



Received: February 23, 2022  
Revised: May 20, 2022  
Accepted: May 22, 2022

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## LAW & SOCIAL POLICY | RESEARCH ARTICLE

# Legal Protection of Indonesian Migrant Workers

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**Abstract:** This research aims to understand and know the legal protection procedures of Indonesian Migrant Workers and the obstacles that often occur in the Indonesian Migrant Worker's Protection Agency, Makassar Region. To answer the formulation of problems in this study, using a type of empirical research. This research aims to understand and know the legal protection procedures of Indonesian Migrant Workers and the obstacles that often occur in the Indonesian Migrant Worker's Protection Agency, Makassar Region. To answer the formulation of problems in this study, using a type of empirical research. Based on the results of research comparing Indonesian migrant workers that the legal protection procedures of Indonesian migrant workers were conducted at the BP2MI office before work, during work, and after work. Based on the results of research comparing Indonesian migrant workers that the legal protection procedures of Indonesian migrant workers were conducted at the BP2MI office before work, during work, and after work. The obstacles faced by the Indonesian Migrant Workers Protection Agency are many illegal workers who are difficult to track by the government, touts that are difficult to eliminate, and not serious about the government in protecting Indonesian workers abroad.

**Keywords:** Legal Protection, Migrant, Worker.

## 1. INTRODUCTION

Legal protection for Indonesian workers who work in other countries/outside the territory of the State of Indonesia requires deep attention to be carried out because the placement of Indonesian Migrant Workers (PMI) to work outside the territory of the Republic of Indonesia is one of the objectives of the State of Indonesia as mandated in the fourth paragraph of the Preamble. The 1945 Constitution, namely "covers the entire Indonesian nation and the entire homeland of Indonesia, promotes public welfare, educates the nation's life and participates in carrying out world order based on eternal peace and social justice". The purpose of the State is the responsibility of the State in providing protection for its citizens both within the territory of the Republic of Indonesia and those outside the territory of Indonesia (in other countries) (Lahaling et al., 2018). Indonesian citizens work to meet their needs and develop their lives by migrating to other countries is part of their essence as humans who always want changes in life. Basically, humans always try to fulfill their needs by working; therefore, Indonesian Migrant Workers (PMI) choose the right to work in utilizing their power or potential in order to produce services or goods for entrepreneurs/users/employers who are paid in exchange for wages. as work performance given by Indonesian Migrant Workers (PMI) to meet the living needs of workers and their families. Workers, as Indonesian citizens, have the right to obtain work and a decent and humane life. (Morradi, 2015) This is constitutionally guaranteed protection in Article 27 paragraph (2) of the 1945 Constitution (hereinafter abbreviated as the 1945 Constitution). The rights of Indonesian Migrant Workers (PMI) in the field of work and a decent living are stated in article 27 paragraph (2), that every citizen has the right to work and a decent living for humanity. This also means the guarantee of protection for PMI and their families when working in other countries. Indonesian Migrant Workers (PMI) and their families should be able to feel and enjoy this protection in other countries (countries of placement). The regulation of protection as an Indonesian citizen has been explained in the explanation of Law Number 26 of 2006 concerning citizenship, namely, the protection of Indonesian citizens is based on the principle of maximum

protection, which is the principle that determines that the government is obliged to provide full protection to every Indonesian citizen in a state of emergency. (Kamal, 2020) Anything, both at home and abroad, including when Indonesian citizens work in other countries.

The condition of job offers (job orders) with high wages in other countries compared to wages in Indonesia is the reason for the increase in the number of Indonesian Migrant Workers (PMI) who choose to work abroad. There are many cases of violations of the overseas work law experienced by Indonesian Migrant Workers (PMI) abroad, such as physical violence, sexual harassment, unpaid salaries, and many others. (Nainggolan, 2016) (Ilmih, 2017) Experience legal processes in the country where they work. In fact, they need legal assistance from the Indonesian government, but workers who experience human rights violations above are people who do not have work contracts and are illegal, so they are easily oppressed by their employers. One example of the torture case of Indonesian Migrant Workers (PMI) abroad, namely in 2010, was experienced by Sumiati Binti Salam Mustapa, a 23-year-old man who worked as a PMI in Saudi Arabia. In the act of torture, the husband's employer had the heart to cut the woman's mouth. Sumiati suffered serious injuries all over her body, face and legs, so she had to be treated in intensive care at the hospital. (Kemala & Kusdarini, 2020) Sumiati was not a legal PMI but was illegal to enter Saudi Arabia so she was tortured.

