

## **The Role of the Governments of Indonesia and Malaysia in Providing Legal Protection for Indonesian Migrant Workers in Malaysia**

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### **Abstract**

TKI stands for Indonesian manpower that are employed in the formal and informal sectors for a period of time. There are lot of problems occurring in Malaysia such as violent treatment of Indonesian workers, especially illegal workers. This is due to the fact that many of such workers have low educational backgrounds and come from poor families. The purpose of this research is to know the roles of Indonesian and Malaysian Governments in providing legal protection for Indonesian Migrant Workers (TKI). The method of this research is normative legal research with library research by taking primary and secondary legal materials. The role between the Governments of Indonesia and Malaysia are Memorandum of Understanding (MoU) on the Placement and Protection of Indonesian Migrant Workers in the Domestic sector in Malaysia which was signed in 2022. The formation of the National Agency for Placement and Protection of Indonesian Migrant Workers (BPN2TKI) helps protect migrant worker from harmful action. And also for migrant workers who are registered in a job either in Indonesia or abroad, they will receive protection under the responsibility of the Social Security Administrator (BPJS) for employment.

**Key Words: Indonesian Migrant Workers, Cooperation, Malaysia, Legal Protection**

### **A. Introduction**

The rapid increase in population in Indonesia is a challenge for the Indonesian government in providing extensive employment opportunities so that there are no gaps and provide equitable welfare for the Indonesian people and overcome the problem of unemployment. Which as mandated in article 27 paragraph (2) of the 1945 Constitution states that "Every citizen has the right to work and a decent living for humanity."

Article 1 paragraph (1) of Law of the Republic of Indonesia Number 39 of 2004 on Placement and Protection of Indonesian Manpower Overseas states: "Indonesian Workers, hereinafter referred to as TKI, are every Indonesian citizen who is qualified to work abroad in an employment relationship for a certain period of time, based on the mandate of Article 27 paragraph (2) of the 1945 Constitution, the government of the Republic of Indonesia provides legal protection for every Indonesian citizen in obtaining decent work and livelihood and decent work based on humanitarian principles. The Government of the Republic of Indonesia conducts bilateral agreements with various countries that can help employ Indonesian citizens who in this case are called (TKI).

TKI stands for "Indonesian Manpower," which translates to "Indonesian Workers Abroad. " These workers are employed in the formal and informal sectors for a period of time. In the 2012/2013 period, the largest destination country for Indonesian migrant workers was neighboring Malaysia, with a total of 150,296 people. In Malaysia, Indonesian workers are known for their perseverance, so the demand for migrant workers continues to increase.

Indonesian workers are the most sought after for employment in Malaysia compared to other countries due to the similarity of culture and language, which eases the working environment.<sup>1</sup>

In the 2022 yearly report, the Indonesian Migrant Worker Protection Agency (BP2MI) reported that there were a total of 200,761 Indonesian Migrant Workers (PMI) placed abroad. This figure shows a tendency to increase by 176.44% compared to 2021, where there were only 72,624 individuals. This disparity indicates a rapid rise in the demand for PMI labor. The data contrasts with the pandemic period that occurred between 2020-2021, during which many recipient countries have lots of restrictions.<sup>2</sup>

Tabel 1.1

Negara Tujuan	Migrant Worker	Pengaduan
Taiwan	83.216	367
Malaysia	72.260	380
Hong Kong	65.916	217
South Korea	12.580	76
Japan	9.673	10
Singapore	7.898	41
Saudi Arabia	6.310	498

Data of Indonesian Migrant Workers that worked in several Asian countries in 2023.<sup>3</sup>

Violent treatment of Indonesian workers, especially illegal workers, has become a serious problem in Malaysia. This is due to the fact that many of such workers have low educational backgrounds and come from poor families. This has led to a large number of illegal Indonesian immigrant workers in Malaysia, which not only raises concerns for both countries, but also impacts the Indonesian workforce (TKI) who have been working in Malaysia for a long period of time. This has become a major issue in bilateral relations between Indonesia and Malaysia. Malaysia itself has become a popular destination for Indonesian immigrant workers looking to make a living. Legal protection of Indonesian workers (TKI) in Malaysia is an important concern for the government. Legal protection of migrant workers in terms of rights and welfare is a major issue. Cooperation between the two countries is very important to create a sense of security and fairness for Indonesian workers in the work environment.<sup>4</sup>

The data above indicates a high incidence of violence experienced by migrant workers, where in cases that occurred in the recent period, all cases were confirmed to violate human rights. In one example, a 23-year-old Household Assistant from East Java experienced violence in the form of torture perpetrated by their employer. They sustained injuries to their body due to beatings with blunt objects. Not only that, besides not receiving any wages, the victim was also denied permission to contact their relatives. Following the submission of a report

<sup>1</sup> Aulia Ilma, "Upaya Pemerintah Indonesia Dalam Melindungi Tki Di Malaysia Pada Masa Pemerintahan Joko Widodo," *UMY Repository*, 2016.

