



The Neglect of Protection for Undocumented Migrant Workers within the Framework of Human Rights Law

Devi Rahayu^{1*}, Dina Imam Supaat², Mirna Yusuf³

¹ Faculty of Law, University of Trunojoyo Madura, Bangkalan, East Java, 69162, Indonesia

² Faculty of Syariah and Law, University Sains Islam Malaysia, Bandar Baru Nilai, 71800, Malaysia

³ Faculty of Social and Political Sciences, Universitas Gajah Mada, Sleman, DI Yogyakarta, 55281, Indonesia

* Corresponding author: rahayudevi78@yahoo.com

Article	Abstract
<p>Keywords: Neglect of Protection; Undocumented Migrant Workers; Human Rights.</p> <p>Article History Received: Jul 10, 2024; Reviewed: Jul 26, 2024; Accepted: Sep 11, 2024; Published: Sep 15, 2024.</p>	<p><i>The safeguarding of fundamental rights for undocumented migrant workers represents a critical challenge that necessitates immediate attention. This article addresses the oversight within the human rights discourse regarding the fundamental rights of undocumented migrant workers. Through empirical normative research, incorporating a comprehensive review of normative literature, this study critically examines the regulations affecting migrant workers through the lens of human rights. It identifies a significant correlation between the lack of protective guarantees for undocumented migrant workers and the various cases and consequences that ensue. From a human rights perspective, regulations prioritise equality before the law, protection, and anti-discrimination. This stance contrasts with existing laws that govern Indonesian migrant workers, wherein protection is exclusively extended to those legally recognised. Such exclusivity denies undocumented migrant workers the assurance of their fundamental rights. Arguably, the provision of basic rights and protections should be indiscriminately extended to all migrant workers, irrespective of their legal status. While the specifics of migrant worker placement can still be regulated concerning requirements, processes, involved parties, and responsibilities, these regulations must not infringe upon the fundamental human rights of individuals. Consequently, this paper advocates for a thorough evaluation of current legislation with respect to its content, the comprehension of involved stakeholders, and the practical implementation of regulations concerning the management of migrant workers.</i></p>



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INTRODUCTION

The lack of protection for the fundamental rights of undocumented migrant workers constitutes a critical issue that demands urgent academic and policy attention. These workers frequently become victims of fraudulent schemes orchestrated by both individuals and officials, a situation exacerbated by factors such as limited alternative employment, poverty, the relative ease of the undocumented migration process, and exploitative practices prevalent in border regions (Bloch, 2013). The Indonesian Migrant Worker Protection Agency (BP2MI) estimated that in 2023, approximately 4.5 million individuals engaged in undocumented migration (Ikhsanudin, 2023).

The absence of regulations concerning undocumented migrant workers represents a form of neglect in providing adequate protection. Protection neglect is multifaceted, emerging when parties are absolved of accountability for specific actions or hazards, such as healthcare provision, community life support, and employment assistance (Chuang, 2010). Wilkinson and Craig (2012) highlight this neglect in the context of employment support, specifically noting the lack of social and labour protections for informal workers (Al-Fatih et al., 2023). Furthermore, Wilkinson (2012) draws attention to the exploitation endemic in key industry sectors, exacerbated by the refusal to formally recognise domestic labour as deserving of worker protections due to its informal status. This perspective aligns with Noll's (2010) assertion that the absence of legal safeguards leaves workers vulnerable to exploitation and violence. Protection neglect is deeply intertwined with societal constructs such as gender, class, race, and nationality (Wilkinson, 2012). The fragility of regulatory frameworks and the ineffectiveness of law enforcement mechanisms significantly contribute to the oversight of rights that should be secured (Sharma & Lalit, 2020). Consequently, this neglect adversely impacts the overall well-being of undocumented migrant workers and their access to essential services.

Migrant workers migrate from one country to another in search of employment or improved living conditions (Zanfrini, 2022). Undocumented migrant workers, who lack official immigration documentation and recognised status as migrant workers, consequently fall outside the scope of governmental legal protection (Suyanto et al., 2020). The phenomenon of undocumented migration involves a wide array of complexities. The classification of individuals as undocumented is not solely determined by the absence of legal documentation but also by their origins and the methods through which they enter a host country. The undocumented status of these workers exposes them to numerous threats and vulnerabilities, including employment under conditions of minimal wages, substandard living conditions, vulnerability to extortion by law enforcement, and an increased risk of workplace accidents (Rustam et al., 2022).

The symbiotic relationship between human rights and the rule of law is crucial, with the latter ensuring the prioritisation and protection of human rights. The primary function of the law is to safeguard individuals as they pursue their various interests,

albeit with the understanding that each person must also consider the interests of others (Hutabarat et al., 2021). Human rights law is a complex domain encompassing many international and domestic legal frameworks (Huhta, 2023). Its primary objective is to address the disparities encountered in the pursuit of justice. Norms established within human rights law provide viable mechanisms for the enforcement of laws on a global scale (Fudge, 2014), underscoring the significance of human rights law in advocating for freedom and justice in accordance with the principles of humanity.

Within the framework of human rights law, different perspectives are employed to examine various forms of injustice. It is observed that certain legal systems fail to extend equitable rights to undocumented migrant workers (Hidayah et al., 2022). Nonetheless, the challenges faced by undocumented migrant workers are inherently linked to human rights, invoking the fundamental principle of human dignity as enshrined in the UN Charter, which obligates all nations. This obligation includes adherence to *jus cogens* norms within every international agreement, customary international law, and other international responsibilities to protect all migrant workers, regardless of their documentation status (Theddy et al., 2022). Despite this, the stark reality remains that most nations lack comprehensive legislation or regulations to protect migrant workers, particularly those who are undocumented (Kartono et al., 2022).

