

KORESPONDENSI

Judul : Analysis Of Illegal Indonesian Migrant Workers Protection Based On Law Number 18 Of 2017 Concerning Indonesian Migrant Workers

Jurnsal : Russian Law Journal

Reputasi : Terindek Scopus Q2

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Submission of an original research article to Russian Law Journal (RLJ)

I Wayan Gde Wiryawan <iwayangdewirayawan@gmail.com>

To: editor@russianlawjournal.org

Sun, Jan 15, 2023 at 7:34 AM

Dear Editor-in-Chief,

My name is **I Wayan Gde Wiryawan** as the corresponding author for this article

We would like to submit the enclosed manuscript entitled **“ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NUMBER 18 OF 2017 CONCERNING INDONESIAN MIGRANT WORKERS”**, which we wish to be considered for publication in **“Russian Law Journal (RLJ)”**.

No conflict of interest exists in the submission of this manuscript, and manuscript is approved by all authors for publication. We would like to declare on behalf of my co-authors that the work described was original research that has not been published previously, and not under consideration for publication elsewhere, in whole or in part. All the authors listed have approved the manuscript that is enclosed.

Indonesian Migrant Workers or Pekerja Migran Indonesia (PMI), is any Indonesian citizen who is eligible to work abroad in an employment relationship for a certain period of time by receiving wages. The placement of PMI abroad organized by PMI Service Companies must comply with the terms and procedures specified in the laws and regulations. After the conditions and procedures have been met, a work agreement is drawn up concerning the legal protection of PMI's rights. With a work agreement, PMI who works abroad will receive legal protection during pre-placement, placement period and post-placement. This study examines the arrangement of work agreements and the placement of PMI abroad, as well as the legal protection available to PMI abroad. The research methods used are the statutory approach and the conceptual approach as a support for the statutory approach. The source of writing legal materials is obtained from literature with types of legal materials in the form of primary legal materials and secondary legal materials. According to the study's findings, there are two primary reasons why migrant workers are not adequately protected: first, the government's protection statute is not being implemented correctly, and second, there is a lack of coordination among the relevant parties. I hope this paper is suitable for **“Russian Law Journal (RLJ)”**

Thank You very much

We are looking forward to your kindly response soon.

Faculty of Law, Mahasaraswati University, Denpasar, Indonesia.

Email : **I Wayan Gde Wiryawan** <iwayangdewirayawan@gmail.com>

 **I Wayan Gde Wiryawan_RLJ - ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NUMBER 18 OF 2017 CONCERNING INDONESIAN MIGRANT WORKERS_(Eng).docx** 59K



I Wayan Gde Wiryawan <iwayangdewirayawan@gmail.com>

**Paper Submission #548 : ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NUMBER 18 OF 2017 CONCERNING INDONESIAN
MIGRANT WORKERS**

Russian Law Journal (RLJ) <editor@russianlawjournal.org>
To : iwayangdewirayawan@gmail.com

Mon, Jan 16, 2023 at 10:01 AM

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Your paper has been successfully submitted. Please note your 'Paper Submission #' and quote it in all correspondence ---in the email subject line---with this Journal email: editor@russianlawjournal.org, Allow 2 to 4 weeks for the review process to be completed. You will be notified via email.

The Editor**ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NUMBER 18 OF 2017 CONCERNING INDONESIAN MIGRANT WORKERS****I Wayan Gde Wiryawan**¹Faculty of Law, Mahasaraswati University, Denpasar, Indonesia**Lead Author:** I Wayan Gde Wiryawan**Enter your email:** iwayangdewirayawan@gmail.com**Your Country:** Indonesia**Title of Your paper :** ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NUMBER 18 OF 2017 CONCERNING INDONESIAN MIGRANT WORKERS

Original Contribution : Indonesian Migrant Workers or Pekerja Migran Indonesia (PMI), is any Indonesian citizen who is eligible to work abroad in an employment relationship for a certain period of time by receiving wages. The placement of PMI abroad organized by PMI Service Companies must comply with the terms and procedures specified in the laws and regulations. After the conditions and procedures have been met, a work agreement is drawn up concerning the legal protection of PMI's rights. With a work agreement, PMI who works abroad will receive legal protection during pre-placement, placement period and post-placement. This study examines the arrangement of work agreements and the placement of PMI abroad, as well as the legal protection available to PMI abroad. The research methods used are the statutory approach and the conceptual approach as a support for the statutory approach. The source of writing legal materials is obtained from literature with types of legal materials in the form of primary legal materials and secondary legal materials. According to the study's findings, there are two primary reasons why migrant workers are not adequately protected: first, the government's protection statute is not being implemented correctly, and second, there is a lack of coordination among the relevant parties.

