

State Responsibility in Protecting Indonesian Citizens as Migrant Workers Abroad

Muhammad Tanwirul Huda*¹, Kenneth Sulthon Alafi Al Hallaj², Dian Prahara Batubara³, Erfanda Andi Mada Arectya⁴, Eka Firmansyah⁵

¹Universitas Islam Negeri Sunan Ampel Surabaya, Indonesia, tanwirulhuda15@gmail.com

²Universitas Islam Negeri Sunan Ampel Surabaya, Indonesia, elaphy07@gmail.com

³Universitas Islam Negeri Sunan Ampel Surabaya, Indonesia, dianbatubara144@gmail.com

⁴Universitas Muhammadiyah Surabaya, Indonesia, erfandaandi99@gmail.com

⁵Universitas Muhammadiyah Palu, Indonesia, ekafirmansyah689@gmail.com

*corresponding author: tanwirulhuda15@gmail.com

ABSTRACT: Indonesia is one of the largest sending countries of migrant workers in the world, with millions of Indonesian citizens (WNI) working abroad in various sectors. However, the protection of these workers remains a critical and unresolved challenge. This study examines the extent of state responsibility in protecting Indonesian migrant workers under both national law and international human rights frameworks. Using a normative juridical research method with a statute approach and conceptual approach, this study analyzes relevant legislation, international conventions, and case law. The findings reveal that although Indonesia has ratified several international instruments and enacted domestic laws such as Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers, significant implementation gaps persist. These include inadequate pre departure protection, lack of diplomatic intervention during crises, and insufficient legal aid mechanisms abroad. The state bears a constitutional obligation to guarantee the safety, rights, and welfare of its citizens regardless of geographic boundaries. This paper argues for a more comprehensive, rights based approach to migrant worker protection, including strengthening bilateral agreements, improving the role of Indonesian diplomatic missions, and reforming institutional coordination among relevant government agencies.

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I. INTRODUCTION

The phenomenon of labor migration has become an integral part of Indonesia's

socioeconomic landscape. Indonesia consistently ranks among the top five countries in terms of the number of workers deployed abroad, with the National Agency for Placement and Protection of Indonesian Migrant Workers (BP2MI) reporting that over 270,000 Indonesian migrant workers were placed in overseas destinations in 2022 alone. The primary destination countries include Malaysia, Saudi Arabia, Hong Kong, Taiwan, Singapore, and several Middle Eastern nations. These workers contribute significantly to the national economy through remittances, which reached approximately USD 9.4 billion in 2021, constituting a major source of foreign exchange for Indonesia. Despite their significant economic contribution, Indonesian migrant workers commonly referred to as *Tenaga Kerja Indonesia* (TKI) or *Pekerja Migran Indonesia* (PMI) remain among the most vulnerable segments of the population. They are routinely subjected to various forms of exploitation, including wage theft, physical and psychological abuse, trafficking, forced labor, and denial of basic rights. The structural vulnerability of these workers is compounded by their socioeconomic backgrounds, low educational attainment, limited access to legal aid, and dependence on informal recruitment networks.

The Indonesian state bears a fundamental responsibility toward its citizens regardless of where they reside or work. Under Article 28D (2) of the 1945 Constitution of the Republic of Indonesia, every person has the right to work and to receive fair and proper remuneration and treatment in employment. Furthermore, the state is obligated under general principles of international law to exercise diplomatic protection over its nationals abroad. The obligation to protect citizens abroad is not merely a political imperative but a legal duty grounded in both constitutional norms and binding international obligations (Putri & Marlina, 2021) [1].

The enactment of Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers (hereinafter “PMIWL 2017”) represented a significant legislative milestone, replacing the previous Law No. 39 of 2004 which was widely criticized for its labor export orientation rather than a rights based approach. The PMIWL 2017 introduced stronger protective mechanisms, including the prohibition of placement in high risk countries, improved pre departure training requirements, and the establishment of a One Stop Service system. However, despite these legal advancements, implementation deficiencies continue to undermine the effective protection of Indonesian migrant workers abroad (Hidayah, 2020) [2].