A scholarly investigation into the human rights implications for undocumented migrant workers—focusing on their experiences, the normative frameworks governing their rights, and the consequences of neglecting their protection—is essential for advocating and safeguarding these fundamental human rights. To date, scholarly examinations of undocumented migrant workers have primarily concentrated on their challenges and the protective measures undertaken by diplomatic representatives abroad. Within this discourse, three predominant perspectives emerge. Firstly, research has highlighted the exploitation and victimisation of migrant workers (Ajis et al., 2015; Noll, 2010; Putra & Runturambi, 2022). Secondly, studies addressing the protection of migrant workers often focus exclusively on those with legal status, thereby overlooking the normative foundations of human rights (Kumar & Choudhury, 2021). Thirdly, the literature identifies the repercussions of neglecting protection for undocumented migrants, including trafficking (Maksum, 2021) and deportation at international borders (Alunaza et al., 2022). This analysis reveals a significant gap in the human rights discourse surrounding undocumented migrant workers, with existing studies inadequately addressing the intersection of their lived experiences and the broader implications of such neglect.

This study aims to address the gaps in previous research that have overlooked the human rights perspective concerning undocumented migrant workers. By integrating a human rights viewpoint, the study offers unique insights into the fundamental rights of these workers. Understanding this perspective enables a normative analysis that seeks to mitigate the challenges faced by undocumented migrant workers.

Consequently, this research is guided by three pivotal questions. First, what incidents commonly affect undocumented migrant workers? Second, how are current legal frameworks structured, and what critical insights can a human rights lens offer to these workers? Third, what consequences arise from the disregard for the protection of undocumented migrant workers? Addressing these questions will provide profound insights, laying the groundwork for developing protective policies tailored to the needs of Indonesian migrant workers.

The central premise of this paper is that the predicaments faced by undocumented migrant workers stem from a lack of normative protections, which can be interpreted as state negligence from a human rights standpoint. The deployment of migrant workers has led to identifiable patterns and actors responsible for perpetuating undocumented migration activities (Machin & Shardlow, 2022). These entities commodify migrant workers, exploiting them for profit within the unlawful placement process. The absence of normative protections leaves undocumented migrant workers vulnerable to exploitation by organised groups. Three fundamental conditions contribute to this vulnerability: First, situations arise and threaten human dignity. Second, the fragility of migrant workers is underscored by their unequal access to protection. Third, there is a glaring omission by the state in ensuring the basic rights of migrant workers. A thorough understanding of these precarious conditions is crucial for the development of laws imbued with a human rights orientation. This paper seeks to examine the legal responses to the problem of non-procedural migrant workers and to provide recommendations to the government for ensuring the basic rights of migrant workers as they navigate cross-border job mobility.

METHOD

This study explores the experiences of migrant workers who migrate through unauthorised or irregular channels. The heightened risk of undocumented migrant workers becoming victims, combined with the restrictive nature of existing regulations that often objectify these workers, highlights the need for a paradigm shift. This research, therefore, adopts a perspective that recognises migrant workers as human subjects endowed with fundamental human rights, including those specific to their status as migrant workers. The study places particular emphasis on undocumented migrant workers, examining the challenges they face, the regulatory framework governing them, and the consequences of neglecting their protection. It draws on various case studies and their outcomes, informed by the narratives of key stakeholders. Additionally, a critical analysis of migrant worker regulations addresses the observed negligence in providing adequate protection (Nur et al., 2023).

The methodological approach of empirical normative research (Al-Fatih, 2023) is the most appropriate for investigating this oversight in protection. This methodology combines normative analysis, critically assessing current migrant worker regulations

through the lens of human rights law (Pelu et al., 2022). The aim is to propose regulations that are both inclusive and non-discriminatory towards undocumented migrant workers. Data for this research are sourced from secondary materials, including literature reviews and document analyses of regulatory studies. Primary data are collected empirically through field observations and interviews to gather firsthand information. By integrating normative analysis with fieldwork data, the study seeks to provide a comprehensive understanding of the issues surrounding the neglect of protection for undocumented migrants and to propose viable solutions.

This research includes an analysis of documents related to the Law on the Protection of Indonesian Migrant Workers (UU PPMI) and the Human Rights Law (UU HAM). Empirical data is obtained from interviews with migrant workers in Indonesia and Malaysia, labour departments, the Indonesian Migrant Worker Protection Agency (BP2MI), the Ministry of Foreign Affairs, the National Commission on Human Rights (Komnas HAM), Migrant CARE, migrant worker groups in Malaysia, the Indonesian Embassy in Kuala Lumpur, and Migrant CARE Malaysia. Conducting empirical studies in both the sending (pre-employment) and receiving (during employment) countries enables a comprehensive understanding of the experiences of migrant workers across these contexts. The normative analysis seeks to propose human rights-based alternatives for migrant worker regulations. Insights derived from fieldwork and literature will contribute to a contextual understanding that can guide the development of recommended norms. Primary data is gathered from interviews with various stakeholders, and the data is then qualified according to the phenomena, variables, and conditions identified (Suwarti et al., 2022).

Data was collected through a desk review, drawing on official reference sources such as legislation, books, publications, and research findings to compile relevant information. Systematic interviews were structured with clear and focused questions to obtain accurate and reliable information directly from primary sources. Interviews were conducted with all informants, including migrant workers, government representatives, and NGOs in Indonesia and Malaysia, ensuring the validity of the collected data. Information from brokers or agents involved in illegal deployment was also obtained through direct meetings and inquiries. The interview and literature data were then used to critically review cases, impacts, and norms. Data analysis employs a descriptive approach, categorising similar information and data into sub-aspects to facilitate interpretation. Following categorisation, qualitative analysis was applied to both primary and secondary data.

