

Legal Protection of Migrant Workers' Issues in Indonesia is Examined According to Law No. 39 Of 2004

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ABSTRACT

Indonesian migrant workers are an integral part of the globalization phenomenon that involves the movement of labor across countries. Along with the times and the increasing need for workers in certain sectors, many Indonesians choose to work abroad to improve their economic welfare and that of their families back home. Despite the expectation of improving economic welfare, they often face various challenges requiring adequate legal protection. This research uses a normative juridical research method with a statutory approach by referring to Law No. 39 of 2004 and its related regulations concerning the protection of migrant workers. Through this approach, the research explores the existing legal framework and identifies weaknesses and shortcomings in its implementation. Drawing on previous studies, this research emphasizes the importance of economic welfare and workers' rights, highlighting the need for comprehensive solutions. Through in-depth analysis encompassing workers' backgrounds, legal frameworks, and existing issues, this study aims to contribute to enhancing legal protection for Indonesian migrant workers abroad.

Keywords: migrants, law, protection, workers

INTRODUCTION

Indonesian migrant workers are an integral part of the globalization phenomenon that involves the movement of labor across countries. Along with the times and the increasing need for workers in certain sectors, many Indonesians choose to work abroad to improve their economic welfare and that



of their families back home.¹ However, behind the hope of finding a better livelihood, migrant workers often face various challenges and risks that result in the need for adequate legal protection.²

It is in this context that Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad is an important foundation that regulates the rights and obligations of Indonesian migrant workers.³ This law provides a legal basis for the Indonesian government to protect the rights of migrant workers, both before, during, and after they work abroad.⁴

However, although the law has provided a clear legal framework, there are still various problems faced by Indonesian migrant workers abroad. Starting from exploitation by irresponsible parties, to the lack of access to the justice system in the destination country.⁵

There are several issues identified that are relevant in the context of Indonesian migrant workers abroad. First, the socio-economic and educational background of migrant workers may play an important role in their decision to work abroad, but the factors that drive them still need to be further researched. Second, a lack of understanding of legal rights and legal procedures in destination countries can be a significant obstacle for Indonesian migrant workers, who may be vulnerable to exploitation or rights violations. By better understanding the factors that drive labor migration as well as their level of knowledge about legal

¹ Donna NP Butarbutar, Lelo Sintani, and Luluk Tri Harinie, "Peningkatan Kesejahteraan Ekonomi Masyarakat Pesisir Melalui Pemberdayaan Perempuan," *Journal of Environment and Management* 1, no. 1 (2020): 31–39, <https://doi.org/10.37304/jem.v1i1.1203>; Ani Devi Anjelina, Rania Salsabila, and Dwi Ayu Fitriyanti, "Peranan Zakat, Infak Dan Sedekah Dalam Meningkatkan Kesejahteraan Ekonomi Masyarakat," *Jibbiz Jurnal Ekonomi Keuangan Dan Perbankan Syariah* 4, no. 2 (2020): 136–47, <https://doi.org/10.33379/jibbiz.v4i2.859>; Didi Suardi, "Makna Kesejahteraan Dalam Sudut Pandang Ekonomi Islam," *Islamic Banking: Jurnal Pemikiran Dan Pengembangan Perbankan Syariah* 6, no. 2 (2021): 321–34, <https://doi.org/10.36908/isbank.v6i2.180>.

² Dewi Asri Puanandini, "Penegakan Hukum Tindak Pidana Perdagangan Orang Pekerja Migran Indonesia," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 14, no. 2 (2021): 257–70, <https://doi.org/10.15575/adliya.v14i2.9938>.

³ Alifa Cikal Yuanita, "Menelaah Konsep Keadilan Hukum Teori Keadilan John Rawls Dalam Pemutusan Hubungan Kerja Secara Sepihak Terhadap Pekerja Migran Indonesia Di Luar Negeri," *Interdisciplinary Journal on Law, Social Sciences and Humanities* 3, no. 2 (2022): 130, <https://doi.org/10.19184/idj.v3i2.34553>; Elias Yulio Kristiadi, Rahayu Subekti, and Purwono Sungkowo Raharjo, "Perlindungan Hukum Terhadap Pekerja Migran Indonesia."

⁴ Fatkhul Muin, "Perlindungan Hukum Terhadap Tenaga Kerja Indonesia (Tinjauan Terhadap UU Nomor 39 Tahun 2004 Tentang Penempatan Dan Perlindungan Tenaga Kerja Indonesia)," *Jurnal Cita Hukum* 3, no. 1 (2015), <https://doi.org/10.15408/jch.v2i1.1838>; Puanandini, "Penegakan Hukum Tindak Pidana Perdagangan Orang Pekerja Migran Indonesia."