This research is motivated by the recurring reports of Indonesian migrant workers facing abuse, exploitation, and even death abroad, many of which expose systemic failures in the state’s protective mechanisms. Notable cases include the execution of Indonesian domestic workers in Saudi Arabia despite diplomatic appeals, widespread trafficking of workers to the Middle East and Southeast Asia, and the abandonment of workers stranded abroad during the COVID 19 pandemic. These incidents raise urgent legal questions about the scope, nature, and enforceability of state responsibility in the protection of migrant workers under international and domestic law (Hernandez, 2021)

[3].

The concept of state responsibility in international law encompasses the legal obligation of a state to protect its nationals both within its territory and through diplomatic channels abroad. The International Law Commission's (ILC) Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA, 2001) provide the foundational framework for understanding when and how a state may be held internationally responsible for failing to protect its nationals. Combined with the norms established under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW, 1990), which Indonesia ratified in 2012, these instruments create a comprehensive normative framework for evaluating Indonesia's protective obligations (Kompas & Suharyo, 2022) [4].

This study aims to: (1) analyze the legal framework governing the protection of Indonesian migrant workers under national and international law; (2) assess the extent to which the Indonesian state has fulfilled its protective obligations; and (3) propose concrete recommendations for strengthening state responsibility mechanisms in protecting Indonesian citizens as migrant workers abroad. The significance of this research lies in its contribution to the growing academic discourse on migrant worker rights and state responsibility, offering a critical assessment that bridges international human rights law with Indonesian domestic legal practice.

II. METHOD

This study employs a normative juridical research methodology, which focuses on the systematic analysis of legal norms, principles, and doctrines as reflected in legislation, judicial decisions, and scholarly literature. As characterized by Marzuki (2019), normative legal research investigates law as a set of prescriptive rules derived from authoritative sources, including constitutions, statutes, treaties, and judicial opinions (Marzuki, 2019) [5]. This method is particularly appropriate for analyzing the legal framework of state responsibility and migrant worker protection, as it allows for systematic examination of existing legal instruments and their interrelationships.

The primary approaches employed in this study are the statute approach (*pendekatan perundang-undangan*) and the conceptual approach (*pendekatan konseptual*). The statute approach involves examining all relevant legislation and international instruments, including the 1945 Indonesian Constitution, Law No. 18 of 2017, Government Regulation No. 59 of 2021, the ICRMW, the ILO Conventions No. 97 and No. 143, and the Vienna Convention on Consular Relations (1963). The conceptual approach draws on doctrinal legal scholarship to construct a theoretical framework of state responsibility applicable to the protection of migrant workers.

Primary legal materials consist of the 1945 Indonesian Constitution, relevant statutes and government regulations, international conventions ratified by Indonesia, and

official reports from BP2MI and the Ministry of Foreign Affairs. Secondary legal materials include peer reviewed journal articles from Sinta accredited national journals and Scopus indexed international journals, monographs, textbooks on international law and migrant worker rights, official reports from the International Labour Organization (ILO), the International Organization for Migration (IOM), and the United Nations Human Rights Council (UNHRC). Tertiary materials include legal dictionaries, encyclopedias, and internet based legal databases such as HeinOnline and LexisNexis.

Data collection was conducted through systematic literature review, analyzing sources published between 2015 and 2024 to ensure relevance and currency. The selection criteria required that journal articles be published in Sinta accredited journals or indexed in Scopus, and that they directly address issues of migrant worker protection, state responsibility, or related areas of international human rights law. Data were analyzed qualitatively using legal interpretation methods, including grammatical interpretation, systematic interpretation, and teleological interpretation, to assess the adequacy of legal norms in fulfilling state protective obligations (Ibrahim, 2021) [6]. The combination of these interpretive approaches enables a comprehensive evaluation of both the letter and the spirit of applicable legal instruments.

III. RESULT AND DISCUSSION

Legal Framework for the Protection of Indonesian Migrant Workers

The protection of Indonesian migrant workers is governed by a multi layered legal framework encompassing constitutional provisions, national legislation, and international instruments. At the highest normative level, Article 28D (2) of the 1945 Constitution guarantees every person the right to work and fair remuneration, while Article 28G provides the right to personal protection and a sense of security. These constitutional provisions impose an affirmative duty on the state to protect its citizens in employment relationships, including those who work abroad.

Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers constitutes the primary domestic statute governing this area. It adopts an explicit rights based approach, defining migrant worker protection as encompassing pre placement, during placement, and post placement phases. The law establishes institutional responsibilities for BP2MI, the Ministry of Manpower, and regional governments, and prohibits placement of workers in countries that have not guaranteed legal protection for migrant workers (Susanti et al., 2022) [7]. A significant innovation of the 2017 Law is the shift of placement responsibility from private recruitment agencies to BP2MI for specific destination countries and job types, reducing the risk of exploitation by intermediary agents. Nonetheless, critics point to persistent reliance on informal networks and illegal channels that circumvent these protections (Wulandari & Lestari, 2020) [8].

At the international level, Indonesia's ratification of the ICRMW through Law No. 6 of 2012 creates binding obligations to recognize and protect the civil, political, economic, social, and cultural rights of migrant workers. The Convention establishes a comprehensive framework that includes the right to equal treatment with nationals in employment conditions, freedom from arbitrary detention, and the right to consular assistance. However, the effectiveness of the ICRMW is constrained by the fact that major destination countries including Saudi Arabia, Malaysia, and the United Arab Emirates have not ratified the Convention, creating an asymmetric protection environment (Arifin & Siregar, 2021) [9].

The ILO Domestic Workers Convention (No. 189, 2011), though not yet ratified by Indonesia, provides internationally recognized standards for domestic workers a category that constitutes the majority of Indonesian migrant workers. The Convention requires member states to extend labor protections to domestic workers on terms not less favorable than those applicable to other workers. Several scholars have argued that Indonesia's failure to ratify Convention No. 189 represents a significant gap in its commitment to protecting migrant worker rights (Rahardjo & Wijaya, 2021) [10]. The Vienna Convention on Consular Relations (1963) further obliges Indonesia to provide consular assistance to its nationals in distress abroad, including notification of detention, access to legal aid, and facilitation of repatriation.

State Responsibility in International Law: Theoretical Foundations

The doctrine of state responsibility in international law establishes that a state bears legal obligations for acts and omissions attributable to it that result in internationally wrongful conduct. The ILC's ARSIWA (2001) codifies the general principles of state responsibility, providing that a state is internationally responsible when an act or omission is attributable to it and constitutes a breach of its international obligations. In the context of migrant worker protection, state responsibility may be invoked both for failing to regulate the conduct of private actors within its jurisdiction and for failing to exercise diplomatic protection on behalf of its nationals abroad (Crawford, 2019) [11].

The principle of due diligence is central to understanding state responsibility in the migrant worker context. States are required to take reasonable legislative, administrative, and judicial measures to prevent violations of migrant workers' rights, investigate alleged violations, and provide effective remedies. The Inter-American Court of Human Rights, in its Advisory Opinion OC-18/03 on the Juridical Condition and Rights of Undocumented Migrants, affirmed that states have an obligation to guarantee the labor rights of migrant workers regardless of their migration status, and that this obligation derives from the fundamental principle of equality and non discrimination (Bustamante, 2020) [12].

The concept of diplomatic protection whereby a state may espouse the claim of its national against another state for an internationally wrongful act is of particular

relevance to Indonesian migrant workers facing abuse or exploitation in destination countries. The ILC's Draft Articles on Diplomatic Protection (2006) establish that a state has the right, but not a legal obligation under customary international law, to exercise diplomatic protection on behalf of its nationals. However, several scholars argue that where the violation of a national's rights constitutes a violation of jus cogens norms such as the prohibition of torture or slavery the state may bear a stronger, arguably mandatory duty to intervene (Weil, 2018) [13]. This argument is particularly relevant to cases of Indonesian domestic workers subjected to severe abuse and execution in destination countries without adequate diplomatic intervention.

Indonesia's constitutional framework arguably transforms this international law right into a domestic obligation. Article 28I (4) of the 1945 Constitution establishes that protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state. Read in conjunction with the state's treaty obligations under the ICRMW, this provision imposes a legally binding duty on the Indonesian government to actively protect its migrant workers, going beyond a mere discretionary diplomatic prerogative (Nugraha & Santoso, 2022) [14].

