



# Strengthening Regulations In Protecting Indonesian Migrant Workers Before Departing to the Destination Country

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## Abstract

*The lack of employment opportunities and intense level of job competitiveness contribute to the increasing number of job seekers in Indonesia. By the availability of opportunities to work abroad, people choose to work as migrant workers. Fact reveals many legal problems faced by migrant workers, especially those who work as domestic workers in foreign countries. This study analyzes the reasons and legal issues that cause Indonesian migrant workers to experience many violations of their rights, particularly in the pre-departure period. It discusses the rights and protection for migrant workers as stipulated in relevant laws and regulations. This research applies a normative legal method, analyzing legal documents in statutory regulations and several supporting references related to migrant workers. The results revealed that the violations of Indonesian Migrant workers' rights occurred due to the lack of implementation of before working (pre-departure) protection. Besides, numerous migrant workers departed without going through a departure mechanism as determined in Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers. Therefore, it is necessary to consider revising the current laws and regulations or strengthening them through implementing regulations.*

**Keywords:** Indonesian migrant workers; Preparation before departing; Human rights; Legal protection.

## 1. INTRODUCTION

### 1.1. Background

As a developing country with a high population, Indonesia is faced with various problems, including labour. The lack of jobs opportunity has led to an increased number of unemployed. The Central Statistics Agency (BPS) recorded that the number of unemployed people in Indonesia in August 2020 reached 9.77 million people, or 7.07 percent, an increase of 1.84 percent compared to August 2019.<sup>1</sup> Limited skills, education, and capital to start a business, as well as the lack of accessible employment opportunities, have caused many people to choose to work abroad as migrant workers.

Every year thousands of Indonesian citizens work for foreign employers abroad, mostly for domestic services, The Indonesian Migrant

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<sup>1</sup> Badan Pusat Statistik, Keadaan Ketenagakerjaan Indonesia Agustus 2020, Nomor 86/11/Th. XXIII, 05 November 2020.

Workers Protection Board (Badan Pelindungan Pekerja Migran Indonesia/BP2MI) published that 276.553 migrant workers in 2019.<sup>2</sup> These workers are usually women, financially less fortunate persons, from small cities or villages with limited work experience. They tend to come from an area with minimal employment opportunities. In general, this is a complex matter, it is not easy to generalize the reason to work overseas as migrant workers. However, the reason for working in a more developed country with the expectation of a higher income is becoming popular on prospective domestic workers. Instead of expecting a high salary, prospective migrant workers should pay more attention to undergo a procedural way to avoid potential arising legal problems.<sup>3</sup>

One group that often attracts global attention due to legal issues is workers working abroad. They usually work outside the formal sector and need more attention from the government. These workers are commonly referred to as foreign Migrant Workers or migrant workers. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families defines migrant workers as a person "*engaged in a remunerated activity in a state of which he or she is not a national.*"<sup>4</sup> A similar understanding by International Organization for Migration (IOM) defines "labour migration" as a "*cross-border movement for employment in a foreign country.*"<sup>5</sup>

Higher-income than the wages paid in Indonesia is the most common reason. In this regard, high levels of unemployment and poverty in the source country act as driving factors in the decision to emigrate. Economic disparities among Asian country groups have been cited as a major factor in terms of per capita income ranging from as low as US\$200 in the poorest countries to around US\$35-40,000 in developed countries.<sup>6</sup> For example, Japan, the Republic of Korea, the Taiwan provinces of China, Singapore, and Hong Kong SAR had record growth during the 1970s and 1980s leading to what has been called the 'East Asian economic miracle'.<sup>7</sup> The choice to work abroad is not only because of the amount of salary received, although it is true that the wages received can be up to three to four times more than salary in Indonesia, but also due to the migrant worker candidate's ignorance of the conditions when working outside country. At this stage,

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<sup>2</sup> BP2MI, Data Penempatan dan Perlindungan TKI Periode Tahun 2020, <https://bp2mi.go.id/statistik-detail/data-penempatan-dan-perlindungan-tki-periode-tahun-2019>, 10/02/2020, accessed 20 January 2021.

<sup>3</sup> BP2MI, Sebanyak 149 PMI Purna Korea Asal Jawa Timur Lolos Ujian CBT Khusus, <https://www.bp2mi.go.id/index.php/berita-detail/sebanyak-149-pmi-purn-korea-asal-jawa-timur-lolos-ujian-cbt-khusus>, 13/11/2020, accessed 21 January 2021.

<sup>4</sup> See Article (2) *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

<sup>5</sup> Susan Kneebone, Introduction Migrant Workers Between States: In Search of Exit and Integration Strategies in South East Asia, *Asian Journal of Social Science* 40, no.4 (2012): 373.

