

# Tulisan 8

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## Legal Guarantees and Legal Protection Practices on the Constitutional Rights of Indonesian Migrant Workers

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**Abstract:** *The flow of Indonesian labor migration abroad is increasing day by day. This is due to unresolved domestic labour problems. The 2000 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is the most significant international human rights document addressing the human rights of migrant workers. The legal problem highlighted in this article is how the constitutional rights of Indonesian Migrant Workers (PMI) are protected by legal assurances and practice. This is a normative legal research project that explains, investigates, and analyzes the legal protection of Indonesian migrant workers' rights overseas. The discussion results show that legal guarantees and legal protection practices for PMI's constitutional rights abroad are pretty good and are considered advanced because they use the migrant worker protection convention as the paramount consideration, although there are still inconsistencies in applying the rules.*

**Keywords:** *Indonesian Migrant Workers (PMI), Legal Protection, Legal Guarantee.*

### Introduction

As cultural beings, humans have needs. Needs are everything that humans need to complete their lives (Muhammad, 2006). Some of the basic human needs are economic needs, psychological needs, biological needs, and job needs. Working is a field of human growth and development as a human being. Working makes humans able to live because of the results of their work (Hasibuan, 2007). On the other hand, humans also live their lives through work; they will not be able to live if they remain silent and sit idly by (not working). It can be said that work as a part of human life must have a close relationship with the very fundamental human nature, which is

the struggle for happiness (Muspawi, 2017).

Workers are part of the workforce, namely workers who work in an employment relationship, under the employer's orders (individuals, entrepreneurs, legal entities), and for their services at work, they receive wages or other forms of compensation (Darma, 2017). Workers are referred to as workers when doing work in an employment relationship and under the orders of others by receiving wages or other forms of remuneration (Maimun, 2007). Workers who operate under the direction of others and are compensated with salaries or other kinds of payment but are

not employed, such as shoe shiners or hairdressers, are not considered workers (Khoe, 2013). In order to improve the quality of Indonesian workers and their contribution to development, as well as protect their rights and interests in line with human dignity, it is necessary to raise the quality of Indonesian employees and protect their rights and interests (Sastrohadiwiryo, 2002).

A complicated problem, migrant workers should be fully protected by the various international accords that Indonesia has ratified (Hamzah, 2016). In addition to women, children, and human trafficking prevention, the issue of migrant workers should be linked to sociocultural issues (Pangehutan, 2007). Although legislation safeguarding Indonesian migrants is necessary, it must be followed by tangible actions that rescind old practices and speed the transition to a new model of labor migration governance based on the state's duty to the safety of its migrant workers (Natalis & Ispriyarso, 2018).

PMI problems also arise due to a lack of government capability in handling PMI issues as a whole. Several factors are at the root of PMI's problems, namely the lack of optimal service by agencies. This is reflected in the weak coordination between agencies or authorized institutions, and the burden of costs borne by PMI candidates through official channels is also not spared from illegal levies carried out by unscrupulous officials. (Manurung & Sa'adah, 2020). Furthermore, the training program provided by the government is still not running effectively in terms of time, so it still leaves a gap for PMI candidates to choose an unofficial route. Then there are

the requirements for documents that have not been integrated, which require PMI candidates to take care of them to different agencies at close distances, not to mention the addition of uneven transportation access, resulting in not all PMI candidates being able to take care of the completeness of the documents (Hadi, 2008). In a journal written by Kaur (2004), he describes several factors that encourage PMI candidates to choose Malaysia. First, working abroad as a PMI is one solution to the country's unemployment problem due to limited employment opportunities.

