

# Empowering Indonesian Migrant Workers: Human Rights-Based Legal Protection Through Village Regulations and Bilateral Agreements

Elfia Farida  
Diponegoro University, Indonesia  
Email: [elfiafarida@lecturer.undip.ac.id](mailto:elfiafarida@lecturer.undip.ac.id)

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## Abstract

This analysis explores the various international and national legal frameworks designed to safeguard migrant workers, emphasizing these protections' significance for the workers and their families. The process encompasses the execution of international accords concerning the safeguarding of migrant workers and their families, the enhancement of the enforcement of Indonesia's Law on the Protection of Migrant Workers, and the advocacy of Village Regulations designed to shield citizens employed abroad, especially in regions with a significant population of migrant workers. The government ought to enhance the comprehension of human rights among migrant workers and their families. It should also increase public awareness through outreach, dissemination, and campaigns focused on safe and dignified labor migration while empowering and building the capacity of migrant workers and their families. The optimal approach to protection necessitates the formulation of bilateral agreements with the reception countries. These agreements ought to integrate the essential elements of the ICMW.

**Keywords:** *Empowerment, Migrant Workers, Human Rights, Legal Protection, Indonesia, Bilateral Agreements, Rural Regulations*

## I. INTRODUCTION

International migration has reached unprecedented levels in contemporary global society with an estimated 281 million people residing in countries other than their birthplace as of 2020, representing a threefold increase from the 1970 estimates and constituting 3.6% of the global population. This dramatic surge in human mobility has transformed migration into a fundamental aspect of globalization, driven by the inherent human right to seek better living conditions as enshrined in Article 13 of the Universal Declaration of Human Rights (UDHR), which affirms that "everyone has the right to leave any country, including his own, and to return to his country."<sup>1</sup> The International Covenant on Civil and Political Rights (ICCPR) further reinforces this

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<sup>1</sup> Karlos A Castilla Juárez, "Chapter 13 Article 13 - The Right to Freedom of Movement and of Residence" in *The Universal Declaration of Human Rights* (Brill Nijhoff, 2023) 314.

principle, establishing that "everyone shall be free to leave any country, including his own."<sup>2</sup> Additionally, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) provides comprehensive protection for migrant workers and their families, stipulating in Article 8(1) that they "shall be free to leave any State, including their State of origin," subject only to lawful restrictions necessary for national security, public order, public health, or morals. Within this global migration framework, Indonesia has emerged as one of the world's most significant labor-sending countries, with migrant worker placements demonstrating remarkable growth from 6,661 in June 2021 to 15,700 in June 2022, and further increasing to 20,388 in June 2023. The demographic composition of these placements reveals distinct patterns, with 62% being female workers and 38% male workers, while sectoral distribution shows 55% in formal employment and 45% in informal sectors.<sup>3</sup> Geographically, most Indonesian migrant workers come from districts in East Java, Central Java, and West Java. The leading contributors are Indramayu (West Java, 5,262 placements), Malang (East Java, 4,831 placements), and Blitar (East Java, 4,624 placements), which together account for a substantial proportion of the country's total migrant worker placements.<sup>4</sup> The constitutional and legal framework governing Indonesian labor migration is anchored in Article 28E(1) of the 1945 Constitution of the Republic of Indonesia, which guarantees that "everyone is free to choose their place of residence within the territory of the country and to leave it, and has the right to return." This constitutional provision is operationalized through Möller et al. of Law No. 39 of 1999 on Human Rights, affirming that "every Indonesian citizen has the right to leave and return to the territory of the Republic of Indonesia in accordance with the provisions of the law."<sup>5</sup> The comprehensive legal framework for migrant worker protection is established through Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers, which defines protection as "all efforts made to safeguard the interests of Prospective Indonesian Migrant Workers and/or Indonesian Migrant Workers and their families, ensuring their rights are fulfilled throughout the entire process—before employment, during employment, and after employment—covering legal, economic, and social aspects." However, despite these robust legal foundations, the practical implementation of protection mechanisms continues to face significant challenges, as evidenced by persistent abuse cases and the volume of complaints filed by migrant workers, with 107 complaints recorded in June 2023, primarily originating from

<sup>2</sup> Ruji Auethavornpipat, "Assessing regional cooperation: ASEAN states, migrant worker rights and norm socialization in Southeast Asia" (2017) 29:2 Global Change, Peace & Security 129–143.

<sup>3</sup> Md Imran Khan et al, "Statistical analysis of push and pull factors of migration: A case study of India" (2023) 35:8 Journal of King Saud University - Science 102859.

<sup>4</sup> Kompas TV, "10 Daerah Pengirim Tenaga Kerja Indonesia Terbanyak Sepanjang 2021, Indramayu Teratas", *Kompas TV* (6 March 2022), online: <<https://www.kompas.tv/nasional/267724/10-daerah-pengirim-tenaga-kerja-indonesia-terbanyak-sepanjang-2021-indramayu-teratas?page=all>>.

<sup>5</sup> Gudmundur Alfredsson, Jonas Grimheden & Bertrand G Ramcharan, *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Möller* (Martinus Nijhoff Publishers, 2009).

Saudi Arabia (40 complaints), Malaysia (25 complaints), and Hong Kong (13 complaints).<sup>6</sup>

This study presents a distinctive contribution by examining the intersection between village-level legal instruments and bilateral agreements as a dual-layered framework for the protection of Indonesian migrant workers through a human rights-based lens. While existing literature extensively discusses national legislation and international conventions, there is limited scholarly focus on how village regulations (*Peraturan Desa*) can serve as decentralized mechanisms for enforcing international human rights standards at the local level. Khairazi argues that while Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers outlines important pre-departure procedures, it lacks operational grounding at the community level, leaving significant gaps in protection during recruitment stages.<sup>7</sup> This research fills that void by exploring how village regulations—especially in migrant-sending regions—can be aligned with the ICMW and International Labour Organization (ILO) standards to ensure safe migration practices and access to legal recourse from the grassroots. The theoretical framework developed in this study bridges the gap between macro-level international instruments and micro-level community governance, offering a novel approach to implementing human rights protections through decentralized legal mechanisms. This approach recognizes that effective migrant worker protection requires not only national and international frameworks but also robust local-level implementation mechanisms that can address the specific needs and vulnerabilities of migrant-sending communities. In parallel, this study also integrates the often-overlooked dimension of bilateral labor agreements within the broader context of human rights protection. While these agreements are crucial for establishing labor standards and dispute mechanisms between sending and receiving countries, they are typically analyzed in isolation from local enforcement structures. Kelsen highlight how many bilateral agreements fail to address the socio-legal vulnerabilities of workers upon return or during informal disputes, particularly when national enforcement is weak. Lyon points out that despite Indonesia's commitment to ratify international instruments such as ILO Convention No. 188 on Work in Fishing, these efforts have yet to translate into regulatory synchronization with local frameworks.<sup>8</sup> The novelty of this study lies in combining macro-level bilateral policy analysis with micro-level village-based legal mechanisms, offering a comprehensive model for multi-tiered protection that has not been proposed before. This integrated approach addresses the disconnect between international commitments and local implementation, providing a framework for ensuring that bilateral agreements

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<sup>6</sup> *Data Penempatan dan Pelindungan Pekerja Migran Indonesia Periode Juni 2023*, by Badan Pelindungan Pekerja Migran Indonesia (BP2MI) (June 2023) online: <<https://bp2mi.go.id/statistik-detail/data-penempatan-dan-pelindungan-pekerja-migran-indonesia-periode-juni-2023>>.