Suggested Reviewer : editor@russianlawjournal.org**Ethical Clearance:** no

Ethical Clearance details: The ethical clearance is not issued as both authors are experts on this field and would like to share their study based on their experience. The authors guarantee and commit that there is no conflict of interest appears on this study. both of them agree to publish it on this journal.

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I Wayan Gde Wiryawan <iwayangdewirayawan@gmail.com>

**Paper Submission #548 : ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NUMBER 18 OF 2017 CONCERNING INDONESIAN
MIGRANT WORKERS**

Russian Law Journal (RLJ) <editor@russianlawjournal.org>
To : iwayangdewirayawan@gmail.com

Tue, Jan 31, 2023 at 10:15 AM

Dear Respected Author,

It's my great pleasure to inform you that your paper encoded "**#548**" has been reviewed by our selected reviewers and editors and will be accepted for publishing in **ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NUMBER 18 OF 2017 CONCERNING INDONESIAN MIGRANT WORKERS** after moderate revision. The following attachments are sent with regards to you. Kindly revise the manuscript according to reviewer's comments, edited article and specially from Authors Instruction standpoint and submit the revised manuscript within a week.

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ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NUMBER 18 OF 2017 CONCERNING INDONESIAN MIGRANT WORKERS

Abstract-- Indonesian Migrant Workers or *Pekerja Migran Indonesia* (PMI), is any Indonesian citizen who is eligible to work abroad in an employment relationship for a certain period of time by receiving wages. The placement of PMI abroad organized by PMI Service Companies must comply with the terms and procedures specified in the laws and regulations. After the conditions and procedures have been met, a work agreement is drawn up concerning the legal protection of PMI's rights. With a work agreement, PMI who works abroad will receive legal protection during pre-placement, placement period and post-placement. This study examines the arrangement of work agreements and the placement of PMI abroad, as well as the legal protection available to PMI abroad. The research methods used are the statutory approach and the conceptual approach as a support for the statutory approach. The source of writing legal materials is obtained from literature with types of legal materials in the form of primary legal materials and secondary legal materials. According to the study's findings, there are two primary reasons why migrant workers are not adequately protected: first, the government's protection statute is not being implemented correctly, and second, there is a lack of coordination among the relevant parties.

Keywords— *Indonesian Migrant Workers, Legal Protection, Work Agreement, Workers Right*

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INTRODUCTION

The issue of unemployment is one of the most fundamental challenges that the people of Indonesia will need to overcome on their journey toward becoming an independent nation. The fact that these issues are occurring is evidence that the labor market in Indonesia is not able to keep up with the rapid increase in the number of people looking for employment (Sudja'i & Mardikaningsih, 2021). Consequently, unemployment becomes one of the major issues inside the national problem circle known as poverty (Prasetyoningrum & Sukmawati, 2018). During the period of globalization, some Indonesian citizens (WNI) migrate overseas for a variety of reasons. The Indonesian Migrant Workers or known as *Pekerja Migran Indonesia* (PMI), Indonesian professionals, students, businesses, and religious affairs are all examples of Indonesian residents living overseas. When compared to Indonesian employees, Indonesian residents who work outside of Indonesia have a higher tendency to not create as many difficulties in the countries in which they find themselves employed. This is because people come from different socioeconomic and educational backgrounds. On the one hand, Indonesian labor migration has the potential to make a significant contribution to the country's economic growth, but there are a number of issues that must be addressed. An rising number of Indonesians, especially in the wake of the country's recent economic crisis, are looking for work outside of Indonesia, contributing to the country's labor shortage (Anas et al., 2022).

Protecting the whole nation and all of Indonesia's blood vessels is a top priority for the Government of the Republic of Indonesia, and the Representative of the Republic of Indonesia abroad, which is why the

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The paper highlights two primary reasons why migrant workers may not receive adequate protection: the improper implementation of government protection statutes and a lack of coordination among relevant parties. This suggests that there may be room for improvement in the current system to better protect the rights and well-being of PMI who work abroad.

