



Legal Protection for Indonesian Informal Migrant Workers: Substantive and Comparative Justice

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ABSTRACT

This study analyzes the alignment of legal protection frameworks for informal migrant workers between Indonesia and destination countries and evaluates the effectiveness of government diplomacy and institutional roles in ensuring substantive and comparative justice. This research uses a normative juridical method with a comparative approach through a review of regulatory literature, institutional documents, and academic works. The analysis shows that Indonesia has relatively strong de jure protection; however, its de facto implementation remains weak due to differences in legal systems, inadequate oversight, unprocedural placement practices, and the kafala system. Malaysia and Singapore also exhibit regulatory limitations. Therefore, the protection of informal migrant workers requires harmonization of international law, strengthening of bilateral agreements, and optimization of diplomatic and institutional capacity to achieve sustainable substantive justice.

A. INTRODUCTION

Cross-border labor migration is a structural global phenomenon, with Indonesia being one of the major sending countries of informal sector migrant workers (PMI) in Asia.¹ This phenomenon is driven not only by economic disparities between countries, but also by global labor market dynamics, economic liberalization, and the demand for low-cost labor in

1 ILO (International Labour Organization)., *Migration for Employment Convention (Revised) No. 97*, (Geneva: ILO, 1949); D. Purnomo, Fenomena Migrasi Tenaga Kerja Dan Perannya Bagi Pembangunan Daerah Asal , *Jurnal Ekonomi Pembangunan* 10, No. 1, (2019): 12-28.

domestic and care sectors that are socially less attractive to local workers in receiving countries.

Indonesia occupies a strategic position as one of the largest migrant-sending countries in Asia, with a significant proportion working in informal sectors such as domestic work and caregiving.² Although Malaysia, Singapore, and Saudi Arabia hold strategic positions as destination countries, existing conditions indicate that increases in placement numbers are not linear with the quality of legal protection received.³ Thus, the primary issue no longer lies in the quantity of labor mobility, but rather in the quality of legal protection governance that accompanies it.⁴

Data from the Indonesian Migrant Workers Protection Ministry (KP2MI) recorded that as of September 2024, more than 18,000 Indonesian migrant workers were active in seven major destination countries⁵: Hong Kong (7,364 workers), Taiwan (6,719), Malaysia (1,675), Japan (1,055), Singapore (889), South Korea (640), and Saudi Arabia (575). However, the dominance of these placement figures must be interpreted critically, as high market demand is not always accompanied by the readiness of receiving countries' legal systems to guarantee rights-based protection. Nevertheless, these quantitative statistics do not fully reflect the quality of legal protection received by informal migrant workers, resulting in a gap between placement figures and the guarantee of substantive justice in destination countries.⁶ This gap reveals a paradox between migrant workers' economic contributions through remittances and their weak bargaining position within the transnational legal structure.

Massive economic contribution generated through remittances, however despite their significant economic contribution, informal migrant workers remain characterized by structural vulnerability.⁷ This vulnerability is multidimensional, encompassing legal, social, economic, and cultural aspects that reinforce one another in creating subordinated conditions. Many work without formal contracts, receive substandard wages, endure excessive working hours, and face risks of violence or human rights violations.⁸ In this

2 Agus Purnomo., *Migrasi Tenaga Kerja Indonesia dan Dinamika Perlindungan Hukumnya* (Jakarta: Rajawali Pers, 2019): 115-118.

3 A. I. B. R. Huzairy., *Final Assignment: Migrant Workers And International Law (The Issue of Exploitation Migrant Workers In Malaysia)*, (Penang: Universiti Sains Malaysia, Malaysia, 2021).

4 Alexander Betts., *Global Migration Governance* (Oxford: Oxford University Press, 2011): 45–47.

5 KP2MI (Kementerian Perlindungan Pekerja Migran Indonesia)., *Laporan Kinerja 2024* (Jakarta: Kementerian Perlindungan Pekerja Migran Indonesia / Badan Perlindungan Pekerja Migran Indonesia, 2025).

6 Stephen Castles, Hein de Haas, dan Mark J. Miller., *The Age of Migration: International Population Movements in the Modern World*, 6th ed. (New York: Guilford Press, 2020): 239–244.

7 Z. A. Hoesein., *Pembangunan Ekonomi Kerakyatan Dalam Perspektif Konstitusi Ekonomi Indonesia*, *Jurnal Konstitusi* 14, No. 2, (2017): 251–270; F. Oktaviani., *Kekerasan Struktural Pada Pekerja Domestik*, *Jurnal Sosiologi Hukum* 9, No. 2 (2021): 211-229.

8 Ibnu Affan., *Problematika Eksekusi Putusan Perkara PPHI (Penyelesaian Perselisihan Hubungan Industri): Rekonstruksi Politik Hukum Berbasis Hukum Progresif*, (Jakarta: Perdana

context, law functions not only as a normative instrument but also as a means to achieve substantive justice for vulnerable groups.⁹ This condition demonstrates that the existence of comprehensive national law does not automatically produce effective protection without normative and institutional alignment at the international level.¹⁰

As stated by Saptomo, good law is law that lives within society and is rooted in its social values.¹¹ This perspective affirms that law cannot be separated from the social realities in which it operates.¹² Therefore, the effectiveness of migrant worker protection law is measured not only by normative completeness but also by its capacity to function across national borders. In the context of migrant workers, this principle underlies Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers, which positions legal protection as an embodiment of humanitarian values through guarantees of social and economic protection for all migrant workers, including the elimination of placement fees for informal sector workers.¹³ However, this normative reform faces serious challenges when confronted with differing legal systems, labor cultures, and migration policies in receiving countries.¹⁴

The fact that de jure protection does not correspond proportionally with de facto protection in destination countries constitutes the main issue.¹⁵ Malaysia, which faces problems related to non-procedural migrant worker placement practices, still lacks an adequate legal framework and has not ratified key international instruments concerning migrant worker protection.¹⁶ Essentially, Malaysia applies only basic human needs standards without a comprehensive legal umbrella addressing exploitation, confinement, violence, harassment, low wages, wage deductions, overtime

Publishing, 2018): 23-25; Hartono Widodo & R. Jossi Belgradoputra., *Perlindungan Pekerja Migran Indonesia*, *Binamulia Hukum* 8, No. 1 (2019): 107-116; E. Elviandri & A. I. Shaleh., *Perlindungan Pekerja Migran Indonesia Di Masa Adaptasi Kebiasaan Baru Di Provinsi Jawa Tengah*, *Jurnal Pembangunan Hukum Indonesia* 4, No. 2 (2022): 210-227.