⁵ Luthvi Febryka Nola, "Upaya Pelindungan Hukum Secara Terpadu Bagi Tenaga Kerja Indonesia (TKI)," *Negara Hukum* 7, no. 1 (2016): 35–52; Puanandini, "Penegakan Hukum Tindak Pidana Perdagangan Orang Pekerja Migran Indonesia."

rights, research can formulate more effective solutions in improving protection for Indonesian migrant workers abroad.

Previous research related to the previous title, "Legal Protection of Migrant Workers Issues in Indonesia Studied According to Law No. 39 of 2004 concerning Placement and Protection of Indonesian Workers Abroad," shows the diversity of topics in studies that have been conducted previously. For example, research by Donna NP Butarbutar, in 2020 discussed "Improving the Economic Welfare of Coastal Communities through Women's Empowerment," which highlighted efforts to improve economic welfare at the local level through empowering women in coastal communities. Another study by Eni Devi Anjelina, in the same year explored "The Role of Zakat, Infaq and Sadaqah in Improving Community Economic Welfare," which highlighted the role of zakat, infaq, and sadaqah in improving community economic welfare, particularly in the context of Islamic economics. In addition, research by Didi Suardi in 2021 examined "The Meaning of Welfare in the Viewpoint of Islamic Economics," which provides an in-depth perspective on the meaning of welfare in the context of Islamic economics. Through a review of these studies, it can be understood that an understanding of economic welfare and the protection of workers' rights, including migrant workers, is an important part of the broader academic discourse on development.

Therefore, this research will look at a number of connected topics in order to strengthen and improve legal protection for migrant workers from Indonesia. It is hoped that this research can make a valuable contribution to efforts to protect the rights of Indonesian migrant workers abroad by identifying the background of migrant workers, looking at the legal protection regulated in Law No. 39 of 2004, and analyzing the issues and struggles faced by migrant workers.

RESEARCH METHODS

In this study, the method of normative jurisprudence is used to analyze legal issues by looking at relevant legal standards, both written and unwritten. The aim of this approach is to gain an understanding and interpretation of legal standards as well as to answer legal questions deductively. To conduct this research, researchers will gather legal data such as legislative regulations, court rulings, legal doctrines, and other relevant sources. The data is then critically analyzed to find solutions or solutions to legal problems.,

RESULT AND DISCUSSION

Indonesian migrant workers (TKI) decide to work abroad for various reasons. Many of them come from poor economic backgrounds, so working abroad is expected to provide a better income for their families in Indonesia. The high unemployment rate in Indonesia also makes it difficult for many people to find decent work, so working abroad is an option to find a better livelihood. In addition, for some migrant workers, working abroad is an opportunity to improve their quality of life, learn new cultures and gain valuable work experience. The influence of the surrounding environment, such as friends or relatives who have worked abroad, can also be a factor that encourages someone to become a migrant worker. Although there are various reasons that encourage migrant workers to work abroad, this decision is often also characterized by various risks and challenges, such as exploitation, unilateral termination of employment, and difficulties in gaining access to health services and social protection in the destination country. Therefore, adequate legal protection is essential for migrant workers to be able to work properly and receive fair treatment abroad.⁶

Legal Protection

For Indonesian workers (TKI) who work abroad, legal protection is very important to guarantee their rights. Legal protection for migrant workers abroad is regulated in Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad. This law provides a legal basis for the Indonesian government to protect migrant workers, both before, during, and after they work abroad.⁷

One form of legal protection for migrant workers is through regulations that govern the process of job placement, including the granting of work permits and placement by registered job placement agencies. In addition, this law also regulates the rights of migrant workers, such as the right to wages, reasonable working hours, insurance, and protection against harassment and discrimination.

In addition to regulations, the Indonesian government has also established institutions tasked with protecting migrant workers, such as the National Agency for the Placement and Protection of Indonesian Workers

⁶ Nola, "Upaya Pelindungan Hukum Secara Terpadu Bagi Tenaga Kerja Indonesia (TKI)."

⁷ Defira Martina dkk Adrian, "Internasional ' Racial and Ethnic Discrimination in the Perspective of International Law ' " 14 (2019): 3; Khofifah Mulyani, Muhammad Sahrul, and Alfian Ramdoni, "Ragam Diskriminasi Penyandang Disabilitas Fisik Tunggal Dalam Dunia Kerja," *Journal of Social Work and Social Services* 3, no. 1 (2022): 11–20.

(BNP2TKI) and the Presidential Working Unit for Development Monitoring and Control (UKP4). These institutions are responsible for providing assistance, protection and legal advocacy for migrant workers who experience problems abroad.