Various problems that arise related to PMI require the government to work harder to protect them. Law Number 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad, in this law, it is known that so far, the policies that have been made by the government seem not to have taken sides with PMIs. In fact, they are detrimental and have not protected the interests of PMIs abroad country. This is due to the number of cases that have not been resolved by the government, which makes the Indonesian government still considered by various parties to have not been proactive and comprehensive in protecting, both in terms of physical, financial, and especially in terms of law against Indonesian workers abroad (especially the PMI problem in Malaysia). So that on November 22, 2017, Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers was passed, which requires strict legal supervision and protection, which includes protection before work, during work, and after work. Regarding the PMI protection policy, it is hoped that it will be able to overcome, provide solutions, and solve PMI problems that have been shackled to Indonesian society in general and the Indonesian government and PMI. However, in practice, until now, the government has not provided maximum protection to PMIs working abroad, especially those who have experienced violence. The existing laws and regulations have not been able to solve the PMI problems that have existed so far. Therefore, in this study, it is important to look at the juridical study of the protection of the rights of Indonesian Migrant Workers (PMI) abroad. (Uluwiyah, 2021). To provide a clear picture as well as how the implementation of PMI protection has been carried out by the government and what problems the government is facing, it is necessary to have standard standards in improving work skills in order to compete in the job market, especially abroad.

## 2. Research Method and Materials

The research method used is empirical research. Empirical research is data obtained directly from the community as the first source of hearing through field research, which is carried out either through observations, interviews, or documents taken at the research site. (Efendi, 2018) This research was conducted at the Indonesian Migrant Workers Protection Agency (BP2MI) in the Makassar area of South Sulawesi Province, jl. Pacinang Raya No. 104 New Tello. The research was conducted by means of interviews, observations and documents. The documents studied are legal materials, both primary and secondary. The data obtained from the study were analyzed qualitatively. The results of the analysis are then presented in the form of an exploratory description.

### 3. Results and Discussion

#### 3.1. Legal Protection Procedures for Indonesian Migrant Workers (PMI) carried out by the Indonesian Migrant Workers Protection Agency (BP2MI) for the Makassar Region

In Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, the role of protecting Indonesian migrant workers is handed over to the government, both central and regional, starting from before work, during work, and after work. Protection of prospective Indonesian migrant workers and Indonesian migrant workers aims to ensure the fulfillment and enforcement of human rights as citizens and guarantee legal, economic, and social protection of Indonesian migrant workers and their families.

##### 1. Legal Protection

In article 31 of Law No. 18 of 2017 concerning the protection of Indonesian migrant workers, it is stated that PMIs can only work in the country of placement destination, namely:

- a. Have laws and regulations that protect foreign workers
- b. Has a written agreement between the government of the destination country and the government of the republic of Indonesia; and/or
- c. Have a social security and/or insurance system that protects foreign workers'

The central government can stop or prohibit the placement of Indonesian migrant workers in certain countries or positions abroad with considerations of security, protection of human rights, equal distribution of employment opportunities, and the interests of labor availability in accordance with national needs. In stopping or prohibiting the placement of Indonesian migrant workers, the central government considers the suggestions and considerations of representatives of the Republic of Indonesia, ministries or institutions, companies placing Indonesian migrant workers, and the community. The placement of certain countries or certain positions is determined by the central government. The central government and local governments provide legal protection to Indonesian migrant workers in accordance with the provisions of laws and regulations, the law of the country of placement destination, as well as international law and practice.

