berdasarkan Hukum Indonesia,” *Das Sollen: Jurnal Kajian Kontemporer Hukum*, 2024, 1–14, <https://doi.org/https://doi.org/10.11111/dassollen.xxxxxxx>.

⁷² H. Sakti, L., Sridiani, N. W., & Dudiartman, “Pemenuhan Hak Konstitusional Pekerja Migran Indonesia Ilegal Di Luar Negeri” 7, no. 2 (2024): 90–104, <https://doi.org/https://doi.org/10.53977/wk.v7i2.2184>.

⁷³ Bryan Firdaus Army Valentino et al., “Perlindungan Hukum Pidana Terhadap Pekerja Migran Indonesia Ditinjau Dari Perspektif Perlindungan Hak Asasi Manusia,” *Borobudur Law and Society Journal* 3, no. 3 (2024): 103–18, <https://doi.org/https://doi.org/10.31603/11839>.

⁷⁴ Silvey, Hwang, and Choi, “Serial Labor Migration : Precarity and Itinerancy among Filipino and Indonesian Domestic Workers.”

and remittances for the country.⁷⁵ Although many problems faced by Indonesian migrant workers generally occur among prospective workers who enter the country illegally, making supervision and protection efforts difficult.⁷⁶

Various examples of exploitation that often arise include unpaid wages for months on end. This even happened in the case of Meriance Kabu, who left based on sweet promises and then suffered torture in Malaysia.⁷⁷ Satjipto Rahardjo said that legal protection is an effort to protect human rights. The goal of this protection is for everyone to be able to obtain the rights guaranteed by law.⁷⁸ Protection for Indonesian migrant workers aims to fulfill and enforce human rights and workers' rights abroad. This protection includes legal certainty and economic and social security for workers and their families.⁷⁹

Although there is legal protection and the government plays a strong role in protecting Indonesian migrant workers, problems often arise in implementation that become obstacles, so that efforts to encourage departure through official channels to ensure safe migration have not been fully effective.⁸⁰

Indonesian migrant workers who lack skills experience discrimination in the workplace in the form of psychological pressure.

⁷⁵ Arthur Josias Simon Runturambi and Ridwan Arifin, "New Patterns and Trends of Migration: Hybrid-Crimes among Indonesian Migrant Workers in Southeast Asia," *Regional Science Policy and Practice* 17, no. 10 (2025): 100215, <https://doi.org/10.1016/j.rspp.2025.100215>.

⁷⁶ S Makhroja, MN, & Anam, "Pendekatan Nexus Migrasi-Ketahanan-Pembangunan Dalam Melihat Fenomena Migrasi Internasional Pekerja Migran Di Nusa Tenggara Barat Tenggara. Konferensi Internasional Indonesia Tentang Studi Interdisipliner Ke-2 (IICIS 2021)," 2021.

⁷⁷ P. Rizqy, M., Putra, S., Cornelia, G., Azzahra, N., & Tabitha, "Tindak Pidana Perdagangan Orang Dipandang Dari Hukum Nasional Dan Internasional : Studi Kasus Terhadap Pekerja Migran Indonesia Dari Nusa Tenggara Timur," *JLEB Journal of Law Education* 2, no. 2 (2024): 1021–1032, <https://doi.org/10.57235/jleb.v2i2.2896>.

⁷⁸ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT. Citra Aditya Bakti, 2000).

⁷⁹ Hamid, *Kebijakan Ketenagakerjaan Bagi Pekerja Migran (Tinjauan Undang-Undang No 18 Tahun 2017 Tentang Perlindungan Pekerja Migran Indonesia)*.

⁸⁰ B Hasbiyalloh et al., "Political Economy Analysis of Indonesian Migrant Worker Vulnerabilities to Exploitation in Malaysia's Palm Oil Sector," *London: ODI and ASEAN ...*, no. March (2024): 16.

Although they face various personal limitations, such as low levels of education and a lack of family support, these workers still receive help from their friends. This form of social support helps them cope with the pressures of life.⁸¹

Indonesian migrant workers receive support, particularly when it comes to financial matters such as medical expenses or the loss of a family member. This situation reflects the sense of caring among Indonesian immigrants, a manifestation of brotherhood rooted in nationalism. It also demonstrates the readiness of various communities to uphold the tradition of mutual cooperation, rooted in the homeland. This fact also confirms the potential for a strong source of social capital within the community.⁸²

IV. The Status of Illegal Indonesian Migrant Workers in Legal Protection

Illegal migrant worker placement syndicates not only harm Indonesia, but also harm the workers themselves. This situation affects Indonesia's reputation and has the potential to damage good bilateral relations with destination countries. Weak law enforcement makes it difficult to eradicate these syndicates. Therefore, appropriate measures are needed to tackle this issue through cross-sector cooperation and collaboration between ministries and state institutions, together with BP2MI, the Directorate General of Immigration, and the Population and Civil Registration Agency.⁸³ To achieve this, a comprehensive and integrated protection system is needed, involving synergy between the central

⁸¹ Noor, N. M., & Shaker, "Int. J. Intercult. Relations."

⁸² Tunira Hasanah, "Potential Social Capital of Indonesian Immigrant in Malaysia: A Preliminary Research," *Procedia - Social and Behavioral Sciences* 211, no. September (2015): 383–89, <https://doi.org/10.1016/j.sbspro.2015.11.050>.

⁸³ Atsil Syah Gibran and M Fadly Khusairy, "Analysis and Initiation of Efforts To Exterminate Illegal Indonesian Migrant Workers Syndicate Through Collaboration of the Indonesian Migrant Workers Protection Agency and the Directorate General of Immigration," *Journal of Law and Border Protection* 5, no. 1 (2023): 1–11, <https://doi.org/10.52617/jlbp.v5i1.414>.

government, regional governments, and the community.⁸⁴ Data integration has been initiated since 2018 through cooperation between BP2MI and Immigration through a memorandum of understanding signed by BP2MI and the Ministry of Law and Human Rights.

The presence of Indonesian migrant workers raises serious issues in the enforcement of human rights protection laws. This inequality makes them vulnerable to becoming targets of crime. Indonesia and various other countries still have regulations that treat Indonesian migrant workers as lawbreakers, such as illegal immigrants who enter without permission, or who falsify visa and passport documents. In fact, Indonesia has ratified the 2000 Protocol, which states that victims of human trafficking should not be subject to criminal sanctions, even if they are undocumented and use false identities.⁸⁵

These illegal migrant workers have an unclear legal status, which means that their rights are not recognized and they do not receive legal protection.⁸⁶ The inability of law enforcement officials to distinguish between legal violations and cases of exploitation affecting Indonesian migrant workers actually exacerbates the risk of human rights violations. As a result, victims who should be receiving assistance, rehabilitation, and access to justice are instead treated as perpetrators, detained, deported, and even subject to criminal sanctions. This situation creates a chain reaction, with victims reluctant to report and perpetrators going unpunished. Furthermore, the stigma attached to illegal Indonesian migrant workers is that they are lawbreakers, without considering the background of marginalized groups, such as unemployment, poverty, and limited job opportunities.⁸⁷

The legal status of Indonesian migrant workers who do not follow the proper procedures has sparked controversy in law enforcement. On

⁸⁴ Ibid.

⁸⁵ Y. Anreany, V., & Fitriliani, "Migran Indonesia Korban Perdagangan Orang Di Malaysia Berdasarkan Protokol Palermo 2000" 6 November (2024): 1406–1417.