<sup>6</sup> ILO, Asian Labour Migration: Issues and Challenges in an Era of Globalization, (International Migration Papers (IMP), 2002), 7.

<sup>7</sup> *Ibid*, 8.

prospective workers tend to look at their relatives or neighbours who have previously found work abroad.<sup>8</sup>

The limited knowledge of prospective migrant workers can cause legal problems, such as violations of migrant workers' rights before or after arriving in the destination country. The infringement that usually occurs pre-departure is the failure to fulfill the worker's privilege by the Employment Agency or known as the Indonesian Migrant Worker Placement Company (PPPMI), as stated in Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers (hereinafter, Indonesian Migrant Worker Protection Law). For example, breaches of contracts, namely the absence of clauses in accordance with the standard Placement Agreement stipulated in the Minister of Manpower Regulation No 22 of 2014 concerning the Implementation of Placement and Protection of Indonesian Workers Abroad. Furthermore, other violations that are also prone to occur are related to the Overcharging Costs carried out by the Employment Agency in Indonesia and similar agencies abroad. This issue is essential for prospective foreign workers to clearly know these rules because it can lead to a very detrimental violation of labor rights.

Regulation regarding the protection of migrant workers in Indonesia is stating in the Indonesian Migrant Worker Protection Law. This Law regulates legal protection aspects for migrant workers in before, present, and post-working departure to working-country destination. However, its implementation faced various obstacles, so that it does not provide strict legal protection for migrant workers. The existence of migrant workers basically benefits the country, especially in reducing the number of unemployed in Indonesia. Workers are vulnerable to being exploited by agents or employers, particularly their rights before working in the destination country, as mentioned above. Hence, the government should ensure the protection and fulfillment of migrant workers' rights.

## **1.2. Purpose**

Legal protection for migrant workers in the Indonesian Migrant Worker Protection Law regulates three forms of protection: pre-departure protection, protection during work, and post-work protection. As on the practical level, migrant workers experienced violations of their rights, especially before departure. For instance, excluding some clauses in accordance with the standard contract regulated in Manpower Regulation by the agency. Therefore, The Indonesian government has a huge responsibility to fulfill the rights of its citizens. Fundamentally, every citizen has the right to get a job and a decent living for humanity. Based on these background problems, this study aims to offers an overview of how to strengthen the law and regulations in responding to critical issues related to the violations of Indonesian migrant workers' rights, particularly in the pre-departure period.

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<sup>8</sup> Maulidyah Amalina Rizqi, Analisis Faktor-Faktor yang Mempengaruhi Masyarakat untuk Menjadi Tenaga Kerja Indonesia di Luar Negeri, Seminar Nasional dan Call for Papers: Manajemen, Akuntansi, & Perbankan, Fakultas Ekonomi Universitas Islam Negeri Maulana Malik Ibrahim, 2018, 1173.

### 1.3 Method

The paper applies a normative legal research. It primarily collects statutory provisions related to Indonesian Migrant Workers as stipulated in various law and regulations in Indonesia besides general norms and principles contained in international treaties. The collected legal sources are analysed and presented in qualitative using prescriptive and argumentative techniques by explaining relevant sources including law and regulations, treaties reports, journal articles, and legal problems experienced by prospective Indonesian migrant workers: and violations of their rights as regulated in the Indonesian Migrant Workers Protection Law.

### 1.4 Literature Review

This study uses the theory of legal protection. According to Fitzgerald, the theory of legal protection aims to integrate and coordinate society's legal interests, which is carried out by protecting the parties' interests.<sup>9</sup> According to Satjipto Rahardjo, legal protection is an effort to protect someone's interest by allocating power to him to act in that interest framework.<sup>10</sup> The protection is necessary to provide security for human rights that others have harmed. There have been previous studies that discussed the issue of the protection of migrant workers.

Riri Anggraini conducted research that focuses on irregular migrants vulnerable to violations of their human rights from an international human rights law perspective. This study indicates that irregular migrant workers also have the same rights as other migrant workers or other citizens. So that countries (especially countries in Southeast Asia) must recognize and Protect them under any circumstances, as contained in the provisions of international human rights law, especially in the International Convention on the Protection of the Rights of All Migrant Workers and their Families.<sup>11</sup> Referring to this convention, the Indonesian government must protect migrant workers. This aims to avoid various violations and legal cases experienced by Indonesian migrant workers. In addition, supporting this article, the Indonesian government is expected to strengthen existing regulations to avoid potential offenses such as the un-procedural dispatch of migrant workers in order to prevent the illegal departure of migrant workers.