9 Amartya Sen., *The Idea of Justice* (London: Penguin Books, 2009): 231-234.

10 Mochtar Kusumaatmadja, *Konsep-Konsep Hukum dalam Pembangunan* (Bandung: Alumni, 2006): 96-102.

11 Ade Saptomo., *Budaya Hukum & Kearifan Lokal: Sebuah Perspektif Perbandingan*, (Kabupaten Bogor: PT Kaya Ilmu Bermanfaat, 2025): 146.

12 I. Prasetyo., *Living Law dalam Dinamika Pembentukan Peraturan Perundang-undangan*, *Jurnal Legislasi Indonesia* 17, No. 3 (2020):25-30.

13 Pemerintah RI (Republik Indonesia), *Undang-Undang Nomor 18 Tahun 2017 Tentang Pelindungan Pekerja Migran Indonesia*, (Jakarta: Lembaran Negara Republik Indonesia Tahun 2017 Nomor 242); Z. A. Hoesein., *Etika Konstitusi Dan Moralitas Hukum Dalam Pembentukan Kebijakan Publik*, *Jurnal Hukum Dan Pembangunan* 51, No. 1 (2021): 45-63.

14 Natasya Yadila et al., *Perlindungan Hukum Terhadap Pekerja Migran Indonesia di Luar Negeri*, *Media Hukum Indonesia* 2, No. 3 (2024):78-85.

15 F. Nasution., *Kesenjangan Perlindungan De Jure dan De Facto dalam Hukum Ketenagakerjaan Migran*, *Jurnal Konstitusi* 19, No. 1 (2022): 112-118.

16 A. I. B. R. Huzairy., *Final Assignment: Migrant Workers And International Law (The Issue of Exploitation Migrant Workers In Malaysia)*, (Penang: Universiti Sains Malaysia, Malaysia, 2021).

limits, and maximum working hours.¹⁷ Regarding administrative law perspective this phenomenon proves the gap and discrepancy on the actual policy norms versus the government and entities in the industry.¹⁸ This condition shows that protection issues are influenced not only by Indonesia's national law but also by the readiness of receiving countries' legal systems to recognize migrant workers as equal legal subjects.¹⁹

In Singapore, discrimination is evident through the exclusion of domestic workers from the primary Employment Act. This was reflected in the "Little India Riot" on 8 December 2013, triggered by perceived injustices within Singapore's labor system toward migrant workers.²⁰ The exclusion also results in the absence of minimum wage regulation, deportation of pregnant migrant women, and excessive restrictions by employers, leading to isolation and limited access to assistance in dangerous situations.²¹ This phenomenon demonstrates that economic modernization is not always accompanied by modernization of legal protection for informal migrant workers.²²

In Saudi Arabia, migrant workers constitute approximately 30% of the population and 49% of the total labor force.²³ The country continues to maintain remnants of the kafala sponsorship system, which restricts workers' freedom.²⁴ Under this system, excessive power is granted to employers, making migrant workers highly vulnerable to poor working conditions, exploitation, abuse, and human rights violations. Although regulatory reforms have been introduced, they have not fully eliminated the imbalance of power relations between employers and migrant workers. These

- 17 Nawiya Yotwilai., Migrant Workers In Malaysia: Human Right Issues In The Workplace, *Sage Journals* 15, No. 2 (2025): 112-131; A. I. B. R. Huzairy, *Final Assignment: Migrant Workers And International Law (The Issue of Exploitation Migrant Workers In Malaysia)*, (Penang: Universiti Sains Malaysia, Malaysia, 2021); Maudiza Fajarina, Yulia A. Hasan, Basri Oner, *Perlindungan Hukum Pekerja Migran Indonesia Di Malaysia Pada Kasus Tenaga Kerja Migran Asal Nusa Tenggara Timur*, *Clavia: Journal of Law* 23, No. 1 (2025): 110-119.
- 18 Andri Winjaya Laksana, Adhi Budi Susilo, Peni Rinda Listyawati, Setiawan Widiyoko, and Toni Triyanto., Legal Uncertainty in Law Enforcement for Drug Addicts Resulting in Criminal Disparity, *Yuridika* 40, No. 2 (2025): 253-270
- 19 T. Yotwilai., Legal Protection for Migrant Domestic Workers in Malaysia, *Asian Journal of Comparative Law* 10, No. 1 (2025): 54.
- 20 Jaclyn L. Neo., Riots And Rights: Law And Exclusion In Singapore's Migrant Worker Regime, *Asian Journal of Law and Society* 2, No. 1 (2015): 137-168.
- 21 ILO (International Labour International) and UN Women., *Public Attitudes Towards Migrant Workers in Singapore*, (Geneva: ILO, 2020); ILO (International Labour International), *Perlindungan Dan Pencegahan Untuk Pekerja Migran Indonesia*, (Jakarta: ILO, 2024).
- 22 J. Neo., Migrant Workers and Employment Exclusion in Singapore," *Asian Journal of Law and Society* 2, No. 3 (2015): 152.
- 23 M. M. Alzahrani., The System of Kafala And The Rights of Migrant Workers In GCC Countries - With Specific Reference To Saudi Arabia, *European Journal of Law Reform* 16, No. 2, (2014): 377-400.
- 24 HRW (Human Rights Watch)., *Workers in Bondage: Exploitation and Abuse of Migrant Domestic Workers in Singapore*, (New York: HRW, 2025); Kemenlu RI (Kementerian Luar Negeri Republik Indonesia), *Laporan Kinerja KBRI Manama Tahun 2022*, (Jakarta: Kemenlu RI., 2023); D. A. Robalino, L. Rawlings, & I. Walker, *Conceptual Frameworks for Social Protection*, (Washington, D.C.: World Bank, 2012)