<sup>7</sup> Rifqon Khairazi, "Strengthening Regulations In Protecting Indonesian Migrant Workers Before Departing to the Destination Country" (2021) 5:1 *Udayana Journal of Law and Culture* 41–57.

<sup>8</sup> Beth Lyon, "The Unsigned United Nations Migrant Worker Rights Convention: An Overlooked Opportunity to Change the Brown Collar Migration Paradigm" (2009).

translate into tangible protection benefits for migrant workers and their families at the community level.<sup>9</sup>

This study aims to achieve eight interconnected objectives that collectively address the comprehensive protection of Indonesian migrant workers and their families through a multi-tiered legal framework. First, it seeks to examine the normative framework provided by the Migrant Workers Convention and its emphasis on the principles of dignity and human rights, thereby highlighting international obligations for state parties in ensuring humane migration governance. Second, the study endeavors to analyze how the ICMW establishes universal protection mechanisms for migrant workers, irrespective of legal status, and promotes equitable access to labor rights, legal remedies, and social services. Third, the study evaluates ASEAN's institutional role, particularly the ASEAN Consensus and Declaration, in fostering regional cooperation to uphold the rights of migrant workers within Southeast Asia, identifying its moral, though non-binding, influence on national policies and bilateral agreements. Fourth, the research investigates the national legal frameworks—including Law No. 18 of 2017—used by Indonesia to protect its migrant workers, identifying critical gaps in coverage, enforcement, and protection for family members. Fifth, the study analyzes Indonesia's ratification status of key ILO conventions, emphasizing the need for urgent adoption of ILO Conventions No. 97, 143, and 189 to strengthen the legal protections of Indonesian workers abroad. Sixth, the study seeks to reaffirm the state's responsibility to respect, protect, and fulfill human rights by establishing bilateral agreements and creating comprehensive systems that prevent exploitation, uphold decent work, and guarantee safe migration. Seventh, the research aims to critically assess strategic approaches for legal empowerment and rights-based policymaking, particularly through village-level regulations and community-based awareness that integrate international norms into local governance. Finally, the study proposes the formulation and implementation of integrated legal protection systems that prioritize the well-being of migrant workers and their families, aligning national policy with global commitments such as the SDGs and the Global Compact for Migration, thereby creating a comprehensive framework for sustainable and rights-based migration governance.

## II. THE MIGRANT WORKERS CONVENTION: A FRAMEWORK FOR HUMAN RIGHTS AND DIGNITY

The International Labour Organization (ILO), established in 1919 as an integral component of the Treaty of Versailles, fundamentally operates on the principle that universal and lasting peace can only be achieved through social justice. The organization's unique tripartite structure, bringing together representatives of governments, employers, and workers in collaborative dialogue, represents a revolutionary approach to international governance that distinguishes it as the only UN organ with such comprehensive stakeholder engagement.<sup>10</sup> The ILO's founding

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<sup>9</sup> Ali Maksum, "Indonesian post-migrant workers: A challenging problem for human security" (2021) 4:1 Social Sciences & Humanities Open.

<sup>10</sup> Lyon, *supra* note 8.

was driven by three primary motivations: humanitarian concerns for exploited workers during the industrial era, political imperatives addressing injustices from rapid industrialization, and economic considerations responding to demands for worker welfare improvements. This foundational philosophy shifted the paradigm from viewing labor purely as an economic commodity to recognizing workers as human beings with inherent rights and dignity. The organization's establishment marked a significant transition toward understanding that labor issues transcend national boundaries and require international cooperation to address effectively. The ILO's unique position within the international system reflects its comprehensive understanding that sustainable peace and development necessitate addressing the root causes of social and economic inequality. The tripartite social dialogue framework ensures that labor standards are developed through collaborative consultation between all stakeholders in the employment relationship. This institutional framework would later prove instrumental in shaping international human rights discourse and establishing the foundation for modern labor protection mechanisms. The organization's commitment to promoting humane working conditions and combating injustice, suffering, and poverty established a precedent for contemporary international labor rights protection. The ILO's evolution demonstrates the critical importance of multilateral cooperation in addressing global labor challenges and protecting worker rights across national boundaries.<sup>11</sup>

The 1944 Philadelphia Declaration represents a pivotal moment in international labor standards evolution, establishing four core principles that fundamentally challenged industrial capitalism's commodification of labor. These principles declared that labor is not a commodity, freedom of expression and association are essential for progress, poverty threatens welfare everywhere, and all human beings have the right to pursue conditions respecting freedom, dignity, and economic security regardless of race, origin, or gender. The declaration's emphasis on universal rights transcending racial, ethnic, and gender boundaries laid the groundwork for contemporary international human rights law and influenced both the UN Charter and the Universal Declaration of Human Rights (UDHR). The recognition that poverty threatens welfare everywhere established the interconnectedness of economic security and human dignity, a principle that remains central to modern development discourse. In 1946, the ILO became the first specialized agency under the United Nations, cementing its role in the emerging post-war international order and formalizing its authority to protect workers according to international standards.<sup>12</sup> The ILO's duty and obligation to develop international labor standards became institutionalized through this relationship, providing the framework for contemporary labor rights protection. The Philadelphia Declaration's influence extended beyond labor law to shape broader conceptions of human rights, social justice, and international cooperation. The modern ILO continues striving to create

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<sup>11</sup> Denise Venturi, "Migrant Workers' Rights in Focus: Placing the UN Convention on Migrant Workers in the European Human Rights' Framework" in Marco Borraccetti, ed, *Labour Migration in Europe Volume II: Exploitation and Legal Protection of Migrant Workers* (Cham: Springer International Publishing, 2018) 17.

<sup>12</sup> Laila Nurlatifah, "Protection of Women's Reproductive Health Rights Based on International Law and Regulation on Laws in Indonesia" (2020) 2:1 Lampung Journal of International Law 25-40.

opportunities for decent and productive work in a free, fair, safe, and dignified manner, with main objectives including promoting rights at work, encouraging decent employment opportunities, improving social protection, and strengthening dialogue on work-related issues.<sup>13</sup> The Preamble to the ILO Constitution specifically establishes the organization's duty to protect "the interests of workers while working in a country other than their own," creating a clear mandate for migrant worker protection. The 1998 ILO Conference declaration on "Fundamental Principles and Rights at Work" established core principles including freedom of association, collective bargaining rights, and elimination of child labor, forced labor, and workplace discrimination.