RESULTS AND DISCUSSION

All Indonesian citizens employed abroad are inherently entitled to equal protection from their national representatives stationed overseas. The significant interest of Indonesian workers in seeking employment abroad is primarily motivated

by the belief that such opportunities can alleviate the lack of domestic job prospects and provide a route out of poverty. However, the reality often contradicts these expectations, as many migrant workers face numerous challenges during their time abroad. Despite the existence of legal frameworks intended to protect these individuals, state institutions frequently fail to deliver adequate support to those in need, particularly undocumented migrants, who are at the heart of this neglect. The regulatory leniency towards migrant workers has significantly contributed to the increasing number of undocumented migrants. This study examines the nature, underlying causes, and consequences of the protection neglect experienced by undocumented migrant workers in foreign countries.

Increase in Cases Involving Undocumented Indonesian Migrant Workers

The number of complaints from Indonesian migrant workers increased between 2021 and 2023. In 2021, there were 1,700 complaints, followed by an unspecified number in 2022 and 1,999 complaints in 2023. In 2023, complaints from non-procedural migrant workers comprised 81% of the total, amounting to 1,618 cases. Additionally, from 2020 to 2024, 110,056 migrant workers were deported due to entering their destination country through non-procedural means. According to data provided by P4TKI (Indonesian Migrant Worker Placement and Protection Service Post) Pamekasan, between 2021 and 2023, 5,657 migrant workers were repatriated due to incomplete documentation.

Interviews were conducted with 20 Madurese migrant workers from Pamekasan and 22 from Sampang, most of whom had worked in Malaysia. The data reveal that these workers often entered Malaysia through brokers without proper procedures. Their work permits were typically arranged after arrival in Malaysia. Moreover, the most common issue they faced while working was unpaid wages. Below is a summary of some of the interview data:

Table 1. Cases Involving Indonesian Migrant Workers

Informant	Field of work	Interview Quote	Type
1	Domestic worker	“After arriving at the employer’s house, [the worker] was confined by the employer.” (All documents were confiscated by the employer)	Violence
2	Domestic worker	“Experienced violence from the employer, including being slapped and abused.”	Violence
3	Domestic worker	“Faced verbal abuse and acts of indecency while staying in a shelter located in the forest.”	Violence

4	Construction worker	“During employment, wages frequently went unpaid due to the foreman’s disappearance, and disputes over these unpaid wages with the superior led to [the worker] being reported and subsequently becoming a fugitive from the Malaysian police.”	Non-payment of wages
5	Construction worker	“Experienced unpaid wages because the foreman fled.”	Non-payment of wages
6	Domestic worker	“The wages paid were not as agreed upon, with deductions made under the pretext of covering departure costs.”	Non-payment of wages
7	Domestic worker	“Doing work that was not as agreed upon, which was hard without a raise like fellow domestic workers. The Indonesian migrant worker stayed for 2.5 years, and due to no change in conditions, the worker eventually fled.”	Exploitation of working hours
8	Domestic worker	“There was no written employment contract, work did not match the agreement, and working hours were unlimited as per the employer’s orders.”	Exploitation of working hours
9	Domestic worker	“The absence of an employment contract and clear working hours, thus having to comply with the employer’s orders.”	Exploitation of working hours

Source: Data compiled by authors, 2024

The neglect of protection for undocumented migrants has led to widespread incidents affecting Indonesian migrant workers, primarily manifesting in violence, non-payment of wages, and exploitation of working hours. The violence endured by these workers spans verbal abuse, physical assault, sexual harassment, and psychological trauma. Verbal abuse often begins in shelters and continues at the employer’s premises, perpetrated by both shelter authorities and employers, who may dehumanise migrant workers by comparing them to animals. Physical assault includes actions such as slapping and other forms of mistreatment, while sexual harassment involves indecent acts committed by shelter supervisors. Psychological trauma, resulting from verbal, physical, and sexual abuse, profoundly affects victims,

manifesting as a significant psychological consequence. The primary victims of such violence are those employed in the domestic sector.

Unpaid wages are categorised into delayed payments, payments less than the agreed amount, and complete non-payment. This issue is particularly prevalent among construction workers, often due to foremen absconding. Domestic workers frequently receive less than the agreed payment and face unjust wage deductions. Labour exploitation is evident in excessive working hours, discrepancies between agreed-upon conditions and actual work, stagnant wages despite increased workloads, and the absence of formal employment contracts. As a result, migrant workers often work beyond the standard eight-hour shift, with ambiguous schedules and being on call at all hours, subject to their employer’s demands. These exploitative practices are common reasons for migrant workers to escape their employment situations. Collectively, these issues underscore the diverse challenges faced by Indonesian migrant workers abroad and highlight the urgent need for enhanced protection measures.