situations pushes priorities to create and impose national and bilateral (government to government) laws, regulations, and agreements that protect and amend dynamically²⁵ for Indonesia migrant workers. The Government needs to impose on the justice and safety are applied in place for Indonesia migrant workers since these are the most basic human rights and needs.²⁶

The international community has expressed particular concern regarding the kafala system in Saudi Arabia due to its implications for human rights and fundamental worker protections.²⁷ Although new regulations contain positive elements, they remain insufficient to provide meaningful and comprehensive protection for migrant workers.²⁸ These three countries represent different regulatory models, from regulatory gaps and normative exclusions to sponsorship-based systems, that collectively limit access to justice for informal migrant workers.

Previous studies have generally focused either on national normative protection or single-country case analyses. This study adopts a distinct approach by integrating three analytical dimensions simultaneously: the alignment of legal frameworks across countries, the effectiveness of the sending state's diplomacy, and community-based informal protection practices among migrant workers. The absence of such an integrative approach has created an analytical gap regarding how national law, receiving country law, and migrant social practices interact to shape real access to justice.²⁹

Differences in legal systems and work cultures create a gap between the ideal of protection and the reality of justice.³⁰ Based on these empirical conditions and scholarly gaps, this research not only compares legal norms but also examines the interconnection between legal instruments, diplomatic practices, and the social realities of informal migrant workers. Through this approach, migrant workers are positioned not merely as objects of regulation but as transnational legal subjects entitled to substantive justice. The study aims to comparatively examine the alignment of legal protection frameworks between Indonesia and key destination countries and to assess the extent to which Indonesia's diplomatic and institutional mechanisms ensure substantive justice abroad.

25 Widayati, Winanto, Andri Winjaya Laksana, Moh. Nurul Huda, Nur Fareha., The Challenges of Using the Omnibus Law Method in Indonesia's Legal System, *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, No. 2 (2025): 459-477

26 Andri Winjaya Laksana, et.al., *Lembaga dan Pranata Hukum*, (Medan: Tahta Media Group, 2024): 4.

27 A. Azhari., The Kafala 'Sponsorship' System In Saudi Arabia: A Critical Analysis From The Perspective of International Human Rights and Islamic Law, *The SOAS Journal of Postgraduate Research* 10, No. 17, (2016): 61-80.

28 M. M. Alzahrani., The System of Kafala And The Rights of Migrant Workers In GCC Countries - With Specific Reference To Saudi Arabia, *European Journal of Law Reform* 16, No. 2 (2014): 377-400.

29 R. Rosalina dan B. Setyawanta., Keadilan Progresif dalam Sistem Hukum Indonesia, *Jurnal Pandecta* 15, No. 1 (2020):70.

30 Utsman., Budaya Kerja dan Perlindungan Tenaga Kerja Migran, *Jurnal Sosiohumaniora* 16, No. 2 (2014): 91.

As a sovereign state, Indonesia must strengthen bilateral agreements and develop coordinated transnational legal strategies, particularly with Malaysia, Singapore, and Saudi Arabia.³¹ The protection of migrant workers can no longer rely solely on domestic approaches but requires synergy between domestic legal reform, protection-oriented diplomacy, and active participation in international legal regimes to ensure effective implementation. This study seeks to systematically explain how national law interacts with foreign legal systems in providing cross-jurisdictional protection for informal migrant workers.³²

To support this analysis, the study is grounded in three theoretical foundations: the concept of legal protection and human rights emphasizing state responsibility to uphold human dignity;³³ Satjipto Rahardjo's progressive legal theory, which underscores law's alignment with humanitarian values;³⁴ and the theory of equity in social protection, which stresses fair and non-discriminatory distribution of protection of legal rights.³⁵ By integrating these approaches, the study aims to fill the fragmented gap between normative, diplomatic, and social analyses and contribute conceptually to the harmonization of national and international law in protecting informal migrant workers.

B. RESEARCH METHODS

This research uses a normative juridical approach with a comparative legal method. This approach is used to examine and compare the legal substance that regulates the protection of informal migrant workers in Indonesia, Malaysia, Singapore and Saudi Arabia. The aim is to obtain a comprehensive picture of the compatibility of legal protection principles between countries and assess the effectiveness of policy implementation towards informal sector migrant workers. This type of research is descriptive-analytical, because the main focus lies in describing and assessing positive legal norms and the practice of implementing them in the