Indonesia's ILO membership since 1950 and ratification of eight core conventions creates legal obligations under *pacta sunt servanda*, requiring good faith implementation of fundamental labor rights. These conventions address forced or compulsory labor, organizational and bargaining rights, equal wages for equal work, freedom of association, minimum employment age, workplace discrimination, and elimination of the worst forms of child labor. However, significant protection gaps exist, particularly regarding migrant workers and fishing industry workers, as Indonesia has not ratified crucial conventions including ILO Convention No. 97 of 1949 on Migration for Employment, Convention No. 143 of 1975 on Migrant Workers (Supplementary Provisions), and Convention No. 188 of 2007 on Work in Fishing. The Maritime Labour Convention (2006) ratification through Law No. 15 of 2016 protects Indonesian seafarers on foreign-flagged ships, yet fishing industry workers remain inadequately protected despite being included in the Indonesian Migrant Workers Protection Act. Data from 2018-2020 shows 2,620, 2,872, and 988 fisherman placements respectively, while the 2019 Indonesian Migrant Workers Union recorded 292 fishing boat crew complaints, ranking second highest in employment sectors. The Seabound report documented 34 cases involving Indonesian fishing boat crew on foreign vessels, with fraud (11 ships), salary withholding (9 ships), excessive overtime (8 ships), and physical and sexual violence (7 ships) as primary complaints. The Fishers Center Report indicated 40 fishing boat crew complaints throughout 2020, with 64.32% involving Indonesian crew on foreign fishing vessels, demonstrating current protection mechanism inadequacy. The Indonesian government must ratify essential ILO conventions including Convention No. 181 of 1997 on Private Employment Agencies and Convention No. 189 of 2011 on Decent Work for Domestic Workers to ensure comprehensive migrant worker protection aligned with human rights principles of universality, non-discrimination, and state responsibility for citizen protection abroad.<sup>14</sup>

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<sup>13</sup> Endeh Suhartini et al, "Indonesian Migrant Workers After Job Creation Law: A Challenging Problem for Protection Welfare" (2023) 11:2 Jurnal Bestuur 271-289.

<sup>14</sup> Wayne Palmer & Antje Missbach, "Enforcing labour rights of irregular migrants in Indonesia" (2019) 40:5 Third World Quarterly 908-925.

### III. UNIVERSAL PROTECTION: MIGRANT WORKERS, HUMAN RIGHTS, AND THE ICMW'S COMPREHENSIVE FRAMEWORK

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) represents a pivotal instrument in international human rights law, emerging from critical humanitarian concerns that began in the early 1970s. The Convention's genesis can be traced to alarming humanitarian crises involving African workers being illegally transported to Europe and subsequently subjected to slavery and forced labor conditions. This catalyzed international discussions at the United Nations in 1972, leading to the adoption of Resolution No. A/Res/34/72 on December 17, 1979, by the UN Human Rights Commission to address the deteriorating situation and guarantee fundamental rights for migrant workers. The Convention's preparation commenced in 1980, representing a decade-long collaborative effort that culminated in its completion in 1990. The ICMW was formally adopted during the UN General Assembly session on December 18, 1999, through Resolution No. A/Res/45/158 without a vote, demonstrating unprecedented international consensus through unanimous adoption. The Convention officially entered into force on July 1, 2003, following ratification by twenty countries, marking a significant milestone in establishing comprehensive legal protection mechanisms for vulnerable migrant workers globally.<sup>15</sup>

The ICMW establishes a robust foundation based on fundamental human rights principles, emphasizing non-discrimination, equality of treatment, and access to effective redress mechanisms for all migrant workers and their family members.<sup>16</sup> The Convention encompasses a comprehensive spectrum of rights, including civil, political, economic, social, and cultural rights, as outlined in established international human rights instruments such as the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), and International Covenant on Economic, Social and Cultural Rights (ICESCR). The Convention sets minimum protection standards for migrant workers and their families, ensuring their rights are upheld throughout every stage of migration, whether they are documented or undocumented, as specified in Article 5(b) of the ICMW.<sup>17</sup> This inclusive approach recognizes that fundamental rights are inherent to human beings, meaning the granting of these rights does not depend on immigration status. The Convention creates binding obligations for all State Parties, including countries of origin, transit, and destination, requiring them to provide appropriate policies and services for the protection of migrant workers.<sup>18</sup> Additionally, the ICMW aims to prevent unsafe migration practices and human trafficking by ensuring equal rights for

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<sup>15</sup> Rina Shahriyani Shahrullah & Elza Syarief, "Proposing an Integrative-progressive Model in Handling Troubled Indonesian Overseas Workers in the Transit Area (a Socio-legal Research in Tanjung Pinang City, Kepulauan Riau Province)" (2015) 5:3 Indonesia Law Review 305-323.

<sup>16</sup> Ben Saul, David Kinley & Jaqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Cases, Materials, and Commentary* (OUP Oxford, 2014).

<sup>17</sup> Yandi Saputera, "Analysis of Protection of Women Workers Abroad in the Perspective of Law Number 18 of 2017 Regarding Protection of Indonesian Migrant Workers" (2022) 4:1 International Journal of Law and Public Policy (IJLAPP) 1-9.

<sup>18</sup> Selvy Cahya Safitri & Imam Budi Santoso, "The Legal Protection For Labours According To Indonesian Laws" (2022) 8:1 Law Research Review Quarterly 105-122.

all migrant workers, regardless of their legal status. The Convention fundamentally recognizes migrant workers as human beings with inherent rights, not merely economic commodities, underscoring the importance of legal protection to enable their effective contribution to both home and host country economies.

The Convention's comprehensive structure consists of nine sections and 93 articles, providing detailed definitions and protections for various categories of migrant workers, including frontier workers, seasonal workers, seafarers, offshore installation workers, itinerant workers, project-tied workers, specified-employment workers, and self-employed workers, as outlined in Article 2. Part 3 contains extensive rights provisions ensuring that undocumented status does not serve as justification for rights deprivation, mandating equal treatment with residents regarding wages and working conditions, including overtime pay, working wages, weekly leave pay, and holiday pay, as well as access to security and healthcare services, as outlined in Article 25. According to Beth Lyon, there are three fundamental principles of human rights protection for undocumented migrant workers: the right to equal protection and equality before the law requiring equal treatment under all labor laws regardless of immigration status; restoration of workers' rights regardless of immigration status; and additional protective measures for unauthorized workers due to their vulnerability.<sup>19</sup> The Convention outlines extensive protections including the right to leave and return to any country (Article 8), protection of life (Article 9), safeguards against inhumane treatment, slavery, or forced labor (Articles 10-11), freedoms related to thought, religion, and expression (Articles 12-13), privacy protection (Article 14), property rights (Article 15), and personal liberty.<sup>20</sup> Furthermore, the Convention ensures humane treatment if detained (Article 17), equal legal rights as nationals (Article 18), protection from excessive penalties for contractual disputes (Articles 19-20), document safeguarding (Article 21), prohibition of mass expulsions (Article 22), and guaranteed diplomatic protection (Article 23), while ensuring fair labor rights, social security, healthcare, education for children, and respect for cultural identity (Articles 24-33). The Convention establishes the Committee for the Protection of the Rights of All Migrant Workers and Their Family Members, tasked with reviewing reports from ratifying countries regarding their implementation measures and compliance with Convention obligations, thereby creating a comprehensive framework for monitoring and enforcement of migrant workers' rights protection globally.

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<sup>19</sup> Henny Natasha Rosalina & Lazarus Tri Setyawanta, "Perlindungan Hukum Terhadap Pekerja Migran Sektor Informal dalam Perspektif Teori Bekerjanya Hukum di Masyarakat" (2020) 2:2 *Jurnal Pembangunan Hukum Indonesia* 174-187.

<sup>20</sup> Carol Riegelman, "Labor's Bridgehead: The I. L. O." (1945) 60:2 *Political Science Quarterly* 205-221.