The effects of the international migration of migrant workers are complex. The positive impacts include reducing unemployment in Indonesia, the implications of which, in addition to increasing the household income of migrant workers, at a macro level, it is also an asset for the country's foreign exchange (Antari, 2008), but the negative impact is also very complex, starting from the many cases of violence. Torture, extortion, and sexual harassment experienced by female migrant workers abroad (before departure); the vulnerability of female migrant workers to trafficking, and the return of migrant workers who are prone to extortion, especially in the types of work that are widely available for migrant workers. Women are housemaids and are included in the 3D area (dirty, dangerous, and difficult) (Wulan et al., 2010). As Devi Rahayu (2011) highlighted in an earlier study, it is the state's obligation to offer legal protection to female migrant workers overseas due to women's vulnerability to discrimination and human trafficking, with the main premise of this research distinguishing it from other research that focuses on the constitutional

rights of migrant workers in general, which is consistent with the goal of providing legal protection to Indonesian migrant workers overseas.

Government policies and initiatives aimed at placing migrant workers overseas are one way to lower the country's unemployment rate by utilizing job possibilities elsewhere (Ananta,1996). The availability of restricted work prospects and poor economic conditions in their home country, combined with the perception that a sufficiently high salary will make the destination country more appealing, has become a catalyst for international labor mobility (Oelangan, 2014). Individuals migrate as a means of improving the quality of their lives in response to economic constraints and an unequal distribution of possibilities at home (Hadi, 2008).

In the context of the protection of migrant workers, each country must be prepared to make arrangements in the law and enforce them. As revealed by Romdiati (2015) in a previous study, the intensity of the flow of migrant workers is influenced by increasing relations between countries. He explained a series of processes of power relations, which were then understood as the working space or the operation of power; there was a process of power-sharing. By elucidating the concept of power negotiation as a mode of interaction in various social relations involving migrant workers, it is possible to develop strategies for combating migrant worker exploitation and the dominance of relations between workers and employers, as well as for defending the rights of migrant workers who work in other countries despite the fact that

regulations in their home country are lax (Krustiyati, 2013). Indonesian regulations, for example, continue to indicate that migrant labor is a commodity. The decision to treat migrant workers as commodities affects other nations by failing to place them in the proper position. In a nutshell, the requirements for treating migrant workers in other countries cannot be met ideally if they have not yet been granted a protected status in their home country (Widodo & Belgradoputra, 2019).

As a result of the passage and implementation of Law No. 39 of 2004, on Indonesian Migrant Workers Abroad (PPTKILN), PMIs and their families will be better empowered and utilized, as well as protected in the destination country until they return to Indonesia, as well as improved in terms of their welfare. As a matter of fact, accomplishing this goal in a tangible manner is challenging. In addition, the truth reveals that there are numerous criminal and civil cases proving inappropriate installation and protection (Muin, 2015).

Problems in Indonesia, Law Number 39 of 2004, as the highest regulation in dealing with the problem of migrant workers, does not include a definition of undocumented migrant workers. This law also does not have a protection perspective. Undocumented and documented related to the development of an increasingly acute global crisis triggered several receiving countries, such as the Hong Kong government, to implement policies that encourage migrant workers not to have documents, such as the two-week rule. In addition, the economic crisis has

prompted recipient countries to increase the need for undocumented Indonesian Migrant Workers (Husni, 2010).

They prefer to become undocumented migrant workers in sending countries such as Indonesia because they are compelled to avoid the high costs associated with the departure procedure when they become migrant workers. According to Fayyad (Hidayati 2013), the difficulties encountered by Indonesian migrant workers begin prior to their departure from Indonesia. The Indonesian government must have the authority to do so due to the country's governance methods and foreign ties, aside from the city and regency (Wahyudi, 2015).

On the other hand, because the issue of placement and protection of Indonesian workers is inextricably linked to the fundamental human rights of life and honor, the private institutions involved must, of course, be those that are capable, both in terms of commitment, professionalism, and economic viability, of guaranteeing the fundamental rights of citizens working abroad to remain. Additionally, every person who works outside his or her country's borders is considered an immigrant or a foreigner in the country in which he or she works. Thus, the best protection must originate (begin) with the employees themselves, who are fundamentally required to adhere to all applicable legal rules both at home and abroad. Because if it is the other way around, what occurs is a violation of the law, which will face several hurdles in defending or protecting it.

