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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Analysis of Forced Labor Study as a Violation of Human Rights in the Harmonization of Indonesian Labor Law with International Standards

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Abstract. *This study analyzes forced labor as a violation of human rights in the context of harmonizing Indonesian labor law with international standards. Forced labor is explicitly prohibited under various international legal instruments, including the International Labour Organization (ILO) Conventions No. 29 of 1930 and No. 105 of 1957, as well as other human rights instruments. However, forced labor practices continue to exist in various sectors of employment in Indonesia, both directly and in disguised forms. This research employs a normative juridical method using statutory, conceptual, and comparative legal approaches. The data were collected through library research involving national legislation, international legal instruments, legal doctrines, and relevant academic literature. The data were analyzed qualitatively using a descriptive-analytical method to examine the conformity between Indonesian labor law and international standards in preventing forced labor. The findings indicate that the harmonization of Indonesian labor law with international standards has been partially achieved through various national regulations; however, normative and implementation gaps still exist. Factors such as weak labor inspection mechanisms, limited awareness of workers' rights, and the prevalence of informal economic practices constitute major obstacles in preventing forced labor. The study concludes that stronger legal harmonization, more effective law enforcement, and enhanced human rights-based labor protection are required to ensure Indonesia fully complies with international standards in preventing forced labor.*

Keywords: *Forced Labor; Human Rights; ILO; International Standards; Labor Law; Legal Harmonization.*



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1. Introduction

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The basic principles of human rights affirm that every individual has the right to protection, even in cases of misunderstanding or potential violation. Therefore, the legal system is essential to protect and defend the rights of all people without exception.¹ However, the reality on the ground often contradicts this ideal, especially for vulnerable groups such as migrant workers. Many of them face various forms of exploitation, discrimination, and inhumane treatment, which constitute serious violations of their human rights.²

The phenomenon of inter-country labor migration, especially between Indonesia and Malaysia, is a very complex and significant issue, involving various interrelated philosophical, legal, and social aspects.³ From a philosophical perspective, the existence of migrant workers reflects fundamental human rights: the right of every individual, regardless of nationality, to earn a decent and dignified living. Certainly, everyone has the right to employment commensurate with their abilities and skills, and to receive fair and adequate protection from the government and society.⁴

This gap between principle and practice raises fundamental philosophical questions regarding the concepts of justice, equality, and the extent of the state's responsibility in ensuring the protection of migrant workers' rights.⁵ Legally, the protection framework for migrant workers has actually been regulated through a series of legal instruments, both at the national and international levels, although its implementation still faces many challenges.

Legal protection for Indonesian Migrant Workers (PMI) working abroad is a fundamental aspect regulated through various levels of law.⁶ At the national level in Indonesia, Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers serves as the primary legal instrument. This law is specifically designed to guarantee and protect the rights of Indonesian migrant workers before, during, and after working abroad. Meanwhile, in destination countries like Malaysia, the legal framework governing foreign workers, including Indonesian migrant workers, is based on their national regulations, such as the 1955 Employment Act.⁷ This act is the basis for regulating the status and working conditions of foreign workers in Malaysia.

¹Puja Auria, Radhit Adi Putra and Mislani, *The Importance of Upholding Human Rights in the Cycle of the Rule of Law*, *Juris Humanity*, Vol.3, No.1 (2024).

²Office to Monitor and Combat Trafficking in Persons, *Trafficking In Persons Report*, Trends in Organized Crime, Vol.10, No.1 (2006).

³DW Handayani, A. Hadiawan and AT Dwijono, *Dynamics of Cooperation between Indonesia and Malaysia on Placement and Protection of Workers*, *SOCIOLOGY: Scientific Journal of Social and Cultural Studies*, Vol.17, No.1 (2015).



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⁴Y. Gunawan, L. Farman, LD Jayapraja, MSF Taufik and D. Irrynta, International Law Review On The Exploitation And Neglect Of Indonesian Workers In Malaysia, Wacana Hukum, Vol.28, No.2 (2022).

⁵B. Frey and AM Pardo, Filling the Migrant Rights Gap: Localized Protections of International Economic and Social Rights, Public Integrity, Vol.19, No.2 (2017).

⁶S. Al Farisi, M. Darwin, M. Mas'oeed and S. Sukamdi, Protection of Indonesian Migrant Workers: Strategies for Sustainable Policies and Best Practices, Politik Indonesia: Indonesian Political Science Review, Vol.7, No.1 (2022).