Hartono Widodo and R. Jossi Belgradoputra published an article on the topic of Indonesian migrant workers protection. The research shows that the government still seems ignorant in dealing with the protection of migrant workers, resulting in cases of human trafficking, slavery, forced labor, abuse, crimes against human dignity, and other treatments that violate

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<sup>9</sup> Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), 54.

<sup>10</sup> Satjipto Rahardjo, *Sisi-Sisi Lain dari Hukum di Indonesia*, (Jakarta: Kompas, 2003), 121.

<sup>11</sup> Riri Anggraini, "Perlindungan Hukum Bagi Irregular Migrant Workers Indonesia di Kawasan Asia Tenggara (Dalam Perspektif Hukum HAM Internasional)," *Jurnal Yuridika* 32, no. 2 (2017): 310.

human rights.<sup>12</sup> It refers to Migrant Worker Protection Law and its derivatives regulations. Basically, the government has made reasonable efforts in protecting Indonesian migrant workers, especially with the issuance of the Indonesian Migrant Worker Protection Law. To date, however, there are still several problems that the government has not resolved and seem ignorant. Such as the establishment of training institutions for migrant workers, supervision for placement agencies, and the issuance of government regulations. Through the strengthening of regulations, these issues can be solved for the welfare of migrant workers shortly.

Wafda Vivid Izziyana et, al discussed the legal protection for migrant workers through paralegal training. This study shows that prospective workers do not understand the flow and procedures of legal protection. Paralegal assistance helps migrant workers understand contracts that consist of wages, working hours, working hours, social security, and procedures. The lack of understanding of the applicable agreement is also caused by insufficient explanation regarding the contract issue.<sup>13</sup> This research emphasizes the importance of training for prospective migrant workers and the lack of information of workers' candidates prone to violation of migrant workers' rights.

This article focuses on the importance of strengthening regulations in protecting migrant workers, particularly before working. The aforementioned research and the present paper have a similarity, that is a concern on the protection of Indonesian migrant workers. The particularity of this paper compares to the three studies above, is an emphasis on existing regulations, especially on indications of violations of migrant workers' rights in the pre-departure period.

## **2. RESULT AND ANALYSIS**

### **2.1. Legal Protection for Indonesian Migrant Workers**

Significant advancements occur in development in the past decades in the Asia-Pacific region, and migrant workers have contributed much to its development. Sending and host countries both gain from the knowledge, skills, labor power, and financial remittances from migrant workers. Therefore, every nation in the Asia-Pacific region is responsible for protecting migrant workers' health and rights.<sup>14</sup>

One of the State's objectives, as stated in the 1945 Constitution of the Republic of Indonesia (hereinafter, Indonesian Constitution), is to protect the people of Indonesia and their entire native land. The Indonesian

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<sup>12</sup> Hartono Widodo and R. Jossi Belgradoputra, "Perlindungan Pekerja Migran Indonesia," *Binamulia Hukum* 8, no. 1 (2019): 107.

<sup>13</sup> Wafda Vivid Izziyana, Surisman, and Andika Yuli Rimbawan, "Perlindungan Hukum bagi Pekerja Migran melalui Pelatihan Paralegal di Ponorogo", *Legal Standing* 4, No. 1 (2020): 328.

<sup>14</sup> Low, Wah Yun, Wen Ting Tong, and Colin Binns, "Migrant Workers in Asia Pacific and Their Rights to Health," *Asia Pacific Journal of Public Health* 27, no. 6 (2015): 586.

Constitution enshrines the protection of human rights in general, including the fulfilment of the right to work in which every citizen has the right to a decent job and livelihood.<sup>15</sup> The Indonesian Constitution also determines that everyone has the right to recognition, guarantees, protection, and legal certainty that is just and equal treatment before the law.<sup>16</sup>

The statutory provisions regarding Indonesian migrant workers are regulated in various law and regulations. Law No.13 of 2003 concerning Manpower states that every worker has the same rights and opportunities to choose, get, or change jobs and earn a decent income at home or abroad. With regards to the placement of workers, this law underlines the need to place the worker in the right positions that are suitable to their expertise, skills, talents, interests, and abilities by paying attention the human dignity, human rights, and legal protection.<sup>17</sup>

Law No.39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad was the first law that specifically regulates the legality of sending foreign workers as well as prevention and efforts to combat trafficking.<sup>18</sup> The law seems to put more emphasis on administrative aspects rather than the rights of migrant workers. Public opinion tends to judge this law has not successfully decreased the problems faced by Indonesian migrant workers abroad. The issue of migrant workers' protection is mostly regulated in both bilateral and regional agreements. The International Labour Organization (ILO) notes that most of these agreements are ineffective<sup>19</sup> Many bilateral agreements are not implemented by the state party, especially in providing equal protection and treatment for migrant workers.

