



# Legal Protection of Migrant Workers' Rights Seen from the Perspective of International Law

**Wandi Subroto**

Sekolah Tinggi Ilmu Hukum Rahmadiyah, Sekayu, Indonesia

Email: [wandi.stuhr@gmail.com](mailto:wandi.stuhr@gmail.com)

## Abstract

Indonesia is one of the most significant contributors to migrant workers globally. It is proven that migrant workers have contributed a large amount of foreign exchange and helped the Indonesian economy. However, the positive contribution made by migrant workers is not accompanied by appropriate legal protection provided by the government, even though various regulations have been made. We still hear a lot of problems related to migrant workers ranging from victims of human trafficking, victims of violence by employers, and various other acts of violence. It is for these reasons that this research will examine the legal protection of migrant workers' rights from the standpoint of international law, with a focus on the Universal Declaration of Human Rights (UDHR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Protection of the Rights Of Migrant Workers And Members Of Their Families, and The ASEAN Declaration on the Protection Of The Rights Of Migrant Workers A normative juridical approach (statue and conceptual) is used in this article's study methodology (conceptual approach). Library books and scientific works, as well as articles and papers relating to research material are used as secondary data in this composition.

**Keywords:** Legal Protection, Migrant Workers, International Law.

## A. Introduction

International law has developed since the Middle Ages. As a legal system that regulates relations between states, International Law was born at the same time as the birth of the international community (Kusumaatmadja & Agoes, 2021). The relevance of international law and its function in the life of the international community is becoming increasingly apparent International Law, like other legal disciplines, has development branches that are similar to those of other legal sciences. It is possible to practice international law in a variety of fields including the Law of the Sea, International Dispute Resolution Law, Humanitarian Law, International Treaty Law, Diplomatic and Consular Law, International Human Rights Law, International Refugee Law, and International Immigration Law, among others (Sariningrum & Idris, 2016).

As a member of the international community, Indonesia has been involved in a variety of global issues, including Indonesia's participation in the ASEAN Economic Community, participation in efforts to maintain international security by sending peacekeepers to several conflict zones, and responding to the problem of migrant workers in Indonesia, the number of whom is increasing every year (Thontowi, 2013). The Indonesian Ministry of Manpower estimates that 400 thousand migrant workers are sent each year to various nations in the Asia Pacific and Middle East areas,

according to data from the ministry. It is estimated that the number of female migrant workers has increased by 72 percent in recent years, compared to the number of male migrant employees. According to the United Nations Special Rapporteur on the Human Rights of Migrant Workers, Jorge Bustamante, as described in Kusniati (2009), Indonesian migrant workers who work in Malaysia, where women predominate, are frequently tortured by their employers, according to the UN Special Rapporteur.

The protection and assistance provided to migrant workers while abroad varies significantly among the countries being compared. The Philippines and Sri Lanka already have excellent systems and responsible practices, while Indonesia, Pakistan, and Thailand generally perform poorly. India has some suitable mechanisms (Wardani et al., 2019). Several Indonesian women return disappointed after working abroad, telling stories of exploitation, abuse, rape, and theft every year. Indonesian representatives in recipient countries rarely provide adequate support (Irianto et al., 2021). Experience from countries such as India shows that levels of violence can be reduced numerically by introducing new forms of contracts that are also legally binding in host countries and thus provide a basis for prosecution of violations. Specific bilateral agreements on the protection of women migrant workers between sending and receiving countries have also proven efficient (Natalis & Ispriyarso, 2018).

Of the twenty-one destination countries for Indonesian migrant workers, no bilateral agreement has been established regarding the protection of migrant workers between Indonesia and the receiving country (Taufik, 2014). A Memorandum of Understanding was made only with five countries: Indonesia and Malaysia, Taiwan, Kuwait, Jordan, and South Korea. From the five Memorandums of Understanding, it is suspected that Indonesia's position, particularly the position of migrant workers, is fragile. For example, the Memorandum of Understanding (MoU) between the Governments of Indonesia and Malaysia, which was signed in Bali on 13 May 2006, is considered to contain principles that violate human rights because it does not regulate in detail the fundamental rights of migrant workers, most of whom are women, domestic workers. Among them is the minimum income of workers, working hours, holidays, freedom of worship, including accommodation standards such as bedrooms that have locks, are ventilated, and have beds (Anggraeni & Sabrina, 2018). Uncertainty regarding all the rights of migrant workers can be the subject of disputes between employers and workers and tend to trigger human rights violations. The legal protection policy for migrant workers through Law no. 39 of 2004 concerning the Placement and Protection of Workers Abroad can only be given to official migrant workers. At the same time, most migrant workers have problems with official documents or work permits held by agents, employers, or documents that are not following the contract (Susetyorini, 2010).