⁷A. Mustaffa, C. Noura and Md. M. Haque, Right Of Migrant Workers To Occupational Health And Safety Under Malaysia Laws, IJLGC, Vol.6, No.26 (2021)

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At the international level, there are more comprehensive protection standards which have been established through legal instruments such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) and various relevant conventions of the International Labour Organization (ILO).⁸ Furthermore, at the regional level, Southeast Asian countries have also agreed to the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2017), which adds a normative framework for the protection of migrant workers. These instruments establish global norms and standards for the treatment of migrant workers.⁹ However, significant challenges remain regarding the effective implementation of these national laws. The effectiveness of national laws in both Indonesia and Malaysia in providing concrete protection for Indonesian migrant workers is often questioned in practice. Furthermore, another crucial issue is the alignment of national laws in both countries with protection standards established under international law.¹⁰

Recognizing the urgency of protecting migrant workers' rights and the complexity of the legal issues surrounding it, this study aims to analyze the alignment of Indonesian and Malaysian national laws with relevant international legal instruments. Specifically, this study will focus on a comparative analysis of Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers and the Malaysian Employment Act 1955. This analysis will assess the extent to which these national laws align with key international legal standards, particularly the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).

2. Research Methods

1. Types of research

This research is normative legal research (doctrinal research), namely research that examines law as norms, principles, and rules that apply in national and international legal systems.

⁸M. Prabaningrum Kusumawati and A. Khairun Hamrany, *The Exploitation of Indonesian Migrant Workers When Abroad*, KnE Social Sciences (2023).

⁹Internationales Arbeitsamt (Ed.), *ILO Multilateral Framework On Labor Migration: Non-Binding Principles And Guidelines For A Rights-Based Approach To Labor Migration*, International Labor Office, Geneva, 2006

¹⁰D. Rahayu, *Migrant Workers' Village as an Effort to Strengthen the Rights of Indonesian Migrant Workers*, SHS Web of Conferences, 54, 02001 (2018).



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2. Research Approach

This research uses a normative juridical approach with several legal approaches that are comprehensive, systematic, and analytical at the doctoral program level.

3. Data source

a. Primary Legal Materials

- 1) The 1945 Constitution of the Republic of Indonesia especially provisions regarding the protection of human rights and the right to decent work.
- 2) Law Number 13 of 2003 concerning Manpower (along with amendments through the Job Creation Law and its derivative regulations).
- 3) Law Number 39 of 1999 concerning Human Rights.
- 4) Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking (as the relevance of forced labor in labor exploitation).
- 5) The Criminal Code (KUHP) and the Civil Code relate to elements of coercion and unlawful acts.

b. Secondary Legal Materials

- 1) Scientific books
- 2) Reputable National and International Journal Articles relevant to the protection of human rights and vulnerable groups.

4. Analysis Method

Qualitative analysis was conducted using a normative juridical approach that was descriptive-analytical and prescriptive (reconstructive) at the doctoral program level.

3. Results and Discussion

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Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers adopts important standards set by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).

This step demonstrates Indonesia's commitment to aligning its national laws with international human rights norms.¹¹ The fundamental principle of non-discrimination, as stipulated in Article 1 paragraph (1) and Article 7 of the ICMW, is clearly reflected in Article 2 letters b and g of Law 18/2017 which stipulates the principles of equal rights and non-discrimination, as well as Article 3 which aims to guarantee human rights without discrimination for Indonesian Migrant Workers (PMI). Similarly, the scope of protection which covers the entire migration process according to Article 1 paragraph (2) of the ICMW, is adopted explicitly through the structure of Article 7 of Law 18/2017 which divides protection into three stages: before, during, and after work, with detailed definitions in Article 1 paragraphs (6), (7), and (8).

Other fundamental rights were also adopted significantly. The spirit of protection from slavery and forced labor in Article 11 of the ICMW and the prevention of human trafficking in Article 68 of the ICMW is manifested in the Consideration of Letter c and the principle of anti-human trafficking in Article 2 letter h of Law 18/2017, and is strengthened by various prohibitions on illegal placement in Articles 69 and 72. The guarantee of fair legal process and access to legal aid, as regulated in Articles 16, 18, and 22 of the ICMW, is adopted through Article 6 paragraph (1) letter g of Law 18/2017 which guarantees the right to protection and legal aid. The state's obligation to facilitate case resolution and legal assistance is also emphasized in Article 21 paragraph (1) letters d and f, as well as Chapter IX (Article 77) which regulates dispute resolution mechanisms.