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- 31 H. Robalino, L. Rawlings, dan I. Walker., Social Protection and Equity, *World Bank Research Observer* 27, No. 1 (2012): 33-40.
 - 32 E. Wahyuni., Bilateral Agreements and Migrant Worker Protection, *Journal of International Migration and Integration* 26, No. 1 (2025): 103-119.
 - 33 Ibnu Affan., *Problematika Eksekusi Putusan Perkara PPHI (Penyelesaian Perselisihan Hubungan Industri): Rekonstruksi Politik Hukum Berbasis Hukum Progresif*, (Jakarta: Perdana Publishing, 2018): 21-25; E. Elviandri & A. I. Shaleh, Perlindungan Pekerja Migran Indonesia Di Masa Adaptasi Kebiasaan Baru Di Provinsi Jawa Tengah, *Jurnal Pembangunan Hukum Indonesia* 4, No. 2 (2022): 210-227.
 - 34 H. N. Rosalina & L. T. Setyawanta., Perlindungan Hukum Terhadap Pekerja Migran Sektor Informal Dalam Perspektif Teori Bekerjanya Hukum Di Masyarakat, *Jurnal Pembangunan Hukum Indonesia* 2, No. 2 (2020): 189-205; S. Utsman., *Metodologi Penelitian Hukum Progresif*, (Yogyakarta: Pustaka Pelajar, 2014): 68-72.
 - 35 D. A. Robalino, L. Rawlings, & I. Walker, *Conceptual Frameworks for Social Protection*, (Washington, D.C.: World Bank, 2012): 14; Heri Noviadana, Tanti Kirana Utami, Aji Mulyana., Peran Serikat Buruh Migran Indonesia Dalam Melindungi Hak-hak Pekerja Migran Yang Menjadi Korban Eksploitasi Dan Diskriminasi, *Customary Law Journal* 2, No. 3 (2025): 1-13; M. Zed, *Metode Penelitian Kepustakaan*, (Jakarta: Yayasan Obor Indonesia, 2008):11-15.

context of migrant worker protection. Research data was obtained entirely from secondary legal materials through literature study. Primary legal materials include Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers, BP2MI Regulation Number 7 of 2022, as well as laws and regulations in destination countries such as the Employment of Foreign Manpower Act in Singapore and the 2021 Labor Reform Initiative in Saudi Arabia. Secondary legal materials were obtained from books, scientific journals, reports from official institutions, and publications of relevant international organizations, including the International Labor Organization (ILO), Human Rights Watch, as well as policy documents from the Ministry of Foreign Affairs of the Republic of Indonesia. As a complement, the research also uses tertiary legal materials in the form of legal dictionaries and encyclopedias to strengthen conceptual understanding. The collected secondary data will undergo analysis through a qualitative and descriptive lens, encompassing primary law, secondary law, and tertiary law materials and comparative method.

C. RESULTS AND DISCUSSION

1. National Legal Policy Framework and Treatment of the Indonesian Government in the Protection of Informal PMI

Indonesia shows a strong commitment to the protection of Indonesian Migrant Workers (PMI), especially those working in the informal sector, through the implementation of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers (UU PPMI). This regulation emphasizes the state's responsibility to guarantee the human rights of citizens working abroad and provides comprehensive protection from pre-deployment, during work, to post-deployment. Article 30 paragraph (1) of the PPMI Law confirms the exemption from placement fees for informal sector migrant workers, especially domestic workers, to prevent the practice of cutting wages which leads to economic exploitation. This provision reflects the partiality towards vulnerable work groups who have been outside the reach of formal protection.³⁶

The philosophical basis of this protection is also in line with the views of Saptomo which stated that good laws must originate from the customs, customs and social institutions of society so that they reflect their social life.³⁷ Furthermore, the aim of law is to realize and guarantee justice for society. In the context of migrant workers, the placement fee exemption policy in the PPMI Law reflects the application of this

36 Pemerintah RI (Republik Indonesia)., *Undang-Undang Nomor 18 Tahun 2017 Tentang Pelindungan Pekerja Migran Indonesia*, (Jakarta: Lembaran Negara Republik Indonesia Tahun 2017 Nomor 242); E. Elviandri.& A. I. Shaleh., *Perlindungan Pekerja Migran Indonesia Di Masa Adaptasi Kebiasaan Baru Di Provinsi Jawa Tengah*, *Jurnal Pembangunan Hukum Indonesia* 4, No. 2, (2022): 210-227.

37 Ade Saptomo., *Budaya Hukum & Kearifan Lokal: Sebuah Perspektif Perbandingan*, (Kabupaten Bogor: PT Kaya Ilmu Bermanfaat, 2025): 147-148.

principle, where the law not only acts as a normative text, but also as a means of social justice that favors vulnerable groups.³⁸

Institutionally, the implementation of PMI protection is regulated through the Indonesian Migrant Worker Protection Agency (BP2MI), which has the mandate of supervision, fulfillment of rights, and facilitation of dispute resolution. BP2MI Regulation Number 7 of 2022 strengthens the state's role in ensuring the placement process runs according to the principles of transparency and without discrimination. Apart from legal protection, migrant workers are also guaranteed social protection through the optional Work Accident Insurance (JKK), Death Insurance (JKM) and Old Age Security (JHT) schemes. This combination of legal and social protection shows the government's efforts to realize substantive justice, although the effectiveness of its implementation still depends heavily on cross-institutional coordination and private sector compliance with national regulations.³⁹

Indonesia's national legal framework has shown normative progress in protecting informal migrant workers, its effectiveness in the field still faces various structural obstacles. The Indonesian government has issued Minister of Manpower Regulation Number 260 of 2015 which prohibits the placement of domestic workers in Middle Eastern countries to prevent exploitation and human rights violations. However, this policy has not been completely successful in suppressing the flow of non-procedural departures. Various reports show that illegal placement practices are still widespread through private channels, unofficial agents, and debt-based recruitment mechanisms known as fit money.⁴⁰ This condition shows that de jure legal protection is not directly proportional to its de facto implementation in the field.⁴¹

The phenomenon of the gap between legal ideals and social reality shows that legal norms often lose effectiveness when they are not rooted in the conditions of society. Saptomo emphasized that the success of law is not solely determined by the completeness of statutory regulations, but by its ability to live and function in the social environment of society.⁴² In the context of migrant workers, weak supervision of non-procedural placement practices and minimal

38 Nicola Piper & Robyn Iredale., Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers, *Asia Pacific Migration Journal* 12, No. 1–2 (2003):18.