Issues and Effors for Resolution

Indonesian Migrant Workers (TKI) who work abroad often face a variety of complex problems. Some of these include exploitation and inadequate work, unilateral termination of employment, limited access to health services and social protection, as well as discrimination and harassment.⁸

a. Exploitation and Inadequate Work

Indonesian Migrant Workers (TKI), foreign exchange heroes who contribute significantly to the country's economy. However, Ironically, according to the Indonesian Migrant Workers Protection Agency (BP2MI), 53% of migrant workers have to swallow the bitter pill of exploitation in foreign countries.. Inadequate pay, excessive working hours, and unsafe working conditions are the harsh reality they face. The rights of migrant workers that should be guaranteed in employment contracts such as minimum wage, reasonable working hours, and a safe working environment, are neglected. People's dreams of a better life are replaced by frustration and fear.⁹

Exploitation of migrant workers is like a trap that ensnares them into a vicious circle. Bound by contracts, language limitations, and lack of information, migrant workers find themselves trapped in inhumane conditions. The Indonesian government must take decisive steps by increasing supervision of the placement of migrant workers by up to 50% and expanding the protection network in destination countries. Strengthening regulations and ensuring the implementation of fair and transparent employment contracts are also equally important. International organizations and civil society must also work hand in hand. Collaborating with the government, they can enhance the standards of migrant worker protection, promote the ratification and implementation of

⁸ Darmini, "Perlindungan Hukum Terhadap Eksploitasi Pekerja Anak Dibawah Umur," *Qanwam: Journal for Gender Mainstreaming* 14, no. 2 (2020): 54, <https://doi.org/10.20414/qawwam.v14i2.2809>.

⁹ Iis Erika Faradila and Arifuddin Muda Harahap, "Perlindungan Hukum Terhadap Tki Oleh Pemerintah Indonesia Dalam Perspektif Siyasa Dauliyah (Studi Kasus Pembunuhan Nurul Aidah Tki Asal Batubara Sumatera Utara Di Malaysia)," *Unes Law Reviw* Volume 5, no. Issue 4 (2023): 4083–94; Lalu Maulana Ukhrowi, "Dampak Pekerja Migran Ilegal Terhadap Meningkatnya Kasus Human Trafficking Di Pulau Lombok," *Indonesian Journal of Global Discourse* 2, no. 2 (2020): 17–31, <https://doi.org/10.29303/ijgd.v2i2.19>.

relevant international conventions, and provide education and advocacy for migrant workers. Exploitation of migrant workers is not just an individual issue but a violation of human rights and a barrier to development. Joint efforts from various stakeholders are required to ensure that migrant workers obtain decent employment and are protected from exploitation.¹⁰

b. Unilateral Termination of Employment

Migrant workers also often face unilateral termination of employment by employers, without clear reasons and without proper compensation.¹¹ This is detrimental to migrant workers because they lose their jobs without getting the rights they should receive.

This shows the need for stronger legal protection for migrant workers, both in terms of employment contracts and termination of employment.¹² A policy that clearly regulates the rights and obligations of both parties, as well as a fair and transparent dispute resolution mechanism, is needed. In addition, strict supervision from the government and related institutions is also needed to ensure that the regulations are implemented properly and migrant workers receive proper protection.¹³

c. Limited Access to Health and Social Protection Services

Migrant workers often experience difficulties in gaining access to health and social protection services in their destination countries, which makes them vulnerable to health risks and social insecurity. This condition is also influenced by a lack of information and understanding of their rights as migrant workers. Therefore, there is a need for concrete steps to improve migrant workers' access to health and social protection services, as well as increase their understanding of their rights. This can be done through the provision of clear and accessible

¹⁰ Yusuf, "Gugus Tugas Bahas Urgensi Pencegahan Dan Penanganan Tindak Pidana Perdagangan Orang," *Kominfo*, 2023, <https://www.kominfo.go.id/content/detail/46599/gugus-tugas-bahas-urgensi-pencegahan-dan-penanganan-tindak-pidana-perdagangan-orang/0/berita>.

¹¹ I Gede Angga Aditya Putra, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliantini, "Upaya Perlindungan Hukum Bagi Para Tenaga Kerja Indonesia (TKI) Di Luar Negeri Dalam Perspektif Hukum Internasional," *Jurnal Komunikasi Hukum (JKH)* 8, no. 2 (2022): 698–708, <https://doi.org/10.23887/jkh.v8i2.52017>.

¹² I Gede Angga Aditya Putra, Dewa Gede Sudika Mangku, and Ni Putu Rai Yuliantini.

