

**ANALYSIS OF THE LAW ON THE PROTECTION OF INDONESIAN  
MIGRANT WORKERS ABROAD**

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**ARTICLE INFO**

**Received:**

1 January 2023

**Revised:**

5 January 2023

**Approved:**

15 January 2023

**ABSTRACT**

The situation of migrant workers abroad over the past few years has been very concerning and has received less attention from the government, the issue of migrant workers is considered less important and the government is only busy talking when cases arise in the community and receive a negative response from the community. Quoted from [Republika.co.id](http://Republika.co.id) Domestic violence (KDRT) among Indonesian citizens living in Australia has increased recently. Legal protections for female workers abroad who are victims of exploitation and rape currently prioritize the fulfillment of the rights of victims who work legally abroad. The rights of all migrant workers and their families, as well as previous ILO conventions, contain elements to protect workers from Indonesia when they face legal challenges in the host country of migrant workers. In addition, guidance is carried out by the government through BNP2TKI and BP3TKI by Article 90 of Law Number 39 of 2004 concerning the Placement and Protection of Overseas Workers, such as providing guidance and advocacy for migrant workers starting from the pre-placement, placement, and post-placement periods. Migrant workers understand the legal system of the country receiving migrant workers so that if migrant workers encounter legal problems, they will know what to do. And also the activeness of ambassadors, consular officers, and attaches in establishing cooperation related to the protection of Indonesian workers who are victims in TKI recipient countries in various forms of diplomatic relations and MoUs.

**Keywords:** Indonesian citizen; Indonesian Migrant Workers; Legislation; Protection of Indonesian Migrant Workers



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**INTRODUCTION**

The increasing economy encourages Indonesia to play an active role at the international level and cooperate with various countries ([Kania, Anggadwita, & Alamanda, 2021](#)). The increasing development of information and transportation between countries to facilitate relations between countries is one of the triggers for the high mobility of Indonesian workers to work abroad. Indonesian workers

working abroad are one of the largest foreign exchange earners for the country. However, in carrying out the protection of Indonesian workers themselves, it is still carried out with consular relations between countries. The number of employment cases that have legal issues abroad is still being handled responsively ([Hanifah, 2020](#)).

The problem of employment from year to year is the same, that is, the lack of employment opportunities. Because of the increasing number of existing workers while job growth is not as fast as the number of workers. On the other hand, labor competition in Indonesia itself is increasingly difficult to see from the inadequate level of education and skill level. This is also influenced by the influx of Foreign Workers (TKA) coupled with the entry of technology into industrial life ([Hanifah, 2021](#)). So that Indonesia's Human Resources (HR) is considered inadequate for the industry.

Based on data from the Central Statistics Agency (BPS), it was stated that in August 2018 alone, the total labor force was 124,004,950 out of a total of 131,005,641 people. So there are about 7 million unemployed people ([Pratama, 2019](#)). This means that there are still many Indonesians who are very productive to work but are still unemployed. Either because they are not working or because of the lack of jobs in Indonesia.

One of the existing solutions to reduce unemployment is to send and place these workers abroad. These workers are called Indonesian Migrant Workers (TKI). Furthermore, with Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, the word TKI was changed to PMI, namely Indonesian Migrant Workers. Sending and placing Indonesian citizens (WNI) abroad is not something new. This has become one of the ways for those who want to try their luck. In addition, these migrant workers are predicted to be dividend heroes for the Indonesian economy. Therefore, the Government with its authority is considered very necessary to protect the PMI. One of the realizations is to establish the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI).

Based on data managed by BNP2TKI, as of October 31, 2014, the number of Indonesian female workers sent abroad was 203,490 (57%), and the number of male workers was 156,573 (43%) (Toha, 2014).

The large number of Indonesian female workers working abroad poses several risks, including harassment, sexual harassment, and being raped by employers (exploitation of rape) ([Yusrini, 2017](#)). Quoted from trafficking groups, the cases of Indonesian female workers working abroad who are victims of exploitation are:

"In 2009, Indonesians were shocked by the case of Winfaidah, a female worker from Batanghari Regency, Lampung Province. Winfaidah works at the home of her employers, Sunti and Welu, Malaysians of Indian descent who work taking care of their 4 children and cleaning the house from morning to midnight but are only given food once a day. In addition, the victim was often physically and sexually abused and was not given a salary or salary that was left behind/wasted on the street in serious conditions as a result of being often abused by the employer and his children by being beaten, splashed hot water on the victim's back, in the corner, ironed on both breasts of the victim and the victim was also cut off the

victim's left index finger. It is known that the victim was caught taking a piece of papaya from the refrigerator because the victim was hungry. Next, the blood dripping from the victim's finger is accommodated in a can that the victim drinks, then the victim is told to drink it. In addition, the victim has been raped by her male employer even with the help of her female employer forcing and dragging the victim to serve her husband, and then the female employer takes pictures of the rape scene. The Winfaidah case became a concern for the Indonesian people, it happened during the moratorium period, namely the cessation of sending migrant workers from Indonesia to Malaysia which began in July 2009" ([Hussin & Khoso, 2021](#)).

