

Protection of The Constitutional Rights of Indonesian Migrant Workers Abroad Post-Placement In Destination Countries

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Abstract

This study describes the protection of constitutional rights of Indonesian migrant workers after being placed in destination countries. Migrant workers often face various challenges, including exploitation, discrimination, and violence. This research highlights the protection efforts undertaken by the Indonesian government and international organizations to ensure the fulfilment of migrant workers' rights in accordance with the constitution. The main focus is on policy implementation, bilateral agreements, and multilateral cooperation aimed at improving the conditions and protection of migrant workers. Research methods include policy analysis, case studies, and interviews with migrant workers and relevant stakeholders. Key findings include challenges in policy implementation, the need for improvements in the protection system, and the importance of advocacy and awareness of rights as part of long-term solutions. This study makes a significant contribution to understanding the protection of constitutional rights of Indonesian migrant workers abroad and offers policy recommendations to enhance their protection in the future.

Keywords: Protection; Constitutional Rights; Migrant Workers

INTRUDUCTION

Indonesian migrant workers face various challenges abroad, including exploitation, illegal employment, and lack of legal protection. The Indonesian government has established laws and agencies to protect these workers, such as the Indonesian Migrant Worker Placement Agency (Prabaningrum Kusumawati and Khairun Hamrany 2023). However, issues persist due to non-procedural work arrangements, inadequate regulations, and poor socialization of recruitment

processes (Juniansyah, Kontesa, and Amancik 2023). The legal protection for Indonesian migrant workers is crucial during pre-placement, placement, and post-placement periods, but implementation gaps and coordination issues hinder effective safeguarding (I Wayan Gde Wiryawan 2023). Additionally, female Indonesian migrant workers, often working as domestic servants, experience challenges balancing work abroad with their roles as mothers and wives, leading to deviant behavior in their children (Nurida and Hidayat 2023). Despite efforts by the government and agencies like BNP2TKI and BP3TKI, more comprehensive support and awareness are needed to address the vulnerabilities faced by Indonesian migrant workers abroad (Purnamasari, Isretno Israhendi, and Barthos 2023).

The protection of constitutional rights for migrant workers is crucial for ensuring their fair treatment and upholding fundamental human rights (Kirilenko, Alekseev, and Chaava 2022), (Arista, Emirzon, and Apriandi 2022), (Amin, Aziz, and Hamid 2019). Legal frameworks play a significant role in safeguarding the rights of migrant workers, especially in areas like labor migration where vulnerabilities are prevalent (Козін 2020). International agreements, such as the 2000 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, serve as essential tools in providing legal assurances and practices for protecting migrant workers' rights (Tseng, Tsai, and Tseng 2023). Ensuring equality of treatment and prohibiting slavery and forced labor are key principles that should guide the protection of migrant workers' rights, as highlighted in various constitutional provisions. By harmonizing migration legislation at different levels and integrating human rights frameworks, states can create a more secure and fair environment for migrant workers within their borders.

The number of Indonesian migrant workers varies across destination countries. Indonesian emigrants living in OECD and non-OECD economies have been increasing since the early 2000s, with diverse socio-demographic characteristics (Anaf et al. 2022). Lampung Province, for instance, sends many workers abroad, with Taiwan being a popular destination, followed by Hong Kong, Malaysia, Singapore, and Brunei Darussalam (No Title n.d.). Indonesia's significant diaspora, numbering about 8 million, reflects the country's high number of migrant workers residing abroad (Sutrisno and Prasetyo 2022). These workers face vulnerabilities to COVID-19 due to the migration process, prompting the implementation of protective measures by both Indonesia and destination countries (Bakker and Dananjaya 2022). The Indonesian government emphasizes legal protection for its workers abroad, highlighting the importance of international and national laws in safeguarding migrant workers (Darmastuti, Inayah, and Simbolon 2022).

Common types of work carried out by Indonesian migrant workers include domestic work, higher education experiences, and online business. Indonesian women migrant workers often engage in domestic work abroad to meet their families' economic needs (Nurida and Hidayat 2023), (Madrah, Suharko, and Sartika 2021).