⁸⁶ S Yusitarani, "Analisis Yuridis Perlindungan Hukum Tenaga Migran Korban Perdagangan Manusia Oleh Pemerintah Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 24–37, <https://doi.org/https://doi.org/10.14710/jphi.v2i1.24-37>.

⁸⁷ Anreany, V., & Fitriliani, "Migran Indonesia Korban Perdagangan Orang Di Malaysia Berdasarkan Protokol Palermo 2000."

the one hand, they are considered to be in violation of border and labor regulations, while on the other hand, they are also at risk of becoming victims of human trafficking and exploitation. Furthermore, referring to Law No. 6 of 2011 on immigration, specifically Articles 119 and 122, these articles contain administrative sanctions in the form of deportation, which may also be imposed on Indonesian migrant workers in other countries. However, it is necessary to distinguish between legal and illegal migrant workers, in situations where prospective Indonesian migrant workers actually want to work legally, but are deceived or trapped in certain circumstances that force them to become illegal Indonesian migrant workers.⁸⁸

The lack of information regarding education and socialization about immigration regulations means that many Indonesian migrant workers do not have documents such as visas and passports. So when their visas expire, Indonesian migrant workers usually obtain information about visas from other Indonesian migrant workers. Because they are categorized as unskilled workers, many of them depend on family, friends, and relatives to start a new life and find a place to live.⁸⁹

Law No. 39 of 2004 previously emphasized the economic aspects of labor placement, so that worker protection was not a primary concern. With the enactment of Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers⁹⁰. In addition, legal protection support is reinforced at the regional level through the establishment of One-Stop Integrated Services (LTSA) and Job Training Centers (BLK)⁹¹. The Indonesian Migrant Workers Union

⁸⁸ Jun Justinar Aura Ratrika, "Perlindungan Pekerja Migran Ilegal Indonesia Korban Perdagangan Orang Di Malaysia Menurut Protokol Palermo Tahun 2000," *JURNAL REFORMASI HUKUM TRISAKTI* 6, no. 1 (2024): 399–408, <https://doi.org/https://doi.org/10.25105/refor.v6i1.19478>.

⁸⁹ Padang Wicaksono et al., "Social Sciences & Humanities Open Skill Formation and Income : Insights from the Indonesian Migrant Workers," *Social Sciences & Humanities Open* 10, no. January (2024): 101086, <https://doi.org/10.1016/j.ssaho.2024.101086>.

⁹⁰ Azizah Devi Rahayu, Misbahul Munir, *Hukum Ketenagakerjaan Konsep Dan Pengaturan Dalam Omnibus Law* (Setara Press, 2021).

⁹¹ Muwahid, "Perlindungan Hukum Terhadap Tenaga Kerja Wanita Ilegal Di Malaysia."

(SBMI) plays a role in ensuring the protection of the rights of Indonesian migrant workers abroad⁹². In order to improve competence, education and training that is in line with industry needs must be carried out,⁹³

Training conducted in the workplace has been proven to increase the income of Indonesian migrant workers. Based on statistical data, migrant workers who receive training in the workplace experience a 1.9-fold increase in salary compared to workers who attend training outside the workplace. This reflects that workplace training plays a major role in honing skills, increasing competitiveness, and improving overall performance, which ultimately leads to an increase in income.⁹⁴ For example, by providing financial literacy training to prospective Indonesian migrant workers so that they can gain an understanding of financial management.⁹⁵

The lack of education and limited understanding of the recruitment process among the public has opened the door for migrant worker brokers who directly offer overseas employment opportunities. From another perspective, many prospective Indonesian migrant workers use unofficial channels because they do not want to deal with the various documentation requirements, thereby speeding up the process of leaving to work abroad⁹⁶.

⁹² A. Rahayunto, I. D. S., & Nugroho, "Peran Dewan Pimpinan Cabang Serikat Buruh Migran Indonesia Terhadap Pelindungan Hukum Pekerja Migran Indonesia Sebelum Bekerja Di Kabupaten Banyuwangi," *Jurnal Novum* 9, no. 2 (2022): 1–13, <https://doi.org/https://doi.org/https://doi.org/10.2674/novum.v0i0.39487>.

⁹³ Ahmad Soleh, "Masalah Ketenagakerjaan Dan Pengangguran Di Indonesia," *Jurnal Ilmiah Cano Ekonomos* 6, no. 2 (2017): 83–92, <https://doi.org/https://doi.org/10.30606/cano.v6i2.629>.

⁹⁴ Wicaksono et al., "Social Sciences & Humanities Open Skill Formation and Income : Insights from the Indonesian Migrant Workers."

⁹⁵ Ramayani Yusuf et al., "Pelatihan Literasi Keuangan Bagi Calon Tenaga Migran Indonesia," *Jurnal Pengabdian Kepada Masyarakat (Adi Dharma)* 2, no. 2 (2024): 129–36, <https://doi.org/10.58268/adidharma.v2i2.94>.

⁹⁶ Verawati Skaut and Widodo Triputro, "Pencegahan Pekerja Migran Indonesia (Pmi) Ilegal," *MARAS: Jurnal Penelitian Multidisiplin* 1, no. 1 (2023): 1–11, <https://doi.org/10.60126/maras.v1i1.1>.

Protection for Indonesian Migrant Workers (PMI) is fundamentally very important, both migrant workers legally and illegally for the government. Prospective migrant workers who depart illegally use false permits prepared by brokers from migrant worker placement Indonesian Migrant Worker Placement Company. The non-procedural departure of migrant workers is not without risk; it is highly vulnerable to dangerous risks such as violence, human trafficking, and sexual violence, not to mention being considered illegal immigrants.⁹⁷ The brokers use various tricks, accompanied by sweet promises and temptations, to convince prospective Indonesian migrant workers to work abroad for fantastic salaries.⁹⁸

Until now, the government has not been able to formulate a strong concept for the protection of Indonesian migrant workers. In fact, the government seems to differentiate between formal and informal migrant workers, thereby failing to provide legal protection. Legal protection for Indonesian migrant workers is actually regulated in various laws and regulations, such as Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, as stated in Article 1 points 1 and 33.⁹⁹

Based on the provisions of Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, unregistered or illegal migrant workers cannot obtain legal protection. In fact, the conditions in the field are alarming, with more cases of legal violations affecting illegal Indonesian migrant workers working in Malaysia. Users of illegal workers are aware of their weak position in the eyes of the law, especially illegal Indonesian migrant workers. As a result, even though these illegal Indonesian migrant workers are exploited and subjected to legal

⁹⁷ Ibid.

⁹⁸ Nizar. A. Inayah. A. T. D. Moh., "Penguatan Peran Pemerintah Melalui Perlindungan Hukum Terhadap Pekerja Migran Indonesia," *SOSIOLOGI: Jurnal Ilmiah Kajian Ilmu Sosial Dan Budaya* 20, no. 2 (2018): 95–111, <https://doi.org/https://doi.org/10.23960/sosiologi.v20i2.10>.