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problem of Indonesian labor overseas is so vital (Nurhadi, 2021). Technical protection, in this case can be in the form of providing shelters and repatriation along with handling travel documents like problematic Indonesian workers abroad, the Embassy of the Republic of Indonesia abroad also provides political protection efforts which is an instrument that is no less important because without the basis of bilateral agreements, the space for protection of the Representative of the Republic of Indonesia against citizens its state is limited only to the 1963 Vienna Convention on Consular Relations, which is limited by the sovereignty and authority of the receiving state.

Because of the crucial role that work plays in human existence, it is essential that everyone have decent jobs (Brock, 2014). A person's job provides him or her with the means to provide for himself and his family. It may also be seen as a way to improve one's sense of self-worth, making one's life more meaningful to oneself, one's loved ones, and one's community. Hence, the right to work is an inherent human right that must be protected and promoted (Mapp et al., 2019).

The 1945 Constitution of the Republic of Indonesia emphasizes the relevance and meaning of employment for everyone. Article 27 paragraph 2 indicates that every person of Indonesia has the right to work and a good standard of living. In fact, the limited number of job openings in the country has prompted a significant number of Indonesian residents and Indonesian Migrant Workers (PMI) to seek employment abroad (Rahman et al., 2021). As time goes on, more and more people choose to make a living overseas.

The biggest motivation for becoming a migrant worker is the high pay given (Supomo, 1999). However, while working overseas, PMI encounters several issues. Starting with the issue of human rights breaches and moving on to the persistent issue of people trafficking at PMI. Because they are in the nation of people illegally, workers frequently find themselves in legal difficulty (Noveria et al., 2020). The overwhelming violence that has so far been directed towards PMI is really worrisome. On the list of nations where PMI frequently gets reports of employer-caused human rights abuses are Malaysia and Saudi Arabia (Fikri, 2022; Mindarti, 2015; Yolanda, 2020).

The birth of Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers (hereinafter written Law No. 18 of 2017) is an integral part of the system built on the mandate of Article 28D paragraph 3, where every citizen is entitled to a decent job. The government expects the passage of Law No. 18 of 2017 to minimize the number of victims of violence against Indonesian migrant workers overseas and to prevent the occurrence of illegal PMI. Besides, Law No. 18 of 2017 controls employment agreements and placements for migrant workers.

Maskunah binti Nasuka Murid from Tukdana Village, Tukdana District, Indramayu Regency, an example of an illegal PMI who died abroad; deceased was despatched by PT Tebar Insani Mandiri; deceased did not follow PMI processes, protocols, and mechanisms in her departure (Voice Indonesia, 2022).

Background information allows us to condense the issue at hand down to a single formulation, namely what is the form of Legal Protection for Indonesian Migrant Workers abroad?. Based on the identification of this issue, this study aimed to analyze the illegal Indonesian Migrant Workers protection based on Law Number 18 of 2017 concerning Indonesian Migrant Workers.

1. METHODOLOGY

In this study, we used the Normative Juridical method, which is a legal research method that is carried out by examining library materials or mere secondary materials (Soekanto, 2012). This study was a normative juridical research on issues related to legal protection for Indonesian Migrant Workers (PMI).

The data analysis method was carried out by collecting data through a review of library materials or secondary data which includes primary legal materials, secondary legal materials and tertiary legal materials, both in the form of documents and applicable laws and regulations relating to normative juridical analysis of election law enforcement and election. To analyze the legal material that has been collected, this study uses a qualitative data analysis method, namely normative juridical which is presented descriptively, namely by describing an effective formula in legal protection for Indonesian migrant workers abroad.

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2. RESULTS AND DISCUSSION

The provision of protection must be viewed carefully and precisely due to the conflict between the sovereignty of other countries and international law. On the other hand, the government does not prepare a budget to provide protection for cases that have no impact on bilateral relations, politics, the economy, or socio-cultural life in Indonesia (Adamhar, 2004).

Realizing the actions of the ruler's protection is provided to every human right in order to create a sense of security as a type of legal protection due to losses produced by a crime, from dangers that interfere with a person's mind and physique (Satjipto, 2000).