##### 2. Social Protection

In article 34 of Law Number 18 of 2017 concerning the protection of Indonesian migrant workers, it is stated that the central government and regional governments, in accordance with their respective authorities, are obliged to provide social protection for prospective Indonesian migrant workers or Indonesian migrant workers through:

- a. Improving the quality of education and job training through standardization of job training competencies
- b. Increasing the role of accreditation and certification bodies
- c. Provision of competent educators and trainers
- d. Social reintegration through skills improvement services, both for Indonesian migrant workers and their families
- e. Protection policy for women and children
- f. Provision of a center for the protection of Indonesian migrant workers in the destination country of placement.

##### 3. Economic Protection

In article 35 of Law Number 18 of 2017 concerning the protection of Indonesian migrant workers, the central government and regional governments, in accordance with their respective authorities, are obliged to provide economic protection for prospective Indonesian migrant workers or Indonesian migrant workers through:

Management of remittances by involving domestic banking institutions or non-bank financial institutions and the country of placement destination

Financial education so that Indonesian migrant workers and their families can manage their remittances

4. Entrepreneurship education.

There are tens of thousands of Indonesian citizens experiencing vulnerability abroad, most of whom are migrant workers, and many Indonesian citizens abroad are also experiencing legal problems. Throughout 2017, the ministry released 14 Indonesian citizens who are facing the death penalty, and the ministry also helped resolve 9,894 cases of Indonesian citizens while restoring their financial rights with a value of up to Rp 120 billion. The problems of Indonesian citizens abroad are very diverse. Each country also has a different character and law. On the other hand, cases related to Indonesian citizens continue to emerge because of the above problem "the ministry of foreign affairs will continue to innovate towards a better Indonesian citizen protection system." (Tamami, 2021) (Zainuddin & Wuryanta, 2021)

The explanation above is one of the government's efforts to protect Indonesian citizens who are undergoing legal proceedings because of the many cases of PMI abroad so that the government continues to innovate toward a protection system.

One of the PMI protections is the compensation in the form of money as a risk guarantee experienced by PMI, which has been carried out by insurance companies that are members of the insurance consortium with protection programs covering pre-placement, placement, and post-placement protection. This protective role is currently being transferred and implemented by the Social Security Administering Body (BPJS) in accordance with Law No. 40 of 2004 concerning the national social security system and Law No. 24 of 2011 concerning social security administering bodies. For certain risks that are not covered by the social security program, BPJS can cooperate with institutions with government or private institutions. With a presidential regulation, BP2MI was formed, which is a revitalization of the National Agency for the Placement and Protection of Indonesian Migrant Workers. BP2MI is under and responsible to the president through the minister who organizes government affairs in the field of manpower. BP2MI has the task of implementing and protecting Indonesian migrant workers in an integrated manner. The Indonesian Migrant Workers Protection Agency (BP2MI) in the Makassar area is tasked with implementing service policies in the context of the placement and protection of Indonesian migrant workers. Official data from the Indonesian Migrant Workers Protection Agency (BP2MI) for the Makassar area states that around 97% of PMIs sent abroad are in the formal sector, especially in South Sulawesi. Malaysia in 2018 to 2020 totaled 2529 people, while PMI who worked in the informal sector was around 3% in 2018 to 2020, the number was 89 people. The realization of formal and informal PMI placements carried out by UPT Makassar Region starting from 2018 to 2020 can be seen in the table below:

**Table 1: Number of Placements for UPT BP2MI Makassar Region Year 2018 until 2020**

No	Year	Formal		Formal Amount	Informal		Total Informal	Total
		3	4		6	7		
1	2018	803	220	1023	61	22	83	1.106
2	2019	1039	245	1284	0	4	4	1,288
3	2020	160	62	222	0	2	2	224

From 2018 to 2020, it shows that there are more jobs in the formal sector, namely PMI who work for companies that are legal entities, reaching 97%, most of whom work in the oil palm plantation sector in East Malaysia and jobs in the informal sector, namely PMI who work on individual users which reaches 3%. Data relating to the handling of complaints of Indonesian Migrant Workers (PMI) states that in 2018 there were 427 people with 316 men and 111 women, in 2019 showed a significant increase of 963 people with the number of men, 774 men, and 176 women, and in 2020 there was a very drastic decline of 48 people with 30 men and 18 women. For more details, data from 2018 to 2020 can be seen in Table 2, as follows:

**Table 2: Number of PMI Handling or Complaints in 2018 to 2020**

No	Year	Number of Handling PMI (Person)	L	P
1	2018	427	316	111
2	2019	963	774	176
3	2020	48	30	18

The table above shows that from 2018 to 2019, PMI complaints to BP2MI Makassar Region increased very significantly and in 2020 experienced a very drastic decline, a very drastic decrease because in 2020 until now there was a covid-19 virus so that Indonesia made a total stop (lockdown) PMIs who want to go abroad thus experiencing a decrease in complaints in 2020. Meanwhile, the repatriation of Indonesian Migrant Workers from 2018 to 2020 with various problems, namely PMI with problems and illness in 2018, as many as 388 people, 33 people's contracts expired and one person's leave with a total of 427 people, then in 2019 PMI had problems and Sickness increased to 974 people, the contract expired 16 people and leave one person with the number of repatriation 991 people, with the number of repatriations can be seen in more detail in table 3, namely:

**Table 3: PMI Repatriation Year 2018 to 2019**

Year	Return Status			Total
	Problem/Sick	Contract Ends	Paid Leave	
1	2	3	4	5
2018	388	38	1	427
2019	974	16	1	991

From the table 3, it is stated that the increase in PMI repatriation from 2018 to 2019 with various return statuses shows a high number of problematic or sick PMI return statuses, meaning that the number of Indonesian Migrant Workers who are repatriated because they have problems in the country where they work, on average Indonesian Migrant Workers is sent home because they are illegal workers who enter the country of their work without going through official or legal documents. Furthermore, in 2020 the repatriation carried out by the Indonesian Workers Protection Agency (BP2MI) recorded their return status as contract expiration as many as 109 people, leave as many as 33 people, overstay or criminal as many as 917 people, sick as many as nine people, drugs as many as 100 people, illegal PMI as many as 282 illegals, and the bodies of 24 people with a total number of 764 people returning home. The number of PMI repatriations can be seen in the table 4:

**Table 4: PMI Returns in 2020**

Year	Return Status							Amount
	Contract Ends	Paid Leave	Overstay/Criminal	Sick	Drugs	Illegal PMI	Corpse	
1	2	3	4	5	6	7	8	9
2020	109	33	917	9	100	282	24	764

The table 4 explains that most PMIs return home in 2020 due to overstay or crime, the number of criminal acts committed by PMIs in their country of placement, such as killing, stealing, and cheating, causes them to be deported to the country where they work, illegal PMI is also one of the factors he was sent home because he was caught being an illegal worker, so they had to be sent home after the contract was returned because he didn't want to extend his work contract, drugs were also one of the crimes of Indonesian Migrant Workers in the country where they worked who had to be sent home, on leave, sick, and there were about two bodies who are repatriated every month at BP2MI Makassar Region in 2020. BP2MI Makassar area in 2018, the number of remittances or remittances for Indonesian migrant workers (PMI) from Makassar reached Rp. 743.047.844 of these shipments have been recorded by BP2MI, while there are many more that are not recorded. The number of remittances in 2018 can be seen in the table below:

**Table 5: 2018 Remittance**

No	Month	PMI	US\$	IDR (Rp)
1	January	220	11.382	147,967,956
2	February	98	182	67,363,344
3	March	130	6.69	86,986,134
4	April	119	6.487	84,332,844
5	May	39	2012	26,161,146
6	Jeni	19	1.022	13,279,986
7	July	108	5.389	72,583,452
8	August	97	5.158	67,055,220
9	September	46	2,463	32,025,204
10	October	25	1.212	16,969,392
11	November	142	7,644	99,373,788
12	December	62	2.23	28,949,378
Total		1105	51,871	Rp. 743,047,844

Data regarding remittances from PMI in the country of placement to Indonesia. PMI remittances are very influential for Indonesia. In 2018 the total remittances from January to December amounted to Rp 743.047.844. In the procedure for protecting Indonesian Migrant Workers (BP2MI), the Makassar Region provides protection for PMI in accordance with its vision and mission, starting before work, during work, and after work.