<sup>2</sup> Hilton Tarnama Putra M and Surya Anom, "Pelindungan Hak-Hak Pekerja Migran Indonesia (Penyuluhan Hukum Pekerja Migran Indonesia Di Desa Binaan Pabuaran Dan Sindangsari )" 2, no. 1 (2023): 24–30.

<sup>3</sup> BP2MI Website, "Data Penempatan Dan Pelindungan Pekerja Migran Indonesia Periode Desember 2023," *BP2MI Website*, 2024, <https://bp2mi.go.id/statistik-detail/data-penempatan-dan-pelindungan-pekerja-migran-indonesia-period-e-desember-2023>.

<sup>4</sup> Abdi Fristho Hutasoit et al., "Kerja Sama Indonesia-Malaysia Dalam Perlindungan Tki Di Malaysia Tahun 2023-2024," *Jurnal Administrasi Negara* 1, no. 5 (2023): 292–300.

regarding the act of torture to the Indonesian Embassy in Malaysia, the Embassy collaborated with the Migrant Worker Protection Agency (PDM) in an effort to retrieve the victim, who was successfully rescued on April 19, 2021.<sup>5</sup>

Other than act of violence there are also human trafficking. Human trafficking is impacted by a wide range of influences, including economic, social, external environmental, and societal structural and cultural factors. Economic factors include the cycle of poverty caused by limited job opportunities and low educational attainment, resulting in individuals becoming migrant workers lacking in skills or knowledge. Socio-cultural factors contribute as well, with community norms often viewing children as valuable assets who can alleviate familial burdens through work, normalizing child labor. External environmental factors, beyond human control, such as natural disasters, ethnic conflicts, economic downturns, or gender-biased policies, further caused vulnerabilities, leading to instances of child labor, economic crises, or forced migration without proper documentation or a defined destination.<sup>6</sup>

In the aspect of providing the latest views on developments related to efforts to provide legal protection to Indonesian workers, which not only has a negative effect on Indonesian workers who seek sources of income in Malaysia but also based on bilateral relations between Indonesia and Malaysia require close cooperation in resolving labor protection issues. The existence of effective cooperation between Indonesia and Malaysia can provide legal certainty for Indonesian workers including those who are affected by several problems related to labor issues, with cooperation between the two countries can provide protection for workers and provide legal protection in order to create a conducive atmosphere for workers in the future.<sup>7</sup>

## **B. Method**

This research was prepared with normative research methods. Normative legal research is a process to find legal rules and legal doctrines to answer the legal problems at hand.<sup>8</sup> Another name for normative legal research is doctrinal legal research, also referred to as literature research or document study. It is called doctrinal legal research, since this research is carried out or aimed only at regulation.<sup>9</sup> This research also uses library research by taking primary and secondary legal materials. This research material is derived from literary sources, including books, journals, and legislative regulations, which serve as references for writing matters related to the research.<sup>10</sup>

## **C. Literature Review**

There are 244 million migrants according to the International Labor Organization (ILO). Rapid economic growth in some countries in Asia, fueled by high labor wages and fast increasing demand also with low employment and low wages in some country, are the reason why there are Indonesia labor migration. Indonesia is one of the countries that sends the

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<sup>5</sup> Erwan Baharudin, "Perlindungan Hukum Terhadap TKI Yang Bekerja Di Luar Negeri," *Jurnal Hukum Dan Pembangunan* 40, no. 2 April-Juni (2010): 270–89.

<sup>6</sup> Belardo Prasetya Mega Jaya et al., "Criticising the Implementation of the ACTIP in Southeast Asia," *Sriwijaya Law Review* 7, no. 2 (2023): 350–67, <https://doi.org/10.28946/slrev.Vol7.Iss2.2542.pp350-367>.

<sup>7</sup> Ibid

<sup>8</sup> Jonaedi Efendi et al., *Metode Penelitian Hukum: Normatif an Empiris*, 2nd ed. (Prenada Media, 2016).

<sup>9</sup> Muhaimin, "Metode Penelitian Hukum," 1st ed. (Mataram University Press, 2020), 168.