Table 2. Legal Basis of Protection Arrangement

Legislation	Content	Description
1945 Constitution	The Preamble of the 1945 Constitution of the Republic of Indonesia (UUD RI 1945), paragraph IV, mandates the protection of the entire Indonesian nation, the promotion of general welfare, the advancement of national education, and participation in maintaining global order.	The protection provided by the state extends to workers, particularly those who are vulnerable to exploitation and victimisation by employers. This vulnerability stems from the inherent imbalance in the labor-employer relationship, which necessitates protective measures for workers, including Indonesian migrant workers. Additionally, the state engages in foreign relations with various countries to fulfil these constitutional obligations.
	Article 27, paragraph 2	Basic rights for every citizen to obtain employment and a decent

	<p>Every citizen has the right to work and a decent living for humanity</p>	<p>living both domestically and abroad</p>
	<p>Article 28D, paragraph 1 Everyone has the right to legal recognition and assurance</p>	<p>The fundamental right of every citizen to legal guarantees, explicitly addressing undocumented migrants</p>
<p>Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers</p>	<p>Article 1, paragraph 1: An Indonesian migrant worker candidate is any Indonesian labour force that meets the requirements of a job seeker who will work abroad and is registered with the district/city government agency responsible for labour.</p>	<p>It defines Indonesian migrant worker candidates, limited to those who meet the requirements and are registered with an agency. In this context, undocumented migrant workers are not included in this rule.</p>
	<p>Article 33: The central and regional governments provide legal protection for Indonesian migrant workers by the provisions of legislation, the laws of the destination country, as well as international laws and customs.</p>	<p>It defines the scope of protection provided by the government to migrant workers according to the legislation. In this context, undocumented migrant workers are not included.</p>
	<p>Article 68: Everyone is prohibited from placing Indonesian migrant workers in a manner that does not meet the requirements referred to in Article 5, letters b to e.</p>	<p>It defines restrictions for individuals to place migrant workers by the law. This provision does not recognise undocumented migrant workers who depart through individuals/brokers.</p>
	<p>Article 3, paragraph 3:</p>	<p>The provision broadly regulates the guarantee of</p>

	<p>The protection of Indonesian migrant workers aims to:</p> <p>a. guarantee the fulfilment and enforcement of human rights as citizens and Indonesian migrant workers; and</p> <p>b. ensure legal, economic, and social protection for Indonesian migrant workers and their families</p>	<p>rights as citizens and the assurance of protection.</p> <p>This provision conflicts with Article 1, paragraph 1.</p>
<p>Law No. 39 of 1999 on Human Rights</p>	<p>Article 3, paragraph 2: Everyone has the right to recognition, guarantee, protection, and fair legal treatment, as well as legal certainty and equal treatment before the law.</p>	<p>The recognition and guarantee of protection and treatment before the law.</p> <p>This construction conflicts with UU PPMI, which applies only to legal migrant workers.</p>
	<p>Article 3, paragraph 3: Everyone has the right to human rights protection and fundamental human freedoms without discrimination.</p>	<p>It defines the right to protection and the absence of discrimination. This conflicts with the differential regulations and treatment between legal and undocumented migrant workers.</p>

Source: Data compiled by authors, 2024

The 1945 Constitution of Indonesia enshrines the fundamental rights of its citizens, including the right to employment, which extends beyond mere access to jobs, emphasising the necessity of securing humane employment that adheres to established norms of decency. The Constitution asserts that “every citizen has the right,” obligating the state to protect these rights effectively. Employment is recognised as a transnational right, applicable both within Indonesia and abroad, and these rights are intrinsically linked to citizenship. This protection must equally apply to citizens working overseas as migrant workers, regardless of their documented or undocumented status.

A fundamental aspect of citizen rights is the right to legal recognition and assurance, necessitating equal legal treatment under laws such as the Indonesian

Migrant Worker Protection Law. This law stipulates that Indonesian migrant workers are eligible for protection if they meet the requirements and are registered with an authorised agency, as outlined in Articles 5 and 13 of the law. Registration through the employment information system at the local government level signifies official recognition. Article 68 of the same law further stipulates that the placement of migrant workers must comply with legal requirements; any placement that does not meet these criteria is prohibited. Only private companies are authorised to facilitate such placements. Additionally, Article 33 delineates the scope of protection available, implicitly limiting the protection afforded to undocumented Indonesian migrant workers. These provisions collectively establish the legal framework restricting the protection available to undocumented Indonesian migrant workers.

Undocumented migrant workers are categorised into two groups: non-procedural undocumented workers and those who are victims of human trafficking. Non-procedural workers are individuals who do not fulfil the administrative requirements outlined in the Indonesian Migrant Worker Protection Law, while trafficking victims may include both those who have and have not followed procedural protocols. Article 3, paragraph 3 of this law presents a paradox by mandating protections that ensure the human rights of both citizens and migrant workers, encompassing legal, economic, and social aspects. This suggests that protection based on human rights is an intrinsic entitlement for all migrant workers, irrespective of their legal status.

This principle is further reinforced by the Human Rights Law, which guarantees recognition, protection, and equal treatment before the law (Article 3, paragraph 2), alongside the right to non-discriminatory protection (Article 3, paragraph 3). These provisions establish the foundation for equitable treatment of all citizens under the law, emphasising protection free from discrimination. However, this highlights a discrepancy between the Human Rights Law and the Indonesian Migrant Worker Protection Law, particularly in their differing regulations concerning legal and undocumented migrant workers. While the Human Rights Law acts as a basis and standard for fulfilling migrant workers’ rights, stressing the importance of non-discrimination, the Indonesian Migrant Worker Protection Law has yet to fully integrate these human rights principles into its regulations. This has resulted in a divergence in the protection of migrant workers based on their legal status.

Regulations governing the requirements and procedures for migrant worker placement are essential for streamlining the process and ensuring proper oversight. However, the promise of protection must extend universally to all Indonesian migrant workers, regardless of their documentation status.