## **Method**

A normative legal study on legal systematics is used to explore these issues, aiming to identify the basic/basic meanings in law, notably legal society, legal subjects, rights and responsibilities, legal occurrences, legal interactions, and legal objects. The research employed statutory, conceptual, analytical, and futuristic approaches (Diantha, 2016). Law number 18 of 2017 about the placement of Indonesian migrant workers (PPMI), and Law number 6 of 2012 concerning ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This study applies deductive reasoning (law) to specific instances (real-life factual legal concerns). In deduction, legal values, principles, concepts, and norms are concretized (explained) and applied to specific legal issues, such as migrant worker protection and rights and obligations, which are still unclear.

## **Result And Discussion**

The Indonesian government has enacted legislation that serves as a regulatory and legal framework for the protection of Indonesian migrant workers; earlier, Law 39 of 2004 was amended to become Law 18 of 2017. This version focuses on migrant worker guarantees and rights, employment agreements, migrant worker protection, placement fees, pre-employment training, supervisory oversight of relevant PMI placement organizers, and the involvement of the federal and regional governments. According to Article 4 of Law Number 18 of 2017, so-called Indonesian Migrant Workers are those who work for

employers who are legal companies, for individual or household employers, and for sailors on ship crews. This means that domestic PMIs who work overseas are considered Indonesian migrant workers. These migrant workers must be protected before, during, and after their work shifts.

The community expects legal certainty because, with legal certainty, the community will be orderly, safe, and peaceful as a form of legal guarantee (Soeikromo, 2017). The community expects benefits from implementing law enforcement. The law is for humans, so the implementation of the law must provide benefits and usefulness for the community. Do not let the law be implemented, causing unrest in society. People who get good and proper treatment will create a peaceful and peaceful situation (Sulistiyowati, 2016). The law can protect the rights and obligations of each individual. In fact, with solid legal protection, the general goals of the law will be realized: order, security, tranquillity, welfare, peace, truth, and justice (Hermoyo, 2012).

Given the importance of labor to businesses, governments, and the community, it is necessary to consider work in order to ensure worker safety. This can be accomplished by providing legal protection to workers, either through compensation or by increasing recognition of human rights: human, physical, and socioeconomic protection through prevailing norms in the workplace (Salasa, 2014). "The excluded minority can be identified primarily by the characteristics of their meager economic lives, although marginalization does not

always have economic consequences" (Harjono, 2008).

The employment connection between the employee and the employer is established by a written or oral employment agreement. Article 1610a of the Civil Code defines an agreement as one in which one party agrees to work for another party for a specified period of time in exchange for compensation. All rights and duties under the employment agreement are reciprocal between the employer and the employee. Thus, "both parties to a work relationship are obligated by the terms of the work agreement and applicable laws and regulations, such that the parties who entered into a work agreement in principle have the same and balanced position and degree." (Sutedi, 2009).

At the point of protection in the pre-employment period for PMIs, it is stated that they are entitled to protection from an administrative perspective, including the validity of the placement documents they have and the determination of working conditions and conditions. This is intended so that PMI does not falsify documents committed by specific individuals to the detriment of PMI in the destination country. Besides, administratively, PMI blessing is given technical protection, which includes socialization and government efforts to improve the quality of PMI through job training (Widyawati, 2018).

For pre-employment, PMI has the right to obtain labor market information, including requests for Indonesian migrant workers from business partners in the country of placement destination or prospective employers, both individuals

and business entities related to PMI's distribution in the destination country. Regarding job market search, the government also carries out validation carried out by relevant labour officials. This validation is carried out on business partners or prospective employers, relevant officials who will review the labour requests offered by the business partners or potential employers.