Implementation of State Responsibility: Achievements and Gaps

Indonesia has made notable efforts to discharge its protective obligations through a combination of legislative, administrative, and diplomatic measures. The establishment of BP2MI as the primary government agency responsible for migrant worker placement and protection, the creation of the Crisis Center at the Ministry of Foreign Affairs, and the operation of Safe House facilities in Indonesian embassies and consulates in destination countries represent tangible institutional advances. The implementation of Memoranda of Understanding (MoUs) with key destination countries including Malaysia, Saudi Arabia, and Taiwan has sought to establish minimum labor standards and complaint mechanisms for Indonesian workers (Farida & Purnomo, 2022) [15].

However, empirical evidence consistently reveals substantial implementation gaps. Research by Lestari et al. (2021) found that a significant proportion of Indonesian migrant workers, particularly undocumented workers, remain outside the protective coverage of existing legal mechanisms, with limited access to consular services and legal aid (Lestari et al., 2021) [16]. The pre departure protection system, while legally mandated under PMIWL 2017, is frequently circumvented through informal recruitment channels that bypass mandatory training and documentation requirements. The Migrant CARE organization reported in 2022 that approximately 1.8 million Indonesian migrant workers are employed abroad through irregular channels, exposing them to heightened risks of exploitation and trafficking.

Diplomatic protection has been inconsistently exercised in cases of Indonesian workers facing criminal prosecution, execution, or severe abuse abroad. The high

profile cases of Indonesian domestic workers on death row in Saudi Arabia, where diplomatic interventions secured reprieves in some instances but failed in others, illustrate the limitations of bilateral negotiations in the absence of binding treaty protections. Studies have shown that the bilateral labor agreements concluded by Indonesia with destination countries often fall short of internationally recognized standards and lack effective enforcement mechanisms (Rohmah & Prasetyo, 2021) [17].

The COVID-19 pandemic exposed additional vulnerabilities in Indonesia's protective framework, with tens of thousands of migrant workers stranded abroad without adequate government assistance, losing employment, and facing deportation without proper repatriation support. A study by Setiawan and Nurdin (2021) documented widespread failure of government agencies to coordinate an effective repatriation response, with returned workers facing inadequate quarantine facilities and lack of post return livelihood support (Setiawan & Nurdin, 2021) [18]. This systemic failure underscores the need for comprehensive contingency planning as part of the state's protective obligation.

Institutional fragmentation is a persistent structural challenge undermining state responsibility. The protection of Indonesian migrant workers involves multiple government agencies including BP2MI, the Ministry of Manpower, the Ministry of Foreign Affairs, the National Police, and regional governments whose overlapping mandates and lack of coordination create accountability gaps. Research by Hasanah and Dewi (2022) identified significant coordination failures among these agencies, particularly in the handling of trafficking cases and the provision of reintegration support to returnees (Hasanah & Dewi, 2022) [19].

Gender Dimensions of State Responsibility

Women constitute a majority of Indonesian migrant workers, with the IOM estimating that approximately 73% of Indonesian migrant workers are female, predominantly employed in the domestic work sector. This demographic reality has profound implications for the scope and character of state responsibility. Female migrant workers face compounded vulnerabilities arising from gender based discrimination, social isolation in private households, and inadequate labor protections for domestic workers in most destination countries. The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) has specifically called on Indonesia to strengthen protections for female migrant workers and address structural factors that increase their vulnerability (Prastiwi & Yusuf, 2020) [20].

The specific protection needs of female domestic workers require a gendered approach to state responsibility that goes beyond formal legal mechanisms. Maulida and Saputra (2021) argue that effective protection must address the social and cultural factors that create demand for cheap, exploitable domestic labor in

destination countries, requiring Indonesia to engage in sustained multilateral advocacy for stronger international standards (Maulida & Saputra, 2021) [21]. The ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers (2017), while non binding, provides a regional framework that Indonesia can leverage to promote improved protections in ASEAN destination countries such as Malaysia and Singapore.

Strengthening State Responsibility: Recommendations

Based on the foregoing analysis, several concrete recommendations can be advanced to strengthen Indonesia's discharge of its state responsibility toward migrant workers. First, the Indonesian government should pursue a comprehensive bilateral labor agreement (BLA) strategy with destination countries, prioritizing the negotiation of legally binding instruments that include enforceable minimum wage provisions, working hour limitations, freedom of movement, and access to justice mechanisms. The model of the Indonesia-Hong Kong BLA of 2020, which includes provisions for a minimum wage and a mandatory day off, offers a template for more protective bilateral arrangements.