Table 3. Problems Faced by Undocumented Migrant Workers

Informant	Interview Quote	Type
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Informant 1	“Currently, Indonesia is facing an emergency regarding the placement of undocumented Indonesian migrant workers. There are 720 cases with the police, 255 cases with the prosecution, and 42 cases have been sentenced.”	
Informant 2	“There’s a difference in perception regarding the handling of trafficking cases in Malaysia. The Malaysian government distinguishes cases involving Indonesian migrant workers into immigration, breach of contract, and trafficking. So, even if a migrant worker is a victim of trafficking but lacks documentation, they will be charged with immigration offences, and if a migrant worker is not paid, it’s considered a breach of contract. Due to this perception, many cases categorised by the Indonesian Embassy as trafficking are not recognised as such by Malaysia.”	Human trafficking
Informant 1	“It’s estimated that 4.5 million Indonesian migrant worker placements were made illegally, of which 1.3 million are destined for Malaysia. From 2019–2023, there were 102,945 Indonesian migrant workers deported and repatriated, mostly from Malaysia.”	Deportation
Informant 3	“Malaysia deports PMIs working without a work permit. Previously, the government covered the cost with the foreign ministry’s budget. Due to budget constraints, now if a PMI is legal, the cost is borne by the company; if illegal, by their family members.”	
Informant 4 (domestic worker)	“Fled from the employer because there was no wage increase, then was falsely accused by the employer of stealing money. On the other hand, the Indonesian migrant worker’s employer also reported to the immigration authorities, and the worker was blacklisted from Malaysia.”	Entry ban
Informant 5 (Malaysian NGO)	“Indonesian migrant workers deported from Malaysia will be blacklisted from re-entering for two years. However, Indonesian migrant workers find ways around this, usually re-entering Malaysia after 3 or 6 months using fake identities, all arranged by brokers.”	

Source: Data compiled by authors, 2024

Indonesia is facing a critical issue regarding the placement of undocumented migrant workers due to insufficient legal frameworks. Currently, there are 720 cases

filed with the police, 255 cases under prosecution, and 42 cases leading to convictions. Malaysia, a key destination for these workers, predominantly sees placements carried out in a non-procedural manner, which significantly heightens the risk of human trafficking. The Indonesian Embassy in Malaysia is handling 23 human trafficking cases (informant 1). A significant disparity exists between the Indonesian and Malaysian governments in their perceptions of human trafficking. Malaysian authorities do not recognise unpaid wages and restricted freedom of movement as indicators of trafficking, resulting in their refusal to enforce the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2022 (ATIPSOM 2022) due to insufficient evidence. This approach leads to the criminalisation of victims for immigration violations under the immigration act rather than acknowledging their exploitation. This fundamental difference in perspective causes discrepancies between the trafficking statistics recorded by Indonesia and Malaysia, underscoring the challenges in safeguarding the rights and safety of migrant workers.

Regarding migrant workers in Malaysia, the authority lies with the Ministry of Home Affairs, which regulates the recruitment of migrant workers and considers employer applications, as well as the Ministry of Human Resources, which is responsible for the employment of migrant workers in Malaysia. There are 3 (three) regulations governing migrant workers. Firstly, the Employment Act 1955 (sect. 2) defines migrant workers as non-citizen workers and migrant workers who are legally employed in Malaysia under the Employment Act 1955. This provision only regulates migrant workers in general and does not differentiate between them regarding expertise. Secondly, the Immigration Act 1959/63 regulates the work pass issued by Malaysian Immigration, which allows migrant workers to work for a set period of 2 (two) years. In section 6 (1)(C) regarding the rules of entry into Malaysia, anyone who enters and stays in Malaysia without a permit and legal papers is guilty of an offence. Thirdly, the 1994 Malaysian Development Institute of Industrial Development (CIDB) Deed qualifies workers into skilled workers, unskilled workers, and semi-skilled workers. The Deed stipulates that foreign workers who are not skilled must undergo a training and examination process to obtain a skilled certificate (Abdul Rahim et al., 2019).

Deportation is enforced on migrant workers who enter a country without the necessary documentation, such as passports and work permits, which are essential for legal employment. The lack of these documents violates Malaysian immigration laws, leading to the arrest and subsequent imprisonment of violators for three months, followed by forced repatriation coordinated with the local Indonesian Embassy. Between 2019 and 2023, a total of 102,945 Indonesian migrant workers were deported and repatriated, with the majority being from Malaysia. The substantial financial burden of deportation, initially shouldered by the government, has since been transferred to employers and the undocumented workers themselves. Additionally, deportation is imposed on migrant workers found guilty of criminal activities, such as

theft from their employers. Escaping from employers and the resulting reports can also serve as grounds for deportation. Once deported, these workers face a two-year ban from re-entering Malaysia. However, it is common for many to return before the ban expires, often using false identities and engaging in illegal processes. The rise in such cases, along with the adverse experiences of migrant workers and gaps in the legal framework, highlights the inadequacy of the current laws in protecting undocumented migrant workers.

An analysis of the neglect of undocumented migrant workers can be approached by examining the legal substance, legal structure, and legal culture, as proposed by Lawrence M. Friedman (Karunia, 2022). According to Friedman, these three indicators serve as benchmarks for assessing law enforcement. First, regarding legal substance, the provisions of the Indonesian Migrant Worker Protection Law fail to address the status of undocumented migrant workers. As a result, only formally processed migrant workers are guaranteed protection under this law. Although non-procedural migration exposes workers to significant risks, 81% of the 1,999 recorded cases involve non-procedural migrant workers. The lack of specific provisions governing undocumented workers means that the rights guaranteed to migrant workers under the relevant law cannot be extended to them. Instead, undocumented migrant workers are only afforded protection as citizens when they encounter issues abroad, rather than being recognised and protected based on labour regulations. In labour-related issues, intervention is generally predicated on a valid work permit and a signed work agreement, which forms the basis of an employment relationship. When undocumented workers face problems and wish to return to Indonesia, the cost of repatriation falls on them.