<sup>10</sup> Belardo Prasetya Mega Jaya et al., "Kebijakan Pemerintah Tentang Merek Dalam Memberikan Perlindungan Hukum Terhadap Umkm," *Jurnal Ilmiah Advokasi* 10, no. 2 (2022): 98–105, <https://doi.org/10.36987/jiad.v10i2.2333>.

largest worker to work abroad. According to International Law, in Article 2 of the Universal Declaration of Human Rights (UDHR) states: "Everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or another opinion, national or social origin, property, birth or another status". It means that every human has the same right to be free from discrimination including based from one's religion.

The United Nations (UN) has made a convention focused on protecting the rights of migrant workers, known as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This convention focused not only on the protection of immigrant workers but also their family members. CTS Kansil describes legal protection as the place of safety and security by law enforcement entities to legal subjects, aimed at securing environment free from any threats or dangers. Satjipto Rahardjo also said that the fundamental objective of legal protection is to fight and defend human rights.

The United Nations adopted the Migrant Workers Convention on December 18, 1990. Focusing on the Protection of the Rights of Migrant Workers and Their Family Members. It is being used on July 1, 2003, following ratification by 20 countries in March 2003. Article 1, paragraph 14 of Law Number 13 of 2003 about Employment states that, "Manpower defines a work agreement as a contract between a worker and an entrepreneur or employer outlining the terms of work, as well the rights and obligation of both parties.

The convention, focused through the ratification of Law Number 6 of 2012 about Confirmation of International Convention on The Protection of The Rights of All Migrant Workers and Members of Their Families. The law focused on protecting all migrant workers, does not care how they enter the country. It also focuses the rights that are applicable or can be used to all migrant workers, regardless of their legal status, and also focused on the fundamental freedoms of migrant workers. This convention sets out human rights standards that every country must give for individuals qualifying as migrant worker.<sup>11</sup>

#### **D. Discussion**

##### **The Role of the Governments of Indonesia and Malaysia in Providing Legal Protection for Indonesian Migrant Workers in Malaysia**

For migrant workers who are registered in a job either in Indonesia or abroad, they will receive protection under the responsibility of the Social Security Administrator (BPJS) for employment. Migrant workers are required to register with BPJS for employment at the latest one year before departure to work, if at any time a migrant worker experiences changes in family data, they have to report it immediately so that the previous data can be replaced. Meanwhile, every Indonesian Migrant Workers (PMI) who will work, is working, and has worked will receive income from abroad or Indonesia, which will provide accident insurance, old-age insurance, and death insurance. In order to make payments for the Work Accident insurance (JKK) and Death Insurance (JKM), migrant workers make a first payment of Rp. 37.500 and continue with payment before the departure of migrant workers of Rp. 332.500, while payments for the Old Age Insurance (JHT) will be made when migrant workers are

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<sup>11</sup> Yapiter Marpi, "Legal Protection of Migrant Workers Against Threats of Abuse Discrimination in a Diplomatic Relationship Perspective Between Countries," *Lampung Journal of International Law* 3, no. 2 (2021): 111–20, <https://doi.org/10.25041/lajil.v3i2.2366>.

already working, because these JHT payment are made in foreign currency and the amount of the premium is in Indonesia Rupiah currency based on the exchange rate at the time of payments are made. It is different for non-procedural migrant workers, if they are suffering from illness and require a large amount of money, they will only receive assistance in the form of contributions made by all migrant workers in the country they are heading to which will then be sent to the home country. The repatriation of non-procedural migrant workers will be assisted by the Government until they return to their home.<sup>12</sup>

Efforts to protect Indonesian Migrant Workers (TKI) from harmful actions are the formation of the National Agency for Placement and Protection of Indonesian Migrant Workers (BPN2TKI) through Presidential Regulation No. 81 of 2006. This agency is a non-departmental government institution (LPND) tasked with implementing policies in the field of placement and protection of TKI in a coordinated and integrated manner. Its responsibilities include providing services, coordinating and conducting supervision, documentation, final departure briefings (PAP), issue resolution, financing sources, from departure to return, and enhancing the quality of TKI. Moreover, it also manages written legal agreements between the Indonesian government and the governments or legal entities of the destination countries for TKI placement.<sup>13</sup>

Most of migrant workers in Malaysia are domestic workers. Domestic workers are a group of workers that are in great demand by the public in Malaysia. There are few characteristics when it comes to workers that are working in the housekeeper sector. The first is dominated by the women of young age, the second one is takes lot of time, and the third one is low wages, the fourth one is no social and health insurance, and the last one is easily exploited both by distributors and users of services. The problems that are occurred in these sectors hasn't really made much improvement. There are still lots of cases of abuse and exploitation of migrant workers in Malaysia.