Additionally, some Indonesian migrant workers in South Korea participate in higher education experiences, which introduce them to cultural intermediation and cosmopolitan processes (Ibnu et al. 2021). Moreover, Indonesian migrant workers in Hong Kong utilize online communication platforms like WhatsApp for financial management and even engage in online business activities (Irawaty 2022). These diverse forms of work reflect the multifaceted experiences and roles undertaken by Indonesian migrant workers across different countries and sectors.

Indonesian migrant workers face various challenges in destination countries, including physical and mental violence, unpaid wages, human trafficking, and discriminatory actions (No Title n.d.), (Wajid Fauzi, Roy Valiant Solomon, and Eko Prasajo 2023). Despite efforts by the Indonesian government to protect migrant workers, there are still persistent issues such as black markets, brokering practices, and institutional problems hindering policy implementation (Safitri and Wibisono 2023). Factors influencing migration include limited job opportunities, changes in agricultural systems, and competition for low-paid jobs, leading many women to migrate due to limited employment opportunities, poverty, and family responsibilities (Fikri 2022). Additionally, the shift from male to female migration is influenced by poverty, gender equality, and family responsibilities, highlighting the complex socio-economic factors driving Indonesian women to work abroad (Sudhiarsa 2023).

The analysis underscores the myriad challenges faced by Indonesian migrant workers abroad, ranging from exploitation to insufficient legal protection. Despite government efforts and the existence of protective agencies, issues persist due to procedural gaps and poor socialization of recruitment processes. Legal protection during various stages of migration is crucial, yet implementation gaps and coordination issues hinder effective safeguarding, especially for female workers balancing their roles as mothers and wives. Protecting constitutional rights is vital for ensuring fair treatment and upholding fundamental human rights, necessitating harmonization of migration legislation and integration of human rights frameworks. The diverse experiences of Indonesian migrant workers, including their engagement in domestic work, higher education experiences, and online business, underscore the multifaceted nature of their roles across different countries and sectors. Persistent challenges such as physical violence and human trafficking persist, influenced by factors like limited job opportunities and socio-economic disparities, driving the need for more comprehensive support and awareness to address vulnerabilities effectively. Based on the description above, the main problem in this research is the constitutional rights protection of Indonesian migrant workers after placement in the destination country.

METHODS

This research employs a qualitative approach to deeply understand the challenges and solutions related to the protection of constitutional rights for Indonesian migrant workers. This approach enables a comprehensive analysis of the legal, social, and policy aspects influencing migrant workers' protection. Data are obtained through literature studies encompassing articles, books, government policy documents, and reports from international institutions related to migrant workers' rights. Additionally, interviews with stakeholders such as migrant workers, government officials, civil society organizations, and legal experts can be conducted to gain deeper insights. Legal documents such as laws, government regulations, and international agreements pertaining to the protection of migrant workers' rights are analyzed thoroughly to understand the legal framework governing the issue. The collected data are systematically analyzed, considering the theoretical framework of law, public policy, and social aspects to explore patterns, trends, and implications of the research findings. The results of the analysis are used to formulate policy recommendations and relevant conclusions aimed at enhancing the protection of constitutional rights for Indonesian migrant workers.

RESULT AND DISCUSSION

Protection of the constitutional rights of Indonesian migrant workers abroad

Constitutional rights enjoyed by Indonesian migrant workers encompass legal protections, social support, and economic safeguards (No Title n.d.), (Matompo 2022). These rights are aimed at ensuring security from various forms of violence, both physical and psychological, throughout the migration process (Fikri 2022). The Indonesian government mandates that placement companies adhere to specific regulations and deposit funds to ensure the protection of migrant workers (I Wayan Gde Wiryawan 2023). However, challenges persist due to inadequate implementation of protection statutes and a lack of coordination among relevant parties (Safitri and Wibisono 2023). Despite efforts to uphold human rights principles and approaches in protecting migrant workers, there are still significant vulnerabilities and insecurities faced by them, necessitating further attention and action.