Poor women in rural and urban areas are forced to work abroad as domestic workers because the opportunity to find work in the country is limited (Sari, 2017). Without status, illegal entrants are targets of exploitation. They are in the hands of their employers and may be required to accept any work, as well as in poor working and living conditions. They rarely seek justice for fear of being exposed to their status and expelled. In recipient countries with illegal levels, wages can be suppressed (Rizki, 2020). In this case, the State can be deemed to have abdicated its responsibility for allowing illicit practices in the labor document process to continue and avoiding a

situation where migrant workers are in unlawful status for a long time in the destination country (Hanifah, 2020).

The absence of protection of human rights in both the sending and receiving nations is one of the issues that develop as a result of migrant labor (Yusitarani, 2020). The absence of protection for migrant workers is due to the fact that both the sending and receiving countries do not provide the following: First and foremost, we must ratify the International Convention on the Rights of All Migrant Workers and Members of Their Families. Secondly, the relationship between the sending and receiving countries was not maintained as a result of an agreement aimed at preserving the rights of migrant workers being signed (Anggriani, 2017). Although a new legislation on the placement and protection of Indonesian migrant workers abroad has been passed, the regulation is still inadequate from the perspective of migrant workers in the country of origin. However, this does not imply that Indonesia's legal framework is the most serious problem; rather, it indicates that the lack of compliance with current rules and regulations by various parties participating in the "business" of migrant labor is the most serious issue (Dewi, 2018).

The protection of the rights of migrant workers has been codified in both international and national legal frameworks. The rights of migrant workers are frequently violated in practice, both in terms of skill-fulfillment standards and human rights, making it necessary for policymakers to properly apply international minimum standards and uphold human rights principles in their respective jurisdictions. The researcher wishes to investigate, and therefore it is required to conduct research under the subject "Legal Protection and Migrant Workers' Rights Seen from the Perspective of International Law," which is based on the above-mentioned notion.

## **B. Method**

The type of normative legal study conducted in relation to national and international legal instruments dealing to the rights of migrant workers is closely related to the method utilized in the publication of this journal. Normative legal research is the study of legal standards that are contained in law and in the decisions of judges (Soekanto, 2007). Furthermore, according to Jhonny Ibrahim (2012), the normative legal research technique is a scientific research procedure that seeks to discover the truth based on the logic of legal scholarship from the normative side, rather than the empirical side. In addition to the writing method, this journal employs a statutory approach and conducts a field analysis of the facts; by combining the two approaches, the issues mentioned in the journal's report can be resolved.

## **C. Result and Discussion**

Sources of international law are the materials and processes by which the international community's rules and norms are developed. Customary international law is derived through international treaties and can take any form agreed upon by the countries involved in the treaty. Agreements can be made based on anything except to the extent that the agreement is contrary to international law, which includes the basic standards of every global action or obligation of member states under the United

Nations Charter (Mangku, 2020). International treaties create laws for the parties to an agreement. The majority's general principles accepted and practiced by various national legal systems are a secondary source of international law. There are circumstances in which neither conventional nor traditional law can be applied. The general principle can be considered a rule of international law in this case. It is a fundamental principle accepted globally in several major legal systems and cannot be regarded as an international claim (Widagdo et al., 2019).

Protection of migrant workers' rights in accordance with international law, based on international accords, including both complicated and soft legislation. Protection of migrant workers' rights based on international legal standards. International sources of law relating to migrant workers' rights based on signed and ratified international agreements, a government shall legally implement and offer obligations to meet the requests of migrant workers in their country (Anggriani, 2017).

Numerous international declarations, decisions, and pertinent recommendations serve as references in the preservation and enforcement of human rights. These documents are ratified by the United Nations or other international organizations, or by an international convention (Krustiyati, 2013). Although these documents are not legally enforceable, they establish internationally recognized norms and are frequently used in international forums to resolve human rights disputes. The most notable of these is the Universal Declaration of Human Rights (UDHR), which the United Nations General Assembly accepted by acclamation in 1948. It also served as the foundation for a large number of its subsidiary measures, including human rights accords.

