



# *Regulation on Human Rights Protection of Illegal Indonesian Migrant Workers*

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**Abstract** — In recent decades, there has been a substantial increase in the emigration of Indonesian migrant workers to foreign countries. This surge is closely correlated with the rise in the number of Indonesian migrant workers who depart without proper authorization. This study uses doctrinal legal research or known as normative research. The findings in this study show that there is no national regulation that specifically regulates the protection of illegal migrant workers, Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers provides a legal basis for protecting the human rights of migrant workers in general. Conventions from ASEAN and other International organizations offer guidance for defending migrant workers' rights. Preventive and curative measures need to be taken to prevent illegal migrant workers, including increased access to information, cooperation between countries, and diplomacy. Human rights protection for illegal migrant workers is important and needs serious attention from multiple stakeholders.

**Keywords**—Illegal Indonesian Migrant Workers; Regulation; Human Rights Protection.

## I. INTRODUCTION

Employment is an important aspect of an individual's existence, as it is a necessity for everyone. Work is commonly regarded as a means of earning a living to meet essential life requirements. Work can serve as a means of self-actualization, allowing individuals to perceive their lives as more meaningful to themselves, their families, and their surroundings. Furthermore, labor is a focal point of national development and a key participant in attaining national development goals.[1]

Legally, according to Article 23 of the Universal Declaration of Human Rights (UDHR) and Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESR), it is required that every individual is entitled to a job that is fair and free from discrimination. Then emphasized in the 1945 Constitution of the Republic of Indonesia (UUD 1945) mandates the entitlement to employment and a satisfactory standard of living. Human rights education promotes the universal values of freedom and equality, preventing violence, exploitation, discrimination, and limitations on other people's rights.[2]

Overseas labor migration has increased in recent decades. This increase is driven by economic needs and employment opportunities abroad, where many companies and destination countries are looking for cheap and skilled labor. Indonesia is categorized as one of the most Migrant Worker sending countries in the world. According to statistics from the Indonesian Migrant Workers Protection Agency (BP2MI), there has been a substantial rise in the number of migrant worker departures from 7,071 in March 2021 to 23,941 in March 2023, which is a more than three-fold increase in just two years. Indonesian Migrant Workers are also one of the pillars of national economic growth and they make a real contribution to government revenue and economic productivity through remittances or the transfer of migrant workers' income to their home countries. These remittances not only bring financial benefits to the welfare of the workers' families, but also act as a catalyst to improve the country's exchange rate. The amount of remittances from migrant workers in Indonesia alone reached Rp. 159.6 trillion which is certainly a considerable foreign exchange revenue. [3]

Indonesian migrant workers surely possess equal rights as other workers, along with the right to human rights protection. However, as migrant workers, they also face special challenges and risks, such as exploitation, harassment, and unfair treatment in the workplace or outside the workplace. Some of the challenges migrant workers face include limited access to information and legal support, inequities in the immigration system and employment policies in destination countries, as well as a lack of protection in the workplace. Indonesian migrant workers are confronted with immigration as a prominent issue.[4] The immigration procedure for prospective Indonesian migrant workers is frequently conducted with ill intent, resulting in a significant number of Indonesian migrant workers residing overseas without proper legal documentation and residency permits from the host

country. Migrant workers often abuse visit visa documents, causing them to overstay and become Indonesian migrant workers who work illegally.[5]

In problems like this, the state must continue to pay attention even though the migrant workers are illegal because they still have the status of Indonesian citizens. According to Article 28D paragraph (1) of the 1945 Constitution, the state has the duty to take care of all of its citizens, regardless of their location or circumstances. This responsibility extends particularly to Indonesian residents who encounter legal issues while abroad. Hence, safeguarding the human rights of illegal migrant workers is important, also has received attention from stakeholders.