⁹⁹ Muwahid, "Perlindungan Hukum Terhadap Tenaga Kerja Wanita Ilegal Di Malaysia."

violations, they do not dare to report it to the Manpower Office because they do not have official documents.¹⁰⁰

Indonesian migrant workers are unofficial, making it difficult to monitor and provide legal protection even though they contribute to foreign exchange earnings. The most sought-after sectors are domestic workers and oil palm plantations¹⁰¹. Enforcement and supervision in various destination countries, particularly in the Middle East and Asia, where there are differences in regulations that only apply to workers in the formal sector.¹⁰²

This requires the government to not turn a blind eye. Even though these migrant workers are illegal, they are still Indonesian citizens. Article 28 D paragraph (1) of the 1945 Constitution This article instructs the state to be present for every citizen, regardless of time or place. Specifically to Indonesian citizens residing in foreign countries, especially Malaysia as the country with the highest demand and destination for Indonesian migrant workers, both legal and illegal.¹⁰³

In the context of legal protection for non-procedural Indonesian migrant workers in Malaysia, in accordance with Law No. 39 of 1999 concerning Human Rights, Article 49, women are also protected by law, including their reproductive organs¹⁰⁴. To date, Indonesian migrant workers continue to experience sexual violence, both verbal and physical, perpetrated by their employers. In essence, this is regulated in Articles 10 and 11 of the International Convention on the Protection of the Rights of Migrant Workers and Their Families, which emphasizes that there should be no discrimination, inhumane treatment, or slavery.

¹⁰⁰ Adharinalti, "Perlindungan Hukum Terhadap Tenaga Kerja Irregular Di Luar Negeri," *Jurnal Rechtsvinding* 1, no. 1 (2012): 160.

¹⁰¹ Gingin Anjar Pramuda & Antoni, "Penegakan Hukum Pidana Terhadap Penyalur Pekerja Migran Secara Ilegal Dalam Prespektif Hukum Pidana Islam," *Journal of Sharia and Legal Science* 3, no. 2 (2025): 180–92, <https://doi.org/https://doi.org/10.61994/jsls.v3i2.1250>.

¹⁰² Angelia and Suherman, "Analisis Hukum Tentang Perlindungan Ham Bagi Pekerja Migran Indonesia Di Negara Tujuan."

¹⁰³ Muwahid, "Perlindungan Hukum Terhadap Tenaga Kerja Wanita Ilegal Di Malaysia."

¹⁰⁴ Hardijan Rusli, *Hukum Ketenagakerjaan* (Bogor: Ghalia Indonesia, 2011).

The government has taken various measures and established agreements with various institutions and ministries, both central and regional, to find solutions to the problems faced by Indonesian migrant workers.¹⁰⁵ The government strives to ensure protection for Indonesian migrant workers by establishing representative offices in destination countries or receiving countries.¹⁰⁶

V. Legal Protection for Illegal Indonesian Migrant Workers from the Perspective of Sharia Law and Law No. 18 of 2017

Legal Protection for Illegal Migrant Workers from an Islamic Law Perspective

From an Islamic perspective, the placement of Indonesian migrant workers, both legal and illegal, can be categorized as a rental contract. This rental contract is regulated in Article 20 of the Compilation of Sharia Economic Law (KHES).¹⁰⁷ In the research conducted by Raisa Angraini in her thesis, entitled Analysis of Islamic Law and Positive Law on the Distribution of Indonesian Migrant Workers at PT Tulus Widodo Putra Ponorogo, it was concluded that the deduction of wages of Indonesian migrant workers amounting to Rp. 28,000,000. which

¹⁰⁵ Nadya Zerlinda Febrianti and Wiwik Afifah, "Perlindungan Hukum Terhadap Pekerja Migran Indonesia Yang Mengalami Kekerasan Di Luar Negeri," *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* 3, no. 1 (2023): 191–203, <https://doi.org/10.53363/bureau.v3i1.174>.

¹⁰⁶ F. E. Susanti, H. D. R., & Putri, "Perlindungan Hukum Jaminan Sosial Penempatan Pekerja Migran Indonesia Di Luar Negeri Berdasarkan Konvensi Dan UU No. 18 Tahun 2017 Tentang Perlindungan Pekerja Migran Indonesia," *Jurnal Ilmiah Ilmu Hukum Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 18, no. 1 (2020): 33–43, <https://doi.org/https://doi.org/10.32528/faj.v18i1.6523>.

¹⁰⁷ Mahkamah Agung Republik Indonesia Direktorat Jendral Badan Peradilan Agama, *Kompilasi Hukum Ekonomi Syariah*, n.d.

was paid in installments for 4 (four) months amounting to Rp. 7,000,000. carried out by PT Tulus Widodo Putra Ponorogo was in accordance with Law number 18 of 2017 concerning Indonesian migrant workers, regional regulation number 7 of 2021 concerning the Protection of Indonesian Migrant Workers for Indonesian Migrant Workers and Prospective Indonesian Migrant Workers (CPMI) from Ponorogo, Government Regulation Number 10 of 2020 concerning the Protection of Indonesian Migrant Workers, and Islamic law, especially in the hadith narrated by Ibn Majah.¹⁰⁸

From the perspective of Islamic economic law, the existence of improvements to the regulations governing Indonesian migrant workers is mandatory. This mandatory law is based on several reasons, namely: first, the law can be categorized as *hifz al-mal*, which means protecting property. Second, it is in accordance with the *fiqh* principle of “*li al-wasa'ili hukmu al-maqasid*” (the law applicable to means (tools) is the law that aims to protect). This means that if the protection of Indonesian migrant workers from various types of losses is mandatory, then the existence of improvements to the laws and regulations governing them is also mandatory. Third, in accordance with the core *fiqh* principle of “*jalbu al maslahah wa dar'u al-mafsadah*”. Attracting *maslahah* and rejecting *mafsadah* [loss]. This principle can be the basis for the government, especially the Ministry of Protection of Indonesian Migrant Workers, to create a sense of security and comfort for all parties involved; to create a disciplined, trustworthy, and responsible attitude and behavior, as well as to avoid negligence, mistakes, and fraud that can harm Indonesian migrant workers.¹⁰⁹

¹⁰⁸ Ibid.

¹⁰⁹ Mohammad Reza Fachruddin, Amir Tajrid, and Bagas Heradhyaksa, “Regulation of Investor Protection of Information Technology- Based Shari’ Ah Crowdfunding Services in Indonesia from the Perspective of Shari’ Ah Economic Law,” *Electronic Journal of Education, Social Economics and Technology* Vol. 5, no. 2 (2024): 13–21, <https://doi.org/https://doi.org/10.33122/ejeset.v5i2.194>.

According to Islamic law, parties who illegally recruit Indonesian migrant workers (PMI) can be subject to ta'zir sanctions, because their actions contain elements of gharar (uncertainty) and dzulm (injustice) that cause harm to workers, whether economically, physically, or psychologically. This act does not fall under the categories of hudud or qisas, so the determination of the punishment is left to the discretion of the judge, taking into account maslahah (public interest) and zajr (deterrence). The practice of illegal PMI placement essentially involves labor exploitation, document falsification, and even human trafficking, thus falling within the scope of Islamic criminal law which requires the application of ta'zir punishment to provide a deterrent effect and prevent the recurrence of such crimes.¹¹⁰

Sanctions against labor brokers or brokers who send Indonesian migrant workers illegally must be strictly enforced and monitored. Every stage of the process, from registration to departure, needs to be strengthened. The role of local governments at the provincial and district/city levels must also be continuously enhanced, as must oversight by the Indonesian National Armed Forces (TNI) and the Indonesian National Police (POLRI), especially in border areas vulnerable to becoming entry and exit routes for illegal migrant workers.¹¹¹

The state's responsibility to protect illegal migrant workers is crucial, given their greater vulnerability to human rights violations than documented migrant workers. This obligation also includes the state's role in ensuring that private parties, individuals, and transnational entities within its jurisdiction do not violate individual rights. Indonesian migrant workers with illegal status are divided into two categories. First, migrant workers who departed in violation of

¹¹⁰ M. Natsir, "Konsep Ta'zir Dalam Hukum Islam Dan Relevansinya Dengan Hukum Pidana Nasional" 11 (n.d.): 124–126.