Through protection during the placement period, it is clearly explained that the state is obliged to protect every Indonesian migrant worker from all forms of human rights crimes. The state is responsible for ensuring that all placement processes run according to the applicable legal corridors and are well coordinated with each relevant agency.

### **Evolution of Thought on Constitutional Rights**

Constitutional rights are rights guaranteed by the constitution or fundamental law, whether the guarantee is expressed or implied. Because it is included in the constitution or the fundamental law, all branches of state power are obliged to respect it. Therefore, recognition and respect for constitutional rights as part of the constitution also means restrictions on state power (Palguna, 2013).

The ILO Convention on Migrant Workers of 1949 (No. 97) defines migrant workers as those who move from one country to another in search of work. In many cases, Indonesian migrant laborers are exploited on a systematic level from the time they are registered, recruited. Violence against Indonesian migrants has been documented across Asia-Pacific and the Middle East, according to research by

the Consortium for the Defense of Indonesian Migrant Workers (KOPBUMI). Most of the violence and exploitation is directed at female migrant workers who face various forms of extortion, physical violence, disease, fraud, illegal recruitment, sexual harassment, unilateral termination of employment (PHK), unpaid salaries, human trafficking, and others (Asian Migrant Center (AMC), 2007).

The following are some alternative policies that the government can do regarding the protection of Indonesian female migrant workers (Rahayu & Munir, 2012):

1. Establishment of an integrated service center or crisis centre in the enclave that provides health, legal, psychological, and psychosocial services;
2. Providing information on migrant women's reproductive rights;
3. Providing information on processes that could become victims;
4. Providing information on what to do if a case occurs;
5. Availability of information regarding remittance management and entrepreneurship;
6. The existence of health, legal, and psychological assistance facilities in a safe home while working;
7. There is assistance for victims;
8. There is assistance in solving cases; and
9. The existence of entrepreneurship and skills training.

In addition, to prevent Indonesian female migrant workers from becoming victims of cases of human trafficking in persons. The rise of trafficking in persons (trafficking) is a type of crime committed

by organized syndicates covering national to international levels (Munthe, 2015), hence several obligations of the state, namely (Hidayati, 2013):

1. It is necessary to conduct socialization and increase capacity among law enforcement officers and Regional Apparatus Work Units as implementers of the law on the Eradication of Criminal Acts of Trafficking in Persons (UU PTPPO) and Regional Regulations related to trafficking in persons. Socialization also needs to be carried out in the broader community, including by disseminating information in rural and remote areas about the dangers and modes of trafficking in persons;
2. In carrying out capacity building in law enforcement and policy implementation, the government needs to understand human rights and their principles. So that human rights values can be incorporated into every activity carried out by law enforcement officers as well as the implementation of other policies at the national and regional levels;
3. In conducting socialization in the community, especially among women, it is also essential to apply the principle of empowerment and increase legal awareness, especially among vulnerable women and girls and their families. Thus, they understand the law and can demand and defend their rights as enshrined in the laws and regulations;
4. All law enforcement officers in Indonesia immediately implement the PTPPO Law and Regional Regulations related to handling cases of trafficking in persons. No longer just using the Code of Criminal Law (KUHP) and building a consistent control (monitoring) mechanism for the implementation of the PTPPO Law for the protection of female migrant workers;
5. Harmonize all existing and future policies, laws, and regulations with the PTPPO Law and related regional regulations as a legal umbrella to eradicate criminal acts of trafficking in persons;
6. Prepare equipment, infrastructure and personnel for the implementation of the PTPPO Law from the central to the village level (integrated service centres, postal services, victim-friendly complaints at the police station, funds for repatriation, psychosocial-media rehabilitation, and social integration for victims and their families);
7. Strengthen the network of anti-trafficking non-governmental organizations nationally and internationally so that the protection of women in trafficking in persons follows human rights standards;
8. Strengthening the documentation (database) on the crime of trafficking in women from various parties as material for advocating government policies and



campaigns for eradicating the crime of trafficking in persons;

9. Making a bilateral agreement between the state of Indonesia and the country that uses the services of migrant workers;
10. Establish a women's desk that handles migrant workers' problems; and K. Expand the function of non-governmental organizations (NGOs) to assist (Rahayu, 2011).