In the context of international law, Indonesia has ratified treaties that cover the issue of migrant workers' rights protection, namely *the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention Against Transnational Organized Crime Organized and International Convention on the Protection of the Rights of All Migrant workers and Members of Their Families* (ICRMW).<sup>20</sup> Most of the provisions of the ICRMW offer a firmer interpretation of human rights in the case of migrant workers and establish some specific rights for the conditions of migrant workers, such as the right to transfer money or have access to

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<sup>15</sup> *Ibid*, Art. 27 (2)

<sup>16</sup> *Ibid*, Art. 28D (1)

<sup>17</sup> See Law No.13 of 2003 concerning Manpower, Art. 31 and 32.

<sup>18</sup> Safrida Yusitarani, "Analisis Yuridis Perlindungan Hukum Tenaga Migran Korban Perdagangan Manusia Oleh Pemerintah Indonesia," *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 29.

<sup>19</sup> Sarah Rosengaertner, "Pathways to Protection and Permanency: Towards Regulated Global Economic Migration and Mobility," *Columbia Journal of Transnational Law* 56, no. 2 (2018): 284.

<sup>20</sup> Yusitarani, *op.cit.* 29. See Law No. 15 of 2009 concerning Ratification of the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, Supplementing the United Nations Convention Against Transnational Organized Crime Organized and Law No. 6 of 2012 concerning Ratification of *the International Convention on the Protection of the Rights of All Migrant workers and Members of Their Families* (ICRMW)

information in the migration process.<sup>21</sup> Concisely, ICRMW comes up with a serious effort to protect migrant workers' rights, meaning that 'everyone' in every human rights instrument 'really means as a human being, that non-original citizens are covered and protected. Therefore, a migrant is also covered by the provisions of human rights instruments. These also apply to immigration law and may restrict states' right to control the exit and entry of foreigners.<sup>22</sup>

The Indonesian Migrant Workers Protection Law, enacted in 2017, emphasizes the aspects of protection of migrant workers based on the considerations specified in *the International Convention on the Protection of the Rights of All Migrant workers and Members of Their Families*. It also regulates the issue of recruitment of prospective migrant workers, immigration services, health, and training are the central and local governments' responsibility. This regulation is the government's seriousness in protecting migrant workers.

## 2.2. Migrant Workers Protection Issues

The Indonesian Migrant Workers Protection Law provides rigorous protection for workers, especially regarding the recruitment of migrant workers. It underlines the need for prospective migrant workers to be determined for a particular field of work to classify their expertise and competence as well as to prevent unexpected treatment by the employer abroad.

To protect migrant workers, Indonesian Migrant Workers Protection Law mandates that only migrant workers candidates who already have acquired the competence and other specified requirements allow working abroad.<sup>23</sup> In addition, both national and local governments are required to provide and facilitate the training of prospective Indonesian migrant workers.<sup>24</sup> Moreover, current supervision carries through establishing one-stop integrated services (LTSA) by the local government. However, the limited number of LTSA in various regions and the lack of integration between the national and regional governments make supervision not-optimal. Additionally, there was still no government regulation on training for prospective Indonesian migrant workers at the time of writing this article.

Domestic workers' case exposes violations in destination country because of assuming that work designated as low skilled is easy and can be done by anyone. Low-skilled labour is imagined as fungible, easily

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<sup>21</sup> See International Convention on the Protection of the Rights of All Migrant workers and Members of Their Families, Art. 32 and 33.

<sup>22</sup> Bogusz Barbara, Ryszard C, Adam C, Erika. *Irregular Migration and Human Rights: Theoretical, European, and International Perspectives*. (Leiden: Martinus Nijhoff, 2004), 19

<sup>23</sup> See Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, Art. 5.

<sup>24</sup> *Ibid*, Art. 38.

replaceable, and this is critical to the logic of immigration policy.<sup>25</sup> Today, the competency training for prospective workers carries by the Indonesian Migrant Worker Placement Company (PPPMI), under the supervision of the provincial and regency/municipality governments.<sup>26</sup> However, the provision of work competency education and training for Prospective Migrant Workers is still a significant issue that must be resolved on the ground that PPPMI is established in the form of a company legal entity under the government or private company.