The protection of constitutional rights for Indonesian migrant workers abroad is crucial due to the vulnerabilities they face (I Wayan Gde Wiryawan 2023), (Perdana 2023), (Prabaningrum Kusumawati and Khairun Hamrany 2023), (Purnamasari, Isretno Israhendi, and Barthos 2023), (Matompo 2022), . Legal frameworks aim to safeguard their rights through pre-placement, placement, and post-placement periods, ensuring protection from exploitation, violence, and injustice. The government's role in providing tangible actions and written legislation is essential to prevent abuses and ensure fair treatment. Efforts include legal, social, and economic protections, such as guidance on understanding the legal systems of host countries and deposit requirements for placement companies. By upholding constitutional

rights, the state can guarantee the safety and well-being of Indonesian migrant workers, promoting equal rights, democracy, and social justice.

Indonesia faces challenges in protecting the rights of its migrant workers both domestically and abroad. While Indonesia has made efforts to safeguard its workers overseas (Fitria 2023), there are still vulnerabilities and insecurities faced by migrant workers, including human trafficking and unpaid wages (Safitri and Wibisono 2023). In contrast, destination countries like Malaysia and Hong Kong exhibit significant differences in addressing human rights violations against Indonesian migrant workers (Badruzzaman 2022). For instance, Indonesian workers in Malaysia often face human trafficking and physical abuse, while those in Hong Kong experience excessive working hours and physical violence (Fikri 2022). Additionally, Saudi Arabia, a major destination for Indonesian workers, provides legal protection through labor laws, but the handling process for migrant workers' legal protection remains weak (Setiawan and Karim 2022). Indonesia's efforts to protect migrant workers abroad need to be strengthened to ensure their rights are upheld effectively.

Legal and administrative problems in protecting the constitutional rights of Indonesian migrant workers stem from various factors. Challenges include ineffective policy implementation due to institutional issues and black market practices (Wajid Fauzi, Roy Valiant Solomon, and Eko Prasajo 2023). Insufficient coordination among relevant parties and incorrect implementation of protection statutes contribute to inadequate protection of migrant workers (I Wayan Gde Wiryawan 2023). Additionally, a lack of attention from the government towards migrant worker issues and inconsistencies in applying rules hinder the protection of workers' rights (Purnamasari, Isretno Israhendi, and Barthos 2023), (Musrin, Simatupang, and Anatami 2022). Furthermore, discrepancies in laws and regulations, limited job opportunities domestically, and weak law enforcement exacerbate the situation, highlighting the need for legal reforms to ensure proper protection for Indonesian migrant workers (No Title n.d.).

Cultural and social factors significantly influence the protection of constitutional rights of Indonesian migrant workers. The legal protection of these workers is crucial, especially in the context of increasing labor migration and challenges faced during the Covid-19 pandemic. Factors such as diverse prospective Indonesian Migrant Worker behavior, hierarchical integration between institutions, and socio-economic conditions during the pandemic play a pivotal role in policy implementation and protection efforts (Wajid Fauzi, Roy Valiant Solomon, and Eko Prasajo 2023). Additionally, the legal guarantees and practices for protecting the constitutional rights of Indonesian migrant workers abroad are considered advanced but still face inconsistencies in application, highlighting the importance of cultural and social factors in ensuring effective protection (Matompo 2022). Moreover, the

treatment of employers often contradicts the law, emphasizing the need for improved legal protection and enforcement mechanisms (No Title n.d.).

The protection of Indonesian migrant workers' rights in destination countries faces challenges due to a scarcity of resources (Wajid Fauzi, Roy Valiant Solomon, and Eko Prasajo 2023), (Fikri 2022), (Fitria 2023), (I Wayan Gde Wiryawan 2023). Issues such as human rights abuses, lack of coordination, and inadequate legal protection contribute to the vulnerability of these workers (Safitri and Wibisono 2023). While efforts have been made by the Indonesian government to implement policies and provide legal protection, there are still gaps in supervision, monitoring, and enforcement. The lack of optimal monitoring systems, coordination between stakeholders, and effective law enforcement exacerbates the difficulties faced by Indonesian migrant workers in destination countries. Addressing these resource scarcities through improved coordination, leadership, policy socialization, and legal enforcement is crucial to enhance the protection of Indonesian migrant workers' rights abroad.