Numerous legal complications will develop if Indonesian migrant laborers in other countries are not protected. Migrant workers must be protected from the moment they arrive on the job until they leave. Even after employment, protection is provided, specifically all activities aimed at ensuring the safety of Indonesian migrant workers and their family members from the time they arrive in Indonesia at debarkation to the time they return to their country of origin, including continuing services to help them become productive workers. Whereas Law 13 of 2003 on Manpower serves as the legal framework for Law 18 of 2007, which includes the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Rights of All Migrant Workers and Their Families) established by Law No. 6 of 2012 (Hartono WidodoR, Jossi Belgradoputra, 2019).

According to Law No. 39 of 2004 concerning PPTKILN, Indonesian workers have the right to equal opportunities and treatment with other foreign workers in accordance with the destination country's laws and regulations, the right to legal protection in accordance with the

destination country's laws and regulations for actions that can degrade their dignity and dignity, as well as the right to obtain legal protection from actions taken against them by their employer.

ILO Convention 189 also requires Indonesian workers to respect and protect fundamental rights at work, such as freedom of association and effective recognition of collective bargaining rights. It also prohibits forced or compulsory labor and child labor as well as discrimination on the basis of employment status (Articles 3, 4, 11). An easy-to-understand contract should be used to notify PMIs of their work responsibilities (Section 7).

The constitutional rights of workers in the 1945 Constitution after the amendments include (Iqbal, 2017):

1. Every citizen has the right to work and a reasonable standard of life for mankind;
2. The right to struggle for rights, namely freedom of association and assembly, expression of views orally and in writing, and so on, is established by law;
3. The right to legal certainty and justice, which means that everyone has the right to be recognized, guaranteed, protected, and treated fairly under the law;
4. The right to work and a reasonable standard of life, i.e., everyone has the right to work and to be compensated and treated fairly in a working relationship.

Based on Law Number 18 of 2017, during the PMI post-placement protection process, the central government coordinates with local governments down to the village level where PMI originates.

In addition to the local government, the company that places the PMI is required to report its PMI return data to the representative of the Republic of Indonesia in the country of placement; this will then be verified by the top human resources to be able to classify whether the PMI has problems or not. If there are no problems, then the labor attache needs to re-verify that if PMI is ready to undergo the return process, PMI must be free from all forms of extension of the work agreement.

#### **Legal guarantee for the constitutional rights of Indonesian Migrant Workers (PMI) abroad**

Legislation enacted in 2004 titled "Law 39 on the Placement and Protection of Indonesian Migrant Workers Abroad" has failed to meet the needs of despite the fact that Indonesia's 2004 Law No. 39 on the Placement and Protection of Indonesian Migrant Workers Abroad does not regulate the proportional allocation of tasks and authorities between the central government, regional governments, and For these reasons, it is necessary to modify Law No. 39 of 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad. According to this law, the central and regional governments are responsible for the protection of migrant workers from the time before, during, and after work. It is the sole obligation of the private sector to employ Indonesian migrant workers. The legal basis of Law Number 18 of 2017 concerning the protection of Indonesian migrant workers, namely:

- a. Article 20, Article 21, Article 27 paragraph (2), Article 28 D paragraphs (1) and (2), Article 28 E

paragraphs (1) and (3), Article 28 G, Article 28 I paragraphs (1) and (2), and Article 29 of the Republic of Indonesia's 1945 Constitution;

- b. Law No. 13 of 2003 on Manpower (State Gazette of the Republic of Indonesia, No. 39, Supplement to the State Gazette of the Republic of Indonesia, No. 4279);
- c. Law No. 6 of 2012 on Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families) (State Gazette of the Republic of Indonesia of 2012 Number 115, Supplement to the State Gazette of the Republic of Indonesia Number 5314).