#### IV. ASEAN'S ROLE IN PROTECTING HUMAN RIGHTS AND MIGRANT WORKERS IN SOUTHEAST ASIA

On December 15, 2008, the Association of Southeast Asian Nations (ASEAN) began to enforce the ASEAN Charter. One of the bodies or organs that carries out the task of achieving ASEAN's goals is the Human Rights Agency ASEAN (ASEAN Human Rights Body). Based on Article 14 of the ASEAN Charter, the Human Rights Agency ASEAN must be formed in harmony with the goals and principles of the ASEAN Charter relating to fundamental freedoms, the promotion and protection of human rights, and the promotion of social justice. This Human Rights Body is tasked with the terms of reference to be determined by the ASEAN Foreign Ministers' Meeting.<sup>21</sup>

In 2009, the Human Rights Agency was formed under the name of the ASEAN Intergovernmental Commission on Human Rights (AICHR). Furthermore, in 2010, ASEAN established a special commission to promote and ensure the protection of women's and children's rights in ASEAN countries under the name of the ASEAN Commission for the Promotion and Protection of Women's and Children's Rights (ACWC).<sup>22</sup> The leaders of ASEAN countries have agreed on a consensus that provides protection and advances the rights of migrant workers working in ASEAN countries. The consensus was formalized on November 13, 2017, at the 31st ASEAN Summit in Manila, Philippines, known as "ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers" (ASEAN Consensus).<sup>23</sup>

Prior to the ASEAN Consensus, ASEAN had declared the protection and promotion of the rights of migrant workers on January 13, 2007, in Cebu, Philippines, known as the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. The Declaration regulates the obligations of both sending and receiving countries of migrant workers to facilitate access to the State, relating to social services in accordance with the laws of the receiving State, providing employment in accordance with the requirements under the laws, regulations, and policies of the State, and bilateral and multilateral agreements.

The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers aims to strengthen the political, economic, and social pillars of the ASEAN community. Both sending and receiving countries are tasked with promoting the potential, dignity, and protection of migrant workers by ensuring freedom, justice, and stability, in line with the laws and policies of each ASEAN member state, as well

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<sup>21</sup> Pebria Prakarsa Renta & Arie Kusuma Paksi, "Efforts of Migrant Care and the Indonesian Government in Realizing the Protection of Indonesian Migrant Workers (PMI) Facing the Death Penalty in Saudi Arabia (2015 – 2018)" (2023) 13:1 *Sociología y tecnociencia* 89–101.

<sup>22</sup> Rizqi Hanindya Putri, Yudhan Catur Nugraha & Aristian Akbar, "The Role of the Asean Intergovernmental Commission on Human Rights (AICHR) in Protecting Human Rights Related to the Coup Conflict in Myanmar" (2022) 5:1 *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)* 7295–7305.

<sup>23</sup> Almaas Rahmawati Putri & Viani Puspita Sari, "ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers sebagai Rezim Perlindungan Pekerja Migran Berketerampilan Rendah di ASEAN" (2021) 3:2 *Padjadjaran Journal of International Relations* 242–264.

as bilateral and multilateral agreements. However, because this Declaration is not legally binding—only morally so—its implementation has been less effective. This is despite the fact that the very subjects of protection are human beings entitled to human rights.

The obligations for receiving countries outlined in the Declaration include: (a) Intensifying efforts to protect fundamental human rights, improve welfare, and uphold the dignity of both migrant workers and recipients; (b) Striving for harmony and tolerance between host countries and migrant workers; (c) Facilitating access to resources such as information, training, education, legal courts, and social welfare services, in accordance with the laws and policies of the receiving country, as well as bilateral and multilateral agreements; (d) Enhancing fair employment protections, ensuring timely wage payments, and providing decent living conditions and access to work for migrant workers; (e) Providing migrant workers access to the legal system to address discrimination, abuse, exploitation, or rights violations; (f) Notifying consular or diplomatic authorities from the worker's country of origin if the worker is arrested, imprisoned, or detained, following the laws of the host country and the Vienna Conventions of 1963 and 1961 on Consular and Diplomatic Relations.

## V. LEGAL FRAMEWORK FOR THE PROTECTION OF INDONESIAN MIGRANT WORKERS

The fundamental principle of legal protection constitutes a basic human right, encompassing laborers who possess both rights and obligations within the legal framework. This protection manifests through three interconnected categories that collectively safeguard workers' welfare and dignity. Economic protection ensures adequate income provision for workers, particularly during periods when they cannot work due to circumstances beyond their control, establishing a financial safety net that maintains their livelihood security. Social protection encompasses comprehensive occupational health insurance systems, guarantees freedom of association through union formation, and protects workers' fundamental right to organize collectively. Technical protection focuses specifically on workplace security and safety measures, creating environments that minimize occupational hazards and ensure worker well-being during employment. These protective categories function synergistically to establish a comprehensive framework that secures workers' rights across all employment dimensions, forming the foundation for effective labor governance.<sup>24</sup>

Indonesia's regulatory evolution regarding migrant worker protection reveals a progressive yet complex legislative journey spanning several decades.<sup>25</sup> The regulatory framework commenced with the Regulation of the Minister of Manpower No. 4 of 1970 concerning workforce mobilization, subsequently followed by the 1983

<sup>24</sup> Andi Luhur Prianto, Aqmal Reza Amri & Mohd Na'eim Ajis, "Governance and Protection of Indonesian Migrant Workers in Malaysia: A Study on Policy and Innovation Network" (2023) 7:2 *Journal of Southeast Asian Human Rights* 214-249.

<sup>25</sup> Francisco Piniella, José María Silos & Francisca Bernal, "Who will give effect to the ILO's Maritime Labour Convention, 2006?" (2015) 152:1 *International Labour Review* 59-83.

regulation addressing companies deploying Indonesian workers overseas.<sup>26</sup> This foundational legislation underwent continuous refinement through successive regulations implemented in 1988, 1991, 1994, 1999, and 2000, reflecting the government's evolving understanding of migrant worker protection.<sup>27</sup> Presidential Decree No. 29 of 1999 established a coordinating board specifically for worker placement, creating institutional mechanisms for oversight and coordination. The legislative framework was further strengthened through Law No. 13 of 2003 on manpower, Law No. 39 of 2004 on the placement and protection of workers abroad, and Presidential Regulation No. 81 of 2006, which created the National Agency for the Placement and Protection of Workers. The most recent and significant development occurred with Law No. 18 of 2017, which specifically focuses on the protection of Indonesian migrant workers, representing the culmination of decades of legislative development in this critical area.

Article 31 of the Manpower Law establishes fundamental principles ensuring every worker possesses equal rights and opportunities to choose, obtain, or change employment while earning decent income domestically or internationally. However, Indonesian workers employed abroad operate under separate regulatory frameworks, as explicitly stated in Article 34 of the Manpower Law, acknowledging the unique challenges and requirements of international labor migration. Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad (Statute Book of the Republic of Indonesia No. 133 of 2004, Supplement to Statute Book of the Republic of Indonesia No. 4445) serves as the primary legal umbrella intended to provide comprehensive protection. Nevertheless, this legislation exhibits significant substantive weaknesses, as it predominantly regulates placement mechanisms rather than protection measures, creating an imbalanced regulatory approach. The private sector assumes a disproportionately dominant role compared to state involvement in both placement and protection processes, potentially compromising the effectiveness of protective measures. This regulatory imbalance reflects broader challenges in balancing market mechanisms with state responsibility for citizen protection in international labor contexts.