¹¹¹ Siti Rodhotul Jannah, "Bentuk Perlindungan Hukum Yang Diberikan Pemerintah Kepada Pekerja Migran Indonesia Ilegal Yang Menjadi Korban Perdagangan Manusia," *LEX et ORDO Jurnal Hukum Dan Kebijakan* 1, no. 1 (2023): 47–43.

administrative provisions or through unofficial institutions, known as illegal migrant workers. Second, legal migrant workers who are victims of human trafficking, involving elements of coercion, fraud, or violence. Legal protection itself is the effort, process, and action taken to protect individuals based on legal provisions established by the authorities.¹¹²

Protection in obtaining employment plays a crucial role, as does ensuring safety and security during work, which is essential. Any form of discrimination in the workplace, including in terms of wages, constitutes a violation of human rights. This principle is reflected in the constitution, which obliges the state to improve the welfare of the people by providing decent and adequate employment opportunities domestically, so that people do not have to rely on work abroad to earn a decent living. The state's responsibility to guarantee and protect every individual's right to decent work also includes protection for migrant workers, both official and unofficial.¹¹³

Facts on the ground clearly demonstrate that the presence of migrant workers, including those with unofficial status, reflects the low level of welfare and economic conditions of the community. Approximately 95% of them come from economically disadvantaged backgrounds, while the remainder are due to low levels of education, which creates an imbalance between the need for labor and the availability of jobs.¹¹⁴

Legal protection for irregular migrant workers is an integral part of the international human rights law system, international law, and labor law. The primary focus of this legal protection is the provisions governing the guarantee of rights and protection for irregular migrant workers.¹¹⁵ The government has attempted to implement a repatriation

¹¹² Marliana, "Perlindungan Hukum Terhadap Pekerja Migran Indonesia Menurut Undang Undang Nomor 18 Tahun 2017" (Universitas Dharmawangsa, 2020).

¹¹³ Nur Efsari, "Perlindungan Hukum Irregular Migrant Workers Indonesia Dalam Prespektif Hak Asasi Manusia."

¹¹⁴ Solechan. et.al, "Upaya Meningkatkan Jaminan Perlindungan Pekerja Migran Indonesia," *Administrative Law & Governance Journal* 2, no. 2 (2020).

¹¹⁵ ILO, *Preventing Discrimination, Exploitation, and Abuse of Women Migrant Workers: An Information Guide*, Booklet 4 (ILO Gender Promotion Programme, 2003).

program for migrant workers in countries with strict policies against undocumented workers. However, the influx of new migrant workers remains uncontrolled.¹¹⁶

The steps taken by the government to reduce the number of illegal migrant workers include re-verifying the required documents of prospective Indonesian Migrant Workers, holding outreach at the sub-district level, establishing cooperation with various agencies that are members of the Indonesia migrant workers (PMI) prevention task force, monitoring the Job Training Centers (BLK) and recruitment Indonesian Migrant Worker Placement Company, and holding training to improve the quality of human resources.¹¹⁷

The government has an obligation to provide formal protection to individuals and groups, both against their own actions and negligence. The state's responsibility at the international level is reflected in various global conventions. In the context of illegal migrant workers, Indonesia has ratified the Convention on the Protection of the Rights of All Migrant Workers and Their Families (CMW) through Law Number 6 of 2012 concerning the Ratification of the International Convention on the Protection of the Rights of Migrant Workers and Their Families.

The Convention establishes fundamental, non-derogable rights for all migrant workers, including those with illegal status, as clearly outlined in Articles 8 through 34. Fundamentally, the Convention affirms three key principles for migrant workers. First, the principle of non-discrimination, which explicitly states that the Convention applies to all migrant workers and members of their families without distinction of sex, race, religion, belief, language, color, political opinion, nationality, ethnic or social origin, citizenship, age, economic status, wealth, marital status, birth, or other background. Second, the principle of providing a remedy, which means that the state is obliged to ensure the availability of effective measures for migrant workers or their families who experience human rights violations, including the

¹¹⁶ Nur Efsari, "Perlindungan Hukum Irregular Migrant Workers Indonesia Dalam Perspektif Hak Asasi Manusia."

¹¹⁷ Skaut and Triputro, "Pencegahan Pekerja Migran Indonesia (Pmi) Ilegal."

provision of legal assistance and health services according to their needs. Third, the principle of equality of treatment, which affirms that migrant workers have the right to receive the same treatment as citizens in the destination country, both in terms of employment, wages, leave, social security, education, training, health, access to legal mechanisms, and protection against violations of employment contracts.¹¹⁸

In essence, this convention does not differentiate between the rights of documented migrant workers and those with illegal status. As Indonesian citizens, illegal migrant workers remain entitled to protection from the state wherever they are, even if they die outside of Indonesia's jurisdiction, as stipulated in this provision. By ratifying the CMW Convention, Indonesia is legally bound to guarantee and protect the rights of migrant workers as stipulated in the convention, including those who are undocumented. Ratification of the convention also signifies that the country declares its willingness to be under the supervision of the relevant international committee. At the same time, Indonesia is committed to fulfilling a number of obligations, namely to respect, protect, and fulfill the rights stipulated in the convention. Fulfillment of these obligations includes legislative, administrative, and judicial measures, as well as concrete actions to ensure the implementation of the rights mandated by the convention.¹¹⁹

The scope of migrant workers recognized under national law is much more limited than the definition set out in the CMW, as it explicitly provides legal protection only for migrant workers who meet certain requirements. However, not all Indonesian migrant workers working abroad meet the requirements stipulated in national law. Documentation requirements, as part of the administrative process, are a crucial aspect in ensuring the protection of migrant workers' rights. This is also emphasized in the CMW, which highlights the importance

¹¹⁸ Eko Riyadi, *Hukum Hak Asasi Manua Prespektif Internasional Regional, Dan Nasional* (Depok: PT Raja Grafindo Persada, 2018).

¹¹⁹ Apeles Lexi L. et.al, *Hukum Hak Asasi Manusia* (Yogyakarta: Penerbit Ombak, 2015).

of complete documentation to prevent the involvement of minors in labor migration activities and to reduce human trafficking and smuggling practices.¹²⁰

TABLE 1. Weaknesses in Law No. 18 of 2017 concerning Indonesian migrant workers

Destination Country	Memorandum of Understanding (MoU)	Fishermen	Gender
Failure to consider the deployment of Indonesian migrant workers to countries with which Indonesia has no diplomatic relations, such as Taiwan	As a medium for placing Indonesian migrant workers, the provisions in Law No. 18 of 2017 have weaknesses from a legal perspective because they are based solely on moral commitments, so they do not yet have binding legal force.	Placing Indonesian migrant workers in the fisheries sector (as fishermen), which is not in accordance with the International Labor Organization (ILO) Convention	There are no specific legal policies regarding the accommodation of Indonesian migrant workers, especially female migrant workers. In fact, female workers outnumber male migrant workers.