"Quoted from [Republika.co.id](#) Domestic violence among Indonesian citizens living in Australia has increased recently, so efforts to stop the practice of domestic violence are very important and relevant."

Work is a human right. And Indonesia as a legitimate country has the 1945 Constitution of the Republic of Indonesia (later called the 1945 Constitution) which guarantees these human rights. As written in Article 27 paragraph (2) of the 1945 Constitution, namely, "Every citizen has the right to work and live a decent life for humanity." Economically, those who work belong to the Labor group. In the KBBI Labor is defined as, "a person who works or does something; workers, employees, and so on." Meanwhile, to protect workers and related parties, the government enacted Law Number 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Law).

In addition to establishing BNP2TKI, the government also cooperates or coordinates with local governments and/or private companies, namely the Indonesian Migrant Worker Placement Company (P3MI) ([Aswindo, Ras, Simon, & Hanita, 2021](#)). This coordination is carried out not only to ease the duties of the central government but also so that the process from recruitment and placement to the expiration of contracts can be monitored more closely. P3MI is shaded by the central government through legislation and also under the Ministry of Manpower through permenaker ([Yulianita, 2021](#)). In addition to the fact that P3MI must be a limited liability company. So get clear legality.

The government and the House of Representatives have ratified international conventions, such as ILO Convention Number 105 on the Elimination of Forced Labor through Law Number 19 of 1999, ratification of ILO Convention Number 111 on Discrimination in Work and Employment through Law Number 21 of 1999, ratification of ILO Convention Number 138 concerning the Minimum Age to be Accepted to Work through Law Number 20 of 1999, and the ratification of the United Nations Convention on the Protection of the Rights of Migrant Workers and Their Family Members, otherwise known as the 1990 Migrant Workers Convention. 39 the Year 2004 on the Placement and Protection of Indonesian Migrant Workers Abroad and ratifying several international conventions, this is not a guarantee that the issue of labor protection is immediately met.

Based on current facts, the large number of female workers working abroad poses several problems in terms of placement and protection, one of which is that female workers who work abroad are often victims of rape exploitation, and their right to legal protection by the Indonesian state and by the country where migrant

workers work is not optimal and still tends to pay more attention to suspects than victims.

## RESEARCH METHOD

This research is descriptive research with a legal approach, namely an approach using laws and regulations, and a conceptual approach that refers to existing legal doctrines.

Research data is an information unit for land acquisition for infrastructure development as regulated in Law number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad. Therefore, the data used by researchers to answer all the problems in this study are as follows:

- a. Primary legal material is authoritative legal material, meaning it has authority. Primary legal materials include legislation, official records, or minutes in the making of legislation. [6] In this research, the main legal material is the Basic Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad.
- b. Secondary legal materials are legal materials that describe primary legal materials. Secondary legal materials are books related to research themes, articles, journals, and papers discussing the land acquisition.
- c. Tertiary legal material, which is explanatory material regarding tertiary and secondary legal materials, in the form of expert opinions

## RESULT AND DISCUSSION

### 1. Law Number 39 of 2004 as a Foundation for the Protection of Indonesian Migrant Workers

One alternative solution to the problem of unemployment can also increase foreign exchange income for the country. The opportunity to work abroad is quite large coupled with relatively higher income stimulation compared to domestic income, which is the main attraction for the Indonesian workforce ([Judge, 2012](#)). To regulate the protection and placement of Indonesian Migrant Workers abroad, on October 18, 2004, the government passed Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad (PPTKILN Law) which seeks to improve previous laws and regulations that were considered simple and lacked protection for migrant workers. The Ordinance on the Mobilization of Indonesians to Work Outside Indonesia (Staatsblad 1887 No. 8) as a regulation before Law No. 39 of 2004 is considered too simple so that it practically does not meet the needs and demands of the developing community. In addition, the absence of a law regulating the placement and protection of Indonesian Migrant Workers abroad has so far been addressed through regulations in Ministerial Decrees and other implementing regulations ([Shubhan et al., 2012](#)).

Referring to article 27 (2) of the 1945 Constitution, the Law basically must protect citizens who will exercise their right to get a job, especially abroad to

obtain labor placement services quickly and easily while still prioritizing labor safety, both physically and mentally, morally and dignity. Law is essentially equal rights, justice, gender equality, and no discrimination of any kind. It has been mentioned that in general the problems that arise in placement are related to human rights, so the sanctions included in this law are quite a lot in the form of criminal sanctions. If the requirements for one of the travel documents are not met, it can be a criminal offense. The absence of a single document puts workers at risk of being ineligible or illegal to work in a country of placement, and it makes workers vulnerable to inhumane treatment or another exploitative treatment country for the purpose of placement.