The protection mechanisms within Law No. 39 of 2004 demonstrate severe limitations, with only eight articles (Articles 77-84) addressing protection issues comprehensively. These provisions include migrant workers' rights to protection during pre-placement, placement, and post-placement periods (Article 77), establishing temporal coverage throughout the migration process. Indonesian representatives' roles in providing protection based on national and international laws are outlined in Articles 78-79, creating diplomatic protection mechanisms. Article 80 addresses legal assistance and defense of rights during placement, while Article 81 grants government authority to halt or restrict migrant worker placements in certain

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<sup>26</sup> Evelyne Pichot & Rudi Delarue, "Chapter 6: International Labour Organization (ILO)" in *Research Handbook on the European Union and International Organizations* (Edward Elgar Publishing, 2019) 101.

<sup>27</sup> Dian Azmawati & Ni Made Ray Rika Azzhara, *The Efforts of UPT BP2MI Nunukan, Indonesia, in Protecting Indonesian Migrant Workers Rights During COVID-19 Outbreak* (Atlantis Press, 2022).

countries for protection or labor needs. Article 82 establishes Private Indonesian Worker Placement Implementers' responsibility for ensuring protection, while Articles 83-84 mandate participation in coaching and protection programs with government regulation. Critically, none of these eight articles addresses protection for family members of migrant workers as stipulated in the United Nations International Convention for the Protection of the Rights of All Migrant Workers and Their Family Members (ICMW), which Indonesia signed on September 24, 2004, and ratified through Law No. 6 of 2012. Furthermore, these articles exclusively regulate rights without establishing concrete protection mechanisms, while placement procedures consume 86 articles out of 109 total articles in Law No. 39 of 2004.<sup>28</sup>

Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, known as the Indonesian Migrant Workers Protection Act, represents a significant advancement in protective legislation. This comprehensive law comprises 13 chapters and 91 articles, systematically addressing migrant worker protection through structured provisions including general provisions (Chapter I), definitions and rights of migrant workers (Chapter II), and detailed protection measures (Chapter III). The legislation encompasses services for placement and protection (Chapter IV), government responsibilities (Chapter V), institutional roles (Chapter VI), worker placement processes (Chapter VII), supervision mechanisms (Chapter VIII), dispute resolution procedures (Chapter IX), investigation protocols (Chapter X), criminal penalties (Chapter XI), and transitional and concluding provisions (Chapters XII and XIII). Under this Act, Indonesian migrant worker placement companies assume critical responsibilities including worker placement in positions aligned with employment agreements (Article 19, paragraph 1), reporting worker return and contract extension data to Indonesian Representatives, and finding job opportunities while resolving migrant worker issues. The job opportunity identification process operates through cooperation with business partners or employers in destination countries, with verification conducted by Employment Attachés or appointed foreign service officials at Indonesian Representatives, forming the basis for Indonesian migrant workers recruitment license applications.<sup>29</sup>

## VI. INDONESIA'S RATIFICATION STATUS OF ILO CONVENTIONS AND LEGAL PROTECTION FOR MIGRANT WORKERS

The protection of Indonesian migrant workers' human rights has emerged as a critical global concern, fundamentally rooted in the state's central responsibility for safeguarding and enforcing international human rights standards. The Indonesian government bears three primary obligations in this regard: to respect individual freedoms, to protect citizens from violations, and to fulfill these rights by facilitating access to essential welfare services including food, housing, education, healthcare,

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<sup>28</sup> Jennifer Lavelle, *The Maritime Labour Convention 2006: International Labour Law Redefined* (Taylor & Francis, 2013).

<sup>29</sup> Ni Ketut Sari Adnyani & I Wayan Landrawan, "Discrimination on the Right to Get Salary for Women Workers in Indonesia from the Ratification of International Conventions Perspective" (2023) 18:1 Pandecta Research Law Journal 123-132.

and employment opportunities.<sup>30</sup> This tripartite framework establishes the foundation for comprehensive migrant worker protection, requiring both internal policy development and external diplomatic engagement. The obligation to protect encompasses preventive measures that operate both domestically and internationally, ensuring that Indonesian migrant workers are not commodified but rather treated as dignified human beings with inherent rights. The government's commitment extends to enhancing the quality and competence of Indonesian migrant workers while simultaneously negotiating formal, legally binding bilateral agreements with recipient and transit countries.<sup>31</sup> These agreements serve as crucial instruments for establishing mutual understanding and cooperation in protecting migrant workers' rights across borders. The constitutional foundation for these protections is firmly established in Article 27 paragraph (2) and Article 28D paragraph (2) of the 1945 Constitution, which guarantee every citizen's right to work and receive fair, decent remuneration and treatment in employment relations.

The theoretical framework underpinning migrant worker protection draws from several philosophical and legal perspectives that emphasize the intrinsic connection between law, morality, and human dignity. According to Ronald Dworkin, the relationship between law and morality cannot be separated, as morality constitutes an integral component of legal systems. This perspective is further supported by Hans Kelsen's *stufenbau* theory, which posits that law derives from fundamental values, necessitating that legal frameworks contain three essential elements: certainty, justice, and utility, as articulated by Gustav Radbruch. John Rawls' concept of equal justice (justice as fairness) reinforces this foundation by emphasizing that law must protect guaranteed rights while ultimately benefiting humanity. The practical application of these principles requires that Indonesian migrant worker protection legislation be grounded in human rights principles rather than purely economic considerations. This approach positions Indonesian migrant workers as subjects with inherent dignity rather than commodity objects from which profit can be extracted. The legal framework must therefore prioritize the protection of human rights over economic interests, ensuring that migrant workers maintain their autonomy, dignity, and fundamental rights throughout their employment journey. Article 1 number (5) of the Indonesian Migrant Workers Protection Act defines protection as comprehensive efforts to safeguard the interests of prospective workers and their families across all phases of migration: pre-departure, during employment, and post-return.<sup>32</sup>

Despite the existence of comprehensive regulatory frameworks, empirical evidence reveals significant gaps between policy intentions and practical implementation, particularly regarding the welfare of migrant workers and their families left behind in Indonesia. Interviews conducted with retired migrant workers

<sup>30</sup> Martin Ruhs, *The Price of Rights: Regulating International Labor Migration* (2013).

<sup>31</sup> L Hadi Adha, Wiwiek Wahyuningsih & Eka Jaya Subandi, "Construction of the Legal Protection of Indonesian Migrant Workers as Children of Foreign Fishery Boats (Abk)" (2024) 11:9 International Journal of Multicultural and Multireligious Understanding 1-13.

<sup>32</sup> Arie Afriansyah, "Asean's Human Rights Body: New Breakthrough for Human Rights Protection in South East Asian Region Some Preliminary Notes From Indonesia's Perspective" (2011) 1:2 Indonesia Law Review, online: <<https://doi.org/10.15742/ilrev.v1n2.80>>.

at the Pertamina Office (Association of Retired Indonesian Workers and Families) in Dayu Village, Nglegok District, Blitar Regency, revealed systemic problems including domestic and international fraud, unpaid wages, mental health deterioration, and even fatalities. The social consequences extend beyond individual workers to encompass family breakdown, divorce, teenage pregnancies, and substance abuse among children left behind. These findings highlight the critical need for improved childcare support systems and comprehensive pre-departure orientation programs that address family welfare alongside worker preparation. The pre-departure orientation should include specific guidance on maintaining family relationships and ensuring children's rights are protected during parental absence. Without adequate childcare systems, children of migrant workers become vulnerable to physical, psychological, and sexual violence, educational deprivation, and malnutrition. The integration of family welfare considerations into migrant worker protection policies represents a crucial evolution in understanding the holistic impact of labor migration on Indonesian communities.