So far, it has been noted that violations of migrant workers' rights are caused by the workers' lack of work experience and knowledge. Gordon's view puts it that, *'from the perspective of workers in the countries that accept them, the more immigrants, the more competition, and the worse the jobs'*.<sup>27</sup> Of the many cases that have entered the National Board for the Placement and Protection of Indonesia Overseas Workers (BNP2TKI) Crisis Center, including Overstay, Sickness, Termination of Employment before the end of the work agreement, unpaid salaries, workers wants to be repatriated, passed away, drops of contact, fraud on job opportunities, and jobs not in accordance with the Work Agreement.<sup>28</sup>

These legal issues can be identified by looking at the contracts and agreements, which are generally a violation of two agreements agreed upon by migrant workers, namely the Placement Agreement and the Employment Contract. The regulation of these two agreements can be seen in Indonesian Migrant Workers Protection Law that the Placement Agreement is *a written agreement between operator Indonesian Migrant Workers placement and Prospective Indonesian Migrant Workers that contains the rights and obligations of each party, in the placement of Indonesian Migrant Workers in the destination country in accordance with the legislation*; and an Employment Contract as *the written agreement between Indonesian Migrant Workers and Employer that contains terms of employment, rights and obligations of each party, as well as security and safety assurance during working in accordance with the legislation*.<sup>29</sup>

In this regard, the Government of Indonesia through the Minister of Manpower Regulation No. 22 of 2014 concerning the Implementation of Placement and Protection of Indonesian Workers Abroad sets a standard employment agreement for the domestic sector. This standard employment agreement also provides for the obligation to pay transportation costs for migrant workers to return home to their place of origin; The employment agreement also states that the employer is not allowed to deduct any

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<sup>25</sup> Bridget Anderson, "Migrant Domestic Workers: Good Workers, Poor Slaves, New Connections, Social Politics: International Studies in Gender," *State & Society* 22, no. 4 (2015): 647.

<sup>26</sup> *Ibid*, Art. 40 and 41.

<sup>27</sup> Einat Albin, "Union Responsibility to Migrant Workers: A Global Justice Approach," *Oxford Journal of Legal Studies* 34, no. 1 (2014): 135.

<sup>28</sup> BP2MI, Bentuk Pengakuan Kualitas Pelayanan Pengaduan di BNP2TKI, 25/11/2019, <https://bp2mi.go.id/program-detail/iso-9001-2015-bentuk-pengakuan-kualitas-pelayanan-pengaduan-di-bnp2tki/Integrasi%20Informasi%20&%20Pengaduan>,

<sup>29</sup> See Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, Art. 1 (13) and (14).

amount from the regular salary. In the case of a deduction for valid reasons, the deduction must be stated on the worker's wage slip. The following are several issues related to potential violators of placement agreements and work agreements:

1. Failure to depart;
2. Wage disputes between workers and employers that are not in accordance with the agreement;
3. Overcharging;
4. Different type of work as stated in Employment Contract, the workload is excessive or is done in several places; and
5. Unilateral Termination of Employment;

Termination of employment, unpaid wages, migrant workers ask to be repatriated, and more are generally caused by the human resources of workers who are not ready to work, yet they leave. Workers should have been equipped with expertise in their field of work in advance. One of the problems that may arise during migration is the language barrier which can lead to misunderstanding between migrant workers and their employers.<sup>30</sup> Workers are vulnerable to be exploited by agents or employers using deception or the lure of high-paying jobs. After they are trapped in a foreign country, they cannot speak a foreign language, and workers are then forced to work with heavy workloads, long working hours, and given dirty and unsanitary living quarters. This weakness forces them to tend to accept and obey the employer's wishes, which they should not do. Consequently, Migrant workers can be at high risk of exposure to workplace hazards and face additional work-related risk factors and unfavourable social determinants of health including employment and wage discrimination, poor working and living conditions.<sup>31</sup>

It is obvious that the root of the problem started from the departure process, namely before working. The practice of sending migrant workers without fulfilling the procedure as stipulated in law and regulation can cause significant harm to migrant workers when they get a job in the destination country. Indonesian Migrant Workers Protection Law states that the Protection of Prospective Indonesian Migrant Workers or Indonesian Migrant Workers covers:<sup>32</sup>

- a. Before Working (Departing) Protection;
- b. During Working Protection; and
- c. After (Post) Working Protection.

It is clear that the protection for migrant workers is started before the employment stage, which covers administrative and technical matters.

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<sup>30</sup> Laporan Bank Dunia Indonesia, *Pekerja Global Indonesia: Antara Peluang dan Risiko*, World Bank Group, 2017, 65.

<sup>31</sup> Yuka Ujita, Paul J Douglas, "Masatoki Adachi, MD, Enhancing the health and safety of migrant workers," *Journal of Travel Medicine* 26, no. 2 (2019): 1.

<sup>32</sup> Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, Art. 7.