The Indonesian government has implemented policies to protect the rights of migrant workers, as outlined in Law No. 18/2017 (Wajid Fauzi, Roy Valiant Solomon, and Eko Prasajo 2023). These policies aim to address challenges such as black markets, brokering practices, and institutional obstacles that hinder effective protection (Safitri and Wibisono 2023). Efforts have been made to provide legal, social, and economic protection for Indonesian Migrant Workers (PMI) before, during, and after their work abroad (Perdana 2023). However, there are still vulnerabilities faced by PMIs, including physical and mental violence, unpaid wages, and human trafficking (I Wayan Gde Wiryawan 2023). The government's protection statutes are sometimes not adequately enforced due to implementation issues and lack of coordination among relevant parties (Matompo 2022). Despite these challenges, recent legal protection initiatives have shown promise in reducing the number of PMIs facing capital punishment overseas.

International organizations play a crucial role in supporting the protection of the rights of Indonesian migrant workers. The International Labor Organization (ILO) has been actively involved in creating conventions such as Convention No. 188 to safeguard crew on fishing vessels from exploitation and injury (Gunawan and Syamsu 2023). Additionally, the International Organization of Migration and Interpol collaborate with the Indonesian government to ensure the protection of Indonesian migrant fishing vessel crews, especially on Taiwan-flagged ships (Bakker and Dananjaya 2022). Furthermore, the 2000 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families serves as a significant international human rights document addressing the rights of migrant workers, including those from Indonesia (Theddy et al. 2022). These international organizations provide legal frameworks, cooperation, and support to enhance the protection of Indonesian migrant workers both domestically and abroad.

Civil society initiatives play a crucial role in supporting migrant workers by providing practical assistance, legal advice, and challenging deportation policies (Sinatti 2023). These initiatives often involve a complex interplay between citizens and institutions in defining and contesting borders through everyday practices of migrant support (Dimitriadis and Ambrosini 2023). In response to the securitization of migration policies, civil society organizations have mobilized to offer both protest and direct social assistance to migrants, blurring the lines between contentious politics and humanitarianism (della Porta and Steinhilper 2022). Small states like Trinidad and Tobago have established response plans involving civil society to aid Venezuelan migrants, showcasing the importance of these organizations in global migration governance (Golesorkhi 2023). The evolution of support activities for migrant workers in different regions highlights the diverse approaches and challenges faced by civil society groups (Kim 2022).

One real case exemplifying the challenges and solutions in safeguarding the rights of Indonesian migrant workers involves the inadequate implementation of protection statutes and lack of coordination among relevant parties, leading to insufficient protection (Wajid Fauzi, Roy Valiant Solomon, and Eko Prasajo 2023). This case highlights the persistent issues faced by Indonesian Migrant Workers (PMI), such as vulnerability to exploitation, violence, and injustice (Safitri and Wibisono 2023), (I Wayan Gde Wiryawan 2023). Despite government efforts demonstrating human security principles, challenges like black markets, brokering practices, and institutional hindrances persist, hindering effective policy implementation (Perdana 2023), (Prabaningrum Kusumawati and Khairun Hamrany 2023). To address these challenges, interventions like high-level leadership coordination, completion of implementing rules, policy socialization, supervision, and enforcement of legal rules are recommended to enhance policy implementation and ensure the protection of PMI rights.

Governments and organizations have responded to cases of Indonesian migrant workers with varying degrees of effectiveness. The Indonesian government has made efforts to protect its migrant workers, demonstrating the practice of human security principles (Wajid Fauzi, Roy Valiant Solomon, and Eko Prasajo 2023). However, challenges persist, such as inadequate legal protection implementation and lack of coordination among relevant parties (Safitri and Wibisono 2023). The government has prioritized legal protection for victims of exploitation and rape, providing guidance and advocacy through institutions like BNP2TKI and BP3TKI (Purnamasari, Isretno Israhendi, and Barthos 2023). Additionally, the response includes efforts to reduce the vulnerability of migrant workers facing physical and psychological violence, discrimination, and injustice (I Wayan Gde Wiryawan 2023). To enhance policy implementation and address these challenges,

interventions like high-level leadership coordination, completion of implementing rules, and policy socialization have been suggested (Perdana 2023).