The challenges facing Indonesian migrant workers abroad are further complicated by destination country policies and systemic vulnerabilities within the migration process. Interviews with Indonesian migrant workers and organizing personnel at the Indonesian Consulate General shelter in Johor Bahru, Malaysia, revealed extensive problems including salary non-payment, contract violations, unfair employment terms, inadequate job provision, and worker incompetence leading to persecution and torture. Working conditions frequently violate international labor standards, with workers facing excessive hours (exceeding 18 hours daily), no rest periods, limited holidays, and restricted communication access. The implementation of Malaysia's online maid system (SMO) since January 1, 2018, has created additional vulnerabilities by allowing prospective employers with adequate financial resources to directly recruit domestic workers, potentially bypassing protective mechanisms. This system requires Malaysian applicants to avoid bankruptcy, workforce blacklisting, and immigration violations, but provides limited safeguards for migrant workers themselves. The challenges are compounded by the application of Malaysian law in dispute resolution, which limits the protective capacity of Indonesian diplomatic representatives. Social problems including serial marriages, out-of-wedlock pregnancies, mental disorders, and cultural adaptation difficulties further demonstrate the need for comprehensive support systems. These empirical findings underscore the urgent necessity for strengthened bilateral agreements, enhanced diplomatic protection mechanisms, and improved pre-departure preparation programs that address both technical skills and cultural adaptation challenges facing Indonesian migrant workers in destination countries.<sup>33</sup>

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<sup>33</sup> Monica Viny Angraini, Yusnani Hasyimzum & Martha Riananda, "Gender Equality in Law Number 4 of 2019 Concerning Midwifery as a Fulfillment of Citizens' Constitutional Rights" 4:2 *Constitutionale* 127-136.

## VII. STRATEGIC APPROACHES TO HUMAN RIGHTS-BASED LEGAL PROTECTION FOR MIGRANT WORKERS: FROM POLICY TO EMPOWERMENT

The protection of Indonesian migrant workers is a complex, multifaceted challenge that requires systematic coordination among multiple stakeholders, including employers, governmental entities, destination countries, and transit nations. This comprehensive framework necessitates strategic arrangements addressing migrant worker planning, human resource development, employment opportunity expansion, competitiveness enhancement, and protection mechanisms both domestically and internationally. The fundamental approach centers on protecting and empowering human rights law for migrant workers and their families, where protection involves safeguarding individuals from cruelty through regulatory frameworks that preserve rights and freedoms, while empowerment represents the process of strengthening individuals through protective measures, development initiatives, consultation services, and advocacy efforts aimed at improving welfare outcomes. The Indonesian state bears the fundamental responsibility to guarantee rights and protect every citizen working abroad, ensuring access to decent employment, fair income, and humane treatment that respects human dignity. This obligation extends to improving the entire protection system encompassing pre-departure, during employment, and post-employment phases for migrant workers and their family members, reflecting human values, justice, and national self-esteem. In response to these imperatives, Indonesia ratified Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers, which repealed Law No. 39 of 2004 concerning the Placement and Protection of Indonesian Workers Abroad as stipulated in Article 89 letter (a) of the Indonesian Migrant Workers Protection Act.<sup>34</sup>

The legal protection strategy requires immediate comprehensive implementation, beginning with the issuance of implementing regulations for Law No. 18 of 2017, many of which remain undetermined despite legislative mandates. It is paramount to strengthen the implementation and enforcement of laws and regulations related to migrant worker protection through methods that instill confidence in law as an effective protective mechanism while increasing legal awareness regarding the existence and application of legal norms. This approach can be operationalized through comprehensive dissemination of safe migration information to all relevant stakeholders, coupled with legal protection services for migrant workers and their families. The provision of legal services encompasses legal assistance and education through continuous socialization and training programs, while legal empowerment involves building confidence in how law and human rights can benefit Indonesian migrant workers and their families in addressing various challenges related to community interactions, national policies, destination country requirements, and employer relationships. The implementation of Indonesian worker placement abroad must be founded on "just and civilized humanity" as formulated in national and international law, particularly international agreements protecting migrant workers. Migrant workers receive special attention in the global

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<sup>34</sup> Ward Berenschot, H G C (Henk) Schulte Nordholt & Laurens Bakker, *Citizenship and Democratization in Southeast Asia*, 115 (2017).

"Sustainable Development Goals (SDGs)" agenda, specifically Goal 8: decent work and economic growth, which mandates improvement of migrant worker conditions by 2030 to protect rights and support safe working environments for all workers, especially female migrant workers and those in precarious situations (indicator target 8.8). Indonesia, as one of the largest migrant worker origin countries and an active SDGs negotiator, must prepare strategies ensuring this global goal's achievement while creating positive impacts for Indonesian migrant workers.<sup>35</sup>

The international legal framework supporting migrant worker protection includes the Global Compact for Safe, Orderly, and Regular Migration (GCM), ratified by UN member states in Morocco on December 10-11, 2018, representing a non-legally binding international agreement aligned with national commitments to promoting and protecting migrant workers' human rights. GCM ensures migration phenomena improvement in both upstream and downstream processes while supporting the achievement of tripartite benefits (triple win approach) benefiting sending countries, receiving countries, and migrant workers and their families. Furthermore, GCM supports the implementation of the Indonesian Migrant Workers Protection Act and contributes significantly to SDGs agenda fulfillment on a global scale. The ideal form of legal protection for migrant workers and their families must be human rights-based, requiring attention to human rights principles through internal legal protection evidenced by Indonesia's ratification of several international agreements including ICCPR, ICESCR, ICMW, ILO Conventions, and the 1961 and 1963 Vienna Conventions. As stated in Article 7, paragraph (2) of the Human Rights Law, international agreements accepted by the Indonesian government regarding human rights become national law, obligating Indonesia to implement them comprehensively. Village Regulations must be based on Pancasila as the state's fundamental norm, representing the basic or highest norm for all legal norms' enactment, while the 1945 Constitution of the Republic of Indonesia serves as the highest written basic law and source of law for subordinate laws and regulations.<sup>36</sup>

The implementation challenges reveal significant gaps in regulatory completion and enforcement mechanisms that require immediate attention from governmental authorities. Article 90 of the Indonesian Migrant Workers Protection Act mandates that implementation regulations must be determined no later than two years from the law's enactment date, with the law being promulgated on November 22, 2017, requiring implementation regulations by November 22, 2019. However, by the end of 2019, only five implementation regulations existed: Presidential Regulation No. 90 of 2019 concerning the Indonesian Migrant Workers Protection Agency, Ministerial Regulation Employment No. 18 of 2018 concerning Social Security for Indonesian Migrant Workers, Ministerial Regulation Employment No. 9 of 2019 concerning Indonesian Migrant Workers Placement Procedures, Ministerial Regulation Employment No. 10 of 2019 concerning Procedures for Granting Indonesian

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<sup>35</sup> Bernard Beguin, *ILO and the Tripartite System* (Int'l Conciliation, 1957).