## II. LITERATURE REVIEW

### A. *The Concept of Human Rights*

The doctrines of natural law became the beginning of the thoughts on natural rights, so that the development of the doctrine of natural law is due to the tendency to speculative thinking and intellectual perception to realize the tragedy of human life and conflicts in the life of this world. According to this teaching, the law is universal and eternal, sourced from God (irrational) and sourced from human ratios.[6] According to Friedman, the history of natural law is the history of the people in their efforts to find what is called absolute justice.[7]

Manfred Nowak said that the principles of human rights include the values of universality, indivisibility, interdependent, and interrelated. Rhona K.M Smith added other principles, namely equality, and non-discrimination. Another principle is to prioritize the principle of human dignity and in Indonesia itself provides a precedent that human rights also have a more important one, namely the responsibility of the state.[8]

The universal principle is a principle that affirms that all people in all parts of the world, no matter what religion, what nationality, what language, what ethnicity, regardless of political and anthropological identity, and regardless of disability status are equal as human beings. Here it can be ascertained that humans around the world have the same rights as human entities themselves. Whoever, wherever and whenever the rights as human beings must be fulfilled.[9]

The principle of indivisibility means that all human rights are equally important and therefore it is not permissible to exclude certain rights or certain categories of rights from their share. Indivisibility and Universality are two of the most important sacred principles. The principle of interdependence means that the fulfillment of one category of rights will always depend on the fulfillment of other rights. As for the principle of interrelatedness, it is understood that all human rights are inseparable from one another. The principle of equality is considered a very fundamental human rights principle. Equality is interpreted as equal treatment, where in the same situation must be treated the same, where in different situations with slight differences are treated differently. Equality is also considered an absolute prerequisite in a democratic state. Equality before the law, equality of opportunity, equality in access to education, equality in accessing a fair trial, equality of belief and worship in accordance with their beliefs and others are important things in the fulfillment of human rights.[10]

Finally, the fulfillment, protection and respect of human rights is a form of state responsibility. The main actor charged with the responsibility to fulfill, protect and respect human rights is the state through its government apparatus. This principle is written throughout international human rights conventions and domestic regulations. Article 8 of the Human Rights Law states that "the government is obliged and responsible for respecting, protecting, upholding, and promoting human rights as stipulated in this law, other laws and regulations and international human rights law accepted by the Republic of Indonesia. This principle of state responsibility can also be found in the preamble of the Universal Declaration of Human Rights which reads "Member States undertake to achieve progress in the promotion and general respect for human rights and fundamental freedoms, in cooperation with the United Nations.

### B. *Illegal Indonesia Migrant Workers*

The migrant worker, as defined by The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as individual who is currently engaged in, has previously engaged in, or will engage in paid work in a country where they are not a citizen. After the Convention was ratified, Indonesian Government passed Law Number 18/2017, which focuses on safeguarding Indonesian migratory workers. Migrant workers are afforded the identical fundamental rights as those specified in the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. To ensure safeguarding of Indonesian Migrant Workers is regulated by Law No. 18/2017, which outlines specific criteria that must be met by migrant workers. These criteria include being no less than 18 years old, possessing the needed skills, being in sound physical and mental condition, being enrolled with a social security membership number, having appropriate paperwork in order.

The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and Law Number 18/2017 on the Protection of Indonesian Migrant Workers lack a precise definition of illegal migrant workers. Illegal migration, as defined by International Organization for Migration (IOM) refers to the act of moving in a manner that goes beyond the established laws of the countries of origin, transit, and

destination. This includes illegal entry, stay or work. Therefore, illegal migrant workers can be defined as people who work abroad without following the official procedures of the country of departure, stopover or destination. The illegal migrant worker works without having a valid work permit or work visa.[11]

According to BP2MI data, in 2019 there were around 3.7 million Indonesian migrant workers in 150 countries. However, consistent with the World Bank, there are around 9 million Indonesian migrant workers, so there is a difference of 5.3 million Indonesian migrant workers who are not recorded in the official data. Of the 5.3 million difference between BP2MI and World Bank data, BP2MI states that 80% are leaving the country illegally. Illegal migrant workers are like an iceberg phenomenon. The state has the potential to lose trillions of rupiah. This is because Indonesian migrant workers play a significant role in generating a substantial amount of foreign exchange for the country. Indonesian migrant workers have deposited IDR 159.6 trillion in foreign exchange in 2019 alone.[12]

### III. METHOD

The author uses normative legal writing as the method of legal research. This type of research focuses on examining library materials and other secondary data. Along with the advancement of scientific development, especially legal science, normative legal research is no longer called what it should be, but simply the term legal research or in Dutch called *rechtsonderzoek* which means it is definitely always normative.[13] In this research, the author uses a regulatory approach and a conceptual approach.