The cooperation of Indonesian and Malaysian Governments when it comes to migrant workers is regulated through a Memorandum of Understanding between both Governments. Inside the MOU between Indonesia and Malaysia on domestic workers 2006, domestic workers are people who received bids for selection by an employer to work in Malaysia and must meet the conditions in order to enter Malaysia; Age from 21 to 45 years old, have enough knowledge of the law, social, and cultural that are practiced in Malaysia, Have a communication skill to speak both Malay language or English, have already finished Malaysian immigration procedures, must be declared healthy and strongly associated with the requirements of the related Indonesia and Malaysia authority, Does not have any criminal record.

There is a legal connection between the employer and the migrant workers abroad, that are based on employment contract. It contains rights and obligations that became the basis of the legal relationship between both parties. If one of the parties does not fulfill its obligations, they have to be responsible to replace the losses that the other party suffered. Inside of the Article 8 of Migrant Worker and Placement and Protection Law, state that every candidate migrant worker is entitled to obtain a copy of the agreement between themselves and their

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<sup>12</sup> 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>.

<sup>13</sup> *ibid*

employer abroad. Also, in Article 55 it says that the contract must be signed prior to departure and also include a specific things that must be written, such as; name and address of the employer and migrant worker, occupation and description of the work written by the migrant worker, rights and obligations of both parties, terms and conditions of employment that are covered by the work agreement.

A common problem that happened a lot in Indonesia is that the migrant workers candidate are told to sign the contracts on the spot. This is a big problem because it made the migrant workers from Indonesia to not have any time consider, read the contract thoroughly, and barely understand the contract. Because most of the workers have only received limited formal education, it's really important for them to be given time in order to study and discuss the contract thoroughly with their family, groups, and Non Government Organization (NGO).<sup>14</sup>

The collaboration between Malaysia and Indonesia in sending Indonesian Migrant Workers has been ongoing for decades, focusing on the crucial relationship between the two nations due to the substantial economic contributions that are made by migrant workers to both of these countries. However, there are lot of challenges that shows up, including act of violence and discrimination, poor working conditions, limitations on freedom of assembly and association, and hard access to healthcare and education services.

To solve this issues, Indonesia and Malaysia have made an agreement that are aimed at safeguarding the rights of Indonesian Migrant Workers in Malaysia. The cooperation pact on labor transfer between the governments of both countries, which was signed in 2006. This agreement focused to regulate the transfer and protection of Indonesia workers in Malaysia, covering aspects such as registration mechanisms, recruiting procedures, training, legal protection, and the legal repatriation of workers. Also the Memorandum of Understanding (MoU) on the protection and management of labor, signed in 2016, focuses on fighting exploitation, human trafficking, violence, and to enhance access to healthcare and education services for migrant workers.

The most recent 2022 Memorandum of Understanding (MoU) between Malaysia and Indonesia about the Placement and Protection of Indonesian Migrant Workers in Malaysia Domestic sector helps enhancing the welfare of Indonesian worker. The implementation of a unified recruitment and supervision system, known as one-channel system. This system is a system of recruiting until it got supervised. The Head of State said that by using this system, it will give benefits to Indonesian Migrant Workers such as providing maximum protection.<sup>15</sup>

## **E. Conclusion**

The role between the Indonesian and Malaysian governments is providing legal protection by making Memorandum of Understanding (MoU) on the Placement and Protection of Indonesian Migrant Workers in Malaysia's Domestic sector, signed in 2022. This MoU focused

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<sup>14</sup> Henni Wijayanti and Arovah Windiani, "Legal Protection and Advocacy for Indonesian Migrant Worker," *The 2nd International Multidisciplinary Conference 2016 November 15th , 2016*, no. 13 (2016): 1003–9.

<sup>15</sup> Nurfarah Nidatya et al., "Indonesia's Foreign Policy : Suspends Sending Indonesian Migrant Workers (PMI) to Malaysia After the Establishment of the Online Maid System (SMO) by the Malaysian Government," *JDKP Jurnal Desentralisasi Dan Kebijakan Publik* 4, no. 1 (2023): 99–111, <https://doi.org/10.30656/jdkp.v4i1.6363>.

on the implementation of a unified channel system for recruitment and supervision. Government officials are confident that this new system will give benefits to Indonesia Migrant Workers such as providing maximum protection. Migrant workers that are registered in a job either in Indonesia or abroad, will receive protection under the responsibility of the Social Security Administrator (BPJS) for employment. In order to protect the migrant workers from harmful action, the government made some effort and that is the formation of the National Agency for Placement and Protection of Indonesian Migrant Workers (BPN2TKI) through Presidential Regulation No. 81 of 2006. The agency has some responsibilities in providing services, coordinating and conducting supervision, documentation, final departure briefings (PAP), issue resolution, financing sources, from departure to return, and enhancing the quality of TKI.

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