Sources: Saru Arifin, “Legislasi Pekerja Migran Indonesia: Dari Coolie, Remitansi Hingga Hak Asasi Manusia”, 2025

Referring to data compiled by Ministry of Protection of Indonesian Migrant Workers (KP2MI), from 2007 to 2025, the number of female migrant workers has consistently outnumbered male

¹²⁰ Riri Anggraini, “Perlindungan Hukum Bagi Irregular Migrant Workers Indonesia Di Kawasan Asia Tenggara (Dalam Perspektif Hukum Ham Internasional),” *Jurnal Yuridika* 32, no. 2 (2017): 310–335, <https://doi.org/https://doi.org/10.20473/ydk.v32i2.4773>.

migrant workers. This places a mental and psychological burden on husbands and children without their mothers by their side.¹²¹

A government vocational institution is needed to address the needs of the international labor market, accompanied by widespread and ongoing socialization of placement programs and education on the rights of Indonesian migrant workers (PMI) and illegal Indonesian migrant workers. In addition, a comprehensive mapping of the various problems faced by PMI from the pre-placement to post-placement stages is needed, as well as the development of a systematic and measurable supervision roadmap. The regulations drafted must also be relevant to the real needs of PMI by actively involving them in the policy formulation process. From a protection perspective, there should be no dichotomy between the formal and informal status of Indonesian migrant workers.¹²²

Indonesia has ratified the Convention on the Protection of Migrant Workers and Members of Their Families and adopted the Global Compact for Safe, Orderly and Regular Migration. However, to date, there has been no comprehensive harmonization of all regulations derived from Law No. 18 of 2017 to bring them into line with international instruments related to the protection of migrant workers' rights. In addition, Indonesia has not yet optimized the use of ASEAN regional mechanisms, both through declarations and consensus, as a means of ensuring the protection of migrant workers in the Southeast Asian region. Although during Indonesia's chairmanship of ASEAN in 2023, three ASEAN Declarations were produced relating to the issue of migrant workers and the prevention of human trafficking, the implementation of comprehensive protection still requires further

¹²¹ Kementerian Pelindungan Pekerja Migran Indonesia/Badan Pelindungan Pekerja Migran Indonesia, "Statistik Penempatan," Kementerian Pelindungan Pekerja Migran Indonesia/Badan Pelindungan Pekerja Migran Indonesia, n.d.

¹²² Wahyu Susilo, "Melindungi Pekerja Migran Indonesia Pada Masa Pasca-Pandemi."

strengthening. Effective and equitable labor migration governance has the potential to promote human development, while weak migration governance risks increasing human trafficking.¹²³

Regulations concerning Indonesian migrant workers, which have been governed by law since 2004 and subsequently updated in 2017, have not fully accommodated substantive aspects of protection. As a result, protection for legal and illegal Indonesian migrant workers, especially during their placement period, is still not optimal, leaving the human rights of Indonesian migrant workers vulnerable to violations. Therefore, this study emphasizes that strengthening and improving the quality of Indonesian migrant worker legislation is a strategic and comprehensive step in addressing the various problems faced by both legal and illegal Indonesian migrant workers¹²⁴.

Indonesia needs to learn from the labor migration regulatory practices in Nepal, Pakistan, and the Philippines, given that a number of their legal provisions are relevant to be adapted in order to strengthen the quality of Indonesian migrant worker legislation. These provisions cover aspects of placement, responsible institutions, social security administration, legal aid, management of migrant worker welfare funds, monitoring mechanisms, and special protection for domestic workers¹²⁵.

Based on ILO Convention No. 189 of 2011 concerning Decent Work for Domestic Workers, domestic workers are recognized as workers who have the same status and rights as workers in other sectors. However, the practice of dichotomizing employment status, which leads to discrimination, still makes female migrant workers, especially those working as domestic workers, the most vulnerable group. Therefore, the ratification of the Draft Law on the Protection of Domestic Workers is

¹²³ Ibid.

¹²⁴ Saru Arifin, "Legislasi Pekerja Migran Indonesia: Dari Coolie, Remitansi Hingga Hak Asasi Manusia" (Semarang, n.d.).

¹²⁵ Ibid.

an important agenda to strengthen legal protection guarantees. In line with this, efforts to revise Law No. 18 of 2017 should not lead to the recentralization of the management of Indonesian migrant worker protection, but should instead further strengthen the decentralization approach. This strengthening needs to be supported by operational policies from the Ministry of Home Affairs and/or the Ministry of Villages to clarify the implementation of the duties and responsibilities of village governments in providing protection to migrant workers.

Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad (PPTKILN) is an initial regulation that tends to focus on the aspect of placement, with relatively limited protection and the dominance of the private sector in the recruitment and placement process of Indonesian migrant workers. The amendment through Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers shows a strengthening of the role of the state at various levels, from the district/city, provincial, to the national level. Unlike the centralistic nature of Law No. 39 of 2004, Law No. 18 of 2017 is designed to carry out decentralized functions by giving greater authority and responsibility to local governments.¹²⁶

Legal Protection for Indonesian Illegal Migrant Workers

Both legal and illegal migrant workers are entitled to equal protection. This protection covers legal, economic, and social aspects for migrant workers and their families. Recognition of human rights is also reflected in Law Number 18 of 2017 concerning Indonesian Migrant Workers, which regulates the forms of protection for migrant workers. Furthermore, Indonesia also collaborates internationally in efforts to

¹²⁶ Susilo, "Melindungi Pekerja Migran Indonesia Pada Masa Pasca-Pandemi."

prevent and address human trafficking, both through bilateral and regional cooperation.¹²⁷

The rights and obligations of Indonesian migrant workers are crucial aspects, in this case requiring serious attention from both the perspective of Indonesian positive law and Islamic law. Under Islamic law, the relationship between employer and employee is always oriented toward the values of justice and honesty, thus ensuring the welfare of the workers. However, employees are obligated to fulfill their mandate and responsibility by performing their work to the best of their ability. From an Islamic legal perspective, every agreement must be made openly and based on the agreement of both parties.¹²⁸

Law number 18 of 2017 concerning Indonesian migrant workers, allows Indonesian Migrant Worker Placement Company to make salary deductions, but on the condition that they do not violate the work contract agreed with the workers. Thus, it does not have an impact on a significant reduction in basic salary for Indonesian migrant workers according to the destination country's wages or minimum wage. Employers or employers in the destination country are not permitted to unilaterally deduct workers' salaries without prior agreement with the workers, so that fairness and transparency are created.

Indonesia strictly enforces the law against parties involved in the placement of illegal migrant workers. The government does not hesitate to impose sanctions on Indonesian Migrant Worker Placement Company and individuals who violate the provisions of Law No. 18 of 2017, ranging from temporary suspension to revocation of business licenses Indonesia also continues to coordinate with field officers,

¹²⁷ Rodhotul Jannah, "Bentuk Perlindungan Hukum Yang Diberikan Pemerintah Kepada Pekerja Migran Indonesia Ilegal Yang Menjadi Korban Perdagangan Manusia."