39 Sukamdi., Governance of Indonesian Labour Migration: Towards Improved Protection, *Asian and Pacific Migration Journal* 27, No. 3 (2018): 320.

40 Kemenlu RI (Kementerian Luar Negeri Republik Indonesia)., *Laporan Kinerja KBRI Manama Tahun 2022*, (Jakarta: Kemenlu RI., 2023); Hartono Widodo & R. Jossi Belgradoputra., Perlindungan Pekerja Migran Indonesia, *Binamulia Hukum* 8, No. 1 (2019): 107-116.

41 Nicola Piper., Feminisation of Migration and the Social Dimensions of Development: The Asian Case, *Global Networks* 8, No. 1 (2008): 129.

42 Ade Saptomo., *Budaya Hukum & Kearifan Lokal: Sebuah Perspektif Perbandingan*, (Kabupaten Bogor: PT Kaya Ilmu Bermanfaat, 2025): 112.

sanctions against illegal agents show that the law has not fully functioned as an instrument of social justice.⁴³

This paradox shows that although Indonesian policies appear normatively progressive, their effectiveness still depends on implementation at the bureaucratic level and community participation in supervision. When the law enforcement process is only oriented towards regulatory texts without paying attention to the social context, informal migrant workers remain in a vulnerable position to exploitation and injustice.⁴⁴ Therefore, strengthening upstream laws must be accompanied by increasing enforcement capacity in the field, including legal education for prospective workers, certification of placement institutions, as well as strict sanctions against illegal actors who ignore protection standards.

2. Comparative Study of International Cooperation and Access to Justice for PMI in Recipient Countries

Access to justice for Informal PMI in destination countries is greatly influenced by differences in legal systems and social diversity, which often places domestic workers in a structurally weakened position.⁴⁵

Malaysia, which is home to a large number of Informal PMI (especially illegal workers)⁴⁶, shows that access to justice is largely determined by diplomatic political dynamics and the legal status of workers. Bilateral conflicts, such as the temporary suspension of sending PMI to Malaysia in July 2022, occurred because Malaysia continued to use the Online Maid System (SMO) for recruitment, which was considered to violate the RI-MY bilateral Memorandum of Understanding (MoU) and reduce protection aspects.⁴⁷ This shows that formal diplomatic agreements often fail to be enforced honestly, resulting in direct worker vulnerability.

For PMI with illegal status, a significant number of whom, steps towards justice often begin with efforts to legalize their status. The Malaysian government has implemented the Recalibration program, which aims to provide proper protection and clear identity for illegal

43 Ryszard Cholewinski., The Protection of the Rights of Migrant Workers: Gaps in International Standards, *International Migration* 47, No. 5 (2009): 4.

44 Philip L. Martin., Labour Migration and Inequality, *International Labour Review* 155, No. 3 (2016): 357.

45 D. A. Robalino, L. Rawlings, & I. Walker., *Conceptual Frameworks for Social Protection*, (Washington, D.C.: World Bank, 2012); Kemenlu RI (Kementerian Luar Negeri Republik Indonesia)., *Laporan Kinerja KBRI Manama Tahun 2022*, (Jakarta: Kemenlu RI., 2023).

46 D. A. Robalino, L. Rawlings, & I. Walker., *Conceptual Frameworks for Social Protection*, (Washington, D.C.: World Bank, 2012): 9.

47 Kemenlu RI (Kementerian Luar Negeri Republik Indonesia)., *Laporan Kinerja KBRI Manama Tahun 2022*, (Jakarta: Kemenlu RI., 2023); Hartono Widodo & R. Jossi Belgradoputra, Perlindungan Pekerja Migran Indonesia, *Binamulia Hukum* 8, No. 1 (2019): 107-116.

PMI, rather than deporting them.⁴⁸ This underlines the importance of recognizing employment status as a pre-requisite for accessing labor rights. Failure to address the legalization of this status complicates efforts to restore rights and provide legal assistance.⁴⁹ The case of Adelina Sau, a PMI who died as a result of abuse and whose lawsuit was disappointing, is an example of the failure to uphold justice which sparked the BP2MI protest.⁵⁰ Legal justice in Malaysia, for Informal PMI, moves from the realm of criminal prosecution to the realm of recognition of work status.

Singapore, which is known for its strict legal certainty, faces structural problems in the protection of migrant domestic workers (FDW). FDWs are regulated under the Employment of Foreign Manpower Act (EFMA) and Work Permit (WP) regulations, but they are explicitly excluded from the key protections of the Singapore Employment Act.⁵¹

This exception has serious implications for substantive fairness. A Human Rights Watch report (HRW, 2005) highlights that these exceptions leave FDW vulnerable to long working hours (13-19 hours a day), low wages (less than half the wages of workers in formal professions), and no guarantee of weekly rest.⁵² Although employers who violate WP provisions (for example, assigning FDW to another address) are subject to large fines (up to S\$10,000)⁵³, these sanctions reflect formal legal certainty but fail to achieve substantive justice (equity of basic rights).⁵⁴

A key recommendation for achieving substantive justice in Singapore is a legislative amendment to include domestic workers in the main Employment Act.⁵⁵ In addition, HRW recommended eliminating the S\$5,000 security deposit charged to employers, as this mechanism actually provides an incentive for employers to restrict movement and

48 S. Soekanto., *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, (Jakarta: Raja Grafindo Persada, 2004): 43-45; S. Utsman., *Metodologi Penelitian Hukum Progresif*, (Yogyakarta: Pustaka Pelajar, 2014): 78-80.