<sup>36</sup> Mario Bruzzone, "Understanding Migration: Why "Push Factors" and "Pull Factors" Do Not Explain Very Much" (2020) Policy Brief, online: <<https://refugees.org/wp-content/uploads/2020/12/7.27.20-Policy-Brief.pdf>>.



Migrant Workers Placement Company Permits, and Ministerial Regulation Employment No. 17 of 2019 concerning Termination and Prohibition of Indonesian Migrant Workers Placement. The Indonesian Migrant Workers Protection Act mandate requires implementation regulations consisting of eleven Government Regulations, two Presidential Regulations, twelve Ministerial Regulations, and three Regulations of the Head of Agency, though the government agreed to simplify eleven Government Regulations to three. These Government Regulations include Government Regulation No. 10 of 2020 concerning Indonesian Migrant Workers Placement Procedures by the Indonesian Migrant Workers Protection Agency (mandated by Article 50 paragraph (2)), Government Regulation No. 59 of 2021 concerning Implementation of Indonesian Migrant Workers Protection (mandated by Articles 20, 23, 28, 36, 38 paragraph (4), 43, 52 paragraph (2), 75 paragraph (3), and 76 paragraph (3)), and Government Regulations about Placement and Protection of Indonesian Migrant Workers Commercial Ship Crew and Fishing Vessel Crew as mandated by Article 64, which remains undetermined. During the COVID-19 pandemic, the Indonesian government established several protection policies including temporary suspension of Indonesian migrant worker placement through Ministerial Decree No. 151 of 2020, social security relaxation through Regulation of the Minister of Manpower No. 10 of 2020, and placement procedures during adaptation periods through Ministerial Decree No. 294 of 2020, demonstrating the government's responsive approach to protecting migrant workers during crisis situations while maintaining comprehensive protection frameworks.<sup>37</sup>

## VIII. BILATERAL AGREEMENTS FOR THE PROTECTION OF INDONESIAN MIGRANT WORKERS: ENSURING HUMAN RIGHTS AND LEGAL SAFEGUARDS

Indonesia's approach to migrant worker protection is fundamentally rooted in the recognition that human beings possess both individual and social dimensions, establishing fair and civilized human values as the philosophical foundation for all aspects of state administration. This constitutional mandate extends to the protection of migrant workers and their family members, emphasizing that human dignity and human rights must be upheld in all international relations and agreements. The Indonesian Constitution guarantees that every Indonesian citizen has equal rights and opportunities without discrimination to obtain decent work and livelihood, forming the legal basis for protecting Indonesian workers abroad. This protection framework aims to create equality for Indonesian workers to access decent employment opportunities that align with their skills, talents, interests, and abilities.<sup>38</sup> The implementation of these protections must consider dignity, humanity, legal protection, human rights, and equitable distribution of employment opportunities. Article 33 of the Indonesian Migrant Workers Protection Act mandates that both central and local governments provide legal protection for migrant workers in

<sup>37</sup> Vincent Chetail, *International Migration Law* (OUP Oxford, 2014).

<sup>38</sup> Michael A Clemens & Justin Sandefur, "A Self-Interested Approach to Migration Crises. Push factors, pull factors, and investing in refugees.", *Foreign Affairs* (27 September 2015) 1.

accordance with national laws, destination country laws, and international laws and customs. This comprehensive legal framework establishes the foundation for Indonesia's obligation to protect its migrant workers through various legal mechanisms and international cooperation.<sup>39</sup>

The Indonesian government has established specific requirements for countries accepting Indonesian workers, as regulated in Article 31 of the Indonesian Migrant Workers Protection Act and Article 25 of Government Regulation No. 59 of 2021.<sup>40</sup> These requirements stipulate that migrant workers can only work in placement countries that have laws and regulations protecting foreign workers, possess written agreements with the Indonesian government, and maintain social security or insurance systems protecting foreign workers. The designation of international agreements must meet several fundamental criteria: the agreement must be genuinely international in scope, made by states and international organizations as subjects of international law, and subject to international legal regimes that create rights and obligations in public law.<sup>41</sup> According to the 1969 Vienna Convention discussions, the International Law Commission establishes that a document is "governed by international law" when it fulfills two essential elements: the intention to create obligations and legal relationships, and subjection to international legal regimes.<sup>42</sup> The Commission further clarifies that provisional agreements between countries may exist without creating obligations and legal relationships, potentially taking the form of Joint Statements or Memoranda of Understanding, depending on subject matter and party intentions. These international legal standards ensure that bilateral agreements provide substantive protection rather than merely ceremonial cooperation. The establishment of these requirements aims to guarantee that destination countries have adequate legal frameworks and social protection systems for Indonesian migrant workers.

Memoranda of Understanding represent a common instrument for regulating operational techniques of master agreements, generally taking effect immediately after signing without requiring ratification. However, the legal protection of Indonesian migrant workers through MoUs requires careful consideration, particularly given that migrant workers, as human beings, possess inherent human rights that must be respected with dignity.<sup>43</sup> The determination of bilateral agreement forms must be approached cautiously, especially for countries that understand MoUs as non-legally binding instruments. In common law systems, such as Malaysia, MoUs

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<sup>39</sup> Djatmika et al, "Intercultural communicative competence among Indonesian migrant workers in Malaysia: a qualitative exploration" (2024) 9 *Frontiers in Sociology*, online: <<https://doi.org/10.3389/fsoc.2024.1321451>>.

<sup>40</sup> Laode Muhammad Fathun & Briando Tanri, "Exploitation of Indonesian Migrant Workers on Foreign Ship" (2022) 5:2 *TRANSBORDERS: International Relations Journal* 75-89.

<sup>41</sup> Triyan Febriyanto & Agus Taufiqur Rohman, "Protection of the Rights of Indonesian Migrant Workers" (2018) 2:2 *Lex Scientia Law Review*, 139-154.

<sup>42</sup> Diane F Frey, "Economic growth, full employment and decent work: the means and ends in SDG 8" (2017) 21:8 *The International Journal of Human Rights* 1-21.