According to the Universal Declaration of Human Rights' Preamble, acknowledgement of all human beings' inherent dignity and equal and inalienable rights is the bedrock of global freedom, justice, and peace. According to international law's standards, human rights values such as the prohibition of slavery and others are treated as *Jus Cogens* (the highest standard) in international law. The Universal Declaration of Human Rights (UDHR) is a non-binding treaty under international law, although it contains universal values accepted by all nations and countries. More precisely, the right to labor is described in Article 23 of the Universal Declaration of Human Rights, or UDHR, as follows:

1. Everyone has the right to work, the freedom to choose a job, the opportunity to earn a living, and the protection against being laid off.
2. Equal remuneration for equal effort should be guaranteed to everyone, without exception.
3. Everyone who works has the right to a fair and adequate wage, which provides for a decent standard of living for himself and his family, and if necessary, various forms of social assistance.
4. Individuals can create and join trade unions to safeguard their own interests.

People are entitled to a right to work, a right to choose their own job, and the right to fair and pleasant working conditions, as stated in the article above. Equal compensation for equal effort should be guaranteed to everyone, regardless of their race, ethnicity, or national origin. Working people should be compensated fairly for their efforts, guaranteeing them a respectable standard of living for themselves and their families, if necessary. The right to create and join trade unions is also protected under the law.

This statement shows that work is an application of human existential mandate. Jobs can be chosen freely. Income from work must be given in a way that positively affects survival and without discrimination. So it can be seen that the UDHR gave a normative affirmation of the importance of the right to get a job. More than that, the guarantee of protection in the world of work is no less important. Thus, all forms of discrimination to obtain wages are expressly stated as contrary to human rights principles.

Moreover, international law governs the legal protection and rights of migrant workers through the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which states in article 6 paragraph 1 that the state party recognizes and will take appropriate measures to protect the right to work, including the right of everyone to the opportunity to earn their living through work that they freely choose or accept." paragraph 2 reveals that "Policies, programs, and procedures for achieving economic, social, and cultural development are all elements that States Parties to the present Covenant must implement in order to fully realize this right. stable employment, full and productive employment, and political and economic liberties for all individuals.

ICESCR further strengthens the existence of the right to work and the right to work. Apart from providing ample space for everyone to realize the right to work, including the choice and absorption of labor by the government, guarantees for the fulfillment of economic, social, and cultural rights through the world of work are also a severe concern ICESCR. In other words, the right to work provides an open opportunity to work while supporting one's productivity is recognized as an inseparable part of efforts to fulfill the request to work and at work.

The 1990 International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families is the next source of international law protecting migrant workers. It entered into force on 1 July 2003<sup>12</sup>, with 33 signing nations and 45 countries seeking membership. Indonesia is a signatory to the Convention and has ratified it through the Republic of Indonesia's 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 1990.

According to Article 2 of the 1990 International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families, a migrant worker is defined as 1. A person who will be, is currently, or has previously performed paid employment in a country of which they are not a member. Citizen. The central principle of this Convention is non-discrimination, as stated in Article 7, which requires that contracting countries, in accordance with international human rights instruments, respect and ensure that all migrant workers and members of their families on their territory or under their jurisdiction have the right to obtain the rights guaranteed in this Convention regardless of their gender, race, color, language, religion or belief, political affiliation, or national origin.

Article 72(4) specifies that the Committee members shall be elected in a session of the States parties to the current Covenant convened at the United Nations Headquarters by the Secretary-General. At the meeting, which requires at least two-thirds of the States Parties to the Covenant to attend in order to become members of the Committee, the candidates receive the greatest number of votes and constitute an absolute majority of the voices of the States Parties' representatives present and

voting. Meanwhile, pursuant to Article 72 (9) of the United Nations Convention on Special Rights and Immunities, Committee Members are entitled to facilities, special rights, and immunities as experts in United Nations missions.

For Southeast Asia, ASEAN member countries also issued a declaration on the protection and promotion of migrant workers' rights on 13 January 2007, stating that both receiving and sending countries will strengthen the ASEAN community's political, economic, and social pillars by promoting workers' full potential and dignity. Migrants in an atmosphere of liberty, justice, and stability, in accordance with the ASEAN member countries' laws and regulations. Receiving and sending countries collaborate on humanitarian grounds to address cases of migrant workers who become undocumented through no fault of their own. Both receiving and exporting countries should take into account the fundamental rights and dignity of migrant workers and members of their families who have settled in their countries, without jeopardizing the receiving country's ability to implement its laws, rules, and policies. Nothing in this declaration shall be construed as regulating the undocumented status of migrant workers.