Maskunah Binti Nasuka Murid is a PMI from Indramayu who departed through PT Tebar Insani Mandiri in February 2022 and arrived at the Jeddah Makkah agent (*syarikah*) place in March 2022 (Voice Indonesia, 2022). It is known that the deceased departed without the consent of her family, which is one of the requirements for becoming a PMI candidate.

In addition, as a PMI candidate, the following requirements must be met: a certificate of marital status, a photocopy of the marriage book for those who are married, a work competency certificate, a health certificate based on the results of health and psychological examinations, a passport issued by the local immigration office, a Work Visa, an Indonesian Migrant Worker Placement Agreement, and an Employment Agreement (Tantri, 2022). In addition to not having authorization from the family and being unknown to the village chief, there are also additional irregularities, such as the absence of a job agreement and the visa being a tourist visa with a 90-day maximum.

The government protects PMI in order to decrease the amount of violent acts committed against PMI in the course of their activities and to save PMI from those who wish to trade them overseas using illegal PMI funds. The law must protect every person who lacks the political, economic, and social resources to obtain justice for themselves (Hartono, 1991).

In this case, Indonesian government has utilized a variety of both local and international measures to protect its citizens (Susetyorini, 2010). Various rules have been created to address the difficulties, yet there are still many purposeful and inadvertent infractions throughout their implementation. A mutually agreed upon employment arrangement includes legal protection for the rights and duties of Indonesian Migrant Workers abroad. Law No. 18 of 2017 regulates the principles of compatibility, equal rights, democracy, equality of society, equality, gender justice, and anti-trafficking.

The government has representatives abroad, namely diplomatic, so that the limitations of diplomatic duties and functions are as follows:

1) *Represanti*

According to B.Sen (Sen, 1979), the limitation of the representative is the main function of a diplomatic representative in representing the sending country in the receiving country and acting as an official liaison channel between the governments of the two countries. The aim is to maintain diplomatic relations between countries concerning the transportation facilities of the two countries. Diplomatic officers often carry out the function of negotiating and conveying their government's views on important issues to the government of the country where they are accredited.

2) Protection

Protection can be viewed as protecting the person, property, and interests of foreign-based citizens. This protection is an authority provided by international law to the sending country, which means that the sending country may, but is not required to, defend its citizens residing in the receiving country. This responsibility arises only on the basis of the national law of the country of origin (Suryono & Arisoendha, 1986).

In the 1961 Vienna Convention on Diplomatic Relations, it has also been emphasized that the diplomatic mission functions to protect the interests of the sending country and its citizens in the territory where it is accredited.

3) Negotiation

In international law, a form of relationship between countries is known as negotiation. Negotiation or negotiations can be held between two or more countries. These negotiations can be carried out either with accredited countries or with other countries. These negotiations are one of the diplomatic functions in representing the country. In this case a diplomat can express his country's attitude to the receiving country which concerns the interests of the two countries and also the attitude taken by his country regarding

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international developments in general (Mauna, 2003).

4) Reporting

The obligation to make reports for diplomatic representatives by law is stipulated in Article 3 of the 1961 Vienna Convention on Diplomatic Relations where it states "Provide reports to the sending country regarding conditions and developments in the receiving country in ways that are justifiable by law."

This is a key responsibility for diplomatic officials in the receiving country, which includes the careful observation of all developments in the receiving country. The need is to facilitate the management of country's interests. The report must be given to the sending nation by observing or carefully analyzing every event that occurs in the receiving country that has the potential to influence the interests of the country (Suryono & Arisoendha, 1986).

The basis of the duty of a diplomat is to provide reports to his government on political policies and other events in the recipient country where he is accredited.

The form of protection provided to PMI consists of 3 aspects, namely:

1. Protection before departure is a protection where prospective migrant workers will be given information regarding the requirements and procedures for the stages that must be passed to become PMI including document management, this stage is very important to prevent illegal PMI from occurring.
2. Protection while in the working area according to the state of work, where this protection includes matters of encouragement and support morally and physically in accordance with the legal provisions of the region where the destination works. The government supervises and guides to prevent human rights violations committed by employers where migrant workers work.
3. Protection given to PMI after the completion of the period of work which includes termination of employment or due to an accident until the deportation activities of the foreign government where the destination works are imposed on PMI. If in the process of repatriating a migrant worker, there is a PMI who has died for some reason, the implementing party of the PMI placement must notify the family concerned no earlier than one day after the death of the PMI. In accordance with the existing provisions, the PMI placement executor must also provide funeral expenses for the person concerned, even though he has died, the receipt of PMI's rights must be fulfilled by the PMI departure implementation service.