The PPTKILN Law was formulated with the spirit to place migrant workers in the right position according to their talents, interests, and abilities while protecting the rights of migrant workers ([Probosiwi, 2015](#)). The law not only serves as a means to protect migrant workers during their pre-employment period, both while working abroad and during their return to their home country in Indonesia, but also to provide benefits for migrant workers, as well as a means for their families. Through the PPTKILN Law, the government protects migrant workers through the provision of Social Security (Social Security for Workers) and strict sanctions for those (both migrant workers and related parties in terms of placement of migrant workers) who violate regulations. In addition, it oversees the process of placing migrant workers in the destination country. This law also addresses, among others, equal rights and opportunities without discrimination to get a job, and a decent income according to expertise, skills, talents, interests, and abilities; the existence of state guarantees for the protection of the human rights of citizens working at home and abroad; the integration between government agencies, both central and regional, as well as community participation in a legal system to protect migrant workers placed abroad.

The government's policy regarding Indonesian labor that has been issued by the government is as follows:

- a. Law Number 3 of 1951 concerning the Establishment of the Enactment of the Manpower Inspection Law of 1948 Number 23 of the Republic of Indonesia for all of Indonesia.
- b. Law Number 14 of 1969 concerning Basic Provisions regarding Manpower (Statute Book of the Republic of Indonesia of 1969 Number 55, Supplement to the State Gazette of the Republic of Indonesia Number 2912.
- c. Law Number 7 of 1981 concerning Manpower Reporting Obligations (Statute Book of the Republic of Indonesia of 1981 Number 39, Supplement to the Statute Book of the Republic of Indonesia Number 3201.
- d. Law Number 9 of 1992 concerning Immigration (Statute Book of the Republic of Indonesia of 1992 Number 33, Supplement to the Statute Book of the Republic of Indonesia 3474.
- e. Law Number 21 of 1992 concerning Shipping (Statute Book of the Republic of Indonesia of 1992 Number 98).
- f. Decree of the Minister of Manpower Number KEP-204 / MEN / 1999 Jo. The decree of the Minister of Manpower Number KEP138 / MEN / 2000 is no longer following the needs and demands of the development of the situation

so it needs to be changed.

- g. Decree of the Minister of Manpower and Transmigration of the Republic of Indonesia Number KEP-104 A / MEN / 2002.
- h. Law number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad
- i. Regulation of the Minister of Manpower and Transmigration Number PER.07/MEN/V/2010 concerning Insurance for Indonesian Migrant Workers
- j. Regulation of the Minister of Manpower and Transmigration Number PER.14/MEN/X/2010 concerning the Implementation of Placement and Protection of Indonesian Migrant Workers Abroad
- k. Government Regulation of the Republic of Indonesia Number 3 of 2013 concerning the Protection of Indonesian Migrant Workers Abroad.

The latest policy issued by the government to protect migrant workers abroad is aimed at implementing the provisions of Article 80 paragraph (2), Article 81 paragraph (3), and Article 84 as well as in the context of protecting Indonesian Migrant Workers starting from pre-placement, placement period to post-placement as referred to in Article 77 paragraph (2) of the PPTKILN Law which orders security during the placement of migrant workers abroad, termination and prohibition of the placement of migrant workers, programs for the development and protection of migrant workers.

## 2. Social Protection Efforts for Troubled Migrant Workers

Social protection is a package of state policies that includes all citizens from the moment they are in the womb until they die. Social protection is an effort to prevent and overcome the risk of shock and social vulnerability of a person, family, group, and community so that their survival can be met with minimal basic needs. The legal basis for social protection for migrant workers includes: [\(Husni, Abdullah, & Cahyowati, 2017\)](#)

- a. Law Number 5 of 1998 concerning the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Supplement to the Statute Book of the Republic of Indonesia Number 3783)
- b. Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights
- c. Law of the Republic of Indonesia Number 13 of 2003 concerning Manpower (Supplement to the Statute Book of the Republic of Indonesia Number 4279)
- d. Law of the Republic of Indonesia Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad
- e. Law Number 40 of 2004 concerning the National Social Security System
- f. Law of the Republic of Indonesia Number 11 of 2009 concerning Social Welfare
- g. Presidential Decree No. 106 of 2004 concerning the Coordination Team for the Repatriation of Troubled Indonesian Migrant Workers and Their Families from Malaysia
- h. Presidential Instruction Number 3 of 2010 concerning the Development Equity Program
- i. Decree of the Coordinating Minister for People's Welfare Number 05A/KEP/MENKO/KESRA/I/2009 concerning the Task Force for the

Repatriation of Troubled Indonesian Workers and Socially Troubled Indonesian Migrant Workers and Their Families from Malaysia 10. Regulation of the Minister of Social Affairs of the Republic of Indonesia Number: 86 / HUK / 2010 concerning the Organization and Work Procedures of the Ministry of Social Affairs of the Republic of Indonesia.