Foreign workers are protected by a legislation in Indonesia, known as Law 18 of 2017 Concerning the Placement and Protection of Indonesian Migrant Workers Abroad and the Law of Indonesia. It was Indonesian Number 6 of 2012, ratification of an international convention that protects migrant workers and their families' rights. The Indonesian government has a responsibility to its citizens and the international community to protect the rights of migrant workers overseas since the passage of this law.

The forms of State Protection for migrant workers as stated in Article 16 of the Law of the Republic of Indonesia Number 6 of 2012 are as follows:

1. Law enforcement personnel must follow established processes when verifying the identities of migrant workers and members of their families.
2. Workers and their families who are on the move are protected from being detained or arrested without a valid reason and in accordance with established legal procedures by the right to liberty and the protections of the constitution.
3. When migrants and family members are arrested, they should be told as soon as feasible of the reasons for their incarceration, and they should be informed as soon as possible of the charges against them in the language they understand.)"
4. An official who is authorized by law to exercise judicial power should immediately be summoned to hear the case of migrant workers and members of their families who have been arrested or detained on criminal accusations. They have the right to be tried within a reasonable time or to be freed. Keeping them in jail while they await testing should not be standard procedure. Release can still be granted based on promises to attend trial, at each level of the problem and to carry out the decision, if so decided, if it is granted.
5. Migration workers and their families who are imprisoned or incarcerated while awaiting trial or in other types of imprisonment are entitled to compensation:
  - a) Notification of the arrest or detention and the reasons for it must be given to the consular or diplomatic representative of the country of origin or that country immediately if requested by the individual concerned.

- b) The person in question must be able to speak with the aforementioned representatives. Officials have a legal right to communicate directly with the individual they're addressing, and they must do so swiftly.
  - c) It's important to note that the individual who is affected by this and other treaty rights is entitled to communicate and meet with these officials as well as arrange for the representation of an attorney.
6. It is the right of migrant workers and members of their families to be tried before a court to evaluate the legality of their imprisonment and order their release if it is determined to be illegal. Members of migrant workers' families are required to employ an interpreter at the event if they cannot understand the language used, and they will not have to pay for this service.
7. The right to compensation for migrant workers and their families who have been unlawfully detained or arrested shall be implemented.

It is up to migrant workers and their families to seek assistance from consular and diplomatic officials of their home countries or states that represent their home countries' interests if the rights guaranteed in this Convention are breached. Eviction is an example where this right should be immediately communicated to the individual affected. The official in charge of the removal should make it easier for people to invoke their constitutional right to privacy.

Employers, unions, and other relevant organisations or institutions shall distribute or publish the information above, as determined by the States Parties. They can also work with the relevant countries if necessary. As a courtesy to migrant workers and their families, free and accessible information should be made available in a language they can comprehend. Migrant workers are guaranteed rights, but they also have obligations under this Convention, including: employment or the need to respect the identity and culture of residents of these countries. They are.

#### **D. Conclusion**

Countries around the world have been increasingly concerned about protecting migrant labor. Migrant workers' rights are perceived to be under-protected, particularly in Indonesia, where a recent incident occurred. The Universal Declaration of Human Rights (UDHR), a soft law in international law with universal ideals acknowledged by all nations and countries around the world, becomes a reference for every country to safeguard migrant workers. Another international treaty that affirms workers' freedom to labor and the chance to earn a living through work they freely choose or accept is known as ICESCR, or International Covenant on Economic, Social and Cultural Rights (ICESCR). There is the 1990 International Convention on the Protection of Migrant Workers and Members of Their Families, as well as the ASEAN Declaration on the Protection and Promotion of Migrant Workers' Rights. Legislation enacted by the Indonesian government in 2004 and 2012 aimed at protecting Indonesian workers abroad was viewed as a way to show the government's presence in the migrant worker community.