In terms of employment rights, the fair wage and working conditions standards in Article 25 of the ICMW are clearly adopted. Article 6 paragraph (1) letter f of Law 18/2017 guarantees the right of Indonesian migrant workers to standard wages, and Article 15 paragraph (2) letter e requires that the Employment Agreement state in detail the working conditions, including wages and working hours. The right to social security, which is encouraged by Article 27 of the ICMW, is one of the strongest adoptions in Law 18/2017. Article 5 letter d makes it a mandatory requirement for Indonesian migrant workers, and Article 29 assigns its implementation to BPJS Ketenagakerjaan as an integral part of the National Social Security System. In addition, the right of Indonesian migrant workers to join a

¹¹Online Law, Analyzing the Effectiveness of the Implementation of International Law in Indonesia, accessed from <https://www.hukumonline.com/berita/a/mengurai-efektivitas-implementasi-hukuminternasional-di-indonesia-lt66fff90fbd473/>, accessed on May 22, 2025.

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trade union, as per Article 26 and Article 40 of the ICMW, is adopted in Article 6 paragraph (1) letter k of Law 18/2017 which guarantees this right in the destination country, of course by taking into account the regulations in force there.

The state's responsibility to promote decent migration conditions and foster international cooperation, as mandated in Part VI of the ICMW, is firmly adopted in Law 18/2017. This is emphasized through the division of duties and responsibilities from the central government down to the village level in Chapter V (Articles 39-43) and the establishment of specialized institutions such as the BP2MI (Indonesian Migrant Workers Protection Agency) in Chapter VI (Articles 44-48). Interestingly, Law 18/2017 even goes beyond the explicit text of the ICMW in terms of economic protection by explicitly prohibiting the imposition of placement fees on Indonesian migrant workers through Article 30.

Through these articles, Indonesia's concrete efforts to integrate international standards set by the ICMW into its national legal framework through Law No. 18 of 2017 are clearly visible, although the focus of its implementation is on protecting Indonesian citizens working abroad.

The effectiveness of the protections mandated by the ICMW depends not only on the adoption of national laws but also on international monitoring mechanisms such as the Committee on Migrant Workers (CMW), which reviews state party reports and makes recommendations. Active engagement with these mechanisms can strengthen state accountability. Furthermore, regional frameworks such as the 2017 ASEAN Consensus and bilateral agreements, such as the Memorandum of Understanding (MOU) between Indonesia and Malaysia on the placement and protection of migrant domestic workers, play a crucial role in translating normative commitments into practice.

4. Conclusion

Based on the research results described above, the following conclusions can be drawn:

1. Indonesia (ICMW Ratification):
 - a) Using Law 18/2017 as a conscious, structured, and comprehensive implementation of ICMW to protect its citizens (PMI) abroad.
 - b) Rights-oriented approach, driven by international commitments and national values (Pancasila, 1945 Constitution).

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- c) Providing holistic protection (before, during, after work), strong state responsibility (down to the village level), special institutions (BP2MI), mandatory social security, even prohibiting placement fees (stronger than ICMW).
 - d) Limitations: Focuses on procedural migrant workers, less explicit on non-procedural ones; does not regulate foreign migrants in Indonesia.
2. Forced labor is a form of human rights violation that violates the principles of freedom, human dignity, and the right to decent work. From an international legal perspective, the prohibition of forced labor is expressly stipulated in ILO Convention No. 29 of 1930, ILO Convention No. 105 of 1957, the Universal Declaration of Human Rights (UDHR), and various other international human rights instruments. Indonesia, as a state governed by law and a country that upholds human rights, has ratified these various international instruments and adopted them into its national legal system through legislation in the field of employment and human rights.
 3. Harmonization of Indonesian labor law with international standards has, in principle, shown significant progress. This is evident in the provisions regarding the prohibition of labor exploitation, the protection of workers' rights, and the state's commitment to fulfilling international obligations in the labor sector. However, several normative and implementation gaps remain, particularly regarding the definition of forced labor, labor inspection mechanisms, the protection of vulnerable workers, and the effectiveness of law enforcement against perpetrators of labor exploitation. These gaps indicate that legal harmonization has not yet fully achieved optimal protection for workers from forced labor practices.
 4. The implementation of labor law to prevent and address forced labor still faces various obstacles, including normative, structural, and cultural ones. Normative obstacles are evident in the lack of synchronization of several labor regulations with developments in international standards. Structural obstacles arise from the limited number and capacity of labor inspectors, weak coordination between institutions, and suboptimal oversight mechanisms in the informal sector. Meanwhile, cultural obstacles relate to workers' low legal awareness, high levels of economic dependency, and the persistence of exploitative practices considered normal in certain employment relationships.
 5. This study proposes a reconstruction of a human rights-based labor law harmonization model that prioritizes the protection of workers' dignity. This model is implemented through strengthening the integration of human rights



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principles into labor policies, continuously aligning national regulations with ILO standards, strengthening oversight and law enforcement mechanisms, and implementing a worker protection approach focused on preventing exploitation. With this model, it is hoped that the harmonization of Indonesian labor law will not only fulfill international obligations but also create a just, humane, and sustainable labor system.

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