49 Sukamdi., Governance of Indonesian Labour Migration: Towards Improved Protection, *Asian and Pacific Migration Journal* 27, No. 3 (2018): 314–316.

50 BP2MI (Badan Perlindungan Pekerja Migran Indonesia)., *Kecewa putusan pengadilan di Malaysia, BP2MI Gelar Aksi Solidaritas Keadilan untuk Adelina Sau*, (April, 2023).

51 HRW (Human Rights Watch)., *Workers in Bondage: Exploitation and Abuse of Migrant Domestic Workers in Singapore*, (New York: HRW, 2025); BP2MI (Badan Perlindungan Pekerja Migran Indonesia), *Kecewa putusan pengadilan di Malaysia, BP2MI gelar aksi solidaritas keadilan untuk Adelina Sau*, (April, 2023).

52 HRW (Human Rights Watch)., *Workers in Bondage: Exploitation and Abuse of Migrant Domestic Workers in Singapore*, (New York: HRW, 2025).

53 BP2MI (Badan Perlindungan Pekerja Migran Indonesia)., *Kecewa putusan pengadilan di Malaysia, BP2MI gelar aksi solidaritas keadilan untuk Adelina Sau*, (April, 2023).

54 Brenda S. A. Yeoh dan Shirlena Huang., Foreign Domestic Workers and the Politics of Mobility in Singapore, *Asian and Pacific Migration Journal* 19, No. 1 (2010): 45–48.

55 HRW (Human Rights Watch), *Workers in Bondage: Exploitation and Abuse of Migrant Domestic Workers in Singapore*, (New York: HRW, 2025).

confine workers to the workplace⁵⁶. Justice in Singapore is hampered not because of a lack of enforcement, but because of policy designs that categorize domestic workers as a different work entity, so that justice solutions must be legislative in nature.

The traditional kafala system in Saudi Arabia places Informal PMIs in strict sponsorship ties with employers/employers (kafeel), who control visa status, legality, and effectively workers' human rights.⁵⁷ Even though Indonesia has banned informal placements since 2015, non-procedural PMI is still widespread in the Middle East.⁵⁸

In 2021, Saudi Arabia launched its historic Labor Reform Initiative (LRI), easing kafala restrictions for private sector workers. This reform allows workers to change jobs and obtain exit visas without employer approval.⁵⁹ This is a de jure progressive step that has the potential to increase mobility and reduce unilateral control by employers⁶⁰

However, considering that the majority of cases faced by Informal PMI are salary disputes, passport detention, or serious criminal cases (High Profile Cases/HPC)⁶¹, the effectiveness of protection still relies heavily on diplomatic intervention.⁶² The Embassy of the Republic of Indonesia (KBRI) in Riyadh has taken the role as the main provider of access to justice. The Indonesian Embassy in Riyadh recorded extraordinary achievements in restoring PMI's financial rights worth around SAR 6.2 million, or the equivalent of IDR 22.8 billion, during 2020.⁶³

This success, especially in complex cases such as Sumarwini (who was successfully acquitted and repatriated after eight years of being sued for a fine of IDR 5.6 billion through a diplomatic process and special lawyers), shows that when the local legal system becomes an obstacle, diplomatic intervention and negotiation becomes the only effective route to justice.⁶⁴ Data on the handling of cases from the Indonesian Embassy in Riyadh shows that administrative/consular

56 HRW (Human Rights Watch)., *Workers in Bondage: Exploitation and Abuse of Migrant Domestic Workers in Singapore*, (New York: HRW, 2025); BP2MI (Badan Perlindungan Pekerja Migran Indonesia), *Kecewa putusan pengadilan di Malaysia, BP2MI gelar aksi solidaritas keadilan untuk Adelina Sau*, (April, 2023).

57 Republika., *Upaya KBRI Riyadh selamatkan uang TKI Rp 22,8 miliar*, (2021, 29 Januari); Kemenlu RI (Kementerian Luar Negeri Republik Indonesia), *Laporan Kinerja KBRI Manama Tahun 2022*, (Jakarta: Kemenlu RI., 2023).

58 Budi Ispriyarso., *Perlindungan Hukum Pekerja Migran Indonesia Non-Prosedural*, *Jurnal Pembangunan Hukum Indonesia* 2, No. 3 (2020): 74.

59 Republika., *Upaya KBRI Riyadh Selamatkan Uang TKI Rp 22,8 miliar*, (2021, 29 Januari).

60 Republika, *Loc.cit.*

61 Republika, *Loc.cit.*

62 Alan Desmond., *The Role of Consular Assistance in Protecting Migrant Workers*, *International Journal of Refugee Law* 31, No. 4 (2019): 58.

63 Rizki Ramadhani., *Diplomasi Perlindungan WNI oleh Perwakilan RI di Timur Tengah*, *Jurnal Hubungan Internasional* 10, No. 2 (2021): 165.

64 Sabrina Axster., *Migrant Workers and Access to Justice in the Gulf*, *Journal of Human Rights Practice* 12, No. 3 (2020): 215.

resolution is faster and more impactful than slow formal litigation.⁶⁵ The following table summarizes a comparison of legal frameworks in recipient countries:

Table 1: Comparison of Legal Framework and Informal PMI Protection in Destination Countries

Jurisdiction	Main Legal Framework	Domestic Worker Status (Informal PMI)	Major Barriers to Access to Justice	The Relevance of Social Diversity
Malaysia	Work Deed, RI-MY Bilateral MoU	Vulnerable illegal (non-procedural), often excluded from full protection.	Non-procedural status ⁶⁶ , conflict over MoU implementation ⁶⁷ , weak enforcement ⁶⁸ .	Influenced by cultural differences, the dominant issue is legal status.
Singapura	Employment of Foreign Manpower Act (EFMA)	Exempt from major Employment Laws (no minimum wage, guaranteed holidays). ⁶⁹	Employer control (\$5K guarantee), workplace imprisonment, legislative exclusion. ⁷⁰	Low education and language are barriers to communication/case reporting. ⁷¹
Saudi Arabia	Kafala System LRI Reform. ⁷²	Very dependent on sponsors (kafeel), although reforms provide mobility. ⁷³	Sponsor control, language/culture, HPC cases, repatriation difficulties, non-procedural PMI are widespread. ⁷⁴	Very high, differences in the legal system (Shariah) and traditional work culture. ⁷⁵
Indonesia (Upstream)	Law No. 18 of 2017	Priority protection,	Weak supervision of non-procedural	The low level of education of

65 Myria Georgiou., Administrative Justice and Migrant Protection Mechanisms, *Journal of Ethnic and Migration Studies* 45, No. 9 (2019): 95.