## Reference

- Anggraeni, D., & Sabrina, K. (2018). Penggunaan Model Nota Kesepahaman Sebagai Bentuk Perlindungan Hak Konstitusional Buruh Migran. *Indonesian Constitutional Law Journal*, 2(1).
- Anggriani, R. (2017). Perlindungan Hukum bagi Irregular Migrant Workers Indonesia di Kawasan Asia Tenggara (dalam Perspektif Hukum HAM Internasional). *Yuridika*, 32(2), 310-335.
- Dewi, D. A. P. S. (2018). Harmonisasi Peraturan Perundang-undangan Tentang Ketenagakerjaan Indonesia Pascaratifikasi Konvensi Internasional Pekerja Migran Tahun 1990. *Reformasi*, 8(1), 57-64.
- Hanifah, I. (2020). Peran Dan Tanggung Jawab Negara Dalam Perlindungan Hukum Tenaga Kerja Indonesia Yang Bermasalah Di Luar Negeri. *De Lega Lata: Jurnal Ilmu Hukum*, 5(1), 10-23.
- Ibrahim, J. (2012). *Teologi & Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia Publishing.
- Irianto, S., Irzan, H., Meij, L. S., Wirastri, T. D., Parikesit, T., Kartika, T., & Perkasa, V. D. (2011). Akses Keadilan dan Migrasi Global: Kisah Perempuan Indonesia Pekerja Domestik di Uni Emirat Arab. Yayasan Pustaka Obor Indonesia.
- Krustiyati, A. (2013). Optimalisasi Perlindungan dan Bantuan Hukum Pekerja Migran Melalui Promosi Konvensi Pekerja Migran Tahun 2000. *Jurnal Dinamika Hukum*, 13(1), 136-147.
- Kusniati, R. (2009). Perlindungan Hukum Dalam Upaya Pemenuhan HAM Buruh Migran. *Jurnal Penelitian Universitas Jambi: Seri Humaniora*, 11(1), 43430.
- Kusumaatmadja, M., & Agoes, E. R. (2021). *Pengantar Hukum Internasional*. Alumni.
- Law of the Republic of Indonesia Number 18 of 2017 concerning the Placement and Protection of Indonesian Migrant Workers Abroad
- Law of the Republic of Indonesia Number 6 of 2012 concerning Ratification of the International Convention Concerning the Protection of the Rights of All Migrant Workers and Members of Their Families
- Mangku, D. G. S. (2020). *Pengantar Hukum Internasional*. Lakeisha.
- Natalis, A., & Ispriyarso, B. (2018). Politik Hukum Perlindungan Pekerja Migran Perempuan di Indonesia. *Pandecta Research Law Journal*, 13(2), 109-123.
- Rizki, K. (2020). Implementasi Konvensi Internasional Tentang Perlindungan Hak Pekerja Asing dan Anggota Keluarganya: Studi Kasus Penjaminan Hak Pekerja Migran Indonesia di Singapura. *RESIPROKAL: Jurnal Riset Sosiologi Progresif Aktual*, 2(1), 13-38.
- Sari, D. P. (2017). Analisis Peran Tenaga Kerja Wanita di Luar Negeri dalam Meningkatkan Pendapatan Keluarga Menurut Perspektif Ekonomi Islam (Studi Pada Desa Sumber Agung Kecamatan Way Sulan Kabupaten Lampung Selatan) (Doctoral dissertation, UIN Raden Intan Lampung).
- Sariningrum, T. N., Ak, S., & Idris, A. (2016). Perlindungan Hukum Terhadap Imigran Ilegal Di Indonesia Dalam Perspektif Hukum Internasional (Doctoral dissertation, Sriwijaya University).
- Soekanto, S. (2007). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Raja Grafindo Persada.
- Susetyorini, P. (2010). Perlindungan Tenaga kerja Indonesia (TKI) di Luar Negeri oleh Perwakilan Republik Indonesia. *Masalah-Masalah Hukum*, 39(1), 65-77.
- Taufik, A. I. (2014). Peran ASEAN dan Negara Anggota ASEAN terhadap Perlindungan Pekerja Migran. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 3(2), 255-280.
- Thontowi, J. (2013). Perlakuan Pemerintah Myanmar terhadap Minoritas Muslim Rohingya Perspektif Sejarah dan Hukum Internasional. *Pandecta Research Law Journal*, 8(1).



- Wardani, R. K., Pujiastuti, E., & Mukyani, T. (2019). Perlindungan Hukum Terhadap Hak-Hak Pekerja Migran: Studi Kasus Satinah Sebagai Mantan Tki Di Arab Saudi. *Humani (Hukum dan Masyarakat Madani)*, 5(3), 38-49.
- Widagdo, S., Suryokumoro, H., Widhiyanti, H. N., Puspitawati, D., Audrey, P., Kusumaningrum, A., ... & Susanto, F. A. (2019). *Hukum Internasional dalam Dinamika Hubungan Internasional*. Universitas Brawijaya Press.
- Yusitarani, S. (2020). Analisis yuridis perlindungan hukum tenaga migran korban perdagangan manusia oleh pemerintah indonesia. *Jurnal Pembangunan Hukum Indonesia*, 2(1), 24-37.