In contrast, documented migrant workers receive assistance with repatriation costs from their placement companies once their issues are resolved. While Indonesian state representatives may provide assistance in resolving these problems, undocumented workers often refrain from reporting due to fear of being questioned about their documentation by immigration authorities. Consequently, their rights as workers are neglected, overshadowed by concerns over their legal status. Second, the legal structure refers to the institutions responsible for enforcing the law, particularly those involved in labour law enforcement. The government has tried to simplify the documentation process for migrant workers by establishing one-stop service centres. This initiative was in response to the preference among migrant workers for quicker and simpler placement processes. Although law enforcement officers in border areas have adhered to established procedures, undocumented workers still manage to cross borders under the guise of visiting or travelling. This points to gaps in the legal structure that allow undocumented migration to persist.

Finally, legal culture encompasses the values and attitudes that influence how the law operates, often referred to as legal consciousness or public legal awareness. A strong legal culture is reflected in high levels of public compliance with the law. In the

context of migrant workers, the high number of undocumented workers and frequent deportations indicate that many prioritise swift departure and immediate employment over compliance with legal procedures. This lack of legal awareness among prospective migrant workers perpetuates the issue of undocumented migration. Additionally, migration has become a deeply ingrained practice in some regions passed down through generations. For example, the Madurese community has a long history of migrating to Malaysia, often entering the country on visitor passports and only applying for work permits after securing employment. This was highlighted in focus group discussions with Madurese construction workers.

Undocumented Migrant Workers within the Framework of Human Rights Law

This research highlights the inadequacy of protection for undocumented Indonesian migrant workers, revealing complex perceptions surrounding this issue. The findings are presented through three key points. First, the failure to adequately safeguard migrant workers has led to an increase in incidents involving undocumented workers, including violence, wage discrepancies, and exploitation (Luo et al., 2023). Second, this deficiency stems from regulatory frameworks that do not comprehensively cover the rights of all migrant workers. The Indonesian Migrant Worker Protection Law, while offering protections for legally migrating workers, stands in contrast to the Human Rights Law by excluding undocumented workers from similar protections. Third, this protection gap exacerbates issues such as human trafficking, deportation, and the imposition of entry bans on Indonesian migrant workers. Collectively, these findings underscore the urgent need to address the protection deficit for undocumented migrant workers within the framework of human rights law.

The neglect of undocumented migrant workers results from a dichotomous approach to rights and protection, where legal and undocumented workers receive unequal treatment. The absence of legislative measures ensuring equality of rights lays the groundwork for the challenges faced by migrant workers (Rogozhina, 2020). The ongoing regulatory distinctions in rights allocation signify a persistent state of neglect, amounting to a violation of citizens' rights (Negrón-Gonzales, 2023). This neglect is rooted in a positivist perspective that overlooks individuals' intrinsic humanity and fundamental rights. Migrant workers are still often viewed as commodities, a perspective that benefits both origin and destination countries through the illegal placement process (Guidi & Berti, 2023).

Moreover, the disregard for the protection of undocumented migrant workers reveals two critical insights. First, it demonstrates that existing laws have failed to align with the core principles and norms of human rights. The rise in undocumented migrants and related cases is inseparable from the ineffective enforcement of regulations governing worker mobility abroad. Second, protecting undocumented migrant workers is essential to human rights (Siagian et al., 2023). The state is

responsible for providing employment and assures job-related protection indiscriminately (Rahayu et al. 2020). The non-discriminatory provision of rights and protections for both legal and undocumented migrant workers constitutes a basic human right.

Prior research on migrant worker protection has primarily focused on those employed through legal channels, with studies on undocumented migrant workers often limited to the consular responsibilities of Indonesian embassies abroad in safeguarding their nationals (Alunaza et al. 2022; Riyanto et al. 2023). The study by Alunaza et al. (2022) explores the management of cases involving undocumented workers through multi-track diplomacy between the Indonesian and Malaysian governments and non-governmental organizations (NGOs) operating in border regions. Similarly, Riyanto et al. (2023) examine the protective measures enacted by the state, including the establishment of temporary shelters for migrant workers entangled in legal difficulties. Both studies highlight the diplomatic and institutional dimensions of migrant worker protection. However, this study diverges by focusing on the role of legislative frameworks, specifically the Indonesian Migrant Worker Protection Law and the Human Rights Law, in shaping these protections.

The failure to adequately protect undocumented migrant workers underscores the need for a comprehensive action plan that thoroughly evaluates the Indonesian Migrant Worker Protection Law. This evaluation must consider the law's substance, the understanding of its provisions by relevant parties, and the enforcement of its stipulations (Vakhoneva et al., 2023). Although norms have been established to protect migrant workers, they often prove ineffective against real-world challenges, such as violence, unpaid wages, and exploitation. The limitations on recognition and protection starkly contrast with the fundamental rights of migrant workers as outlined in human rights principles. Therefore, a clear distinction must be drawn between ensuring equitable treatment for migrant workers and the bureaucratic procedures that govern their placement.

CONCLUSION

This study highlights the neglect of protection for undocumented migrant workers, which leads to severe consequences such as violence, unpaid wages, exploitation, and broader complications like human trafficking, deportation, and entry bans from foreign nations. Notably, the Indonesian Migrant Worker Protection Law offers protection exclusively to legal migrant workers, a practice that discriminates against undocumented workers and constitutes a breach of human rights. Emphasising a human rights perspective is crucial, as it is fundamental to the realisation of citizens' rights, ensuring equal legal treatment and protection without discrimination in a constitutional state. Adopting a human rights framework in this analysis has enabled a critical examination of the deficiencies in protecting undocumented migrant workers.