66 Soerjono Soekanto., *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, (Jakarta: Raja Grafindo Persada, 2004): 39.

67 Kemenlu RI (Kementerian Luar Negeri Republik Indonesia)., *Laporan Kinerja KBRI Manama Tahun 2022*, (Jakarta: Kemenlu RI., 2023).

68 BP2MI (Badan Perlindungan Pekerja Migran Indonesia)., *Kecewa putusan pengadilan di Malaysia, BP2MI Gelar Aksi Solidaritas Keadilan Untuk Adelina Sau*, (April, 2023).

69 HRW (Human Rights Watch)., *Workers in Bondage: Exploitation and Abuse of Migrant Domestic Workers in Singapore*, (New York: HRW, 2025).

70 HRW (Human Rights Watch)., *Workers in Bondage: Exploitation and Abuse of Migrant Domestic Workers in Singapore*, (New York: HRW, 2025)

71 H. Widodo & R. J. Belgradoputra., Perlindungan Pekerja Migran Indonesia, *Binamulia Hukum* 8, No. 1 (2019): 107-116.

72 Republika., *Upaya KBRI Riyadh selamatkan uang TKI Rp 22,8 miliar*, (2021, 29 Januari).

73 Republika., *Op.cit.*

74 Kemenlu RI (Kementerian Luar Negeri Republik Indonesia), *Laporan Kinerja KBRI Manama Tahun 2022*, (Jakarta: Kemenlu RI., 2023).

75 Republika., *Op.cit.*

Jurisdiction	Main Legal Framework	Domestic Worker Status (Informal PMI)	Major Barriers to Access to Justice	The Relevance of Social Diversity
	(PPMI)	exemption from placement fees ⁷⁶	placements, bureaucracy, slow litigation ⁷⁷	informal PMIs is a trigger for upstream and downstream vulnerabilities ⁷⁸

3. The Role of Government Institutions and Social Justice Mechanisms for PMI in the Midst of Structural Vulnerability

Access to justice for informal PMI is influenced by social diversity (for example, language difficulties and low education⁷⁹, which makes it difficult for them to navigate the formal legal system⁸⁰.

Formal litigation mechanisms (courts), both for suing employers in recipient countries and P3MI in Indonesia, have substantial procedural obstacles. This process requires troublesome evidentiary requirements, procedures are expensive and slow, and requires trained legal assistance.⁸¹ As a result, research shows that very few PMI cases brought to court end in clear success.⁸²

In contrast, the administrative and diplomatic mechanisms implemented by the Indonesian Embassy and BP2MI have proven to be more effective for quick dispute resolution and restoration of financial rights. Procedures through embassies, although often informal and ad hoc, are faster, cheaper and simpler.⁸³ This effectiveness is validated by data from the Indonesian Embassy in Riyadh, which handled a total of 1,757 PMI cases in 2020 and succeeded in repatriating 881 PMI, the majority from the Harapan Mandiri Shelter Home (Ruhama).⁸⁴ The following table shows empirical evidence of the success of diplomatic channels:

Table 2: Comparative Data on the Success of Restoring Financial Rights and Legal Assistance for the Indonesian Embassy (Saudi Arabia Case Study 2020)

Indicators of Success (Indonesian Embassy in Riyadh, 2020)	Amount/Value (Absolute Number)	Implications for Access to Informal Justice
Total Recovery of PMI's Financial Rights	SAR 6.2 Million (Rp. 22.8 Billion)	The effectiveness of diplomatic-administrative channels in recovering

76 Pemerintah RI (Republik Indonesia), *Undang-Undang Nomor 18 Tahun 2017 Tentang Pelindungan Pekerja Migran Indonesia*, (Jakarta: Lembaran Negara Republik Indonesia Tahun 2017 Nomor 242).

77 Kemenlu RI (Kementerian Luar Negeri Republik Indonesia), *Op cit.*

78 H. Widodo & R. J. Belgradoputra., *Pelindungan Pekerja Migran Indonesia*, *Binamulia Hukum*, Vol 8, No. 1 (2019): 107-116.

79 *Loc.cit.*

80 Republika, *Op.cit.*

81 Republika, *Op.cit.*

82 Republika, *Op.cit.*

83 Republika, *Upaya KBRI Riyadh selamatkan uang TKI Rp 22,8 miliar*, (2021, 29 Januari).

84 Republika, *Op cit.*

Indicators of Success (Indonesian Embassy in Riyadh, 2020)	Amount/Value (Absolute Number)	Implications for Access to Informal Justice
		unpaid salaries, diyat and insurance. Replaces the difficult formal litigation process ⁸⁵
Total Serious Criminal Cases / High Profile Cases (HPC) Accompanied	14 Cases	Mandatory legal protection for crucial cases (murder, witchcraft) that require special lawyers and diplomatic pressure ⁸⁶
Total PMI taking shelter in Ruhama (shelter)	660 PMI	Physical and logistical protection for Informal PMI who flee or face disputes, providing a safe space before repatriation ⁸⁷
Total Cases Handled (inside and outside Ruhama)	1.757 PMI	The sheer volume of problems indicates an urgent need for rapid and effective consular intervention ⁸⁸
Successful Repatriation Case	881 PMI	Success in ending the suffering of PMI through a fast/safe repatriation route ⁸⁹