The administrative aspect emphasizes the completeness and validity of documents. It determines working conditions such as a statement of marital status, letter of consent from husband or wife, health certificates, work competency certificates, passports, work visas, Indonesian migrant workers agreement, employment contract. Meanwhile, technical protection includes facilities provided to ensure prospective migrant workers' ability and quality when they depart. Technical protection, as referred to in Article 7, at least includes:<sup>33</sup>

- a. socialization and dissemination of information;
- b. quality improvement of prospective migrant workers through education and job training;
- c. social security;
- d. facilitate the fulfillment of future Indonesian migrant workers;
- e. role strengthening for work agent functional staff;
- f. placement services in one-stop placement and protection services for Indonesian Migrant Workers; and
- g. coaching and supervision.

Indonesian Migrant Workers Protection Law authorizes three placement institutions the Agency, the Indonesian Migrant Worker Placement Company (Perusahaan Penempatan Pekerja Migran Indonesia/PPPMI), and the company, sending their workers for the company's interest.<sup>34</sup> The placement through the Agency is carried out based on a written agreement between the two countries or the employer with a legal entity.<sup>35</sup> In the absence of any further explanation regarding the placement of migrant workers with legal entity employers, it is understood that PPPMI carries out the placement of migrant workers.

Article 30 of the Indonesian Migrant Workers Protection Law stipulates that migrant workers cannot be charged a placement fee. The implementing regulation classifies items of placement fees in which migrant workers cannot be burdened with, namely:<sup>36</sup>

- a. departure tickets;
- b. return tickets;
- c. work visas;
- d. legalization of work agreements;
- e. job training;
- f. work competency certification;
- g. company services;
- h. change of passports;
- i. police records;
- j. social security;

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<sup>33</sup> *Ibid*, Art. 8 (3).

<sup>34</sup> *Ibid*, Art 49.

<sup>35</sup> *Ibid*, Art. 50

<sup>36</sup> See Indonesian Migrant Worker Protection Agency Regulation No. 9 of 2020 concerning Exemption from Placement Fees for Indonesian Migrant Workers, Art. 3 (1) and (2).

- k. domestic health and psychological examinations;
- l. additional medical examinations if certain countries require it
- m. local transportation from the area of origin to the place of departure in Indonesia; and
- n. accommodation.

The above exemption only applies to migrant workers who choose the following type of job:<sup>37</sup>

- a. housekeeper;
- b. babysitter
- c. caregiver for the elderly;
- d. cook;
- e. family drivers;
- f. park nurses;
- g. childminder;
- h. janitor;
- i. farm/plantation workers; and
- j. migrant fishing boat crews.

PPPMI usually sends migrant workers to work for individual employers as domestic workers. Data released by BP2MI reveals that Domestic Workers are migrant workers with the highest placement, namely 276,553 workers in the 2017 to 2019 period.<sup>38</sup> This group of migrant domestic workers is prone to violations. They are categorized in the 3D category (dirty, dangerous, and degrading). This group is prone to experiencing various violence, abuse, human rights violations, and violations of workers' rights.

In one of many cases,<sup>39</sup> Josephine (not her real name) was working as an Indonesian migrant domestic worker in Hong Kong. One day, her employers took her with them to work as a live-in nanny in another country. Josephine was happy about signing a new local employment contract that came with a higher salary. Unfortunately, the hope of a promising start in a new country was short-lived. Taking her passport, Josephine's employers forced her to work every day with no break, from 6 am to 11 pm. Sometimes, she was so busy that she only had time for one meal in her 17-hour workday. They gave her no days off.<sup>40</sup> This case shows how the impact of the

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<sup>37</sup> *Ibid*, Art. 3(3)

<sup>38</sup> BP2MI, Data Penempatan dan Perlindungan TKI Periode Tahun 2020, <https://bp2mi.go.id/statistik-detail/data-penempatan-dan-perlindungan-tki-periode-tahun-2019>, 10/02/2020, accessed 14 September 2020.

<sup>39</sup> Data released by BP2MI through PMI Services' complaints in Crisis Center, there were 9,377 cases received in 2019. BP2MI has not currently issued recent complaint data for 2020. However, the last data drawn on January 4, 2021, shows that there were 74 cases in December 2020.

<sup>40</sup> Justice Without Borders, Standing Up for Unpaid Wages: One Woman's Fight Across Borders, <https://forjusticewithoutborders.org/standing-up-for-unpaid-wages-one-womans-fight-across-borders/> 30/09/2020, accessed 3 December 2020.

non-fulfillment of migrant workers' rights, which is not compatible with the provisions laid down in the Indonesian Migrant Worker Protection Law,

This situation is exacerbated by a recruitment model that is not according to procedures. The weak supervision from the government leads to some violations. The law requires PPPMI to provide socialization and dissemination of information; quality improvement through education, and job training for prospective migrant workers. However, the recruiting authorities consider these procedures are restrictive, convoluted, and time-consuming. The fee exemption for prospective migrant workers, as guaranteed by law and regulations is sometimes not fully implemented. Some cases indicate that domestic workers become targets for illegal recruitment by irresponsible parties.