¹²⁸ Raisa Anggraini, "Analisis Hukum Islam Dan Hukum Positif Terhadap Praktik Penyaluran Pekerja Migran Indonesia Di PT. Tulus Widodo Putra Ponorogo" (IAIN Ponorogo, 2025).

including representatives of consultants and Indonesian embassies in other countries. This measure aims to protect illegal migrant workers so that they can be dealt with quickly and fairly in every case. This is in accordance with the standards of the ILO (International Labor Organization).¹²⁹

Indonesia has enacted regulations through Law No. 18 of 2017 concerning Indonesian migrant workers, which is the main legal norm related to legal protection¹³⁰. Despite various regulations being put in place, problems related to illegal Indonesian migrant workers still occur frequently. The high level of enthusiasm among the public to work abroad has led to a rapid increase in the number of illegal and legal Indonesian migrant workers. However, not all Indonesian Migrant Worker Placement Company that recruit Indonesian migrant workers comply with applicable laws and regulations. In addition, prospective migrant workers often lack knowledge and information about legal issues, making them vulnerable to becoming victims of illegal migrant workers who violate regulations, thereby harming the migrant workers themselves.¹³¹

In an effort to protect illegal migrant workers who are deported by their destination countries, Indonesia has developed an economic empowerment program for workers. The rehabilitation and reintegration program includes skills training, provision of business capital, and other assistance. This effort is an attempt to combat the practice of illegal migrant workers due to the financial pressures faced

¹²⁹ Dkk M. Rofid Nadhil Septino, "Peran Pemerintah Indonesia Dalam Menangani Kasus Meriance Kabu Dalam Memperjuangkan Keadilan," *Jurnal Siber Multi Disiplin* 2, no. 4 (2025): 259, <https://doi.org/https://doi.org/10.38035/jsmd.v2i4.312>.

¹³⁰ Lahia Jeremy, "Perlindungan Hukum Terhadap Pekerja Migran Indonesia Menurut Konvensi Internasional Tentang HakHak Pekerja Migran Tahun 1990," *Lex Privatum* 12, no. 1 (2024): 2.

¹³¹ Zaeni Asyhadie dan Rahmawati Kusuma, *Hukum Ketenagakerjaan Dalam Teori & Praktik Di Indonesia* (Jakarta: Prenada Media Group, 2019).

by Indonesian migrant workers.¹³² Indonesia is also working to eliminate the perception that illegal migrant workers are heroes who earn foreign exchange for the country through education. It is hoped that this will change the perspective of the community and state officials. This approach is in line with the principle of fair treatment in international law.¹³³

Indonesia also actively contributes to ASEAN cooperation through the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers. Although not legally binding, this has become a legal norm for regional cooperation to protect both illegal and legal migrant workers. Indonesia also recommends that ASEAN countries strengthen their joint referral system in dealing with issues related to illegal and legal migrant workers.¹³⁴

Indonesia is one of the countries with international trade routes, which creates opportunities for the illegal migration of Indonesian workers and the potential for human trafficking. The Indonesian government, through the Directorate General of Immigration, consistently monitors Indonesian citizens (WNI) who wish to migrate to other countries. This is done to prevent illegal migrant workers who often use the excuse of traveling for tourism or umrah to work abroad. Inspections are carried out from upstream to downstream, beginning with visa and passport checks at Immigration Checkpoints (TPI). The

¹³² Elva Rahmi, "Evaluasi Pembangunan Berkelanjutan Melalui Pemberdayaan Ekonomi Bagi Mantan Kombatan Dan Masyarakat Korban Konflik Di Provinsi Aceh," *Journal Education and Government Wiyata* 2, no. 3 (2024): 336, <https://doi.org/https://doi.org/10.71128/e-gov.v2i3.126>.

¹³³ Dkk Muhadzib Rezki Hilmy, "'M-PMI (Monitoring-Pekerja Migran Indonesia) Sebagai Sistem Pengawasan Terintegrasi IoT Guna Menjamin Perlindungan PMI Di Luar Negeri,'" *Tematics* 6, no. 1 (2024): 12.

¹³⁴ Almaas Rahmawati Putri dan Viani Puspita Sari, "SEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers Sebagai Rezim Perlindungan Pekerja Migran Berketerampilan Rendah Di ASEAN," *Padjadjaran Journal of International Relations (PADJIR)* 3, no. 2 (2021): 243, <https://doi.org/https://doi.org/10.24198/padjir.v3i2.33497>.

Directorate General of Immigration can also delay the issuance of passports if there are indications of misuse.¹³⁵

The principle of equality before the law as stipulated in Article 27 paragraph (1) of the 1945 Constitution, including Indonesian migrant workers, both illegal and legal, are entitled to equal treatment, rights, and protection. This is in line with the principles of equal protection and non-discrimination in the international legal system. Therefore, the Indonesian government has a responsibility to take preventive and preemptive measures to protect its citizens, one of which is through the One-Stop Integrated Service (LTSA) to facilitate the licensing process and prevent the illegal sending of Indonesian migrant workers.¹³⁶

Indonesia has ratified various international conventions, such as the CMW and the International Covenant on Civil and Political Rights (ICCPR), as a commitment to fulfilling the rights of irregular migrant workers. However, the protection of undocumented migrant workers remains challenging. From an international legal perspective, there are fundamental rights that are crucial and still apply to illegal migrant workers. These rights include the right to life, the right to be free from torture or cruel treatment, the right not to be enslaved, and the right to freedom of belief.¹³⁷

Indonesia actively promotes the interests of illegal migrant workers in various international forums, such as the ILO and the United Nations Human Rights Council. As a result, illegal migrant workers are afforded legal protection. These diplomatic efforts aim to ensure that the destination countries of both illegal and legal Indonesian migrant

¹³⁵ Dkk. Yosia Martin, "Upaya Pencegahan Pekerja Migran Indonesia (PMI) Nonprosedural Sebagai Bagian Perdagangan Orang Melalui Pengawasan Keimigrasian," *Syntax Literate: Jurnal Ilmiah Indonesia* 9, no. 5 (2024): 2548–1398, <https://doi.org/https://doi.org/10.36418/syntax-literate.v9i5.15738>.

¹³⁶ Amira Hasna Nabila, "Perlindungan Hukum Terhadap Hak-Hak Pekerja Migran Indonesia Sektor Rumah Tangga," *Jurist-Diction* 5, no. 1 (2022): 12.

¹³⁷ Wisnu Aryo Dewanto, "Penerapan Perjanjian Internasional Di Pengadilan Nasional: Sebuah Kritik Terhadap Laporan Delegasi Republik Indonesia Kepada Komite Hak Asasi Manusia Perserikatan Bangsa-Bangsa Tentang Implementasi Kovenan Internasional Tentang Hak-Hak Sipil Dan Politik D," *Padjadjaran Jurnal Ilmu Hukum* 1, no. 1 (2014): 59, <https://doi.org/https://doi.org/10.22304/pjih.v1n1.a4>.

workers receive attention, accommodation, and easy access in their destination countries.¹³⁸

The ICCPR Convention requires that illegal migrant workers be granted equal and fair access to justice. Access to justice is a key element of the rule of law. However, in practice, many destination countries often fail to comply with this principle by deporting illegal migrant workers without following fair legal procedures.¹³⁹ The principle of restorative justice in international law encourages countries to respond to illegal migrant workers whose rights have been violated, as applied in the national laws of those countries.¹⁴⁰ Furthermore, the principle of shared responsibility in international law requires all countries to intervene in addressing the issue of illegal migrant workers through focus group discussions, workshops, and bilateral or multilateral agreements.¹⁴¹

The principle of non-refoulement originated during the era of international refugees, and its meaning has now been expanded to provide protection to illegal migrant workers from forced deportation to their country of origin if there are indications of a risk of torture or unfair treatment that could demean human dignity. This principle is recognized in international customary law (treaty).¹⁴² This international customary law results in the emergence of an obligation for states to

¹³⁸ Dkk Wahyu Susilo, *Seluruh Kebijakan (Minus) Perlindungan Buruh Migran Indonesia* (Jakarta: Migrant CARE, 2013).