When recipient countries' formal protection and formal social guarantees are not enough, non-state and community actors play a vital role. The Indonesian Migrant Workers Union (SBMI) and non-governmental organizations (NGOs) function to protect the rights of victims of exploitation and actively increase the participation of migrant workers in policy formation.⁹⁰

Furthermore, amidst the failure of formal social protection (such as insufficient JHT coverage which is still optional), PMI Perempuan often builds informal community-based social protection schemes with the principle of mutual cooperation.⁹¹ In this study, such schemes are not merely understood as practices of social solidarity, but are analyzed as a form of proto-institutionalization of social protection emerging from below (bottom-up social protection model).⁹² The existence of this network is a reflection of a fragmented justice ecosystem, where workers

85 Republika, *Op cit.*

86 Republika, *Op cit.*

87 Republika, *Op cit.*

88 Republika, *Op cit.*

89 Republika, *Op cit.*

90 U. Khasanah, N.K. Khanifa, & R.E. Rizkiana., Analisis Yuridis Undang-Undang Nomor 18 Tahun 2017 Terhadap Pelaksanaan Desmigratif, *Integralistik* 34, No. 1 (2023): 55-72; T. D. Y. Aresta & Migrant C.A.R.E., Serikat Pekerja Sebagai Episentrum Peningkatan Partisipasi Pekerja Migran Dalam Pembentukan Kebijakan, *Nasional Kebebasan Sipil* 8, No. 2 (2023): 11-29.

91 Koesrianti., An Overview of Indonesia's Protection on Women Migrant Workers, *Research Gate* (2016): 1-17; Heri Noviadana et al, Peran Serikat Buruh Migran Indonesia Dalam Melindungi Hak-hak Pekerja Migran Yang Menjadi Korban Eksploitasi Dan Diskriminasi, *Customary Law Journal* 2, No. 3 (2025): 88-106.

92 Heri Noviadana et al., Peran Serikat Buruh Migran Indonesia Dalam Melindungi Hak-hak Pekerja Migran Yang Menjadi Korban Eksploitasi Dan Diskriminasi, *Customary Law Journal* 2, No. 3 (2025): 88-106.

must create self-defense mechanisms due to the weakness of formal and diplomatic protection⁹³ These findings demonstrate a conceptual contribution, asserting that informal social protection is not merely a temporary response but rather an embryo of an alternative protection system with the potential to be integrated into state policy.

This research offers a new analytical framework in the form of the Three-Layer Model of Access to Justice for Informal Migrant Workers, which maps the dynamic relationship between the state, diplomacy, and the community as a mutually reinforcing protection ecosystem, rather than functioning in sectoral isolation.⁹⁴ Increasing access to justice requires integration and strengthening synergies between these three layers. The primary contribution of this research lies in the shift of perspective from a purely normative-legal approach toward an ecosystemic approach that recognizes the role of the community as a social legal actor in building cross-border substantive justice. It also an opening ideas and creation of the new shape and perspective of synchronized and harmonized domestic and bilateral laws, regulations, and agreements to be in accordance and eliminate culture gaps that hold up the justice and guarantee the safety of migrant workers despite of various countries characteristics.

D. CONCLUSION

Based on the foregoing discussion, it can be concluded that the alignment of the legal protection framework for informal migrant workers between Indonesia and Malaysia, Singapore, and Saudi Arabia remains a critical issue, particularly in assessing the effectiveness of state diplomacy and institutional mechanisms in ensuring substantive justice across jurisdictions. The findings indicate that Indonesia possesses a relatively strong *de jure* protection foundation through Law Number 18 of 2017; however, its *de facto* implementation continues to face structural challenges, including weak supervision of non-procedural placements, limited inter-agency coordination, and differences in legal systems in destination countries that restrict access to justice. Practices of normative exclusion, sectoral regulatory gaps, and remnants of sponsorship systems in receiving states demonstrate that legal protection does not operate equally in practice. Although diplomatic and institutional interventions have succeeded in restoring workers' rights in certain cases, these efforts remain reactive and have not yet been integrated into a sustainable preventive framework.

93 Endeh Suhartini et al., Preventing The Exploitation of Indonesia Migrant Workers by Illegal Companies, *Jurnal of Law Sciences (Legisci)* 3, No. 2 (2025): 192-207; D. A. Robalino, L. Rawlings, & I. Walker., *Conceptual Frameworks for Social Protection*, (Washington, D.C.: World Bank, 2012).

94 Yenni Fitria Khairani., Perlindungan Hukum Pekerja Migran Indonesia Di Malaysia Melalui One Channel System, *Ensiklopedia Education Review* 5, No. 3, (2023): 357-364; Republika, *Upaya KBRI Riyadh selamatkan uang TKI Rp 22,8 miliar*, (2021, 29 Januari); Pemerintah RI (Republik Indonesia), *Undang-Undang Nomor 18 Tahun 2017 Tentang Pelindungan Pekerja Migran Indonesia*, (Jakarta: Lembaran Negara Republik Indonesia Tahun 2017 Nomor 242)

The novelty of this research lies in the formulation of the Three-Layer Model of Access to Justice, which integrates state legal protection, diplomatic intervention, and community-based social networks as a unified protection ecosystem, while also introducing openness as a new normative principle—namely cross-border contract transparency, open complaint mechanisms, and public accountability of protection diplomacy as prerequisites for achieving substantive justice that is not merely reactive, but systemic and participatory.

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