Constitutional rights for Indonesian migrant workers encompass legal protections, social support, and economic safeguards, aimed at ensuring security from various forms of violence throughout the migration process. While the Indonesian government mandates specific regulations for placement companies to protect workers, challenges persist due to inadequate implementation and coordination issues. Despite efforts to uphold human rights principles, vulnerabilities remain, necessitating further attention. The protection of constitutional rights is crucial due to the vulnerabilities faced, but challenges such as insufficient coordination and ineffective policy implementation persist. Cultural and social factors significantly influence protection efforts, with legal guarantees facing inconsistencies in application. In destination countries, challenges include human rights abuses and inadequate legal protection, exacerbated by resource scarcities. The government has implemented policies, but gaps in supervision and enforcement remain. International organizations and civil society play vital roles in supporting migrant workers' rights, providing legal frameworks and practical assistance. Real cases exemplify challenges in protection statutes' implementation, highlighting the need for enhanced policy coordination and enforcement. Despite government efforts, challenges persist, underscoring the importance of interventions like leadership coordination and policy socialization to ensure effective protection of migrant workers' rights.

Future Prospects for the Protection of the Constitutional Rights of Indonesian Migrant Workers

Challenges in enhancing the protection of constitutional rights for Indonesian migrant workers include issues such as black markets, brokering practices, institutional hindrances, and vulnerabilities like physical and mental violence, unpaid wages, and human trafficking (Wajid Fauzi, Roy Valiant Solomon, and Eko Prasajo 2023), (Safitri and Wibisono 2023). Despite efforts by the Indonesian government to protect migrant workers, there are still significant challenges that need to be addressed, including inconsistencies in applying rules and the vulnerability of legal protection, especially for undocumented workers (No Title n.d.), (Asmorojati et al. 2022). Additionally, the lack of attention from the government and the prioritization of legal protection for female workers who are victims of exploitation and violence abroad pose further challenges in safeguarding the rights of Indonesian migrant workers (Purnamasari, Isretno Israhendi, and Barthos 2023). Addressing these challenges requires comprehensive interventions such as leadership coordination, completing implementing rules, socialization, supervision, and enforcement of legal regulations.

Opportunities for improvement through international cooperation and domestic policies towards Indonesian migrant workers include addressing challenges

in protecting workers (Wajid Fauzi, Roy Valiant Solomon, and Eko Prasajo 2023). Stories by Indonesian domestic helpers can serve as means to assess and reform labor mobility (Moratilla 2023). Efforts to prevent HIV/AIDS transmission among returning migrant workers are crucial, highlighting the need for better information dissemination and cultural understanding (N. Hidayah et al. 2023). Indonesia's foreign policy decisions regarding sending workers to Malaysia are influenced by both domestic regulations and global human rights concerns (Nidatya, Muhammad Kamil Ghiffary Abdurrahman, and Dini Putri Saraswati 2023). Utilizing foreign workers in Indonesia for knowledge transfer can benefit national development and increase foreign investment (Flambonita, Emilda Kuspraningrum, and Suartini 2023). By enhancing leadership coordination, completing implementing rules, socializing policies, and enforcing legal regulations, improvements in protecting and supporting Indonesian migrant workers can be achieved.

The future vision for the protection of Indonesian migrant workers' rights involves addressing existing challenges in policy implementation and legal protection. To enhance protection, coordination among relevant parties, high-level leadership involvement, and strict enforcement of legal rules are crucial (I Wayan Gde Wiryawan 2023), (Wajid Fauzi, Roy Valiant Solomon, and Eko Prasajo 2023). Additionally, reinforcing legal protections during the Covid-19 pandemic is essential, ensuring optimal safeguards for Indonesian migrant workers (Matompo 2022), (Sugianto, Wijaya, and R. Artini 2022). The state must focus on comprehensive legal frameworks, including stringent permit requirements for labor placement companies and active engagement of sending companies to fulfill their roles effectively (N. P. Hidayah et al. 2022). By strengthening policy implementation, improving coordination, and enforcing legal regulations, the future vision aims to provide Indonesian migrant workers with enhanced legal protections and rights fulfillment. Improving the protection of constitutional rights for Indonesian migrant workers is crucial due to the challenges faced in effectively safeguarding their interests (Wajid Fauzi, Roy Valiant Solomon, and Eko Prasajo 2023), (Matompo 2022), (Safitri and Wibisono 2023).