#### 1. Protection Before Work

In protecting PMIs before working in the Makassar area, legally registered cases of 0%, all are well protected because before the PMIs leave, they have completed the validity of the placement documents that have been legalized by the ambassador, who before ratifying them had first investigated the company in the country. PMI placement. In Law No. 13 of 2003 concerning employment in article 9, namely job training is organized and directed to equip, improve and develop work competencies in order to increase ability, productivity, and welfare.

Job training is carried out by taking into account the needs of the labor market and the business world, both inside and outside the employment relationship, job training is held based on training programs that refer to work competency standards, and the training can be carried out in stages. Before the PMI is sent to the country of placement, the PMI will sign a work contract which is the only protection for them abroad. The work contact is made not unilaterally but through a contract that is known to the two parties.

#### 2. Protection During Work

In Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, PMI during work does not take over criminal and/or civil responsibility for Indonesian migrant workers and is carried out in accordance with the provisions of the legislation, the law of the country of placement destination, as well as laws and customs. International.

In protecting PMI abroad, the BP2MI Makassar area protects workers by facilitating the fulfillment of the rights of Indonesian migrant workers, providing consular services, mentoring, mediation, advocacy, and providing legal assistance in the form of facilitation of advocate services by the central government and/ or representatives of the Republic of Indonesia and representatives in accordance with local state law.

According to the head of BP2MI Makassar Region, violence that often occurs to Indonesian Migrant Workers (PMI) such as being raped, damaging companies, fighting, our PMIs will be prosecuted under the law of the country, which can be done by the government, namely hiring an advocate or lawyer.

### 3. After Work Protection

In Law Number 18 of 2017 concerning the Protection of Indonesian Workers, the protection after work includes:

- a. Facilitate return to the area of origin
- b. Resolving the unfulfilled rights of Indonesian migrant workers
- c. Facilitating the management of sick and dead Indonesian migrant workers
- d. Social rehabilitation and social reintegration, and
- e. Empowerment of Indonesian migrant workers and their families.

In the protection of migrant workers after work carried out by BP2MI, namely after working, it is valid for six months after returning to Indonesia or their hometown, and they are still protected because BPJS is valid for six months after the contract, such as sick, their children are financed until they finish high school. (Aryana, 2021)

According to BP2MI data, protecting PMIs before work, while working, and after work is well protected with a note that PMIs leave in the country of placement legally.

### *3.2. Obstacles faced by the Indonesian Migrant Workers Protection Agency (BP2MI) Makassar Region to Protect PMIs Abroad*

Actions that are often experienced by Indonesian migrant workers abroad are violations of human rights, namely every act of a person or group of people, including state apparatus, whether intentional or unintentional or abnormality that unlawfully reduces, hinders, limits, and/or is feared not to obtain a fair and correct legal settlement based on the applicable legal mechanism (Law No. 39 of 1999 concerning Human Rights Article 1 point 6). (Burhan, 2014). Protection efforts by the Indonesian Representatives are only in the early stages and are not considered optimal. This is due to several factors, such as financial constraints for the provision of local lawyers, in addition to limited funds for operational costs incurred to accommodate problematic PMIs at the Indonesian Embassy. In addition, the space for Indonesian representatives to move is also limited by the 1963 Vienna Convention, including the consular function, which requires every representative of a foreign country to respect the sovereignty and authority of the host country (Pocock et al., 2020).

#### 1. Juridicial Barriers

There is a government policy of the receiving country, for example, in Malaysia, which states that PMI can use a traveler's visa to then process a work permit in Malaysia. This can make it difficult for Indonesian diplomatic representatives so that PMIs who are imported with tourist visas are difficult to monitor. (Yomo et al., 2019) They will make PMIs more vulnerable to trafficking. Even though Indonesia is one of the largest senders of migrant workers abroad and has enacted Law No, 18/2017 on the protection of Indonesian migrant workers.