This paper argues for the necessity of evaluating existing regulations related to migrant workers, emphasising that such regulations should inherently align with human rights principles. It advocates for extending basic rights and protections to all migrant workers, regardless of their legal status, while acknowledging that regulations regarding the placement of migrant workers can still be differentiated based on conditions, processes, involved parties, and responsibilities. However, this research is limited by its focus on a human rights perspective, specifically examining the neglect of protection for migrant workers through the lens of the Indonesian Migrant Worker Protection Law and Human Rights Law. This narrow focus restricts the scope of data, as it overlooks the broader policy context and the practical implementation of policies to protect migrant workers. Consequently, further research is necessary to explore the lived experiences of migrant workers as victims of human trafficking and to critically assess anti-trafficking legislation, with the goal of producing a more comprehensive and in-depth study.

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REFERENCES

- Abdul Rahim, R., Mohd Zuki, M. A. N., Ab Rahim, M. R., Junaidi, A. A., & Abdul Mumin, M. S. (2019). Mobiliti Pekerja Migran Tidak Mahir ke Malaysia: Implikasi Sosial dan Perundangan Negara. *Jurnal Undang-Undang Dan Masyarakat*, 25, 81–98. <https://doi.org/10.17576/juum-2019-25-10>
- Ajis, M. N., Askandar, K., & Awang, S. (2015). International migration and human trafficking in Malaysia: A study on illegal immigrants. *Asian Social Science*, 11(25), 124–134. <https://doi.org/10.5539/ass.v11n25p124>
- Al-Fatih, S. (2023). *Perkembangan Metode Penelitian Hukum di Indonesia - Sholabuddin Al-Fatih - Google Buku* (1st ed., Vol. 1). UMM Press. https://books.google.co.id/books/about/Perkembangan_Metode_Penelitian_Hukum_di.html?id=EOBiEAAAQBAJ&redir_esc=y
- Al-Fatih, S., Nur, A. I., & Nilasari, N. (2023). Workers Layoffs Caused from the COVID-19 Pandemic in Indonesia and the European Union. *Jurnal Kajian Pembaruan Hukum*, 3(1), 1–26. <https://doi.org/10.19184/JKPH.V3I1.33378>
- Alunaza, H., Cantika, S., Anggara, D. M., Umniyah, A., Anindya, K., Putri, S., & Manurung, G. N. (2022). Analisis Diplomasi Indonesia-Malaysia Dalam Menangani Praktek Penyelundupan Pekerja Ilegal Di Perbatasan Aruk Kalimantan Barat. *Journal of International Relations (JoS)*, 1(1), 1–19.
- Bloch, A. (2013). The labour market experiences and strategies of young undocumented migrants. *Work, Employment and Society*. <https://doi.org/10.1177/0950017012460313>
- Chuang, J. A. (2010). Achieving Accountability for Migrant Domestic Worker Abuse. *North Carolina Law Review*.

- Fudge, J. (2014). Making claims for migrant workers: human rights and citizenship. *Citizenship Studies*, 18(1), 29–45. <https://doi.org/10.1080/13621025.2014.865894>
- Guidi, C. F., & Berti, F. (2023). Labor exploitation in the Italian agricultural sector: the case of vulnerable migrants in Tuscany. *Frontiers in Sociology*, 8(October), 1–11. <https://doi.org/10.3389/fsoc.2023.1234873>
- Hidayah, N. P., Komariah, K., Esfandiari, F., & Jaelani, A. K. (2022). Legal Protection of Indonesian Migrant Workers Affected by Covid-19. *Jurnal Cita Hukum*. <https://doi.org/10.15408/jch.v10i1.24156>
- Huhta, K. (2023). Conceptualising Energy Justice in the Context of Human Rights Law. *Nordic Journal of Human Rights*, 41(4), 378–392. <https://doi.org/10.1080/18918131.2023.2210443>
- Hutabarat, D. T. H., Fransisca, Z., Ritonga, F., Pardede, D. J., Almas, S., Sikumbang, N. A., Mutiara, Khoiriyah, A., Hamizah, S., Malahayati, & Suryadi. (2021). Understanding and Describing Relationship of State Law and Human Right. *Journal Of Humanities, Social Sciences And Business (JHSSB)*, 1(1), 65–72. <https://doi.org/10.55047/jhssb.v1i1.63>
- Ikhsanudin, A. (2023). BP2MI Ungkap Beda Data dengan World Bank soal WNI Kerja di Luar Negeri. *Detik.Com*.
- Kartono, K., Kunarti, S., Hartini, S., Supriyanto, S., & Sintha Dewi, D. A. (2022). Legal protection of migrant workers and their families: before, during, and after working. *Borobudur Law Review*. <https://doi.org/10.31603/burrev.6871>
- Karunia, A. A. (2022). Penegakan Hukum Tindak Pidana Korupsi Di Indonesia Dalam Perspektif Teori Lawrence M. Friedman. *Jurnal Hukum Dan Pembangunan Ekonomi*, 10(1), 115.
- Kumar, S., & Choudhury, S. (2021). Migrant workers and human rights: A critical study on India's COVID-19 lockdown policy. *Social Sciences and Humanities Open*, 3(1), 100130. <https://doi.org/10.1016/j.ssaho.2021.100130>
- Luo, S., Gadd, D., & Broad, R. (2023). The criminalisation and exploitation of irregular Chinese migrant workers in the United Kingdom. *European Journal of Criminology*, 20(3), 1016–1036. <https://doi.org/10.1177/14773708221132889>
- Machin, H. E., & Shardlow, S. M. (2022). The Construction of Character in Social Work Narratives of Practice with Undocumented Migrants. *The British Journal of Social Work*, 52(8), 5045–5065. <https://doi.org/10.1093/bjsw/bcac105>
- Maksum, A. (2021). Indonesian post-migrant workers: A challenging problem for human security. *Social Sciences and Humanities Open*, 4(1), 100223. <https://doi.org/10.1016/j.ssaho.2021.100223>
- Negrón-Gonzales, G. (2023). Educating the “illegal”: Life and learning as both undocumented student and undocumented migrant worker. *Latino Studies*, 21(2), 188–210. <https://doi.org/10.1057/s41276-022-00406-y>
- Noll, G. (2010). Why human rights fail to protect undocumented migrants. *European Journal of Migration and Law*. <https://doi.org/10.1163/157181610X496894>
- Nur, M., Asmorojati, A. W., Megawati, Zuliyah, S., & Isdiyanto, I. Y. (2023). A comparative assessment of digital platform worker protection in the EU and ASEAN. *Legality: Jurnal Ilmiah Hukum*, 31(2), 367–391. <https://doi.org/10.22219/LJIH.V31I2.29823>
- Pelu, I. E. A. S., Asfia, H., Tarantang, J., & Supriadi, A. (2022). Sex Recession Phenomenon from the Perspective Maqashid Sharia Based on Objectives