### IV. RESULT AND DISCUSSION

#### A. Regulation on Human Rights Protection of Illegal Migrant Workers at the International Level

Specifically, there is no international regulation that specifically addresses the safeguarding of the human rights of illegal migrant workers. Nevertheless, there are numerous international treaties that govern the general welfare of migratory workers. The International Convention on the Protection of the Rights of Migrant Workers and Members of all Their Families is a comprehensive international agreement that is created to safeguard the rights of migratory workers. This International Convention emphasizes the relationship between migration and human rights and has developed into an important global policy that aims to protect migrant workers and members of their families, set moral standards, and serve as a guide to promote migrant rights in each country. The Convention also considers the Migration for Employment Convention (Revised), 1949, the Migrant Workers (Supplementary Provisions) Convention, 1975, and ILO Convention No.105 concerning the Abolition of Forced Labor, which were previously established by the International Labor Organization.

The primary objective of the Convention is to promote the recognition of the human rights of migrant workers. Migrant workers are not merely employees; they are human beings. The Convention does not establish new rights for migrants; rather, it endeavors to guarantee equal treatment and working conditions for migrant workers in comparison to citizens. The Convention promotes the fundamental premise that all migrants should be entitled to a minimum level of protection. It also acknowledges that procedural (legal) migrant workers have the right to demand more rights than illegal immigrant workers, but it also underscores the importance of respecting their human rights, which must still be respected in the same way as those of anyone else.

The Convention also proposes measures to reduce the sending of illegal migrant workers, particularly by addressing misleading information that encourages people to migrate for procedural reasons and by imposing sanctions against human traffickers and employers of illegal immigrant workers. The Convention mentions the protection of the rights of migrant workers and their families regardless of sex, race, color, language, religion or belief, political or other opinion, national origin, ethnic origin, social, nationality, age, economic position, property, marital status, birth, or other status.

The International Labor Organization has established the Convention concerning Migration for Employment (Number 97) in 1949. However, Indonesian government has not ratified the convention. The convention highlights the importance of accurate and correct information on labor migration that must be provided by signatory countries. Article 1 mandates, among other things, that member states shall provide information on: national policies, laws and regulations relating to emigration and immigration; specific provisions concerning labor migration, terms of employment and sources of income of migrant workers; contracts of a general or specific nature concerning such matters as determined by the member state concerned. States should ensure that adequate and free services are provided to assist migrant workers, especially services that provide accurate and correct information.

The Convention also stipulates that each State Party shall take the necessary measures, within the limits of its rights and sovereignty, to facilitate the departure, passage and reception of migrant workers. Meanwhile, each State Party is also obliged not to discriminate on the grounds of nationality, race, religion or sex, to treat legal immigrants in its country at least as its own nationals.

Then at the local level, Southeast Asia already has a consensus on protection for migrant workers in all ASEAN countries entitled ASEAN Consensus on the Promotion and Protection of the Rights of Migrant Workers. The consensus is the result of the 31st Summit in 2017 in Manila, Philippines. This consensus aims to

improve the protection of the rights of migrant workers in ASEAN, which pertains to the fundamental rights of migratory workers and their families. The consensus is a step forward to implement the International Convention on the Protection of the Rights of Migrant Workers and Members of all Their Families in Southeast Asia.

### *B. Human Rights Protection of Illegal Migrant Workers in Indonesia*

Talking about the protection of human rights starts from the concept of the main obligations of the state as mandated by international law, the main obligations are respect, protect and fulfill human rights. The protection of human rights means that state actors must ensure that no party intervenes in the exercise of rights by rights holders.[14] The interference or intervention of individual human rights by other individuals (non-state actors) is often called the horizontal effect of human rights.

Illegal migrant workers are a group that is highly vulnerable to human rights violations. They often work in poor conditions, without adequate legal protection, and are vulnerable to exploitation, harassment and discrimination. Therefore, it is important for the government and related parties to provide adequate human rights protection for illegal Indonesian migrant workers as a form of fulfillment of their basic rights. In the case of illegal migrant workers, migrant workers are often victims of intervention in the exercise of their rights by migrant worker placement companies, employers, the community where they work and even by the government of the country where they work.