¹³⁹ Dkk Muhammad Jailani, "Analisis Tanggung Jawab Negara Dalam Memberi Jaminan Perlindungan Hak Sipil Dan Politik Di Indonesia," *Jurnal Risalah Kenotariatan* 2, no. 2 (2021): 97.

¹⁴⁰ Jeremy Julian Sarkin, "Why the International Criminal Court Should Apply Restorative Justice and Transitional Justice Principles to Improve the Impact of Its Criminal Trials on Societies around the World," *International Journal of Transitional Justice* 19, no. 2 (2025): 260–78, <https://doi.org/https://doi.org/10.1093/ijtj/ijaf005>.

¹⁴¹ Siti Sumartini dan Suhaendi Salidja, "Penerapan Prinsip Common but Differentiated Responsibility Dihubungkan Dengan Prinsip Tanggung Jawab Negara Dalam Penegakan Hukum Lingkungan Internasional," *Gema Wiralodra* 13, no. 1 (2022): 238.

¹⁴² Hendra Simak, "Penerapan Hukum Internasional Dalam Kasus Migrasi Massal: Perjanjian Dan Protokol Yang Diterapkan," *Jurnal Esensi Hukum* 6, no. 2 (2024): 89, <https://doi.org/https://doi.org/10.35586/esensihukum.v6i2.415>.

provide legal protection to their citizens who are outside their territorial jurisdiction, including illegal migrant workers. This is based on the principle of citizenship, whereby the country of origin remains responsible for its citizens wherever they may be.¹⁴³

Seeing the paradigm shift in modern international law, which was previously oriented towards state security towards the protection of human rights, including in the context of illegal migrant workers. Therefore, legal protection for illegal migrant workers is based on the principles of equality, protection from unfair acts and treatment, and recognition of human rights.¹⁴⁴ International law provides opportunities for individuals, including illegal migrant workers, to file complaints through various international complaint mechanisms, such as the United Nations Human Rights Committee and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Committee. However, there are still requirements that the country of the illegal migrant worker must ratify the CEDAW convention, so that the legal protection of illegal migrant workers is not only rooted in the national law of a country.¹⁴⁵

One of the main reasons is that most countries where Indonesian migrant workers work have not yet signed up to these conventions. This situation hinders the fulfillment and enjoyment of migrant workers' rights, including those with irregular status, as guaranteed by the Convention. At the ASEAN regional level, only Indonesia and the Philippines—the two largest migrant worker-sending countries—have ratified the CMW. Meanwhile, major destination countries, such as Singapore and Malaysia, have opted not to ratify it, arguing that migrant worker issues should be regulated through their respective national legal frameworks. Ratification of the CMW by sending countries demonstrates a commitment to protecting migrant workers, but at the

¹⁴³ Michael Wood dan Omri Sender, *Customary International Law* (England: Oxford Public International Law, 2024).

¹⁴⁴ Jeffry Alexander Christianto Likadja, *Revitalisasi Sistem Pertahanan Dan Keamanan Nasional Sebagai Pilar Kedaulatan Negara* (Kupang: Fakultas Hukum Undana, 2023).

¹⁴⁵ Josep Robert Khuana, "Pengaturan Dan Perlindungan Hukum Tenaga Kerja Migran Lintas Negara Dalam Perspektif Hukum Internasional," *Jurnal Kertha Semaya* 8, no. 8 (2020): 1279.

same time, it also reflects a clear divergence of interests between sending and receiving countries.¹⁴⁶ This has led to a lack of a legal framework governing the protection of migrant workers in destination countries, and to implement the mandate of Article 11 of Law Number 18 of 2017, which requires the placement of migrant workers abroad to be carried out through a written agreement between the Indonesian government and the government of the destination country. This necessitates concrete steps from the Indonesian Ministry of Manpower and the Indonesian Ministry of Foreign Affairs. These two ministries need to establish bilateral agreements regarding the placement and protection of migrant workers with destination countries, for example through the signing of a memorandum of understanding (MoU).¹⁴⁷

The legal status of illegal Indonesian migrant workers should not prevent them from exercising their rights and obligations to be recognized with dignity and respect as human beings, as affirmed in international principles, in the International Covenant on Economic, Social, and Cultural Rights (ICESCR).¹⁴⁸ This is in line with the principle of *maqahid syari'ah* in Islamic law.

Within the context of bilateral relations, the Indonesian government continues to strive to provide protection for illegal migrant workers. One concrete step is the issuance of Minister of Manpower Decree Number 291 of 2018 concerning Guidelines for the Implementation of the Placement and Protection of Indonesian Migrant Workers in the Kingdom of Saudi Arabia, which is implemented through the One-Channel Placement System (SPSK).

¹⁴⁶ Erina Ikawati, "ASEAN Consensus on the Protection and Promotion of the Rights of Migran Workers: Penjaminan Keamanan Manusia Dan Perlindungan Pekerja Migran Perempuan," *Jurnal Hubungan Luar Negeri* 8, no. 1 (2023): 71–89, <https://doi.org/https://doi.org/10.70836/jh.v8i1.6>.

¹⁴⁷ Mochamad Alvin DQ, *Politik Perlindungan Buruh Migran Indonesia: Studi Terhadap Penempatan TKI Sektor Domestik Ke Malaysia* (Jakarta: Departement Ilmu Politik, 2013).

¹⁴⁸ Heni Sutra dan Syofyan Hadi, "Kewajiban Negara Dalam Memberikan Perlindungan Hukum Terhadap Pekerja Migran Indonesia Non Prosedural Dalam Perspektif HAM," *Jurnal Sosial Humaniora Sigli (JSH)* 6, no. 2 (2023): 453.

This system represents a breakthrough in the mechanism for the placement and protection of Indonesian migrant workers, connecting online between the Indonesian and Saudi governments. Through this system, the registration, selection, placement, and repatriation of workers can be directly monitored by the Indonesian government. It is hoped that this system will be able to reduce the number of illegal migrant workers who have the potential to become victims of human trafficking. Furthermore, this type of bilateral cooperation is also expected to be expanded to other destination countries. The Indonesian government needs to actively conduct bilateral diplomacy to protect its citizens abroad, by integrating national law into the legal systems of destination countries to ensure the safety and security of the Indonesian people.¹⁴⁹

The Indonesian government has made efforts to support the protection of Indonesian migrant workers by ratifying the 1990 Migrant Convention through Law Number 6 of 2012 concerning the ratification of the 1990 Migrant Convention.¹⁵⁰ Indonesia became the 46th country to agree to ratify the convention. This convention reflects the recognition of the rights and obligations of undocumented migrant workers.¹⁵¹ It's undeniable that government efforts to protect migrant workers, especially those with illegal status, still face various obstacles. Although regulations regarding the protection of migrant workers and Indonesian citizens abroad are well-established, their implementation is highly dependent on the policies of each country. Furthermore,

¹⁴⁹ Knut D. Asplund Et.al, *Hukum Hak Asasi Manusia* (Yogyakarta: Pusat Studi Hak Asasi Manusia Universitas Islam Indonesia, 2008).