- Marriage Law in Indonesia. *Al-Istinbath: Jurnal Hukum Islam*, 7(1), 39. <https://doi.org/10.29240/jhi.v7i1.4204>
- Putra, I. K. O. D., & Runturambi, A. J. S. (2022). Pelaku Penyelundupan Yang Terorganisir Menjadi Faktor Penentu Dalam Praktik Keluar / Masuknya Pekerja Migran Indonesia Secara Ilegal. *Jurnal Ilmiah Indonesia*, 7(3), 1282–1290.
- Rahayu Devi, Ningwahyu Susilaningtyas, N. N. (2020). Menakar Peran dan Tantangan Pemerintah Daerah Dalam Perlindungan Hukum Pada Pekerja Migran Indonesia. *Rechtidee*, 15(2), 245–272.
- Riyanto Benny, Martuti nana, Hidayah Isti, F. Y. (2023). Pendampingan Hukum bagi Tenaga Migran Indonesia di Tempat Singgah Sementara KJRI Johor Bahru. *Jurnal Purubita*, 5(2), 1–7.
- Rogozhina, N. (2020). Intra-Regional Migration of Labor Resources in Southeast Asia. *World Economy and International Relations*, 64(3), 111–119. <https://doi.org/10.20542/0131-2227-2020-64-3-111-119>
- Rustam, I., Sabilla, K. R., Rizki, K., & Estriani, H. N. (2022). Kejahatan Lintas Negara Perdagangan Orang: Studi Kasus Pekerja Migran Asal Nusa Tenggara Barat. *Indonesian Perspective*, 7(1), 102–107. <https://doi.org/10.14710/ip.v7i1.48597>
- Sharma, M., & Lalit, M. (2020). Social Protection of Women Migrants amidst COVID-19: Can Social Protection contribute to Social Inclusion. *International Journal of Legal Science and Innovation*.
- Siagian, P., Tahir, M., & Damayanti, A. (2023). *Jurisprudentie Criminological Phenomenon of Illegal Placement of Indonesian Migrant Workers in Sanggau Regency*. 10(1), 1–11. <https://doi.org/10.24252/jurisprudentie>
- Suwarti, Khunmay, D., & Abannokovya, S. (2022). Conflicts Occurring Due to the Application of Different Legal Inheritance Systems in Indonesia. *Legality: Jurnal Ilmiah Hukum*, 30(2), 214–227. <https://doi.org/10.22219/ljih.v30i2.21020>
- Suyanto, B., Sugihartati, R., Sutinah, & Hidayat, M. (2020). Bargaining the Future: a Descriptive Study of the Lives of the Indonesian Illegal Migrant Workers. *Journal of International Migration and Integration*, 21(1), 185–204. <https://doi.org/10.1007/s12134-019-00710-y>
- Theddy, Sirait, N. N., Agusmidah, & Rosmalinda. (2022). Legal Protection of International Labor Organization (ILO) and Indonesia Towards Indonesia Illegal Migrant Workers. *Proceedings of the Second International Conference on Public Policy, Social Computing and Development (ICOPOSDEV 2021)*, 642(Icopolosdev 2021), 159–164. <https://doi.org/10.2991/assehr.k.220204.026>
- Vakhoneva, T. M., Mykolayets, D. A., Hryshyna, Y. M., Yurovska, V. V., & Dyachenko, O. A. (2023). Legal challenges to the protection of labor rights of refugees in the digital age. *Legality: Jurnal Ilmiah Hukum*, 31(2), 245–265. <https://doi.org/10.22219/ljih.v31i2.26576>
- Wilkinson, M. (2012). Out of sight, out of mind: The exploitation of migrant workers in 21st-century Britain. *Journal of Poverty and Social Justice*. <https://doi.org/10.1332/175982712X626734>
- Wilkinson, M., & Craig, G. (2012). Wilful negligence: Migration policy, migrants' work and the absence of social protection in the UK. In *Migration and Welfare in the new Europe: Social Protection and the Challenges of Integration*. <https://doi.org/10.56687/9781847429377-014>
- Zanfrini, L. (2022). From slaves to key workers? How the Covid-19 pandemic

questions the sustainability of the Italian model of migrants' integration. *Rassegna Italiana Di Sociologia*. <https://doi.org/10.1423/103329>