Additionally, there are preventive and curative legal protections in place to protect migrant workers abroad. Preventive protection for migrant workers is educational protection, i.e. providing knowledge on the rights and responsibilities of each party in doing a good and accurate job, specifically in the sphere of domestic assistant (ART) work or what is widely known as the informal industry (Rustamaji & Kusuma, 2023). Affirming the duties that employees must fulfil, the rights they get, and the manner in which they embrace these rights. PMI receives curative or repressive protection if there is a violation of the employment agreement in an employment relationship. This protection is offered if PMI encounters a legal issue in a jurisdiction in which it operates. As an effort to ameliorate the victims' condition. It is feasible for each victim of physical abuse to obtain justice and mental improvement in order to better continue their life.

The protection efforts by the RI Representatives are only at an early stage and are felt to be not optimal (Primawati, 2012). This is caused by several factors such as financial constraints for the provision of local lawyers, in addition to limited funds for operational costs incurred to accommodate troubled migrant workers at the Indonesian Embassy. In addition, the Indonesian Representatives' flexibility is restricted by the Vienna Convention of 1963, specifically Article 5 on consular services, which requires every foreign official to respect the sovereignty and authority of the host country.

CONCLUSION

Indonesian Migrant Workers or *Pekerja Migran Indonesia* (PMI) Protection in accordance with Law Number 18 of 2017 encompasses PMI protection before placement, PMI protection during placement, and PMI protection after completion of employment in placement. To protect the rights of migrant workers, the government also offers preventive and curative/repressive measures. In this instance, the objective of

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preventive protection is to prevent violence towards PMI. Meanwhile, curative or repressive protection is provided if PMI encounters difficulties or violence while performing their tasks.

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03/02/2023

Paper Submission #548: ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NUMBER 18 OF 2017 CONCERNING INDONESIAN
MIGRANT WORKERS



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**Paper Submission #548 : ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NUMBER 18 OF 2017 CONCERNING INDONESIAN
MIGRANT WORKERS**

I Wayan Gde Wiryawan <iwayangdewirayawan@gmail.com>

To: editor@russianlawjournal.org

Fri, Feb 03, 2023 at 7:58 AM

Dear Editor,

Thank you very much for your valuable advises.

We have already accomplished to revised the manuscript as your instructions as attached. Please kindly check and inform us the result in advance.

Please let me know if you need further assistance. We are looking forward to hearing from you soon

[Kutipan teks disembunyikan]

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I Wayan Gde Wiryawan <iwayangdewirayawan@gmail.com>

Acceptance letter

Russian Law Journal (RLJ) <editor@russianlawjournal.org>
To : iwayangdewirayawan@gmail.com

Sat, Feb 11, 2023 at 11:35 AM

Dear I Wayan Gde Wiryawan

It's my pleasure to inform you that, after the peer review, your paper, **"ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION BASED ON LAW NUMBER 18 OF 2017 CONCERNING INDONESIAN MIGRANT WORKERS"** has been **ACCEPTED** to publish with **Russian Law Journal (RLJ)**. Your article will be published on 2023, Vol. XI, Issue. 1s, (274-278) of **Russian Law Journal (RLJ)** with ISSN 2309-8678 (Print); ISSN 2312-3605 (Online).

There is a **Publication fee that should be paid in advance** for the article. The publication fee will include the following.

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Thanks

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Date: 11th Feb, 2023

LETTER OF ACCEPTANCE

I Wayan Gde Wiryawan

Faculty of Law, Mahasaraswati University, Denpasar, Indonesia

Corresponding email: iwayangdewirayawan@gmail.com

It's my pleasure to inform you that, after the peer review, your paper:

**“ANALYSIS OF ILLEGAL INDONESIAN MIGRANT WORKERS PROTECTION
BASED ON LAW NUMBER 18 OF 2017 CONCERNING
INDONESIAN MIGRANT WORKERS”**

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Please do not hesitate to contact me if you have any further questions. Sincerely,

Editor-in-Chief of Russian Law Journal