¹⁵⁰ Dani Amran Hakim and Muhammad Havez, "Politik Hukum Perlindungan Pekerja Migran Indonesia Dalam Perspektif Fikih Siyasah Dusturiyah," *Tanjungpura Law Jpurnal* 4, no. 2 (2020): 95–116.

¹⁵¹ Zati Rizqi Muhammad, "Pertanggungjawaban Indonesia Sebagai Negara Peratifikasi Konvensi Perlindungan Hak-Hak Seluruh Pekerja Migran Dan Anggota Keluarganya," *Jurist Diction* 7, no. 1 (2024): 171, <https://doi.org/https://doi.org/10.20473/jd.v7i1.55051>.

countries' attitudes and treatment of international conventions are often determined by their own national interests.

The essence of the 1990 migrant convention is the obligation to fulfill the human rights of both legal and illegal migrant workers. Thus, illegal migrant workers still have fundamental rights as human beings that cannot be ignored. This is reinforced by international law, which affirms that discrimination against the protection of illegal migrant workers is not permitted.¹⁵²

The BP2MI team, which also includes police officers, has taken several preventive measures at Terminal 3 of Soekarno-Hatta Airport, including one related to an alleged attempt to send dozens of prospective Indonesian migrant workers to the Middle East. Furthermore, handling cases of non-procedural migrant workers, verifying related documents, and involving the public are crucial, as the government cannot work alone and requires support from all levels of society to ensure the protection of Indonesian migrant workers.¹⁵³

The Indonesian Ministry of Foreign Affairs plays a key role in protecting Indonesian migrant workers abroad through diplomatic cooperation in destination countries, such as embassies and consulates general. This aims to strengthen legal protection, including cooperation agreements in destination countries (placement).¹⁵⁴

¹⁵² Tim GKPM Komnas Perempuan, *Mengenal Konvensi PBB 1990 Tentang Perlindungan Hak-Hak Seluruh Pekerja Migran Dan Anggota Keluarganya (Konvensi Migran 1990)* (Jakarta: Komnas Perempuan, 2013).

¹⁵³ M Yusuf Samad et al., "Pencegahan Dan Penanganan Praktik Pekerja Migran Indonesia Non Prosedural (PMI-NP) Melalui Pendekatan Intelijen Strategis (Prevention and Addressing Non-Procedural Indonesian Migrant Worker Practices (PMI-NP) Through A Strategic Intelligence Approach," *Jurnal Lembanas RI* 11, no. 4 (2023): 260–72, <https://doi.org/https://doi.org/10.55960/jlri.v11i4.486>.

¹⁵⁴ Divya Aviva Marsyaf dan Rahayu Subekti, "Peran Kementerian Luar Negeri Dalam Memberikan Perlindungan Hukum Terhadap Pekerja Migran Indonesia Ilegal," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (2021): 753–58.

The state needs to play an active role in preventing illegal Indonesian migrant workers from potentially falling prey to international crimes abroad. State presence is crucial, particularly during the administrative selection process and departure at Immigration Checkpoints (TPI). Furthermore, increased public awareness campaigns and stricter implementation of selective policies are also needed.¹⁵⁵

Efforts to prevent the departure of illegal migrant workers at the Class I Immigration Office in Malang involve monitoring passport validity. However, in practice, officers still encounter various obstacles, one of which is the frequent discrepancy between the documents submitted by applicants and the information provided during interviews¹⁵⁶. In line with the steps taken in Malang, the Batam Class I Special Immigration Office also inspects the travel documents of illegal migrant workers at Immigration Checkpoints (TPI), which are often used as routes for unauthorized entry and exit from Indonesia. Immigration officials explained that their primary role is passport issuance, as every Indonesian citizen traveling abroad is required to have a valid passport. Furthermore, immigration is authorized to identify unauthorized travel documents, detect potential non-procedural migrant workers, known as illegal migrants, and ensure that they pass through established official channels.¹⁵⁷

¹⁵⁵ Felix Ferdin Bakker and Tony Mirwanto, "Contribution of the Role of Indonesian Immigration in Preventing and Protecting Human Rights Against Non-Procedural Migrant Workers (Pmi-Np) From Transnational Crimes," *Journal of Law and Border Protection* 3, no. 1 (2021): 51–63, <https://doi.org/10.52617/jlbp.v3i1.208>.

¹⁵⁶ Samad et al., "Pencegahan Dan Penanganan Praktik Pekerja Migran Indonesia Non Prosedural (PMI-NP) Melalui Pendekatan Intelijen Strategis (Prevention and Addressing Non-Procedural Indonesian Migrant Worker Practices (PMI-NP) Through A Strategic Intelligence Approach."

¹⁵⁷ W. F. Budiarto, *Efektivitas Pencegahan Pekerja Migran Indonesia Non Prosedural Oleh Kantor Imigrasi Kelas 1 Khusus Batam* (Batam: Universitas Putra Batam, 2018).

Indonesian migrant workers with illegal status are entitled to basic rights that must be protected by their country of origin (Indonesia) and their country of destination. Based on the principle of human rights, the destination country has an obligation to provide legal protection for illegal migrant workers. This obligation stems from the recognition and respect for the basic rights of every human being, regardless of the migration status of the worker.¹⁵⁸ Countries of destination for illegal migrant workers are not permitted to act arbitrarily, such as detaining or deporting them without a clear legal basis and without appropriate standard procedures. Countries of destination must ensure legal protection for both legal and illegal migrant workers as appropriate.¹⁵⁹

VI. Conclusion

It is important to understand that Indonesian illegal migrant workers are vulnerable to violence and exploitation. Therefore, the government needs to ensure protection for these migrant workers. Enforcement against illegal Indonesian migrant workers is a necessity, and is carried out for the sake of the workers' own welfare and legal protection. From an Islamic perspective, enforcement and protection are mandatory and recommended. Of course, in this case, the Indonesian Migrant Workers Protection Agency (BP2MI) cannot work alone. It needs support from various stakeholders such as immigration, city and provincial labour offices, Indonesian Migrant Worker Placement Companies (P3MI), and the Ministry of Foreign Affairs. Indonesian migrant workers should use official channels and complete the employment contracts provided by their employers or business owners, and not misuse their visas and passports.

From a protection perspective, there should be no distinction between the formal and informal sectors for Indonesian migrant

¹⁵⁸ Lanang Sakti Dkk., "Pemenuhan Hak Konstitusional Pekerja Migran Indonesia Ilegal Di Luar Negeri," *Widya Kerta: Jurnal Hukum Agama Hindu* 7, no. 2 (2024): 101, <https://doi.org/https://doi.org/10.53977/wk.v7i2.2184>.

¹⁵⁹ Dkk Owen Agustio Matitakapa, "Perlindungan Hukum Terhadap Tenaga Kerja Migran Menurut Hukum Internasional," *PATTIMURA Law Study Review* 3, no. 1 (2025): 69.

workers, whether they are legal or illegal. Therefore, it is necessary to push for the ratification of the Indonesian Migrant Workers Bill, especially in the domestic sector. Good governance of migrant labor migration will have an impact on human development, while poor governance of Indonesian migrant workers will lead to human trafficking in the destination country (placement). This is a strategic step that is expected to improve the quality of legislation related to Indonesian migrant workers. The weak governance of the protection of illegal and legal migrant workers in the destination country is caused by the lack of comprehensive existing laws and regulations. This is to maintain Indonesia's good reputation. This is in line with the principle of *maqahid syari'ah* in Islamic law.

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