As a right, any citizen can claim and hold the government accountable if his or her right to social protection is not fulfilled. However, conditions on the ground are sometimes concerning, where social protection is only political jargon and has not been a priority for budget programs. Whereas as a welfare state, Indonesia is responsible for fulfilling the welfare of its citizens, one of which is manifested in the form of social security. According to UURI Number 40 of 2004 concerning the National Social Security System, article 1: 1, social security is a form of social protection to ensure that all citizens can meet their basic needs for a decent life. Migrant workers as legal citizens of Indonesia are entitled to social security as obtained by other workers through social security for workers (jamsostek). Currently, migrant workers get a form of protection in the form of an insurance program based on article 1:1 of the PPTKILN Law.

This insurance program is called Indonesian Migrant Workers Insurance (hereinafter referred to as TKI Insurance). The organizer of this insurance is a private insurance company that is part of a private insurance consortium. At the implementation level, the TKI Insurance program is currently unable to protect migrant workers. The insurance guarantee provided by the government turned out to be only an insurance guarantee paid by Indonesian Migrant Workers when they wanted to go abroad, amounting to Rp. 400,000.00 per person. This insurance does not provide comprehensive protection because the insurance scheme provided is in the form of compensation after the incident, not in the emergency they need, so it is felt that the current insurance scheme is more burdensome for Indonesian workers and benefits certain parties amid the lack of protection provided to Indonesian workers. While the government struggled to bear the burden of protecting migrant workers, others enjoyed lucrative fresh funds belonging to migrant workers, as it was estimated that the claim rate of migrant workers was less than 5% of the total participants (Iqbal, 2011).

In addition to social protection in the form of physical social security, capacity building or empowerment needs to be carried out as an effort to prevent social problems for migrant workers abroad. This social protection includes not only migrant workers but also migrant workers' families. Empowerment efforts can be made through increasing knowledge about the role and function of the family, coping and problem-solving strategies through potential and resources in the environment, managing remittances appropriately and usefully, and improving management and entrepreneurial skills. Social assistance is also a form of social protection for migrant workers and their families from before departure to return from abroad. In addition, the placement of social ties that can be used as material for advice, social assistance, advocacy, and conflict resolution techniques is urgent, especially in the destination country for Indonesian migrant workers.

## CONCLUSION

The situation of migrant workers abroad over the past few years has been very concerning and has received less attention from the government, the issue of migrant workers is considered less important and the government is only busy talking when cases arise in the community and receive a negative response from the community. The government issued the PPTKILN Law in response to the problem of placing and protecting migrant workers abroad, but this policy has not been able to overcome the existing problems of migrant workers, as evidenced by the many cases that have arisen such as the persecution of migrant workers, unpaid wages for migrant workers, illegal migrant workers, and even some migrant workers who receive the death penalty abroad. The government is considered not to have performed its diplomatic functions properly to protect Indonesian migrant workers abroad.

Legal protections for female workers abroad who are victims of exploitation and rape currently prioritize the fulfillment of the rights of victims who work legally abroad. Such as obtaining legal assistance from local lawyers appointed by the Indonesian ambassador in the homeland of TKI recipients, the assistance of psychologists and clergy, the arrival of victims' families, compensation, and insurance claims. Meanwhile, for migrant workers who work illegally, the government has not been able to fully protect the rights of victims who experience rape. The legal protections provided by the government to female workers who work abroad and are subjected to rape, whether by their employers or not, are the same as for female workers who are victims of rape exploitation. The International Convention on the Protection of the Rights of All Migrant Workers and Their Family Members is currently not effectively implemented, as an effort to protect migrant workers, especially Indonesian female workers working abroad.

The rights of all migrant workers and their family members as well as the ILO Convention which already contains elements of protection for workers from Indonesia if they experience legal problems in the country receiving the migrant workers. In addition, guidance is carried out by the government through BNP2TKI and BP3TKI by Article 90 of Law Number 39 of 2004 concerning the Placement and Protection of Overseas Workers, such as providing guidance and advocacy for migrant workers starting from the pre-placement, placement, and post-placement periods. Migrant workers understand the legal system of the country receiving migrant workers so that if migrant workers encounter legal problems, they will know what to do. And also the activeness of ambassadors, consular officers, and attachés in establishing cooperation related to the protection of Indonesian workers who are victims in TKI recipient countries in various forms of diplomatic relations and MoUs.

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