Efforts to protect human rights are carried out through various means such as the adoption of international rules, making and implementing laws, licensing and monitoring. Indonesia is a country that has ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families through Law Number 6 of 2012. Indeed, Indonesia has signed the convention since September 22, 2004 in New York.[15]

The obligation of the State after ratifying an international agreement categorized as law making which includes Agreement, Convention, Covenant, Treaty and Protocol is to convert the international agreement into national positive law. Of course, this has its own reasons, especially for law enforcement officials who are not brave enough to enforce the rules of international law if it has not become national positive law.[16]

National regulations governing the protection of human rights against illegal migrant workers do not yet exist, but the protection of human rights against migrant workers in general is contained in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. One of the principles of the law is the recognition of human dignity and rights. This means that the protection of Indonesian migrant workers must reflect respect for human existence as creatures of God for the sake of honor and protection of human dignity. The purpose of protecting migrant workers in the law states that to ensure the fulfillment and enforcement of human rights. This contrasts with Law Number 39 of 2004 regarding the Placement and Protection of Indonesian Migrant Workers Abroad, which prioritizes the objective of empowering and maximizing the utilization of migrant workers.

Protection of migrant workers is carried out in 3 phases, namely before, during and after work. During work's protection is what is often used in terms of protecting illegal migrant workers in working countries abroad. The protection includes assistance and provision of legal aid by representatives of the Indonesian government as well as guardianship in compliance with regulations at the regional level. Support is needed from various parties to guarantee protection undocumented migrant workers facing difficulties overseas, namely the Ministry of Foreign Affairs, the Ministry of Social Affairs, the Embassy or Consulate General and BP2MI. In practice, the Ministry of Foreign Affairs will use the regulatory basis of the Regulation of the Minister of Foreign Affairs of the Republic of Indonesia No. 5/2018 concerning Protection of Indonesian Citizens Abroad which includes protection including prevention, early detection and rapid response.

Law No. 18/2017 on the Protection of Indonesian Migrant Workers includes provisions for criminal liability for individuals and companies who send minor migrant workers or fail to comply with the necessary departure documentation, resulting in their status as unlawful migrant workers. Other human rights protection efforts can also take the form of supervision. Law No. 18/2017 on the Protection of Indonesian Migrant Workers stipulates that both central and local governments bear the responsibility for overseeing the Regional Government's compliance with the placement and protection of migrant workers, which may involve the participation of the community. Unfortunately, the role of supervision of migrant workers is still considered insufficient. This is justified by the government that the supervision of Indonesian migrant workers is still far from other countries, especially in providing legal services to migrant workers who have problems in the placement country.[17] Even the Ombudsman RI also found mal administration in the form of document forgery. The community is also considered to be lacking in terms of social control over the departure of illegal migrant workers, especially in border areas with other countries.[18]

## V. CONCLUSION

Indonesia, being one of the leading countries in terms of sending migrant workers, also has a substantial population of undocumented migrant workers, akin to an iceberg phenomenon. Of course, the government must continue to provide human rights protection to migrant workers in the form of adopting international laws, licensing, and supervision. Indonesia currently has regulations in place to safeguard the human rights of legitimate migratory workers, specifically Law No. 18/2017 regarding the Protection of Indonesian Migrant Workers. However, there is currently no legislation in place to regulate the protection of illegal migrant workers. In other words, the law only regulates a portion of the prevention of illegal migrant workers; it has not addressed the management of illegal migrant workers who are in difficulty, particularly those who are abroad. Another form of human rights protection effort, namely supervision by the government, is also considered insufficient. The Indonesian government is anticipated to establish regulations that govern the treatment of illegal Indonesian migrant workers. This is due to the fact that citizens who become illegal migrant workers are still considered citizens and are entitled to human rights protection under the law. Other measures can provide preventive measures to prevent illegal migrant workers through increased access to information and understanding of their rights encompass the entitlement to get a fair salary, work in a safe and healthy environment, and be safeguarded against discrimination and violence. As well as simplifying public services to work abroad. Increase cooperation with countries that are the barns of Indonesian migrant workers who are vulnerable to problems. Countries should work together to prevent human trafficking and enhance human rights protection for migrant workers. Subsequently, the government can address the issue by engaging in diplomatic efforts with countries that use legal migrant workers, in order to implement remedial measures.

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