The next problem that potentially harms Indonesian migrant workers is the loophole in the Indonesian Migrant Worker Protection Law, which regulates that migrant workers can work abroad outside the placement implementing mechanism. This potential problem causes illegal recruitment by individual employers, and unlicensed labor placement companies in Indonesia can make it with un-procedural recruitment. Migrant workers can work without the placement implementer at the risk that they have to bear themselves.<sup>41</sup> Again, efforts to improve quality have to start from the beginning; it is before working.

Article 63 of the Indonesian Migrant Worker Protection Law is considered an un-procedural way to attract migrant workers. Efforts to recruit migrant workers in this way lead to the unpreparedness of prospective workers. They are offered a substantial income and job abroad, but they do not know their work's core. This fundamental lack of understanding is vulnerable to exploitation by employers to ask them to do things outside their workload. Also, various unlicensed PPPMIs emerged as a factor causing workers not to receive pre-placement education. They were only used as objects or labor commodities, which could even lead to human trafficking. This clearly violates the norms contained in the International Covenant on Civil and Political Rights, in which a person has the right to be treated humanely. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.<sup>42</sup>

As a brief reminder, in Europe, the Sanctions Directive 2009/52/EC regulates the prohibition of unlicensed migrant workers, imposing administrative and criminal penalties. The purpose of this rule is to "fight illegal immigration," which also means "prohibits the employment of illegally staying third-country nationals."<sup>43</sup> That way, the Indonesian government must firmly provide protection and impose strict sanctions on placement

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<sup>41</sup> Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, Art. 63.

<sup>42</sup> International Covenant on Civil and Political Rights, Art. 8.

<sup>43</sup> Niklas Selberg, "The Laws of 'Illegal' Work and Dilemmas in Interest Representation on Segmented Labor Markets: A Propos Irregular Migrants in Sweden," *Comparative Labor Law and Policy* 35, no. 2 (2014): 257.

agencies who dare to send migrant workers through mechanisms that are not under statutory regulations.

From the problems stated above, it can be identified that a series of issues that are often experienced by Indonesian workers abroad, that is starting from the period before work departure. The workers do not receive adequate job training. Even though this training plays a significant role in determining the success of prospective migrant workers in carrying out their work obligations, this training emphasizes prospective workers in understanding their rights during working; knowing the right to be protected while they are working, the right to get access to health, the right to get insurance, the right to work in accordance with the work agreement, and the right to get additional wages if they get a job outside of what is stated in the work agreement, and knowledge of costs placement. Considering the data released by BP2MI, the cost of overcharging is included in the top ten *Types of Complaints for Indonesian Migrant Workers by Type of Problem*.<sup>44</sup>

### **2.3. Migrant Worker Protection Attempts Before Departure**

Efforts to protect migrant workers can start from a simple way: educating them on workers' rights and their efforts to ensure that their rights are fulfilled. The government has conducted training to prepare migrant workers that increase the portion of teaching materials on worker mental preparation. Brenda et.al argued that a typical protections enacted by origin country governments include dispatching labour attaches to be stationed at embassies of major destinations, administering pre-departure training, processing job contracts that regulate particular aspects of employment, and licensing (and blacklisting) private recruitment and employment agencies.<sup>45</sup> Hence, the training is necessary to stimulate their cognitive and psychological aspects that would increase their confidence, professionalism, and readiness to adapt to living conditions abroad. It is expected that the training can increase the capacity and strengthen the mentality of the worker candidates before being placed in the destination country.

Legislation can be a means to maximize the protection for migrant workers. Therefore, amendment to Indonesian Migrant Worker Protection Law needs to be carried out on several articles that regulate the departure process and migrant workers' rights before, during, and after Work., The strengthening of existing laws and regulations can also be used as a primary way in ensuring the fulfillment of migrant workers' rights from before departure.

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<sup>44</sup> BP2MI, Data Penempatan dan Perlindungan TKI Periode Tahun 2020, <https://bp2mi.go.id/statistik-detail/data-penempatan-dan-perlindungan-tki-periode-tahun-2019>, 10 February 2020, accessed 14 September 2020.