#### 2. Non Juridicial Barriers

Not much information has been given to people who are vulnerable to human trafficking related to their rights if they become victims, for example, the right to get protection from the local government/state against the treatment they have received so far that treats them as criminals, illegal migrants or undocumented migrants. (Simatupang et al., 2015)

PMIs who work in the formal sector generally do not experience difficulties. However, PMIs who work in the informal sector often experience barriers to accessing services and assistance from Indonesian representatives abroad because they usually do not report or are not given the opportunity to report by their employers. Or a job placement agency.

There are many cases of trafficking that occur with the motive of falsifying the personal data of PMI candidates. This will have an impact on the difficulty of the efforts of the diplomatic representatives of the Republic of Indonesia to provide protection. To repatriate Indonesian citizens with problems abroad, including the great sovereignty of the Republic of Indonesia (KBRI) abroad, it is difficult for funds to repatriate Indonesian citizens to their homeland, so the repetition process involves the social department as the provider of the repatriation funds.

The government guarantees the rights of PMI abroad as stated in Law Number 18 of 2017 concerning the Protection of Indonesian Workers, namely facilitating the fulfillment of the rights of Indonesian migrant workers. Sanctions will also be imposed on companies that do not guarantee the rights of PMI abroad by not allowing recruitment in these companies, but many PMI recruitment companies have foreigners who supply PMI, so the government is difficult to control the company. Makassar Region BP2MI data states that all PMI repatriations in Makassar will be picked up and even delivered to their hometowns. This is PMI protection carried out by Makassar Region BP2MI in PMI safety. According to the head of the Makassar Regional BP2MI, the legal barriers to the protection of Indonesian workers are:

1. Indonesia has not been serious about protecting its workers because Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers was made, but this law has a rival in laws that are not connected, for example, migrant workers who do not want to get married are between the population law and the law. Law Number 18 of 2017 states that a worker must have 1 (one) NIK, which is a big problem currently being faced.
2. In terms of health, PMIs who want to work abroad must check their health online, but the problem is that the government does not build online hospitals. Even in South Sulawesi, there are only 2 (two) hospitals, namely in Pare-Pare and Bulukumba, so workers who want to work overseas must have a health check at the hospital that has been registered for overseas migrant workers.
3. Law Number 18 of 2017 concerning the protection of Indonesian migrant workers has also not been linked to the law on security and the police, so they have less role to play in handling PMI.
4. The local government's lack of attention to people who want to work abroad, such as the local government never doing socialization due to money constraints.

The PMI social protection barriers are explained in Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers which states that the central government and local governments in accordance with their respective authorities are obliged to provide social protection for prospective Indonesian migrant workers and/or Indonesian migrant workers through the provision of educators and competent trainers. (Wilkins, 2011) The problem in Indonesia is that Indonesia has not implemented competence, so the workforce is common, and there is a lack of competent and certified trainers.

#### 4. Conclusion

Legal Protection Procedures for Indonesian Migrant Workers (PMI) carried out by the Indonesian Migrant Workers Protection Agency (BP2MI) for the Makassar Region, namely before work, complete documents are prepared so that they can be protected by government representatives, namely the Indonesian embassy and given job training while working PMI are protected by rights by the government and protection after work is still protected by BPJS for six months after returning to Indonesia, the obstacles faced by the Indonesian Migrant Workers Protection Agency (BP2MI) for the Makassar Region To Protect PMI Abroad, namely many illegal PMIs that are difficult to track down by the government, the brokers who are very difficult to eliminate and even impossible to disappear because it is their livelihood and the government is not serious in protecting Indonesian Migrant Workers abroad. The advice is to increase outreach to PMI so that PMIs know the importance of having skills and skills as evidenced by a skills certificate issued by a training institution accredited by the competent authority, providing direction to PMI that it is important to follow the legal process to work abroad to prevent oppression faced by PMI abroad due to illegal departure and providing socialization to prospective Indonesian Migrant Workers about the contract agreement before signing it so that when they work abroad, they know their rights and obligations.

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