The Indonesian government's efforts to protect these workers align with human security principles, yet numerous challenges persist (Musrin, Simatupang, and Anatami 2022). Legal protection measures, such as ensuring security from violence and arbitrary acts, are essential for safeguarding the rights of migrant workers (Perdana 2023). Additionally, the need for synchronized laws and regulations, increased legal awareness among workers, and stronger law enforcement are highlighted as critical areas for improvement. Enhancing policy implementation through interventions like leadership coordination, rule completion, socialization, and enforcement is vital to ensure the fulfillment of constitutional rights for Indonesian migrant workers.

Efforts towards protecting the constitutional rights of Indonesian migrant workers necessitate ongoing action and enhanced policies. Challenges persist despite existing governance policies (Wajid Fauzi, Roy Valiant Solomon, and Eko Prasjo 2023), with issues like exploitation, violence, and human trafficking affecting migrant workers (Safitri and Wibisono 2023). The state's role in safeguarding these workers is crucial, requiring tangible actions beyond legislation (Prabaningrum Kusumawati and Khairun Hamrany 2023). Legal protection measures encompass ensuring security from various forms of violence (Matompo 2022), with a focus on preventing injustices like the death penalty for workers facing threats overseas (Perdana 2023). To improve protection, interventions such as leadership coordination, rule completion, socialization, and enforcement are recommended. Continuous efforts are essential to address vulnerabilities and ensure the dignity and rights of Indonesian migrant workers are upheld effectively.

Challenges in enhancing the protection of constitutional rights for Indonesian migrant workers include issues such as black markets, brokering practices, institutional hindrances, and vulnerabilities like physical and mental violence, unpaid wages, and human trafficking. Despite efforts by the Indonesian government to protect migrant workers, there are still significant challenges that need to be addressed, including inconsistencies in applying rules and the vulnerability of legal protection, especially for undocumented workers. Additionally, the lack of attention from the government and the prioritization of legal protection for female workers who are victims of exploitation and violence abroad pose further challenges in safeguarding the rights of Indonesian migrant workers. Addressing these challenges requires comprehensive interventions such as leadership coordination, completing implementing rules, socialization, supervision, and enforcement of legal regulations. Opportunities for improvement through international cooperation and domestic policies towards Indonesian migrant workers include addressing challenges in protecting workers.

Efforts to prevent HIV/AIDS transmission among returning migrant workers are crucial, highlighting the need for better information dissemination and cultural understanding. The future vision for the protection of Indonesian migrant workers' rights involves addressing existing challenges in policy implementation and legal protection. To enhance protection, coordination among relevant parties, high-level leadership involvement, and strict enforcement of legal rules are crucial. By strengthening policy implementation, improving coordination, and enforcing legal regulations, the future vision aims to provide Indonesian migrant workers with enhanced legal protections and rights fulfillment. Challenges persist despite existing governance policies, with issues like exploitation, violence, and human trafficking affecting migrant workers. Continuous efforts are essential to address vulnerabilities and ensure the dignity and rights of Indonesian migrant workers are upheld effectively.

CONCLUSION

Constitutional rights are fundamental for Indonesian migrant workers, encompassing legal, social, and economic protections aimed at ensuring security from various forms of violence throughout the migration process. Despite government mandates and efforts to protect these rights, challenges persist due to inadequate implementation of protection statutes and lack of coordination among relevant parties. The vulnerabilities faced by migrant workers necessitate further attention and action to uphold their rights effectively. To address these challenges, interventions such as high-level leadership coordination, completion of implementing rules, policy socialization, supervision, and enforcement of legal rules are recommended. Strengthening policy implementation and addressing inconsistencies in applying rules are crucial steps towards enhancing the protection of Indonesian migrant workers' rights abroad.

International cooperation, civil society initiatives, and domestic policies play significant roles in supporting the protection of migrant workers' rights. By addressing challenges, seizing opportunities for improvement, and reinforcing legal protections, the future vision aims to provide Indonesian migrant workers with enhanced rights fulfilment and legal protections. In conclusion, continuous efforts are essential to improve the protection of constitutional rights for Indonesian migrant workers, ensuring their dignity and rights are upheld effectively in destination countries.

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