#### **The practice of legal protection of the constitutional rights of Indonesian Migrant Workers (PMI) abroad**

Malaysia and Singapore are the two nations that get the most migrant laborers, particularly those from Indonesia. ASEAN leaders have decided to offer safety and legal clarity for migrant workers working in ASEAN member states. The agreement was formalized during the 31st ASEAN Summit in Manila, Philippines. It's based on the ASEAN Consensus on Promoting and Protecting Migrant Workers. Migrant workers in ASEAN countries must have protection and legal clarity because of this agreement. An important decision was made by the Indonesian government 10 years ago. In this agreement, migrants' rights have been restricted in a number of ways. Those who are employed as migrant

laborers have a right to receive Retain your personal documents, such as passports.

As a result of human rights principles, migrant workers and their families are also protected. According to the United Nations Convention on Protection and Promotion of the Rights of All Migrant Workers and Their Families, enacted in 1990, this is also in line with the United Nations Declaration on Illegal Immigrants. They, as well as migratory workers who arrive and remain in the United States in order to work, are all afforded the same level of protection.

Based on legal guarantees and the practice of legal protection for PMI's constitutional rights abroad, because it uses the migrant worker protection convention as the primary consideration, it is considered quite excellent and advanced, although there are still inconsistencies in applying the rules. Because there are three implementing institutions, namely: agencies, private and independent companies, in implementing the placement of PMI, there is a conflict of authority between institutions, which in practice the Ministries and Institutions/Non-Ministry Agencies, creates uncertainty in the management of migrant worker protection and creates a blurring of norms related to the guidance and supervision of PMI. Then in practice, there are no rules which are clear about the protection of domestic workers, which is also no detailed regulation regarding legal assistance for PMI.

Furthermore, several principles that reinforce the protection of Indonesian migrant workers, among others:

1. The principle of integration, namely the protection of Indonesian migrant

workers, must reflect the integration and synergy of all relevant stakeholders;

2. The notion that potential Indonesian migrants and current Indonesian migrants have the same rights, opportunities, and treatment in order to achieve respectable employment and a decent lifestyle;
3. To honor and defend human dignity and value, respect for human life as a creation of God Almighty must be reflected in the protection of Indonesian migrant workers.
4. The principle of democracy, that Indonesian migrant workers be given equal treatment and rights in expressing opinions, associating, and assembling;
5. By stressing issues of equality, non-discrimination, and maintaining a balance between rights and duties, Indonesian migrant workers are protected in accordance with the idea of social justice;
6. In a system where men and women are treated equally, they have equal opportunities to fully realize their human rights and work abroad.
7. In order to safeguard Indonesian migrant workers, the idea of non-discrimination must be adhered to, which means that they must not be subjected to discrimination on the basis of their religion or ethnicity;
8. Under the anti-trafficking concept, no prospective or current Indonesian migrant worker may be recruited, transported, delivered, transferred, or received under fear of violence, force, kidnapping, or imprisonment.
9. Accountability demands that all efforts and outcomes connected to

migrant worker protection be made public in line with applicable legislation; and

10. In order to achieve prosperity and progress in all sectors of life today and in the future, Indonesian migrant workers must be protected at all phases of their employment.

### Conclusion

Legal guarantees and legal protection practices for PMI's constitutional rights abroad are pretty good. They are considered advanced because they use the migrant worker protection convention as the paramount consideration. However, there are still inconsistencies in applying the rules. In practice, there are three implementing institutions, namely agencies, companies, and independent institutions. As a result of this conflict of authority between institutions, there is a blurring of norms related to the guidance and supervision of PMI. Furthermore, there are no clear rules regarding the protection of domestic workers, which is equated with PMI, which is domestic.

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