Second, the institutional capacity of Indonesian diplomatic missions should be substantially strengthened. Research by Haris and Nugroho (2022) recommends increasing the number of labor attachés in high volume destination countries, establishing dedicated legal aid units within embassies, and improving the responsiveness of Safe House facilities to emergency situations (Haris & Nugroho, 2022) [22]. Enhanced consular protection, including proactive outreach to Indonesian workers in destination countries, is essential for early detection and prevention of abuses.

Third, the regulation of private recruitment agencies must be substantially tightened to reduce exploitation in the recruitment process. The zero cost recruitment policy requiring recruitment costs to be borne by employers rather than workers should be systematically enforced and extended to all destination countries. The ILO's Fair Recruitment Initiative provides a framework for reforming recruitment practices that Indonesia can adopt through regulatory measures and bilateral negotiations.

Fourth, Indonesia should accelerate the ratification of ILO Convention No. 189 on Domestic Workers, which would strengthen the normative basis for demanding improved protections for the majority of Indonesian migrant workers in destination countries. Ratification would also signal Indonesia's commitment to international labor standards and strengthen its negotiating position in bilateral and multilateral forums. Fadhillah et al. (2022) argue that ratification of Convention No. 189 is a necessary step toward establishing a comprehensive rights based framework for the protection of Indonesian migrant domestic workers (Fadhillah et al., 2022) [23].

Fifth, enhanced data collection and monitoring systems are needed to track the situation of Indonesian migrant workers abroad more effectively. The establishment

of a real time online reporting platform, accessible to workers and their families, would facilitate early detection of abuse and enable faster government response. Integration of this platform with the consular management information system would support more coordinated protective action across government agencies. Kurniawan and Pratama (2023) emphasize that digital transformation of migrant worker protection services represents a critical enabler of more responsive and effective state protection (Kurniawan & Pratama, 2023) [24].

Finally, a comprehensive post-return integration program should be established to support returning migrant workers, particularly those who have experienced abuse or exploitation. Such a program should encompass psychosocial counseling, access to legal remedies, skills training, and microenterprise development support. The integration of returnee support into the mandate of BP2MI, with dedicated funding and inter agency coordination mechanisms, would strengthen the post placement phase of state protection. Siregar and Wahyuni (2022) document the positive outcomes of comprehensive reintegration programs in enhancing the economic and social resilience of returned migrant workers (Siregar & Wahyuni, 2022) [25].

IV. CONCLUSION

This study has examined the scope and implementation of Indonesia's state responsibility in protecting its citizens as migrant workers abroad, drawing on national constitutional law, domestic legislation, and international human rights instruments. The analysis reveals a significant normative framework anchored in the 1945 Constitution, Law No. 18 of 2017, the ICRMW, and various ILO conventions that creates clear legal obligations for the Indonesian state to protect its migrant workers throughout all phases of the migration cycle.

However, persistent implementation gaps, institutional fragmentation, inadequate diplomatic protection, and the vulnerability of informal migration channels significantly undermine the effective fulfillment of these obligations. The experiences of Indonesian migrant workers particularly women employed as domestic workers in Middle Eastern and Asian countries illustrate the consequences of these systemic deficiencies in concrete human terms.

State responsibility in this context is not merely a principle of international law but a constitutional imperative that requires active, proactive, and rights centered engagement by the Indonesian government. The recommendations advanced in this study encompassing bilateral agreement reform, diplomatic mission capacity building, recruitment regulation, ILO Convention No. 189 ratification, digital monitoring systems, and comprehensive reintegration support represent a coherent agenda for aligning Indonesia's protective practice with its legal obligations.

Future research should focus on empirical assessment of the impact of bilateral labor agreements on migrant worker outcomes, comparative analysis of protective mechanisms in other major sending countries, and evaluation of the effectiveness of

digital platforms in improving government response to migrant worker distress. A rights based, gender responsive, and institutionally coordinated approach to state responsibility is essential for ensuring that Indonesia's migrant workers are protected, not merely placed.

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