<sup>45</sup> Brenda S. A. Yeoh, Charmian Goh, and Kellynn Wee, "Social Protection for Migrant Domestic Workers in Singapore: International Conventions, the Law, and Civil Society Action." *American Behavioral Scientist* 64, no. 6 (2020): 846.

There are several provisions in the Indonesian Migrant Worker Protection Law needs that can be manipulated in its implementation including the exploitation by job placement agencies. For instance, Article 63 of the Indonesian Migrant Workers Protection Law provides an opportunity for unscrupulous placement agents to potentially recruit illegally. This potential problem causes illegal recruitment by individual employers, and unlicensed labour placement companies in Indonesia can make it with un-procedural recruitment. The Government and the House of Representatives (DPR) need to redesign the enforcement mechanism for the Indonesian Migrant Workers Protection Law, especially ensuring that the placement process for migrant workers is in accordance with procedures and ensures workers' readiness before working to the destination country. It was noted that the unpreparedness of migrant workers who were sent to the destination countries caused problems such as problematic employers, abuse, harassment, rape, and other violence. Even the resilience of their families is also at stake because of the risk of infidelity and divorce. By this, the fulfillment of their children's rights is also neglected.

Data released by the International Organization for Migration (IOM) in Indonesia through the Ministry of Women's Empowerment and Child Protection noted that in 2015 the number of migrant workers successfully assisted by IOM was 7, 193 people with a ratio of 5,876 women and 1,317 men. In these records, one victim could report more than one problem, so that from the 20 types of cases, the total case reports received reached 61,518 cases. Meanwhile, data from the National Agency for the Placement and Protection of Indonesian Workers (BNP2TKI) in 2016 that migrant workers experienced problems were 4,756 people, of which 3,221 were female while 1,535 were male workers.<sup>46</sup> Furthermore, The number of complaints received in 2017 was 4,349, 2018 recorded for 4,779, and a significant increase occurred in 2019 for 9,377 cases.<sup>47</sup>

Current governance arrangements tend to be centralized in the central government, where it is difficult to supervise prospective workers and PPPMI. It is necessary to involve regional and provincial governments to optimize the enforcement and guarding of migrant workers in ensuring the fulfillment of rights and protection for Indonesian Migrant Workers.

It is necessary to understand the aspects that can help to strengthen migrant workers' protection seen from many violations of migrant workers' rights. It can be achieved by amending existing regulations and/or strengthening current rules by implementing regulations that regulate the government's functions, duties, obligations, and responsibilities at both the central and regional levels. The protection of migrant workers through a regulatory approach is expected to provide clear certainty on migrant workers' rights and how they can get their rights, mostly their rights as regulated in the Indonesian Migrant Workers Protection Law.

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<sup>46</sup> *Ibid.*

<sup>47</sup> BP2MI, Data Penempatan dan Perlindungan TKI Periode Tahun 2020, <https://bp2mi.go.id/statistik-detail/data-penempatan-dan-perlindungan-tki-periode-tahun-2019>, 10/02/2020, accessed 20 January 2021.

Most migrant workers seem to do not understand this matter. Therefore, efforts to strengthening the regulations, either by an amendment or creating implementing regulations, will be valuable for prospective migrant workers. It is obvious that pre-departure training is essential for future workers to teach them basic knowledge and skills in carrying out their jobs. Besides, this training can be used to explained the prospective workers understand their rights to work, the right to be protected in the working period, the right to get access to health During Work, the right to get insurance, the right to work as mentioned in the work agreement, and the right to obtain a salary. Extra wages if they get an additional job. These rights are significant to know and provide understanding to prospective workers before departure. These rights are also protected in Indonesian legislation and international legal instruments such as the ICPMR. Therefore, the government has a crucial role in ensuring this is rewarded, which can be achieved by strengthening existing regulations.

### **3. CONCLUSION**

Indonesian migrant workers often face legal problems that are mainly caused by the lack of knowledge, soft skills, and limited language constraints. The Indonesian Migrant Workers Protection Law has determined the rights of migrant workers and guarantees protection before, during, and post-work. The Law underlines the needs of providing socialization and dissemination of information; quality improvement of prospective migrant workers through education and job training; social security; facilitate the fulfillment of future Indonesian migrant workers; Role strengthening for work agent functional staff; placement services in one-stop placement and protection services for Indonesian migrant workers; and coaching and supervision.

The problem is that many of these workers are not prepared with the basic knowledge and skills to work abroad. Therefore, attempts to strengthen regulations are essential to ensure the fulfillment of migrant workers' rights. Given these problems, it is necessary to consider revising laws and regulations related to migrant workers. Besides, strengthening rules can also be done by implementing regulations (such as Government Regulation) to ensure migrant workers' satisfaction, especially before departure to the destination country.

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