<sup>43</sup> Guy S Goodwin-Gill, "The Right to Leave, the Right to Return and the Question of a Right to Remain" in *The Problem of Refugees in the Light of Contemporary International Law Issues* (Brill Nijhoff, 1996) 93.

are viewed as containing only political and moral commitments rather than legal obligations, meaning parties cannot enforce MoUs through international courts or conventional international agreement enforcement mechanisms. The legally binding force of an MoU depends largely on the specific language of its clauses, which determines its legal weight and enforceability. Some countries align MoUs with formal agreements, creating both moral and legal bonds, emphasizing that substance matters more than terminology. The practice varies significantly among countries, with different legal systems interpreting MoU obligations differently. The MoU between Indonesia and Malaysia exemplifies this challenge, as Malaysian law does not recognize MoUs as legally binding documents enforceable by courts. For Malaysia to enforce such agreements, MoUs must be upgraded to formal legislation or "Acts," highlighting the need for specific foreign worker protection legislation beyond general labor laws.<sup>44</sup>

The ideal form of external human rights-based legal protection involves bilateral agreements between Indonesia and recipient countries, particularly those with common law systems, structured as international agreements serving as umbrella instruments for migrant worker and family protection. These bilateral agreements should be negotiated from equal and balanced bargaining positions, recognizing mutual interests: Indonesia's need for workforce absorption and foreign exchange generation, and recipient countries' need for Indonesian workers to support their development.<sup>45</sup> The April 1, 2022, MoU between Indonesia and Malaysia on domestic sector Indonesian migrant worker placement and protection, witnessed by President Joko Widodo and Malaysian Prime Minister Ismail Sabri bin Yaakob, demonstrates progress while revealing limitations in sectoral coverage.<sup>46</sup> This MoU regulates only domestic sector workers, leaving plantation, agriculture, manufacturing, and service sectors unaddressed, necessitating comprehensive bilateral agreements as umbrella instruments governing general migrant worker and family protection.<sup>47</sup> Indonesian bilateral agreement development must prioritize human rights-based legal protection reflecting Pancasila values of humanity and justice while integrating international agreements related to migrant worker rights, including the ICCPR, ICESCR, and ICMW. These agreements should be adaptive, flexible, predictive, and anticipative while upholding humanity, justice, and civilization values. Bilateral agreements can extend beyond recipient countries to include transit countries, creating comprehensive protection networks. The framework should establish bilateral agreements as umbrella instruments, with MoUs serving as derivative instruments for specific technical implementations.

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<sup>44</sup> Linda Dwi Eriyanti, Muhammad Hadi Makmur & Diah Ayu Intansari, "Indonesia's Political Position on the Protection Policy of Migrant Workers in ASEAN" (2022) 26:1 Jurnal Ilmu Sosial dan Ilmu Politik 33-48.

<sup>45</sup> Muhammad Iqbal & Fifik Wiryani, "Implication of Principles in the International Convention on the Protection of the Rights of Migrant Workers and Their Families" (2020) 1:2 Audito Comparative Law Journal (ACLJ) 85-93.

<sup>46</sup> Frey, *supra* note 42.

<sup>47</sup> Yordan Gunawan & Andi Pramudya Syamsu, "The Role of the ILO in Resolving Violence Against Indonesian Crew on Fishing Vessels" (2023) 17:1 Fiat Justisia: Jurnal Ilmu Hukum 31-44.

When bilateral agreements cannot be achieved, Indonesia can provide diplomatic or consular protection based on Article 19(b) of Law No. 37 of 1999 concerning Foreign Relations, which obligates Indonesian representatives to provide protection and legal assistance. This diplomatic protection is supported by Article 3 paragraph (1)(b) of the 1961 Vienna Convention and Article 5 letter (a) of the 1963 Vienna Convention, empowering diplomatic and consular representatives to protect their citizens abroad. Protection implementation includes legal aid through legal advice provision, lawyer services for Indonesian migrant workers facing legal problems, and humanitarian assistance including repatriation support, health and psychosocial services, visits to workers with legal problems, and basic needs assistance, particularly during the COVID-19 pandemic. Consular protection through Vienna Convention 1963 channels must consider international law and recipient country national law, applying to situations involving recipient country interests and implemented by designated consular officials. Diplomatic channels under the Vienna Convention 1961 transform cases from "People to Government" to "Government to Government" character, addressing violations of migrant worker rights as foreign nationals who have exhausted local remedies in recipient countries. Indonesia's commitment to migrant worker protection is demonstrated through participation in international instrument discussions, including regional encouragement of ASEAN member countries to implement the ASEAN Consensus on Protection and Promotion of Migrant Worker Rights, and global commitment to achieving SDGs and GCM goals, even when these instruments are morally rather than legally binding.

## IX. CONCLUSION

Ideal legal protection for Indonesian migrant workers and their families should be both domestic and international. Internally, Indonesia must implement international migrant worker protection agreements and enforce the Law on the Protection of Indonesian Migrant Workers. Promoting Village Regulations to protect residents who work abroad, especially in villages with a large overseas workforce, is crucial to this process. Many workers start their migration in villages, so these local regulations should be based on the Indonesian Migrant Workers Protection Act and ICMW. To protect and serve migrant workers early on, local institutions, especially village governments, need legal tools.<sup>48</sup>

Raising awareness of Indonesian migrant workers' and their families' legal rights is crucial to internal protection.<sup>49</sup> Community education campaigns, socialization programs, and safe and dignified labor migration information can achieve this. In addition to legal awareness, Indonesian migrant workers and their families should be empowered by building their capacities and preparing them for migration challenges.

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<sup>48</sup> Christophe Gironde & Gilles Carbonnier, *The ILO @ 100: Addressing the Past and Future of Work and Social Protection*, 11 (2019) International Development Policy.

<sup>49</sup> Zati Rizqi Muhammad, "Pertanggungjawaban Indonesia Sebagai Negara Peratifikasi Konvensi Perlindungan Hak-Hak Seluruh Pekerja Migran Dan Anggota Keluarganya" (2024) 7:1 *Jurist-Diction* 165-186.

Indonesian migrant workers need bilateral agreements with destination and transit countries for legal protection. These agreements should include key ICMW provisions to protect migrant workers in transit and at their destination. MoUs can detail the technical protection aspects of such agreements.

Many methods for protecting Indonesian migrant workers are suggested. Village-level laws must be strengthened to protect migrant workers. Lawmakers should require village governments to create migrant worker and family protection regulations under the Indonesian Migrant Workers Protection Act and related government regulations. Local regulations should protect migrants by following national law and international conventions like the ICMW. Village governments must protect Indonesian migrant workers because migration often begins in rural areas. Village Regulations would give local governments legal and institutional support to help migrant workers before they leave. Indonesian migrant workers should be legally protected in transit as well as destination. To protect transiting Indonesian migrants, the ICMW should amend the Indonesian Migrant Workers Protection Act. Transit countries are vital to migration, and Indonesian migrant workers in transit should be protected as in destination countries.

This research presents several limitations, primarily due to its reliance on traditional legal methodologies that concentrate solely on the legal regulations pertinent to the topic at hand. This research ultimately concentrates on secondary data, resulting in limited use of primary data, including field conditions and related factors. This research is primarily descriptive and localized, as it concentrates specifically on the conditions of migrant workers in Indonesia. Finally, this research has addressed the topic of empowerment for migrant workers; however, it has not been explored in detail.

The researcher intends to address the identified limitations by further developing this research in the future, thereby broadening both the research topic and the geographical scope of the study. The forthcoming research project will involve participant observations and comprehensive interviews with various stakeholders while broadening the research scope beyond Indonesia. In addition, researchers will employ the most recent approach to legal research, specifically socio-legal research. This method examines the existing legal rules and the application of law within society, which is consistently shaped by cultural factors, expectations, discourse, politics, and social dynamics. This initiative aims to establish an effective empowerment mechanism for migrant workers that aligns with their specific conditions.

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**Elfia Farida** is a senior lecturer and researcher in the field of Human Rights at the Faculty of Law, Universitas Diponegoro. She holds a Doctor of Law (Dr.) from Universitas Diponegoro, with a focus on Human Rights Law; a Master of Humanities (M.Hum.) from Gadjah Mada University, specializing in International Law; and a Bachelor of Laws (S.H.) from Universitas Diponegoro, with a concentration in Private Law.