¹³ Nurnaningsih Al Hasmi and Patrice Lumumba, "Masalah Tenaga Kerja Indonesia (TKI) Di Arab Saudi Dan Perjuangan Diplomasi Republik Indonesia," *Hasanuddin Journal of International Affairs* 2, no. 2 (2022): 2775–3336; Peran Dan et al., "Peran Dan Tanggung Jawab Negara Dalam Perlindungan Hukum Tenaga Kerja Indonesia Yang Bermasalah Di Luar Negeri" 5 (2020): 10–23.

information, training, and assistance for migrant workers before and during their work abroad.¹⁴

d. Discrimination and Harassment

In the context of Indonesian migrant workers (migrant workers), discrimination and harassment in the workplace are serious problems that violate human rights and have negative psychological impacts. Some migrant workers experience discriminatory treatment both verbally and physically by employers or other parties in the workplace.¹⁵ Factors such as negative stereotypes, job competition and cultural incomprehension are often the main drivers of discrimination and harassment. The impact does not stop at psychological harm, but also includes social impacts such as social isolation and difficulty integrating into the local community. To protect migrant workers, adequate legal protection is essential. However, the challenge is that law enforcement is often difficult due to limited access to the legal system or ignorance of their rights.¹⁶ Therefore, the role of the community and the media is also crucial in raising awareness of the issues faced by migrant workers and fighting for their rights. Concrete recommendations, such as policy changes, public education, or special assistance programs, are needed to improve the protection of migrant workers and reduce cases of discrimination and harassment in the workplace.

The efforts made by the Indonesian government to address the various problems faced by migrant workers, such as discrimination and harassment, are indeed very important. The following are some of the efforts that have been made

To address the issues of discrimination and harassment faced by Indonesian Migrant Workers (TKI), several measures can be implemented. Firstly, providing counseling and education to prospective TKIs about their rights, as well as the risks and appropriate actions to take while working abroad, is essential. This initiative aims to enhance the awareness and understanding of migrant workers regarding their rights. Secondly, improving coordination with

¹⁴ Niswan Harefa and Ica Karina, "Pertanggungjawaban Pidana Pelaku Tindak Pidana Penipuan Dalam Perekrutan Tenaga Kerja Indonesia (TKI)," *INNOVATIVE: Journal Of Social Science Research* 3 (2023): 8013–27.

¹⁵ Farid Wajdi and Imran Imran, "Pelanggaran Hak Asasi Manusia Dan Tanggung Jawab Negara Terhadap Korban," *Jurnal Yudisial* 14, no. 2 (2022): 229, <https://doi.org/10.29123/jy.v14i2.445>; Riska Agustina et al., "Kebijakan Wajib Vaksinasi Covid-19 Ditinjau Dari Asas Manfaat, Kepentingan Umum Dan Hak Asasi Manusia," *Indonesia Law Reform Journal* 1, no. 3 (2021): 384–98, <https://doi.org/10.22219/ilrej.v1i3.18244>.

¹⁶ Rai Mantili and Putu Eka Trisna Dewi, "Prinsip Kehati-Hatian Dalam Penyelenggaraan Sistem Elektronik Dalam Upaya Perlindungan Data Pribadi Di Indonesia," *Jurnal Aktual Justice* 5, no. 2 (2020): 132–45, <https://doi.org/10.47329/aktualjustice.v5i2.549>; Faissal Malik, "Tinjauan Terhadap Teori Positivisme Hukum Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 1 (2021): 188–96.

destination countries' governments, particularly through bilateral labor agreements, is crucial to ensuring legal protection for migrant workers. By enhancing cooperation, this measure seeks to enhance the overall protection afforded to migrant workers in foreign countries. Furthermore, the establishment of dedicated protection and advocacy institutions, such as the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI) and Indonesian Embassies (KBRI), can offer legal support and advocacy for migrant workers facing problems overseas. These institutions aim to provide prompt and effective assistance to those in need. Lastly, strict supervision and enforcement of laws against placement agencies and employers who exploit migrant workers are imperative. By holding accountable those who violate regulations, this measure strives to deter exploitation and inhumane treatment of migrant workers, thereby ensuring their safety and well-being while working abroad.

These efforts demonstrate the Indonesian government's commitment to protecting and fighting for the rights of migrant workers, as well as reducing the risk of discrimination and harassment that they face in the workplace. Nevertheless, greater efforts are still needed from the Indonesian government and various related parties to improve legal protection for migrant workers abroad.

CONCLUSION

Indonesian migrant workers (migrant workers) working abroad often face various challenges, including exploitation, inadequate work, unilateral termination of employment, limited access to health services and social protection, and discrimination and harassment. To address these issues, the Indonesian government has made efforts such as providing counseling and education to prospective migrant workers, improving coordination with destination countries, establishing protection and advocacy institutions, and conducting supervision and law enforcement. However, greater efforts are still needed to improve legal protection for migrant workers, including increased understanding of their rights, law enforcement against violations, and cooperation between relevant institutions to provide better protection for migrant workers while working abroad.

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